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Department of the Treasury  
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Person To Contact:  
 , ID No.  
Telephone Number:

Refer Reply To:  
CC:EEE:EB:QP3  
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Date:  
September 19, 2024

Legend

Taxpayer =  
Parent =  
Pension Plan =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =

Dear :

This is in response to your letter, dated , submitted on your behalf by your authorized representative. The letter requests a ruling on the impact of amending a pension plan document to expand employee eligibility for benefits under the plan’s section 401(h) retiree medical accounts to include, pursuant to section 401(a)(36) of the Internal Revenue Code (Code), certain employees eligible to commence retirement benefits under the plan upon attainment of age 59 ½.

Facts

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

The Taxpayer is a subsidiary of the Parent. The Taxpayer has a fiscal calendar year accounting period and files its tax returns under the accrual method.

The Taxpayer maintains a Pension Plan, a defined benefit pension plan. The Pension Plan was established effective Date 1 and was most recently restated effective Date 2.

The Pension Plan received its most recent IRS determination letter on Date 3. The Pension Plan was designed in accordance with the applicable tax-qualification requirements of the Code. The Pension Plan includes two section 401(h) retiree medical accounts (Pension Plan's 401(h) Accounts).

The Taxpayer also maintains a retiree medical benefit plan covering eligible retired employees and their dependents (Retiree Medical Plan) and an active medical benefit plan covering eligible active employees and their dependents (Active Medical Plan).

The Pension Plan currently funds medical benefits under the Retiree Medical Plan for certain Pension Plan participants (Current 401(h) Account Individuals). No Current 401(h) Account Individuals are collectively bargained employees.

The Taxpayer amended the Pension Plan, effective Date 4, to allow certain Pension Plan participants who have attained age 59 ½ and are not members of a collective bargaining agreement (Age 59 ½-Eligible Employees) to elect to commence receipt of payment of retirement income from the Pension Plan while such employees remain employed by the Taxpayer. All forms of benefit payment available under the Pension Plan will be available to the Age 59 ½-Eligible Employees.

The Taxpayer also amended the Pension Plan to permit the Pension Plan's 401(h) Accounts to fund medical benefits for the Age 59 ½-Eligible Employees (including their spouses and dependents). The Age 59 ½-Eligible Employees participate in the Active Medical Plan until their retirement and, if eligible, they participate in the Retiree Medical Plan upon retirement.

The Taxpayer represents that the Taxpayer does not have a contractual obligation to fund medical benefits to Current 401(h) Account Individuals or the Age 59 ½-Eligible Employees.

The Taxpayer represents that no section 420 transfers were made to the Pension Plan's 401(h) Accounts or the 401(h) accounts of any predecessor pension plan.

#### Ruling Requested

The Taxpayer requests a ruling that the payment of medical benefits from the Pension Plan's 401(h) Accounts for Pension Plan participants who are eligible to take pension distributions in accordance with section 401(a)(36) does not violate section 401(h) or § 1.401-14 or otherwise cause the Pension Plan to lose its tax-qualified status under section 401(a).

Law

Section 401(a) describes the requirements for a qualified trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of the employer's employees or their beneficiaries.

Section 501(a) provides that an organization described in section 401(a) is generally exempt from federal income tax.

Section 401(a)(36) provides that a trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under section 401 solely because the plan provides that a distribution may be made from the trust to an employee who has attained age 59 ½ and who is not separated from employment at the time of the distribution.

Section 401(h) provides that, under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses, and their dependents, but only if—

- (1) such benefits are subordinate to the retirement benefits provided by the plan;
- (2) a separate account is established and maintained for such benefits;
- (3) the employer's contributions to such separate account are reasonable and ascertainable;
- (4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits;
- (5) notwithstanding the provisions of section 401(a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer; and
- (6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

Section 1.401-14(a) provides that, under section 401(h), a qualified pension or annuity plan may make provision for the payment of sickness, accident, hospitalization, and medical expenses for retired employees, their spouses, and their dependents. The term “medical benefits described in section 401(h)” is used in § 1.401-14 to describe such payments.

Section 1.401-14(b)(1) provides that, under section 401(h), a qualified pension or annuity plan may provide for the payment of medical benefits described in section 401(h) only for retired employees, their spouses, or their dependents. To be “retired” for purposes of eligibility to receive medical benefits described in section 401(h), an employee must be eligible to receive retirement benefits provided under the pension plan, or else be retired by an employer providing such medical benefits by reason of permanent disability. For purposes of the preceding sentence, an employee is not considered to be eligible to receive retirement benefits provided under the plan if he is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits.

Section 1.401-14(c) sets forth requirements which must be met for a qualified pension or annuity plan to provide medical benefits described in section 401(h):

- (1) The plan must specify the medical benefits described in section 401(h) which will be available and must contain provisions for determining the amount which will be paid. Such benefits, when added to any life insurance protection provided for under the plan, must be subordinate to the retirement benefits provided by such plan.
- (2) A separate account must be maintained with respect to contributions to fund medical benefits described in section 401(h).
- (3) Amounts contributed to fund medical benefits, as described in section 401(h), must be reasonable and ascertainable.
- (4) It must be impossible, at any time prior to the satisfaction of all liabilities under the plan to provide for the payment of medical benefits described in section 401(h), for any part of the corpus or income of the medical benefits account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits.
- (5) The plan must provide that any amounts which are contributed to fund medical benefits described in section 401(h) and which remain in the medical benefits account upon the satisfaction of all liabilities arising out of the operation of the medical benefits portion of the plan are to be returned to the employer.
- (6) The plan must expressly provide that in the event an individual’s interest in the medical benefits account is forfeited prior to termination of the plan an amount

equal to the amount of the forfeiture must be applied as soon as possible to reduce employer contributions to fund the medical benefits described in section 401(h).

### Analysis

The second sentence of § 1.401-14(b)(1) provides that an employee is eligible to receive medical benefits from a 401(h) account as a “retired employee” if the employee is eligible to receive retirement benefits under the associated pension plan. The Pension Plan will allow the Age 59 ½-Eligible Employees to elect to commence receipt of payment of retirement income from the Pension Plan. Under the terms of the Pension Plan, as amended, the Age 59 ½-Eligible Employees satisfy the definition of a “retired employee” as described in the second sentence of § 1.401-14(b)(1).

The third sentence of § 1.401-14(b)(1) provides that an employee is not considered to be eligible to receive retirement benefits under the plan if he is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits. Because the Taxpayer amended the Pension Plan to allow the Age 59 ½-Eligible Employees to receive retirement benefits under the terms of the Pension Plan prior to their separation from employment, separation from employment is not a condition to the Age 59 ½-Eligible Employees receiving retirement benefits under the Pension Plan. Accordingly, the Age 59 ½-Eligible Employees are not excluded from being considered eligible to receive retirement benefits under the third sentence of § 1.401-14(b)(1).

### Ruling

We conclude that the payment of medical benefits from the Pension Plan’s 401(h) Accounts for Pension Plan participants who are eligible to take pension distributions in accordance with section 401(a)(36) does not violate section 401(h) or § 1.401-14 or otherwise cause the Pension Plan to lose its tax-qualified status under section 401(a).

The ruling contained in this letter is based upon information and representations submitted by the Taxpayer and accompanied by penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2024-1, 2024-1 IRB 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for rulings. This material is subject to verification upon 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, section 11.05.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter ruling. Specifically, no opinion is provided on any income tax consequences to the Taxpayer as a result of the use of the Pension Plan's 401(h) Accounts to provide health benefits to the employees who have not separated from employment. In addition, no opinion is expressed as to whether the Pension Plan satisfies any requirements of section 401(a) not expressly discussed.

This ruling 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,

Jeremy D. Lamb  
Senior Counsel  
Qualified Plans Branch 2  
Office of Associate Chief Counsel  
(Employee Benefits, Exempt Organizations, and  
Employment Taxes)

cc: