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Department of the Treasury
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Date:
March 23, 2016

Taxpayer A =
Company B =
Parent Company =
Plaintiffs =

Plan X =
Plan Y =
Trustee C =
Month 1 =
Amount 1 =
Amount 2 =
Amount 3 =
Amount 4 =

Dear :

This letter responds to your request dated June 26, 2015, as supplemented by correspondence dated November 30, 2015, December 9, 2015, December 15, 2015, and February 25, 2016, submitted on your behalf by your authorized representatives regarding the proper treatment of surplus assets in Plan X following its termination under section 4980 of the Internal Revenue Code ("Code") and Revenue Ruling 89-87, 1989-2 C.B. 81 (Rev. Rul. 89-87).

The following facts and representations were submitted under penalty of perjury on your behalf:

Taxpayer A is a limited liability company that is a disregarded entity for tax purposes and that provides services to affiliated companies within the U.S. consolidated group of corporations with Parent Company. Taxpayer A sponsors Plan X, a defined benefit pension plan, and Plan Y, a defined contribution retirement plan with section 401(k), section 401(m), and employee stock ownership plan (ESOP) features. Both Plan X and Plan Y have current favorable determination letters.

In Month 1, Plaintiffs,
filed lawsuits

In addition, the Defendants,
have been named as
defendants in an adversary proceeding

Plan X remains a
defendant in the litigation . It should be noted that Plan X is merely one of many defendants in the litigation. As a defendant in the litigation, Plan X has a contingent liability with respect to the litigation (the “Contingent Liability”). Taxpayer A represents that no further efforts to resolve the litigation are warranted pending resolution of the Plaintiffs’ appeal
and the motion to dismiss
Taxpayer A further represents that resolution of the Contingent Liability is outside of its control.

Taxpayer A terminated Plan X effective as of June 30, 2014. Taxpayer A applied for a favorable determination letter with respect to Plan X’s termination and received a favorable determination letter dated July 23, 2015.

Taxpayer A intends to distribute assets, either by payment of lump sums to plan participants or by the purchase of irrevocable commitments from an insurance company to pay annuities to plan participants, sufficient to satisfy all of Plan X’s benefit liabilities as soon as administratively feasible.

After the satisfaction of all of Plan X's benefit liabilities, Plan X's Trust will have assets remaining (Surplus Assets). With respect to the Surplus Assets, Taxpayer A's Board of Managers has adopted a resolution under which any and all assets remaining in the Plan X Trust after Plan X has terminated with respect to all participating employers and after all Plan X liabilities have been satisfied shall be transferred to a qualified replacement plan (within the meaning of section 4980(d)(2)) as soon as administratively feasible. The Board further resolved that the assets shall be transferred to the qualified replacement plan as follows: (1) retain in Plan X's Trust an amount deemed [by Taxpayer A] sufficient to pay Plan X's maximum estimated potential Contingent Liability; (2) transfer the balance of the Surplus Assets, which will be at least 25 percent of the Surplus Assets, as soon as administratively feasible to a qualified replacement plan, as defined in section 4980(d)(2); and (3) as soon as administratively feasible following the satisfaction of the Contingent Liability, transfer any remaining assets to a qualified replacement plan as defined in section 4980(d)(2). Thus, no Plan X assets will revert to Taxpayer A.

Taxpayer A anticipates that after satisfaction of all benefit liabilities, approximately Amount 2 will remain in the Plan X Trust, of which approximately Amount 3 will be withheld for the Contingent Liability and approximately Amount 4 will be transferred, as soon as administratively feasible, to Plan Y as the qualified replacement plan.

Plan Y provides a discretionary contribution of from 0 percent to 3 percent of compensation (DC1) as well as a discretionary contribution of from 0 percent to 6 percent of compensation (DC2). No DC2 contributions are made unless DC1 contributions are made in an amount equal to 3 percent of compensation. At least 95 percent of the employee participants in Plan X will participate in Plan Y and be eligible to receive DC1 contributions. Somewhat less than 95 percent of the employee participants in Plan Y will receive DC2 contributions because a certain group of highly compensated employees, as defined in section 414(q), are not eligible under the terms of Plan Y to receive DC2 contributions, although this group is eligible to receive DC1 contributions.

