Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:EEE:EB:QP1
PLR-123836-23
Date: June 4, 2024

Legend:

Taxpayer	=	
DB Plan	=	
DC Plan	=	
Year 1	=	
Year 2	=	
Year 3	=	
Year 4	=	
Year 5	=	
Year 6	=	
$A	=	
$B	=	
$C	=	
$D	=	
$E	=	
$F	=	
$G	=	
$H	=	

Dear :

This is in response to a request for a letter ruling under section 4980(d) of the Internal Revenue Code (Code), submitted on your behalf by your authorized representative in correspondence dated November 28, 2023.

The following facts and representations have been submitted under penalties of perjury in support of the requested ruling.

Taxpayer maintained DB Plan for 12 years. In Year 1, Taxpayer established DC Plan.

Taxpayer terminated DB Plan in Year 2. Upon termination, DB Plan's assets exceeded its accrued benefit by $A (surplus assets). All the surplus assets were transferred in Year 2 from DB Plan to a suspense account in DC Plan.

Under the terms of DC Plan, all amounts held in the suspense account, including earnings, are to be allocated as nonelective contributions credited to participants' accounts no less rapidly than ratably over the seven-plan-year period beginning in the year of transfer. DC Plan also provides that a participant's account may not be credited for any plan year with an amount of nonelective contributions in excess of the Code section 415 limit that applies for the year. In addition, DC Plan provides that the minimum amount that may be released from the suspense account is the total amount held in the suspense account at the beginning of the plan year (as adjusted for earnings and losses) multiplied by the following percentage for the year: 14.2857% (first year); 16.6667% (second year); 20% (third year): 25% (fourth year); 33.3333% (fifth year); 50% (sixth year); and 100% (seventh year).

DC Plan further provides that any assets that remain in the suspense account as of the date of the plan's termination will be credited to a participant's account up to the section 415 limit that applies for the year of termination, and that any assets that remain because of section 415 limitations will revert to Taxpayer.

Taxpayer caused nonelective contributions under DC Plan to be made for each of six consecutive plan years from Year 1 through Year 6 by allocating the following amounts from the suspense account to participants' accounts: $B (Year 1); $C (Year 2); $D (Year 3); $E (Year 4); $F (Year 5); $G (Year 6). No contribution on behalf of a participant was in excess of the section 415 limit that applied to the participant for the year.

Taxpayer terminated DC Plan in Year 6. Upon the plan's termination, and after $G was contributed to participant's accounts, $H remained in the suspense account, unable to be allocated to participants' accounts because of section 415 limitations. The unallocated $H amount includes earnings on the original $A amount transferred to the suspense account. Nonetheless, the $H amount is less than 75 percent of the original $A in surplus assets that was transferred to DC Plan in Year 2.

Taxpayer will report $H in its gross income for Year 6. Taxpayer intends to file Form 5330 and pay excise tax equal to 20% of $H, because it contends that DC Plan constitutes a "qualified replacement plan" within the meaning of section 4980(d)(2), with respect to DB Plan.

RULINGS REQUESTED

1. That DC Plan constitutes a "qualified replacement plan" with respect to DB Plan because DC Plan meets the requirements of section 4980(d)(2):

    a. Participation Requirement. DB Plan and DC Plan had the same participants, which exceeds the requirement that at least 95 percent of the active participants in DB Plan who remain employees of Taxpayer following termination actively participated in DC Plan.

    b. Asset Transfer Requirement. One hundred percent of the surplus assets from DB Plan were transferred to DC Plan, which exceeds the requirement that at least 25 percent of the maximum amount which Taxpayer could receive as an employer reversion would be transferred.

    c. Allocation Requirement. The surplus assets were transferred to the suspense account in DC Plan and allocated from the suspense account to participants' accounts no less rapidly than ratably over the seven-plan-year period beginning with the year of the transfer, subject to the limitations under section 415.

2. That the transfer of surplus assets to the suspense account should be treated in accordance with section 4980(d)(2)(B)(iii).

3. That the amounts allocated from the suspense account to participants' accounts for each year from Year 1 through Year 6 met the requirements of the Code.

4. That the $H remaining in the suspense account upon DC Plan's termination should be subject to a 20 percent excise tax under section 4980(a).

LAW

Section 61 defines gross income as all income from whatever source derived (subject to certain exceptions).

Section 4980(a) provides for a 20 percent excise tax on the amount of any reversion from a 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 which take effect immediately on the termination date.

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)(2) of the Code provides that a “qualified replacement plan” is 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 sections 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 such 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 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 section 4980(d)(2)(C)(i)(II) may not be allocated to a participant before the close of the seven-plan-year period, such amount shall be allocated to the accounts of other participants, and if any portion of such amount may not be allocated to other participants by reason of any 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 clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such 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)

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 subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which this section applies.

Revenue Ruling 2003-85, 2003-32 I.R.B. 291, provides that in accordance with section 4980(d)(2)(B)(iii), the direct transfer of an amount that is at least 25 percent of the maximum amount which the employer could receive as an employer reversion from a terminated plan which was transferred to a "qualified replacement plan" is not includible in the employer's gross income. In addition, the IRS held that no deduction was allowable with respect to the amount transferred, and the amount transferred was not treated as an employer reversion. Further, the IRS concluded that the amount that the employer received was subject to the 20 percent excise tax under section 4980(a) and was includible in income under section 61.

Code Section 415(c)(1) limits employer contributions to the account of any participant to the lesser of (i) 100% of the participant's compensation, or (ii) a specified dollar amount, which is adjusted for inflation.

ANALYSIS

With respect to your first ruling request, you have represented that the same participants participated in both DB Plan and DC Plan. Therefore, because DC Plan covered 100 percent of DB Plan participants who remained in Taxpayer's employ, the requirements of Code section 4980(d)(2)(A) were met.

