Significant Index Nos. 4980.00-00

200727024

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 12 2007

SE:T:EP:RA:T:A2

Re:

Sub A =

Sub B =

Pension Plan =

Agency =

Union =

Insurance Company =

Welfare Plan =

Corporation =

Amount A =

Amount B =

Dear :

This letter is in response to your request for a ruling concerning the Pension Plan which was submitted by your authorized representative on April 27, 2005. Specifically you asked us to rule that a return of an excess advance (described below) from the Agency to the trust of the Pension Plan should not constitute an employer reversion under section 4980 of the Internal Revenue Code ("Code").

The Company is a financial services company. Sub A is an insurance company and a wholly-owned subsidiary of the Company. Sub B was a wholly owned subsidiary of Sub A. The Pension Plan was a single-employer, defined benefit pension plan established effective April 1, 1974, by Sub B. The most recent determination letters concerning the qualification of the Pension Plan under section 401(a) of the Code and the tax-exempt status of the trust established for the Pension Plan under section 501(a) of the Code were issued to the Pension Plan on October 20, 1995, and June 30, 2003. A separate determination letter related to the qualified status of the Pension Plan upon the termination of the Pension Plan was issued on June 30, 2003.

The Welfare Plan is an employee welfare benefit plan covering employees of the federal government and their beneficiaries and funded by the Agency. Subject to the contractual control of and oversight by the Agency, the Insurance Company entered into a contract with the Union to underwrite and administer the Welfare Plan, and subcontracted these responsibilities to Sub B. All compensation costs for the employees of Sub B, including the amount of all contributions to the Pension Plan, were reimbursable by the Agency directly to Sub B on behalf of the Welfare Plan arrangement with the Agency.

Effective January 1, 2003, the Union entered into a new contract with the Corporation pursuant to which the Corporation would perform the administrative and underwriting services to the Welfare Plan. In order to facilitate the transition of the Welfare Plan contracting arrangement to the Corporation, Sub A agreed to sell the stock of Sub B to the Corporation. However, the Corporation refused to assume any obligations with respect to the Pension Plan. Instead, pursuant to the terms of the stock sale, the sponsorship of the Pension Plan and all obligations related thereto were transferred to Sub A immediately prior to July 1, 2002, the closing date of the stock sale. As a consequence, Sub B ceased benefit accruals under the Pension Plan effective June 30, 2002, and the sponsorship of the Pension Plan was transferred to Sub A effective July 1, 2002.

Effective September 12, 2002, Sub A terminated the Pension Plan in a standard termination within the meaning of section 4041(b) of ERISA. The enrolled actuaries servicing the Pension Plan, in consultation with the Agency, determined that an additional contribution of Amount A would be necessary to fully fund the Pension Plan on a termination basis. The Agency agreed to advance Amount A on behalf of the Welfare Plan to Sub B to fund the Pension Plan termination liability ("Agency Advance").

The transfer of funds was completed prior to the July 1, 2002, stock sale to the Corporation, because Sub A would not have access to the letter of credit reserve after the stock sale. Also, the Agency required that the Agency Advance be held separately from the assets of the Pension Plan.

The Agency specified that no amount of the Agency Advance was actually to be contributed to the Pension Plan until the precise amount of the termination funding requirement and the related administrative expenses were determined. The Agency Advance was also conditioned on the investment of the funds in government securities or similar stable value investment.

The Agency Advance was not contributed to the Pension Plan, but was invested solely in government securities. Also, the Agency Advance was not reported as an asset of the Pension Plan on the Pension Plan's 2002 Form 5500.

On March 11, 2003, Sub A filed a standard termination notice with the Pension Benefit Guaranty Corporation ("PBGC") stating that the Pension Plan was terminated effective

September 12, 2002, and the PBGC issued notice of receipt on April 7, 2003. Sub A did not receive a notice of noncompliance from the PBGC, and the participants of the Pension Plan received distributions of their accrued benefits during the period from June 2003 through March 2004.

After all accrued benefits to Pension Plan participants were paid, Amount B remained of the Agency Advance ("Excess Advance") as a result of the use of conservative actuarial assumptions with the respect to the number of Plan participants who would elect single sum distributions. On February 25, 2005, the Agency requested that the Excess Advance be immediately returned to the Welfare Plan and then to the Agency. The Excess Advance has yet to be returned to the Agency and is still the subject of negotiations between Sub A and Agency.

Section 401(a)(2) of the Code generally prohibits, prior to the satisfaction of all liabilities with respect to employees and beneficiaries of the trust of the plan, the diversion of trust assets for purposes other than for the exclusive benefit of the employees or beneficiaries for whom an employer maintains a qualified pension plan.

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

Section 4980(b) provides that the tax imposed by section 4980(a) shall be paid by the employer maintaining the plan.

Section 4980(c)(1)(A) provides, in part, that the term "qualified plan" means any plan meeting the requirements of section 401(a) or section 403(a) of the Code other than a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A. Such term shall include any plan which, at any time, has been determined by the Secretary of the Treasury to be a qualified plan.

Section 4980(c)(2)(A) defines the term "employer reversion" to mean 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(c)(2)(B) provides in pertinent part that the term "employer reversion" shall not include (i) except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating section 401, or (ii) any distribution to the employer allowable under section 401(a)(2) in the case of a plan other than a multiemployer plan, by reason of mistake of fact, or in the case of any plan, by reason of the failure of the plan to initially qualify or the failure of the contributions to be deductible.

Section 4980(d) provides that section 4980(a) shall be applied by substituting 50 percent for 20 percent with respect to any employer reversion from a qualified plan unless (A) the employer establishes or maintains a qualified replacement plan or (b) the plan provides benefit increases meeting the requirements of this section.

Section 1.401-2(b)(1) of the Income Tax Regulations ("Regulations") provides, however, that if a defined benefit pension plan terminates and assets remain after the satisfaction of all liabilities to plan participants and beneficiaries, and if such excess is attributable to actuarial error, then the employer is permitted to recover the excess assets. Generally, if the excess assets are recovered from a qualified defined benefit pension plan upon termination, then the excess is included in gross income by the employer.
Because the Plan has received favorable determination letters, the Plan has been determined to be a qualified plan under section 401(a) of the Code. Hence, the Plan is a qualified plan for purposes of section 4980(c)(1)(A). Furthermore, Sub A did not establish a qualified replacement plan or provide benefit increases meeting the requirements of section 4980(d). Accordingly, the excise tax that would apply to any employer reversion within the meaning of section 4980 would be 50 percent. As represented by Sub A's authorized representatives, the exceptions to employer reversions under section 4980(c)(2)(B) do not apply to Sub A.

The Excess Advance was held separately from the trust established for the Pension Plan. As such, the Excess Advance was never contributed to the Pension Plan and was never a plan asset of the Pension Plan.[1] Accordingly, the return of the Excess Advance to the Agency does not constitute an employer reversion for purposes of section 4980 of the Code and would not result in the imposition of a 50 percent tax on the amount of the Excess Advance on Sub A.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

We have sent a copy of this letter to your authorized representative pursuant to a power of attorney on file in this office.

If you require further assistance in this matter, please contact ( ) at
( ) .

Sincerely yours,

Anthony J. Montanaro, Acting Manager
Employee Plans Actuarial Group 2

[1] We informally discussed the facts with a representative of the Department of Labor who concurred with our analysis.

Cc:

SE:T:EP:RA:T:A2

Control Number 911657827