Based on the foregoing, you request the following rulings:

1. The retention in Plan X's Trust, after all benefit liabilities have been satisfied, of assets in an amount sufficient to satisfy the Contingent Liability will not void Plan X's termination nor will it cause the Plan X Trust to be treated as a wasting trust. Benefit distributions made after receipt of the favorable determination letter with respect to the Plan X termination will be treated as made on account of the Plan X termination, and Plan X will not be required to be updated for changes in applicable law or regulations occurring after June 30, 2014, the Plan X termination date.
2. During the period the Plan X Trust retains assets to satisfy the Contingent Liability, the Plan X Trust will continue to be a tax-exempt trust pursuant to

sections 401(a) and 501(a) and the assets held therein will not be a reversion under section 4980.

3. No Form 5500 will need to be filed under sections 6057, 6058 and 6059 for any year after the year in which all benefit liabilities are satisfied, and no other annual returns otherwise required under the Code will need to be filed for any such year.
4. The initial transfer of assets from Plan X's Trust to Plan Y in an amount at least equal to 25 percent of the Surplus Assets will constitute a transfer of amounts to a qualified replacement plan under section 4980, notwithstanding that when such transfer occurs, the Contingent Liability will not have been satisfied and assets will remain in the Plan X Trust.
5. Any transfer of assets from the Plan X Trust to the qualified replacement plan after the Contingent Liability has been satisfied will not constitute a reversion under section 4980 and will be subject to a 7-plan-year allocation period under section 4980(d)(2)(C)(i)(II) beginning with the plan year in which such transfer occurs.
6. Because at least 95 percent of all employee participants in Plan X are, or will become, participants in Plan Y entitled to DC1 contributions, the participation requirement of section 4980(d)(2)(A) will be satisfied even though somewhat less than 95 percent of all employee participants in Plan X will be eligible to receive DC2 contributions. Additionally, if this participation requirement is met at the time of the initial transfer of Surplus Assets, it will be deemed to be met when the second transfer is made following satisfaction of the Contingent Liability.

With respect to ruling requests (1), (2) and (3), under section 401(a), a trust created or organized in the United States and forming a part of a qualified stock bonus, pension, or profit-sharing plan of an employer shall constitute a qualified trust only if the various requirements set out in section 401(a) are met.

Under section 501(a), an organization described in section 401(a) (that is, a trust which is part of a qualified pension, profit-sharing or stock bonus plan) is generally exempt from taxation.

Under § 1.411(d)-2(c)(2) of the Income Tax Regulations ("Regulations"), for purposes of section 411, a plan to which title IV of the Employee Retirement Income Security Act of 1974 (ERISA) applies is considered terminated as of a particular date if as of that date it was terminated under section 4041 or section 4042 of ERISA. For such plans, the date of termination is the date of termination determined under section 4048 of ERISA. Under § 1.411(d)-2(c)(3), a plan that is not subject to title IV is considered terminated on a particular date if, as of that date, it is voluntarily terminated by the employer or employers maintaining the plan.

Section 1.416-1, T-4, of the Regulations defines a terminated plan as one which has been formally terminated, under which crediting service has ceased for vesting and benefit accruals, and under which plan assets have been, or are being, distributed as soon as is administratively feasible. Under § 1.416-1, T-5, under a plan for which the assets are not distributed as soon as administratively feasible, minimum contributions or benefit accruals are required under section 416.

Under Revenue Ruling 69-157, 1969-1 C.B. 115 (Rev. Rul. 69-157), a trust that is part of a qualified plan will not retain its qualified status after the plan has been terminated. Further, a plan is not considered terminated in fact where the plan continues in effect until all the assets have been distributed to participants in accordance with the terms of the plan.

Under Revenue Ruling 79-237, 1979-2 C.B. 190 (Rev. Rul. 79-237), once applicable, the minimum funding standards described in section 412 apply to a pension plan through the date of its termination. Rev. Rul. 79-237 defines the date of termination for plans subject to title IV as the date described in section 4048 of ERISA.

Rev. Rul. 89-87, clarifying Rev. Rul. 69-157 and modifying Rev. Rul. 79-237, states that in order to terminate a qualified plan, the date of termination must be established, the benefits of plan participants and other liabilities under the plan must be determined with respect to the date of plan termination, and all plan assets must be distributed to satisfy those liabilities in accordance with the terms of the plan as soon as administratively feasible after the date of termination. A plan that is amended to terminate and to cease benefit accruals has not, in fact, been terminated under the Code if the assets are not distributed as soon as administratively feasible after the stated date of plan termination, regardless of whether the plan is treated as terminated under other federal law, including title IV of ERISA. Whether a distribution is made as soon as administratively feasible is to be determined under all the facts and circumstances of the given case but, generally, a distribution which is not completed within one year following the date of plan termination specified by the employer will be presumed not to have been made as soon as administratively feasible.

Rev. Rul. 89-87 further states that a plan under which all assets are not distributed as soon as administratively feasible is an ongoing plan and must meet the requirements of section 401(a) in order to continue its qualified status. Such a plan remains subject to the minimum funding requirements of section 412, where applicable. Also, in any year in which the trust assets have not been distributed, the plan is subject to the information reporting requirements of sections 6057 and 6058 and, in the case of a defined benefit plan, the actuarial reporting requirements of section 6059.

Form 5500, Annual Return/ Report of Employee Benefit Plan, is filed in order to satisfy the reporting requirements of section 6058. The Instructions to Form 5500 state that a final Form 5500 may not be filed until all assets have been distributed.

Schedule SB (Form 5500), Single-Employer Defined Benefit Plan Actuarial Information, is filed in order to satisfy the reporting requirements of section 6059. The Instructions to Schedule SB (Form 5500) state that it must be filed for any year in which the plan is subject to the minimum funding standards. Pursuant to Rev. Rul. 79-237, the minimum funding standards do not apply to a terminating plan after the end of the plan year containing the plan's termination date.

Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, is filed in order to satisfy the reporting requirements of section 6057(a). The Instructions to Form 8955-SSA state that the form is filed to report information on separated participants who have deferred vested benefits. The form only needs to be filed for a year if there is information to report.

With respect to ruling requests (1), (2), and (3), in order for Plan X to be a terminated plan, the date of termination must be established, the benefits of plan participants and other liabilities under the plan must be determined with respect to the date of plan termination, and all plan assets must be distributed to satisfy those liabilities in accordance with the terms of the plan as soon as administratively feasible after the date of termination. In the present case, Taxpayer A took action to terminate Plan X effective as of June 30, 2014, and to determine the benefits of plan participants and liabilities under Plan X. Plan X received a favorable determination letter on its termination on July 23, 2015. All that remains to complete the termination is to distribute plan assets as soon as administratively feasible. Whether a distribution is completed as soon as administratively feasible has been interpreted in Rev. Rul. 89-87 generally to require distribution within one year of the date of termination.

Exceptions to the one-year rule are limited and depend on the facts and circumstances of the plan termination. In analogous guidance, § 1.430(a)-1(f)(5)(ii)(B) provides that in order to determine the termination date for plans not subject to title IV, a plan is not treated as failing to meet the requirement to distribute plan assets as soon as administratively feasible to the extent that a delay in distributing plan assets is attributable to either: (1) circumstances beyond the control of the plan administrator; or (2) the period of time necessary to obtain a determination letter from the Commissioner of Internal Revenue on the plan's qualified status upon its termination.

Taxpayer A has represented that it is unknown when the Contingent Liability will be resolved and the amount of the Contingent Liability determined. Taxpayer A has further represented that the timing of the distribution of any amount remaining after the Contingent Liability is resolved is outside of its control. However, Taxpayer A is legally required, pursuant to the resolution of the Board of Managers, to transfer any remaining assets in the Plan X Trust to Plan Y as soon as administratively feasible following the satisfaction of the Contingent Liability.

Based on the facts and circumstances as represented by Taxpayer A, we conclude that Plan X will not be treated as failing to meet the requirement to distribute plan assets as soon as administratively feasible as a result of the fact that assets relating to the Contingent Liability and any related earnings will remain in the Plan X Trust for a period of time after all other benefits and liabilities have been distributed, provided that any amounts remaining in the Plan X Trust after the Contingent Liability is resolved are thereafter transferred to Plan Y as soon as administratively feasible in accordance with the resolution adopted by the Board of Managers.