You have represented that 100 percent of the surplus assets were transferred to DC Plan. Because this amount was at least equal to 25 percent of the maximum amount that Taxpayer could have received as an employer reversion without regard to section 4980(d), the requirements of section 4980(d)(2)(B), as interpreted by Rev. Rul. 2003-85, were satisfied.

You have represented that the amount transferred from DB Plan to DC Plan was credited to a suspense account and allocated to participants' accounts no less rapidly than ratably over the seven-plan-year period beginning with the year of the transfer, and that the allocations were otherwise made in accordance with the requirements of section 4980(d)(2)(C) (assuming that the allocation method is acceptable, as concluded with respect to your third ruling request). Therefore, DC Plan was a "qualified replacement plan" within the meaning of section 4980(d)(2) with respect to DB Plan.

With respect to your second ruling request, you have represented that, in Year 2, 100 percent of DB Plan's surplus assets ($A) were transferred to DC Plan, a qualified replacement plan. In accordance with section 4980(d)(2)(B)(i) and Rev. Rul. 2003-85,

this was at least 25 percent of the maximum amount that Taxpayer could have received as an employer reversion without regard to section 4980(d). Therefore, the amount transferred in Year 2 was not includible in Taxpayer's gross income, no deduction was allowable with respect to the amount transferred, the amount was not treated as an employer reversion for purposes of section 4980, and the amount transferred was not subject to the excise tax under section 4980.

With respect to your third ruling request, you have represented that surplus assets were credited to a suspense account in DC Plan for allocation to participants' accounts in DC Plan with the balance (including any earnings thereon) allocated over a seven-plan-year period pursuant to the schedule of minimum annual allocations set forth in DC Plan, and that such allocations were coordinated with the limitations of section 415 as they applied to each participant. Section 4980(d)(2)(C) does not specify a method for allocating amounts from a suspense account to participant accounts but does require coordination with section 415 limitations. Therefore, we conclude that the use of amounts held in the suspense account to make nonelective contributions in accordance with the allocations schedule set forth in DC Plan satisfied the requirements of sections 415 and 4980(d)(2)(C).

With respect to your fourth ruling request, whether a 20 percent excise tax applies under section 4980(d)(1) depends, under section 4980(d)(2)(B) and Rev. Rul. 2003-85, on there being a transfer of surplus assets to a qualified replacement plan of at least 25 percent of the maximum possible reversion amount without regard to section 4980(d). We have concluded with respect to your second ruling request that the requirement was met for purposes of the initial transfer of DB Plan's surplus assets to DC Plan in Year 2. However, section 4980(d)(2)(C)(iv)(II) provides that any portion of surplus assets transferred to a qualified replacement plan that may not be allocated to participants upon termination of the plan because of the limitations under section 415 are treated as a reversion to which section 4980 applies. Accordingly, the requirement for at least 25 percent of the maximum possible reversion amount also applies to the portion of surplus assets (although transferred to a qualified replacement plan) that may not be allocated to participants upon termination of the plan because of Code section 415 limitations. You have represented that the amount of surplus assets transferred to DC Plan upon DB Plan's termination in Year 2, and therefore the maximum possible reversion amount, was $A, and that the $A amount was credited to a suspense account under DC Plan that was allocated together with earnings thereon ratably over a period of no more than seven years to participants' accounts, starting with Year 1. The allocations were coordinated with the limitations under section 415 as they applied each year to each participant. As a result of the application of the section 415 limitations, upon termination of DC Plan in Year 6, a portion of the maximum possible reversion amount of $A, in the amount of $H, remains unallocated and will be transferred to Taxpayer as an employer reversion. $H is less than 75 percent of $A. This indicates that, for purposes of section 4980(d)(2)(C)(iv)(II), Taxpayer allocated at least 25 percent of the maximum possible reversion amount remaining upon termination of DB Plan. Therefore, the unallocated $H remaining in the suspense account upon DC Plan's termination is, for Year 6, includible

in Taxpayer's gross income and subject to a 20 percent excise tax under section 4980(a).

RULINGS

Thus, with respect to your ruling requests, we conclude as follows:

1. That DC Plan constitutes a "qualified replacement plan" with respect to DB Plan because DC Plan meets the requirements of section 4980(d)(2):

    a. Participation Requirement. DB Plan and DC Plan had the same participants, which exceeds the requirement that at least 95 percent of the active participants in DB Plan who remain employees of Taxpayer following termination actively participated in DC Plan.

    b. Asset Transfer Requirement. One hundred percent of the surplus assets from DB Plan were transferred to DC Plan, which exceeds the requirement that at least 25 percent of the maximum amount which Taxpayer could receive as an employer reversion would be transferred.

    c. Allocation Requirement. The surplus assets were transferred to the suspense account in DC Plan and allocated from the suspense account to participants' accounts no less rapidly than ratably over the seven-plan-year period beginning with the year of the transfer, subject to the limitations under section 415.

2. That the transfer of surplus assets to the suspense account should be treated in accordance with section 4980(d)(2)(B)(iii).

3. That the amounts allocated from the suspense account to participants' accounts for each year from Year 1 through Year 6 met the requirements of the Code.

4. That the $H remaining in the suspense account upon DC Plan's termination should be subject to a 20 percent excise tax under section 4980(a).

This letter assumes that DB Plan and DC Plan satisfied the requirements of the Code at all relevant times.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by Taxpayer, as specified in Rev. Proc. 2024-1, 2024-1 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. 2024-1, § 11.05.

Except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling.

This 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 your authorized representative.

Sincerely,

_____

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

cc: