Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
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Refer Reply To:
CC:PSI:B3
PLR-123750-05

Date:
April 13, 2010

Legend

Taxpayer =

Trusts =

Date =

Dear :

This letter responds to your letter dated April 25, 2005, and subsequent correspondence, submitted on behalf of Taxpayer, requesting a ruling that the Single Employer Plans described below are not the same as, or substantially similar to, arrangements described in Notice 95-34, 1995-1 C.B. 309, and identified in Notice 2004-67, 2004-1 C.B. 600, as listed transactions under § 1.6011-4(b)(2) of the Income Tax Regulations.

Facts

Taxpayer sponsors and markets to various employers arrangements that Taxpayer represents are single employer welfare benefit plans to provide death, long-term care, post-retirement medical, severance and other welfare benefits for their respective eligible employees (the "Single Employer Plans"). The Single Employer Plans are funded through Trusts that include a separate sub-account for each employer's plan so that the assets of a sub-account are held for the exclusive benefit of the employees of that employer. Each employer's plan is accounted for separately and benefits are paid from the employer's segregated pool of assets. Each employer files a Form 5500 for its own plan. No amounts revert to the employer and no employer is

entitled to refunds of amounts contributed. Investment gains and losses, forfeitures, expenses and mortality are determined on a single-employer basis. The Single Employer Plans do not purport to be a 10 or more employer plan exempt from the §§ 419 and 419A deduction limits, nor is an employer's deduction for contributions to the Single Employer Plan based on a claim that the Single Employer Plans are a 10 or more employer plan described in § 419A(f)(6).

Previously, Taxpayer had sponsored and marketed plans that claimed to satisfy the 10 or more employer plan exception under § 419A(f)(6). By corporate resolution dated Date, a date that is later than October 22, 2004, Taxpayer claims to have amended the plans such that each would be an aggregation of single employer plans, contributions would be based directly upon the experience of the individual employers, and the plans would no longer meet the requirements of a 10 or more employer plan.

Law

Sections 419 and 419A provide deduction limits for contributions paid or accrued by an employer to a welfare benefit fund.

Section 419A(f)(6)(A) provides that §§ 419 and 419A shall not apply in the case of any welfare benefit fund which is part of a 10 or more employer plan, but only if the plan does not maintain experience-rating arrangements with respect to individual employers.

Section 419A(f)(6)(B) provides that for purposes of § 419A(f)(6)(A), the term "10 or more employer plan" means a plan -----

(i) to which more than 1 employer contributes, and

(ii) to which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers.

Section 1.6011-4(a) provides that, in general, every taxpayer that has participated in a reportable transaction and who is required to file a tax return must attach a disclosure statement to its return for the taxable year.

Section 1.6011-4(b)(1) provides that a reportable transaction is a transaction described in any of § 1.6011-4(b)(2) through (7). The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan.

Section 1.6011-4(b)(2) provides that a listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal

Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

Section 1.6011-4(c)(4) provides that the term substantially similar includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure.

In Notice 2004-67, the Service identified transactions described in Notice 95-34 as "listed transactions" for purposes of § 1.6011-4(b)(2). The Service had previously identified these transactions as "listed transactions" in Notice 2003-76, 2003-2 C.B. 1181, Notice 2001-51, 2001-2 C.B. 190, and Notice 2000-15, 2000-1 C.B. 826.

Notice 95-34 is entitled "Tax Problems Raised by Certain Trust Arrangements Seeking to Qualify for Exemption from Section 419." The opening paragraph of that notice states that taxpayers and their representatives have inquired as to whether certain trust arrangements qualify as multiple employer welfare benefit funds exempt from the limits of §§ 419 and 419A, and that the Service is issuing the notice to alert taxpayers and their representatives to some of the significant tax problems that may be raised by these arrangements. The Notice continues by discussing the § 419A(f)(6) exception for 10 or more employer plans and the legislative history of that exception.

Notice 95-34 describes some of the arrangements claiming to meet the § 419A(f)(6) exception. In addition to the claim by the promoters that the arrangements satisfy the 10 or more employer plan requirements, some of the other factual elements of the arrangements described in Notice 95-34 include the existence of a trust providing benefits such as life insurance, disability, and severance pay benefits that invests in cash value life insurance contracts on the lives of the covered employees; large employer contributions relative to the cost of the amount of term insurance that would be required to provide the death benefits under the arrangement; the use of the cash values within the insurance contracts owned by the trust to pay benefits other than death benefits; separate accounting of the assets attributable to the contributions made by each subscribing employer; determination of an employer's contributions or its employees' benefits in a way that insulates the employer to a significant extent from the experience of other subscribing employers; and the provision of benefits to most participants whether or not there has been an occurrence of an unanticipated future event. [1]

[1] Solely for purposes of this ruling, it is assumed that some or all of the factual elements described in this sentence may be present in the Single Employer Plan arrangements.

Finally, Notice 95-34 discusses some of the reasons these arrangements and similar arrangements do not satisfy the requirements of the § 419A(f)(6) exemption. Among other reasons discussed in the Notice, the described arrangements may be, in fact, separate plans maintained for each employer, or they may maintain experience-rating arrangements with respect to the individual employers. As separate plans, or as plans that maintain prohibited experience-rating, the arrangements do not qualify for the 10 or more employer plan exception from the §§ 419 and 419A deduction limits.

Conclusion

Based on the facts submitted and representations made, we conclude that the Single Employer Plans are not the same as, or substantially similar to, the listed transaction described in Notice 95-34.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the above described facts under any other provision of the Internal Revenue Code. Moreover, this ruling does not address the issue of whether the Single Employer Plans are the same as, or substantially similar to, the transactions identified as listed transactions in Notice 2007-83, 2007-2 C.B. 960, or whether the plans, prior to the amendment to become Single Employer Plans, were the same as, or substantially similar to, the listed transaction described in Notice 95-34. This ruling does not address whether there are disclosure requirements under § 1.6011-4 for persons participating in the Single Employer Plans or disclosure or list maintenance requirements under §§ 6111 or 6112, respectively, with respect to advisors to the Single Employer Plans. This ruling does not address whether there are disclosure or list maintenance requirements for any person with respect to the plans prior to the amendment to become Single Employer Plans. This ruling also does not address the income tax consequences to participating employers and covered employees resulting from the amendment to the plans to become Single Employer Plans or whether the deductions are allowable under §§ 419 and 419A for contributions to the Single Employer Plans.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This 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.

Sincerely,

/s/

Tara P. Volungis
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):
Copy of this letter
Copy for §6110 purposes