Accordingly, we rule that the retention in Plan X's Trust, after all benefit liabilities have been satisfied, of assets in an amount sufficient to satisfy the Contingent Liability will not void Plan X's termination nor will it cause the Plan X Trust to be treated as a wasting trust, provided that any amounts remaining in the Plan X Trust after the Contingent Liability is resolved are transferred to Plan Y as soon as administratively feasible in accordance with the resolution adopted by the Board of Managers. As a result, benefit distributions made with respect to the Plan X termination will be treated as made on account of the Plan X termination, Plan X will not be required to be updated for changes in applicable law or regulations occurring after June 30, 2014 (the Plan X termination date), the Plan X Trust will continue to be a tax-exempt trust pursuant to sections 401(a) and 501(a), and Schedule SB (Form 5500), Single-Employer Defined Benefit Plan Actuarial Information, will not need to be filed for years after 2014, the year containing the Plan X termination date. However, Form 5500, Annual Return/ Report of Employee Benefit Plan, will need to be filed for Plan X with respect to each year that any assets remain in the Plan X Trust. In addition, Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, will need to be filed for each year that there are deferred vested participants to be reported.

With respect to ruling requests (4), (5), and (6), section 4980(a) imposes a 20 percent excise tax on the amount of any 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)(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.

Under section 4980(d)(2), 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.

Under section 4980(d)(2)(B)(iii), 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.

Under section 4980(d)(2)(C)(i), 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.

Under section 4980(d)(2)(C)(ii), 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, 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 such limitation, it shall be allocated to the participant as provided in section 415.

Under section 4980(d)(2)(C)(iii), 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)).

Under section 4980(d)(2)(C)(iv), if any amount credited to a suspense account under section 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, such portion shall be treated as an employer reversion to which section 4980 applies.

Under Revenue Ruling 2003-85, 2003-32 I.R.B. 291, the direct transfer from a terminating plan that did not increase benefits to a plan intending to be a qualified replacement plan satisfied the requirements of section 4980(d)(2)(B) when the amount was at least 25 percent of the maximum amount that the employer could receive as an employer reversion.

In the present case, Plan Y will be a qualified replacement plan if it is maintained by Taxpayer A in connection with a qualified plan termination that satisfies the participation, asset transfer and allocation requirements of sections 4980(d)(2)(A), (B), and (C). As discussed above, the proposed transfer of assets will occur in connection with a qualified plan termination. In addition, Taxpayer A has represented that at least 95 percent of the active participants in Plan X will remain as employees of Taxpayer A after the termination of Plan X and will be eligible for DC1 contributions under Plan Y, thus satisfying the participation requirement of section 4980(d)(2)(A) that at least 95 percent of Plan X participants be active participants in Plan Y. Taxpayer A has also represented that 100 percent of the assets remaining in the Plan X Trust will be transferred to Plan Y. Although the transaction is expected to take place in two transfers, the resolution adopted by the Board of Managers binds Taxpayer A to transfer the entire amount. Therefore, the transfer of Surplus Assets (and any related earnings) to Plan Y will be treated as a single transaction involving at least 25 percent of the Surplus Assets upon termination of Plan X for purposes of satisfying the asset transfer requirement of section 4980(d)(2)(B). Finally, each of the two transfers will be subject to a 7-plan-year allocation period under section 4980(d)(2)(C)(i)(II) beginning with the plan year in which the transfer occurs.

Accordingly, we rule that the initial transfer of assets from Plan X's Trust to Plan Y in an amount at least equal to 25 percent of the Surplus Assets will constitute the transfer of an amount to a qualified replacement plan under section 4980, notwithstanding that when such transfer occurs, the Contingent Liability will not have been satisfied and assets will remain in the Plan X Trust. In addition, any transfer of assets from the Plan X Trust to Plan Y after the Contingent Liability has been satisfied will not constitute a reversion under section 4980 and will be subject to a 7-plan-year allocation period under section 4980(d)(2)(C)(i)(II) beginning with the plan year in which such transfer occurs. Finally, because at least 95 percent of all employee participants in Plan X will remain as employees of Taxpayer A after the termination of Plan X and will be eligible for DC1 contributions under Plan Y, the participation requirement of section 4980(d)(2)(A) will be satisfied even though somewhat less than 95 percent of all employee participants in Plan X will be eligible to receive DC2 contributions. Additionally, if this participation requirement is met at the time of the initial transfer of assets, it will be deemed to be met when the second transfer is made following satisfaction or elimination of the Contingent Liability.

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.

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

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Laura B. Warshawsky
Senior Tax Law Specialist
Qualified Plans Branch 2
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)

cc: