Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:EEE:EB:QP1
PLR-105144-23

Date:
August 29, 2023

In Re:

Taxpayer =
Plan A =
Plan B =
Plan C =

Plan D =

Dear :

This is in response to a request for a letter ruling submitted on behalf of Taxpayer by its authorized representatives on March 1, 2023, as supplemented by correspondence dated June 1, 2023, and August 15, 2023, regarding the proper treatment of the transfer of surplus assets to Plan C following the termination of Plan A, and to Plan D following the termination of Plan B under section 4980 of the Internal Revenue Code (Code).

Facts

Taxpayer has represented the following facts:

Taxpayer, a publicly-traded corporation, sponsors two tax-qualified defined benefit plans (Plan A and Plan B) and two tax-qualified defined contribution plans (Plan C and Plan D) which are profit-sharing plans that includes a cash or deferred arrangement intended to qualify under section 401(k). Plan A and Plan C provide benefits to salaried and non-union employees and Plan B and Plan D cover employees whose employment is governed by collective bargaining agreements. All four of these plans are individually designed and have periodically received favorable determination letters throughout their existence and operation.

Taxpayer terminated Plan A and Plan B effective December 31, 2021 and has submitted a request for the determination of qualified status of Plan A and Plan B upon

termination to the Service, using Form 5310 (Application for Determination upon Termination). After issuance of a favorable determination letter by the Service in connection with the termination of Plan A and Plan B, Taxpayer will undertake the complete liquidation of all assets in both plans and payment of all benefit commitments to all participants in both plans. Assets remaining in each plan following distribution of all benefits and payment of all expenses associated with the termination of the plans are excess assets that will be subject to the possible reversion to Taxpayer.

After payment of all benefits from Plan A and Plan B and satisfaction of all expenses associated with their termination, Taxpayer proposes to transfer all excess assets in Plan A to Plan C and all excess assets in Plan B to Plan D. Taxpayer has confirmed that by transferring excess assets in this manner at least 95 percent of the active participants in the Plan A and at least 95 percent of the active participants in Plan B who remain as employees of taxpayer after the termination of the plans will be active participants in the respective Plan C and Plan D.

Taxpayer will either allocate the transferred funds from Plan A and Plan B to the accounts of the respective Plan C and Plan D participants in the plan year in which the transfer occurs, treating the transferred funds in the same manner as a non-elective contribution by Taxpayer, or, in the alternative, credit the transferred funds to a suspense account established in each of Plan C and Plan D.[1] In the event the transferred funds are transferred to suspense accounts in Plan C and Plan D, respectively, Taxpayer will allocate the transferred funds from the applicable suspense account to participants' accounts in the Plan C or Plan D no less rapidly than ratably over a 7-plan-year period, beginning with the year in which the transfer occurs, treating the transferred funds in the same manner as a non-elective contribution by Taxpayer. In no event will Taxpayer use or apply any transferred funds or any funds in either suspense account to satisfy any matching contribution obligation Taxpayer may have with respect to Plan C or Plan D.

If the limits imposed by section 415 prevent the allocation of any amount in either suspense account to a participant in Plan C or Plan D before the close of the 7-year period, that amount will be allocated to the accounts of other participants. If any portion of the suspense account amount may not be allocated to other participants by reason of any limitation, it will be allocated to participant accounts as otherwise provided under section 415. Taxpayer does not anticipate that any amounts to be allocated from the transferred funds will exceed the limits under section 415, whether allocated in a single year or placed in the suspense account ratably over multiple plan years.

[1] Taxpayer will cause Plan C and Plan D to be amended, to the extent necessary, prior to the receipt of the transferred funds from Plan A and Plan B, respectively, so that the transferred funds may be held in the conforming suspense accounts for subsequent allocation, if all transferred funds are not allocated in the year of transfer.

Taxpayer requests the following rulings:

1. Plan C and Plan D are qualified plans within the meaning of section 4980(c)(1).
2. Based on Taxpayer's compliance with the requirements in section 4980(d)(2)(A) and (B), Plan C and Plan D are qualified replacement plans within the meaning of section 4980(d)(2).
3. The excess assets transferred from the terminated Plan A to Plan C will not be includible in the gross income of Taxpayer.
4. The excess assets transferred from the terminated Plan B to Plan D will not be includible in the gross income of Taxpayer.
5. With respect to the transfer of the excess assets from the terminated Plan A and Plan B to the respective Plan C and Plan D, no deduction is allowable to Taxpayer under section 404 and the amount transferred will not offset the maximum deductible amount otherwise available to Taxpayer under that Code section.
6. The excess assets transferred from the terminated Plan A and Plan B to the respective Plan C and Plan D will not constitute or be treated as a reversion to Taxpayer.
7. No amount of the excess assets transferred from the terminated Plan A and Plan B to the respective Plan C and Plan D will be subject to any excise tax under section 4980.
8. The excess assets transferred from the terminated Plan A and Plan B to the respective Plan C and Plan D will not be treated as annual additions to either of the respective Plan C and Plan D under section 415 until allocated to participant accounts.

Applicable Law

Section 61 provides that, except as otherwise provided in Subtitle A, gross income means all income from whatever source derived.

Section 404 provides rules governing the deductibility of employer contributions to an employees' trust or annuity plan or with respect to a deferred compensation plan. Under section 404(a), if contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, those contributions are not deductible under any other provision of Chapter 1 of Subtitle A of the Code. If those amounts would otherwise be deductible, however, they are deductible under section 404 subject to specified limits.

Section 415(c) provides that contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition to the participant's account, such annual addition is greater than the lesser of $40,000 (as indexed in accordance with section 415(d)(1)(C)), or 100 percent of the participant's compensation.

Section 415(c)(2) provides that, for purposes of section 415(c)(1), the term “annual addition” means the sum for any year of employer contributions, employee contributions, and forfeitures.

Section 4980(a) imposes a 20 percent excise tax on the amount of any employer reversion from a qualified plan. Under section 4980(d)(1), the excise tax under section 4980 is increased to 50 percent with respect to an employer reversion from a qualified plan unless the employer either establishes or maintains a “qualified replacement plan,” or the plan provides for certain benefit increases which take effect on the termination date.

Section 4980(c)(1) generally defines a “qualified plan” as any plan meeting the requirements of section 401(a) or section 403(a), other than a plan maintained by an employer if such employer has, at all times, been exempt from tax under Subtitle A, or a governmental plan (within the meaning of section 414(d)).

Section 4980(c)(2) generally defines the term “employer reversion” as the amount of cash and fair market value of other property received (directly or indirectly) by the employer from the qualified plan.

Section 4980(d)(2) defines a “qualified replacement plan” as a qualified plan established or maintained by the employer in connection with a qualified plan termination, which satisfies the participation, asset transfer, and allocation requirements of section 4980(d)(2)(A), (B), and (C).

Section 4980(d)(2)(A) requires that at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination be active participants in the replacement plan.

Section 4980(d)(2)(B) requires that a direct transfer from the terminated plan to the replacement plan be made before any employer reversion, and that the transfer be an amount equal to the excess (if any) of (i) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to section 4980(d), over (ii) the amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment adopted during the 60-day period ending on the date of termination of the qualified plan, and which takes effect immediately on the termination date.

Section 4980(d)(2)(B)(iii) provides that in the case of the transfer of any amount under section 4980(d)(2)(B)(i) from a terminated plan, such amount is not includible in the gross income of the employer, no deduction is allowable with respect to the transfer, and the transfer is not treated as an employer reversion for purposes of section 4980.

Section 4980(d)(2)(C)(i) provides that if the replacement plan is a defined contribution plan, the amount transferred to the replacement plan must be (I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or (II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer.

Section 4980(d)(2)(C)(ii) provides that if, by reason of any limitation under section 415, any amount credited to a suspense account under section 4980(d)(2)(C)(i)(II) may not be allocated to a participant before the close of the 7-plan-year period, that amount shall be allocated to the accounts of other participants, and if any portion of that amount may not be allocated to other participants by reason of such limitation, it shall be allocated to the participant as provided in section 415.

Section 4980(d)(2)(C)(iii) provides that any income on any amount credited to a suspense account under section 4980(d)(2)(C)(i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under section 4980(d)(2)(C)(i)(II) (after application of section 4980(d)(2)(C)(ii)).

Section 4980(d)(2)(C)(iv) provides that if any amount credited to a suspense account under section 4980(d)(2)(C)(i)(II) is not allocated as of the termination date of the replacement plan, (I) such amount shall be allocated to the accounts of the participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and (II) if any portion of such amount may not be allocated to other participants under the preceding subclause by reason of such limitation, that portion shall be treated as an employer reversion to which section 4980 applies.

Section 4980(d)(4)(A) provides that a benefit may not be increased under section 4980(d)(2)(B)(ii) or section 4980(d)(3)(A), and an amount may not be allocated to a participant under section 4980(d)(2)(C), if such increase or allocation would result in a failure to meet any requirement under section 401(a)(4) or section 415.

Section 4980(d)(4)(B) provides that any increase in benefits under section 4980(d)(2)(B)(ii) or section 4980(d)(3)(A), or any allocation of any amount (or income allocable thereto) to any account under section 4980(d)(2)(C), shall be treated as an annual benefit or annual addition for purposes of section 415.

Revenue Ruling 2003-85, 2003-32 I.R.B. 291, provides that the direct transfer from a terminating plan that did not provide for increases in the accrued benefit of participants to a plan intending to be a qualified replacement plan satisfied the requirements of section 4980(d)(2)(B) when the amount transferred was at least 25 percent of the maximum amount that the employer could receive as an employer reversion.

Analysis

With respect to the first request, Taxpayer represents that Plan C and Plan D have each received determination letters, which indicates that they satisfy the requirements of section 401(a) and are thus qualified plans. Therefore, Plan C and Plan D are "qualified plans" within the meaning of section 4980(c)(1).

With respect to the second request, Taxpayer represents that at least 95 percent of the active participants in Plan A who remain as employees of Taxpayer after Plan A was terminated and Plan A benefits are distributed are active participants in Plan C. In addition, Taxpayer represents that at least 95 percent of the active participants in Plan B who remain as employees of Taxpayer after Plan B was terminated and Plan B benefits are distributed are active participants in Plan D. In addition, Taxpayer represents that all remaining excess assets in Plan A will be transferred to Plan C, and all remaining excess assets in Plan B will be transferred to Plan D. All of those assets could revert to Taxpayer if not transferred to Plan C or Plan D. Taxpayer further represents that Taxpayer will either allocate the transferred funds from Plan A and Plan B to the accounts of the respective Plan C and Plan D participants or credit the transferred funds to a suspense account established in each of Plan C and Plan D. Based on these representations, Taxpayer will satisfy the participation, asset transfer, and allocation requirements of sections 4980(d)(2)(A), (B), and (C). Based on these representations, Plan C and Plan D are qualified replacement plans within the meaning of section 4980(d)(2).

With respect to the third and fourth requests, Taxpayer represents that Plan A and Plan B have been terminated and, after payment of Plan A and Plan B benefits and expenses, all remaining assets from Plan A will be transferred to Plan C and all remaining assets from Plan B will be transferred to Plan D. Section 4980(d)(2)(B)(iii) provides that in the case of the transfer of any amount under section 4980(d)(2)(B)(i) from a terminated plan, that amount is not includible in the gross income of the employer. Therefore, excess assets transferred from the terminated Plan A and Plan B to the respective Plan C and Plan D will not be includible in the gross income of Taxpayer.

With respect to the fifth request, Taxpayer represents that pursuant to section 4980(d)(2)(B)(i) the assets from Plan A are being transferred directly to Plan C and the assets from Plan B are being transferred directly to Plan D. Therefore, in accordance with section 4980(d)(2)(B)(iii), no deduction is allowable to Taxpayer under section 404 and the amount transferred will not offset the maximum deductible amount with respect to Plan C and Plan D otherwise available to Taxpayer under section 404.

With respect to the sixth request, Taxpayer represents that Plan C and Plan D will receive all of the excess assets from Plan A and Plan B, respectively. Therefore, Taxpayer will not receive any of the excess assets. Section 4980(d)(2)(B)(iii) provides, in part, that in the case of the transfer of any amount under section 4980(d)(2)(B)(i) from

a terminated plan, the transfer is not treated as an employer reversion for purposes of section 4980. Therefore, the transfer of excess assets from Plan A to Plan C or from Plan B to Plan D will not constitute or be treated as a reversion to Taxpayer under section 4980.

With respect to the seventh request, because the transfer of excess assets to Plan B and Plan D is not a reversion to Taxpayer, the amounts transferred to Plan B and Plan D will not be subject to the excise tax under section 4980.

With respect to the eighth request, section 4980(d)(4)(B) provides that any allocation of any amount (or income allocable thereto) to any account under section 4980(d)(2)(C), is treated as an annual benefit or annual addition for purposes of section 415. Therefore, excess assets transferred from Plan A to Plan C and Plan B to Plan D will not be treated as annual additions to Plan C and Plan D accounts under section 415 until amounts are allocated to Plan C and Plan D participant accounts from the suspense account.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer's authorized representatives (including the representation that the transfers will take place only upon the issuance of a favorable determination letter from the Service on the termination of Plan A and Plan B) and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2023-1, 2023-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2023 1, § 11.05.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to each of your authorized representatives.

Sincerely,

Jason E. Levine
Branch Chief
Qualified Plans Branch 1
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: