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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-109216-24
Date:
November 05, 2024

In Re:

LEGEND

Taxpayer =
Plan A =
Plan B =
Plan C =
Plan D =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Amount 1 =
Amount 2 =

Dear :

This is in response to a request for a letter ruling submitted on behalf of Taxpayer by its authorized representative on May 7, 2024, as supplemented by additional information dated August 16, 2024 regarding the treatment of the transfer of surplus assets following the termination of two of its qualified defined benefit pension plans, Plans A and B (collectively, “the pension plans”) to two of its qualified defined contribution plans, Plans C and D (collectively, “the 401(k) plans”) under section 4980 of the Internal Revenue Code (Code).

Facts

Taxpayer adopted the pension plans effective Date 1. Plan A covered employees whose collective bargaining agreements provided for participation. Participation and accrued benefits were generally frozen for all participants of Plan A effective Date 2. Plan B covered employees not covered under a collective bargaining agreement. Participation and accrued benefits were frozen for all participants of Plan B effective Date 2.

Taxpayer adopted the 401(k) plans effective Date 3. Plan C covers Taxpayer's employees who are not covered under a collective bargaining agreement. Plan D covers employees whose collective bargaining agreements provide for participation in the plan. As Taxpayer's employees transfer from collectively bargained to non-collectively bargained positions and vice-versa, they also transfer between Plan C and Plan D.

Taxpayer's Board of Directors has authorized the termination of Plan A and Plan B effective as of Date 4. Taxpayer intends to complete the distribution process in the same year. Assets for the pension plans are held in a single master trust. After distributing all benefits to participants and satisfying all expenses associated with the termination of the pension plans, Taxpayer's actuaries estimate that Plan A will have approximately Amount 1 remaining and Plan B will have approximately Amount 2 remaining after the pension plans are terminated (the "excess assets"). Taxpayer anticipates that the excess assets will exceed the amount of non-elective contributions currently being made for participants in the 401(k) plans.

The pension plans, as amended in connection with their termination, provide that any excess assets remaining after termination may be transferred to a qualified replacement plan under section 4980(d)(2). As of the termination date, all employees who were active participants in the pension plans will be active participants in either Plan C or Plan D. After completion of the pension plan termination process, Taxpayer proposes to have the excess assets of Plan A and Plan B transferred to the 401(k) plans in the manner described below.

The 401(k) plans will be timely amended to provide for a suspense account and a minimum allocation of the excess assets from the suspense account to participant accounts each plan year over a seven plan-year allocation period (the "allocation period"). Taxpayer will instruct the trustees of both of the pension plans to make a direct transfer of more than 25% of the excess assets to the 401(k) plans. Taxpayer currently expects to transfer 100% of the excess assets of both pension plans to the 401(k) plans, allocated as described below.

The excess assets of Plan A will be primarily transferred to Plan D, which is the defined contribution plan in which most of the former Plan A participants already participate. However, a portion of the excess assets attributable to Plan A will be directly transferred to Plan C, based on the percentage of Plan A participants who have transferred to non-collectively bargained unit positions and currently participate in Plan C.

Similarly, the excess assets of Plan B will be primarily transferred to Plan C, which is the defined contribution plan in which most of the former Plan B participants already participate. However, a portion of the excess assets attributable to Plan B will be directly transferred to Plan D, based on the percentage of Plan B participants who have transferred to collectively bargained unit positions and currently participate in Plan D.

Because the total excess assets plus investment earnings are expected to exceed the total nonelective contributions Taxpayer is otherwise planning to make to the 401(k) plans over the allocation period, Taxpayer intends to make allocations of additional nonelective contributions to Plan C and Plan D for the first year of the allocation period.

Further, the excess assets attributable to Plan B are higher than the excess assets attributable to Plan A. In lieu of making greater allocations of nonelective contributions to Plan C for the initial year of the allocation period (which would benefit a higher percentage of highly compensated employees). Taxpayer intends to transfer a larger amount of the excess assets from Plan B to Plan D than would be determined as described above in order to ensure that the employees participating in Plan D, which is comprised primarily of non-highly compensated employees, will receive additional allocations of nonelective contributions that are at least as valuable (as a percentage of employee compensation) as the additional allocations of nonelective contributions that will be received by the employees participating in Plan C.

Each transferred amount will be held in a suspense account and used as least ratably over the allocation period, beginning with the annual nonelective contribution for the year in which the transfer occurs. The minimum ratable drawdown from the suspense account will be determined by Taxpayer on a periodic basis (at least annually). Specifically, the ratable portion to be allocated from the suspense account for each plan year will be a fraction, the numerator of which is one, and the denominator of which is the number of plan years remaining in the seven-year allocation period, including the then-current plan year. As a result, the ratable portion will be 1/7 for the plan year of the transfer. In the following years, the ratable portion will be 1/6, 1/5, etc. until all assets in the suspense account are fully allocated to participants. The allocation of income earned in the 401(k) plan suspense accounts will be allocated at least as ratably on the same periodic basis over the remainder of the allocation period under the same procedure.

The excess assets transferred to the 401(k) plans will be used to fund nonelective and other permissible employer contributions, as well as reasonable administrative expenses, for each receiving 401(k) plan for each plan year in the allocation period. The excess assets will not be used to fund any employer matching contributions.

Rulings Requested

1. With respect to each of the pension plans, the 401(k) plans may be treated as one plan for purposes of section 4980 pursuant to section 4980(d)(5)(D), and together constitute a single qualified replacement plan for purposes of section 4980(d)(2).
2. The direct transfers of assets from the pension plans to the 401(k) plans of a selected transfer amount that is in excess of 25 percent of the maximum amount

that the Taxpayer could receive as an employer reversion from the pension plans will be treated as follows:

a. The aggregate amount transferred will not be included in the Taxpayer's gross income;
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 excise tax under section 4980 with respect to the amount transferred.

3. The crediting of the amounts transferred from the pension plans to a suspense account in each of the 401(k) plans and the allocation of each 401(k) plan's suspense account to fund all or a portion of the nonelective contributions due under the terms of each of the 401(k) plans at least as rapidly as ratably on a periodic basis over an allocation period beginning with the plan year in which the transfer occurs and ending with the timely funding of employer contributions for the sixth plan year after the plan year of transfer, with the minimum ratable drawdown of the suspense account measured by Taxpayer on periodic intervals designated by Taxpayer over the allocation period, and the allocation of any income earned on amounts in the suspense accounts as least as rapidly as ratably on the same periodic basis over the remainder of the allocation period under the same procedure, will satisfy the allocation requirement of section 4980(d)(2)(C).
4. The use of amounts transferred from the pension plans to the suspense accounts under the 401(k) plans (and any associated earnings) to pay reasonable administrative expenses of the 401(k) plans does not violate section 4980(d)(2)(C).

Applicable Law

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 § 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.

Section 4980(d)(5)(D)(i) provides that for purposes of determining whether there is a qualified replacement plan the Secretary may provide that two or more plans may be treated as one plan.

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 your first request, Taxpayer represents that the 401(k) plans will receive the excess assets from the pension plans. Taxpayer also represents that as of the termination date, all employees who were active participants in the pension plans will be active participants in the 401(k) plans, and that all excess assets will be transferred to the 401(k) plans. The transfers of the assets from Plan A and Plan B to Plan C and Plan D will be made in a manner that is generally consistent with the proportion of the employees from each of Plan A and Plan B who are participating in Plan C and Plan D, as adjusted so that the additional allocations that will be made for the first year of the allocation period will satisfy the requirements of section 4980(d)(4)(A). This is consistent with the treatment of the 401(k) plans as a single qualified replacement plan. Section 4980(d)(5)(D)(i) authorizes the Secretary of Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan. Thus, pursuant to this provision, we rule that, assuming the requirements of a qualified replacement plan under paragraphs (A), (B) and (C) section 4980(d)(2) are satisfied, the 401(k) plans may be treated as one plan pursuant to section 4980(d)(5)(D), and thus

constitute a single qualified replacement plan for purposes of section 4980(d)(2) with respect to each of the pension plans.

With respect to your second request, Taxpayer represents that, with respect to each of the pension plans, the direct transfers of assets from the pension plan to the 401(k) plans of a selected transfer amount, in the aggregate, will be in excess of 25 percent of the maximum amount that the Taxpayer could receive as an employer reversion from the pension plan. These transfers are transfers under section 4980(d)(2)(B)(i) from a terminated plan. Therefore, the aggregate amount transferred will not be included in Taxpayer's gross income, 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 excise tax under section 4980 with respect to the amount transferred.

With respect to your third request, Taxpayer represents that the crediting of the amounts transferred from the pension plans to a suspense account in each of the 401(k) plans and the allocation of each 401(k) plan's suspense account to fund all or a portion of the nonelective contributions due under the terms of each of the 401(k) plans at least as rapidly as ratably on a periodic basis over an allocation period beginning with the plan year in which the transfer occurs and ending with the timely funding of employer contributions for the sixth plan year after the plan year of transfer, with the minimum ratable drawdown of the suspense account measured by Taxpayer on periodic intervals designated by Taxpayer over the allocation period, and the allocation of any income earned on amounts in the suspense accounts as least as rapidly as ratably on the same periodic basis over the remainder of the allocation period under the same procedure. This will satisfy the allocation requirement of section 4980(d)(2)(C).

With respect to your fourth request, the use of amounts transferred from the pension plans to the suspense accounts under the 401(k) plans (and any associated earnings) to pay reasonable administrative expenses of the 401(k) plans does not violate section 4980(d)(2)(C). Please note that, although we rule that the use of amounts transferred from the pension plans to the suspense accounts under the 401(k) plans (and/or the earnings thereon) to pay reasonable administrative expenses of the 401(k) plans does not violate section 4980(d)(2)(C), we do not express an opinion regarding whether that use is permitted under Title I of the Employee Retirement Income Security Act of 1974.

This ruling letter is based on the representation that the pension plans and the 401(k) plans are qualified under section 401(a) and that their related trusts are tax-exempt under section 501(a) at all times relevant to this ruling letter.

The rulings contained in this letter are based upon information and representations submitted by your authorized representatives and accompanied by a penalty of perjury statement executed by an appropriate party, 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.

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 each of your authorized representatives.

Sincerely,

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

cc: