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Department of the Treasury
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Refer Reply To:
CC:EEE:EB:QP3
PLR-121708-23

Date:
April 19, 2024

In Re:

Taxpayer =
Plan A =
Plan B =
Plan C =

Dear :

This is in response to a request for a letter ruling submitted on behalf of Taxpayer by its authorized representatives on September 12, 2023, as supplemented by correspondence dated March 4, 2024, and March 11, 2024, concerning the proper treatment under section 4980 of the Internal Revenue Code (Code) of the direct transfer of all of the remaining assets of Plan A, a qualified defined benefit plan sponsored by Taxpayer that has been terminated, to Plans B and C, two qualified profit-sharing plans sponsored by Taxpayer.

Facts

Taxpayer is a publicly traded company that, along with other members of its controlled group, files a consolidated Federal income tax return. Taxpayer's taxable year is the calendar year. Taxpayer has represented the following facts:

Plan A is a defined benefit pension plan established by Taxpayer that (together with its related trust), since its inception, has been qualified under section 401(a). Taxpayer terminated Plan A effective as of December 31, 2021. Before that date, benefit accruals under Plan A were discontinued at various times for different participant groups.

Plan B is a defined contribution profit sharing plan sponsored by Taxpayer that (together with its related trust), since its inception, has been qualified under section 401(a). Plan C is a defined contribution profit sharing plan sponsored by Taxpayer that (together with

its related trust), since its inception, has been qualified under section 401(a). Plan B and Plan C each have a plan year that is the calendar year.

Prior to its termination, Plan A covered two groups of employees that are referred to for purposes of this request as, respectively, bargaining employees and non-bargaining employees. Plan B covers eligible employees who are non-bargaining employees. Plan C covers eligible employees who are bargaining employees.

Plan B includes: (A) a qualified cash or deferred arrangement under section 401(k); (B) an employer safe harbor contribution feature pursuant to which Taxpayer makes certain matching contributions on behalf of eligible non-bargaining employees in accordance with sections 401(k)(12) and 401(m)(11); (C) an employer nonelective contribution feature pursuant to which Taxpayer makes certain supplemental contributions for each plan year on behalf of eligible non-bargaining employees; and (D) the ability for Taxpayer to make discretionary employer contributions on behalf of eligible non-bargaining employees.

Plan C includes a qualified cash or deferred arrangement under section 401(k) and an employer contribution feature pursuant to which Taxpayer makes certain matching contributions and supplemental nonelective employer contributions on behalf of certain eligible bargaining employees in accordance with sections 401(k) and 401(m).

All employees who were active participants in Plan A on the date of Plan A termination were active participants in either Plan B or Plan C at that time. Thus, immediately after the termination of Plan A effective December 31, 2021, 100 percent of the participants in Plan A who remained as current employees of Taxpayer (including any member of its controlled group) were active participants in either Plan B or Plan C. Of those employees, 35 percent were active participants in Plan B, and 65 percent were active participants in Plan C.

The IRS issued a favorable determination letter on July 12, 2022, as to the effect of the termination of Plan A on its qualified status. Plan A was terminated in a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and a Standard Termination Notice was filed with the Pension Benefit Guaranty Corporation (PBGC) for Plan A on June 20, 2023.

The distribution of all benefits due to participants, surviving spouses, other beneficiaries, and alternative payees under Plan A was completed on February 1, 2023. Following the distribution of all benefits due to participants, surviving spouses, other beneficiaries, and alternative payees under Plan A, the actuary for Plan A estimated that Plan A had a surplus of $14.4 million as of June 30, 2023.

After all Plan A liabilities have been satisfied and before the reversion of any surplus funds to Taxpayer, Taxpayer will direct the trustee of Plan A to effectuate the direct transfer from Plan A to Plan B and Plan C of an aggregate amount equal to the total

amount of Plan A's remaining surplus. Taxpayer will further direct that this aggregate amount be divided between Plan B and Plan C in proportion to the number of participants in Plan A as of December 31, 2021 (100 percent of whom were participants in either Plan B or Plan C as of December 31, 2021) who remain as current employees of Taxpayer (including any member of its controlled group) and are active participants in, respectively, Plan B and Plan C as of the last day of the month immediately preceding the month in which the direct transfer of assets from Plan A occurs.

Taxpayer will cause the amounts transferred to Plan B and Plan C to be credited to a suspense account under each of those plans, and amounts from those suspense accounts will be allocated to fund all or a portion of any employer nonelective contributions due in accordance with the terms of those plans (after the offset of any forfeitures). The transfers will take place following receipt of a favorable private letter ruling approving the Proposed Transaction. Taxpayer will direct the release of amounts from the suspense accounts for allocation to fund future nonelective contributions in accordance with section 4980 to be allocated for plan years beginning with the year of the transfers. The allocations from the suspense accounts will be no less rapidly than ratably on a periodic basis over an allocation period beginning on the date of the transfer and ending on the last day of the sixth plan year after the plan year of transfer (Allocation Period). The minimum ratable drawdown of the suspense account over the Allocation Period will be measured by the Taxpayer or plan administrator at periodic intervals. The amount released from the suspense account for each interval (*e.g.*, for each plan year), applied to fund employer nonelective contributions, will be no less than the amount determined by multiplying the amount in the suspense account as of the first day of the interval by a fraction, the numerator of which is one and the denominator of which is the number of intervals remaining in the Allocation Period, and these amounts will be released from the suspense accounts at least annually. The suspense accounts will not be applied to fund any employer matching contributions (within the meaning of Treas. Reg. § 1.401(k)-6)) under Plan B or Plan C. Taxpayer will adopt amendments to Plan B and Plan C to accomplish the foregoing.

Any amounts allocated from the suspense accounts in Plan B and Plan C attributable to the transfers from Plan A and any income earned thereon will be treated as employer contributions for purposes of sections 401 and 415.

All benefits due under Plan A were distributed after Taxpayer received the favorable IRS determination letter regarding the qualified status of Plan A upon its termination. The remaining surplus assets will be retained in the trust through which Plan A is funded pending receipt of the requested rulings described herein.

In general, in a standard plan termination, a defined benefit plan is to distribute plan assets to satisfy all plan benefits by a distribution deadline. The distribution deadline is the later of (a) 180 days after expiration of PBGC's 60-day review period, or (b) 120 days after receipt of a favorable IRS determination letter provided that the plan administrator submits a valid request for an IRS determination letter by the time he or

she files the Form 500 with PBGC. Plan A received its favorable determination letter relating to the termination of Plan A on July 12, 2022. The period of 180 days following the expiration of the PBGC's 60-day period occurred on December 23, 2022 (the Form 5500 was filed with the PBGC on April 27, 2022). An insurance company assumed the annuity payments on or about February 1, 2023. As part of the process of terminating Plan A, Taxpayer was required to make best efforts to locate any missing participants to ensure that their benefits were properly paid and ultimately reported to the PBGC in the context of Taxpayer's filing of Form 501 (PBGC Post-Distribution Certification for Standard Termination) and MP-100 (Missing Participants Program Plan Information). Taxpayer filed Form 501 and MP-100 with the PBGC on June 20, 2023, and was then in position to confirm the amount of excess pension assets remaining and evaluate whether the excess pension assets could be transferred to one or both of the defined contribution plans sponsored by Taxpayer. The effort to locate and contact missing participants took far longer than Taxpayer may have contemplated, and this effort contributed to the delay in finalizing a contract with an annuity provider. In view of the number of missing participants and certain complexities involving Plan A, Taxpayer had to resolve questions in connection with the annuity provider's assumption of liabilities and, once the excess amount was known, determine how best to proceed with addressing the remaining assets (culminating in a letter ruling request). The missing participants were not resolved until the end of June 2023. After that date, there were no remaining participants in Plan A; all participants had received distributions from Plan A. In addition, the process of obtaining guidance has also delayed the distribution of the remaining assets in Plan A's trust.

Taxpayer requests the following rulings:

1. Plan B and Plan C may be treated as one plan for purposes of section 4980 pursuant to section 4980(d)(5)(D) and together constitutes a single "qualified replacement plan" for purposes of section 4980(d)(2).
2. The direct transfer from Plan A to Plan B and Plan C of an aggregate amount equal to 100 percent of the maximum amount that Taxpayer could receive as an employer reversion from Plan A will be treated as follows:
    a. the aggregate amount transferred will not be included in the gross income of Taxpayer;
    b. no deduction will be allowable with respect to the aggregate amount transferred; and
    c. the aggregate amount transferred will not be treated as an employer reversion for purposes of section 4980, and Taxpayer will not be subject to any excise tax under section 4980 with respect to the amount transferred.
3. The allocation of the aggregate amount of the direct transfer from Plan A between Plan B and Plan C in proportion to the number of participants in Plan A as of December 31, 2021 who remain as current employees of Taxpayer (including any member of its controlled group) and are active participants in, respectively, Plan B and Plan C as of the last day of the month immediately preceding the month in which the direct transfer of assets from Plan A occurs is

consistent with the treatment of Plan B and Plan C as a single qualified replacement plan for the purposes of section 4980(d)(2) and the requirements of that provision.

4. The crediting of the amounts transferred from Plan A to suspense accounts in Plan B and Plan C, as applicable, and the allocation of the assets in each suspense account to fund all or a portion of the periodic employer nonelective contributions due in accordance with the terms of each of Plan B and Plan C will satisfy the allocation requirement of section 4980(d)(2)(C).
5. An allocation of the surplus in the suspense account in 2025 may be treated as an allocation for the year of the transfer (2024) when used for a 2024 nonelective contribution, provided that the 2024 nonelective contribution is made no later than the due date, including extensions, of Taxpayer's federal income tax return for the 2024 tax year.
6. In view of the requirement in Revenue Ruling 89-87 that plan assets be distributed as soon as administratively feasible following the termination of the plan, that Plan A be granted an extension of time to distribute its remaining assets through the date that is 60 days after the date this letter ruling is resolved (either approved or denied) so that the retention of assets in Plan A's trust, after all benefit liabilities have been satisfied, and the transfer of the remaining assets to the qualified replacement plans, will be considered to have been made as soon as administratively feasible following the termination of Plan A.

Applicable Law

Section 4980(a) provides for a 20 percent excise tax on the amount of any reversion from a qualified plan.

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

Section 4980(d)(1) provides, in pertinent part, that the excise tax under section 4980(a) shall be increased to 50 percent with respect to any 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 that take effect immediately on the termination date.

Section 4980(d)(2) provides that a qualified replacement plan is a qualified plan established or maintained by the employer in connection with a qualified plan termination, that 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 that 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 that 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, that 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 the suspense account to accounts of participants no less rapidly than ratably over the seven-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 clause (i)(II) may not be allocated to a participant before the close of the seven-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 the 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 clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under that clause (after application of clause (ii)).

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

Section 4980(d)(5)(D)(i) authorizes the Secretary of the Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan.

Rev. Rul. 2003-85, 2003-32 IRB 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 intended 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.

Under section 501(a), an organization described in section 401(a) (that is, a trust that is part of a qualified pension, profit-sharing or stock bonus plan) is generally exempt from taxation.

Under § 1.411(d)-2(c)(2), for purposes of section 411, a plan to which title IV of ERISA applies is considered terminated as of a particular date if as of that date it was terminated under section 4041 or 4042 of ERISA. For such a plan, the date of termination is the date of termination determined under section 4048 of ERISA.

Section 1.416-1, T-4, defines a terminated plan as one that has been formally terminated, under which crediting service has ceased for vesting and benefit accruals, and under which plan assets have been, or are being, distributed as soon as is administratively feasible.

Under Rev. Rul. 69-157, 1969-1 CB 115, a trust that is part of a qualified plan will not retain its qualified status after the plan has been terminated. Further, a plan is not considered terminated in fact where the plan continues in effect until all the assets have been distributed to participants in accordance with the terms of the plan.

Under Rev. Rul. 79-237, 1979-2 CB 190, once applicable, the minimum funding standards described in section 412 apply to a pension plan through the date of its termination. Rev. Rul. 79-237 defines the date of termination for a plan subject to title IV as the date described in section 4048 of ERISA.

Section 430 provides requirements regarding the minimum funding standards under section 412 for single-employer defined benefit plans, including rules for determining minimum required contributions and rules regarding the timing for making the minimum required contributions. Section 1.430(a)-1(f)(5)(i) provides that in the case of a plan subject to Title IV, the plan's termination date means the termination date established under section 4048 of ERISA.

Rev. Rul. 89-87, 1989-2 C.B. 81 states that in order to terminate a qualified plan, the date of termination must be established, the benefits of plan participants and other liabilities under the plan must be determined with respect to the date of plan termination, and all plan assets must be distributed to satisfy those liabilities in accordance with the

terms of the plan as soon as administratively feasible after the date of termination. A plan that is amended to terminate and to cease benefit accruals has not, in fact, been terminated under the Code if the assets are not distributed as soon as administratively feasible after the stated date of plan termination, regardless of whether the plan is treated as terminated under other federal law, including title IV of ERISA. Whether a distribution is made as soon as administratively feasible is to be determined under all the facts and circumstances of the given case but, generally, a distribution that is not completed within one year following the date of plan termination specified by the employer will be presumed not to have been made as soon as administratively feasible.

Analysis

With regard to the first request, section 4980(d)(5)(D)(i) authorizes the Secretary of the Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan. In this case, Taxpayer proposes to contribute all of the excess Plan A assets to Plan B and Plan C, both of which are ongoing defined contribution plans that collectively included all of the active Plan A participants at the time of its termination. Plan B and Plan C may be treated as one single qualified replacement plan for purposes of section 4980(d)(2).

With regard to the second request, 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, no deduction is allowable with respect to the transfer, and the transfer is not treated as an employer reversion for purposes of section 4980. In this case, Plan A will transfer all of the excess Plan A assets that would otherwise be a reversion to Taxpayer to Plan B and Plan C, considered collectively to be a qualified replacement plan. Therefore, the direct transfers from Plan A to the receiving plans of the entire amount that Taxpayer could receive as an employer reversion from Plan A will not be included in the gross income of Taxpayer, no deduction will be allowable with respect to the aggregate amount transferred, the aggregate amount transferred will not be treated as an employer reversion for purposes of section 4980, and Taxpayer will not be subject to an excise tax under section 4980 with respect to the amount transferred.

With regard to the third request, after all Plan A liabilities have been satisfied and before the reversion of any surplus funds to Taxpayer, Taxpayer states that it intends to direct the trustee of Plan A to effectuate a direct transfer from Plan A to Plan B and Plan C of an aggregate amount equal to the total amount of Plan A's remaining surplus. Taxpayer further intends to direct that this aggregate amount be divided between Plan B and Plan C in proportion to the number of participants in Plan A as of December 31, 2021 (100 percent of whom were participants in either Plan B or Plan C as of December 31, 2021) who remain as current employees of Taxpayer (including any member of its controlled group) and are active participants in, respectively, Plan B and Plan C as of the last day of the month immediately preceding the month in which the direct transfer of assets from Plan A occurs. This method of allocation of the excess Plan A assets is consistent

with the treatment of Plan B and Plan C as a single qualified replacement plan for the purposes of section 4980(d)(2) and the requirements of that provision.

With regard to the fourth request, Taxpayer states that the terms of Plan B and Plan C will be amended to provide for the creation of a suspense account in each plan and the minimum amount allocated from the suspense account for each of Plan B and Plan C to fund nonelective employer contributions for each interval during the Allocation Period will be no less than the amount determined by multiplying the amount in the respective suspense account as of the first day of the interval by a fraction, the numerator of which is one and the denominator of which is the number of intervals remaining in the Allocation Period for Plan B and Plan C, respectively, and will be at least annually. The allocation of any income earned by the suspense accounts will similarly be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the Allocation Period under the same procedure. This method of allocation complies with the requirements of section 4980(d)(2)(C)(i). Therefore, in this case, this method of crediting of the amounts transferred from Plan A to suspense accounts in each of Plan B and Plan C, and this method of allocation of the assets in the suspense accounts to fund all or a portion of the nonelective employer contributions due in accordance with the terms of Plan B and Plan C, will satisfy the allocation requirements of section 4980(d)(2)(C).

With regard to the fifth request, Taxpayer represents that it will release amounts from the suspense accounts for both plans during 2025 and before the due date (including extensions) for its 2024 Federal income tax return to fund employer contributions for the 2024 plan year. Section 4980(d)(2)(C)(i)(II) provides for the portion of the amount transferred to a qualified replacement plan to be credited to a suspense account and allocated from that account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer. If the transfer of the remaining surplus assets from Plan A to Plans B and C is made during 2024, this release of amounts from the two suspense accounts during 2025 for allocation for the 2024 plan year will not fail to satisfy the requirement to make the first set of periodic allocations from the suspense account in accordance with section 4980(d)(2)(C)(i)(II).

With regard to the sixth request, Taxpayer took action to terminate Plan A effective as December 31, 2021. Plan A received a favorable determination letter on its termination on July 12, 2022. All benefits due under Plan A were distributed after Taxpayer received the favorable determination letter. All that remains to complete the termination is to distribute the plan assets as soon as administratively feasible. Whether a distribution is completed as soon as administratively feasible has been interpreted in Rev. Rul. 89-87 generally to require distribution within one year of the date of termination.

Exceptions to this one-year rule are limited and depend on the facts and circumstances of the plan termination. Taxpayer has represented that the effort to locate and contact missing participants took far longer than Taxpayer may have contemplated, and such effort contributed to the delay in finalizing a contract with an annuity provider. In

addition, Taxpayer had to resolve questions in connection with the annuity provider's assumption of liabilities and, once the excess amount was known, determine how best to proceed with addressing Plan A's remaining assets. In order to transfer the remaining assets to two separate plans and treat the two plans as a qualified replacement plan under section 4980, Taxpayer determined that this letter ruling request was required so the Secretary could provide its approval, pursuant to section 4980(d)(5)(D), that two or more plans may be treated as one plan for purposes of whether a qualified replacement plan exists. Taxpayer filed this letter ruling request several months after the process to locate and contact missing participants concluded. The timing of receipt of the letter ruling (after a request is filed) is largely out of the control of Taxpayer, and the process of obtaining the letter ruling contributed to the delay in the distribution of Plan A's assets.

Based on the facts and circumstances as represented by Taxpayer, we conclude that, if any amounts remaining in Plan A's trust are transferred to Plan B and Plan C by the date that is 60 days after the date of this letter ruling, then Plan A will not be treated as failing to meet the requirement to distribute plan assets as soon as administratively feasible as a result of the fact that assets will remain in Plan A's trust for a period of time after all other benefits and liabilities have been distributed.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2024-1, 2024-1 IRB 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. 2024-1, § 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 letter ruling is directed only to the taxpayer who requested 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,

Linda S. F. Marshall
Senior Counsel, Qualified Plans Branch 1
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: