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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-104069-20

Date:
August 10, 2020

Re:

Taxpayer =
Plan X =
Plan Y =

Date A =
Date B =
Date C =
Amount =

Dear :

This is in response to a request for a letter ruling submitted on behalf of Taxpayer by its authorized representatives on December 20, 2019, as supplemented by correspondence dated May 27, 2020, and July 7, 2020, regarding the proper treatment of the transfer of surplus assets to Plan Y under § 4980 of the Internal Revenue Code (Code) following the termination of Plan X.

Facts

Taxpayer is a publicly-traded corporation. Taxpayer sponsors two plans qualified under § 401(a), Plan X and Plan Y. Plan X is a defined benefit pension plan. Plan X received a favorable determination letter dated Date A. Plan Y is a defined contribution plan that incorporates both a cash or deferred arrangement under § 401(k) and an employee stock ownership plan (ESOP) under § 4975(e)(7). Plan Y received a favorable determination letter dated Date B. Taxpayer terminated Plan X effective as of Date C. Plan X assets will be liquidated, and all benefits will be paid to Plan X participants. After payment of all Plan X benefits and expenses, all excess assets remaining in Plan X will be transferred to Plan Y. No excess Plan X assets will be transferred to Taxpayer. Taxpayer estimates that the amount transferred may be as much as Amount.

Taxpayer represents that at least 95 percent of the active participants in Plan X who remain as employees of Taxpayer after Plan X was terminated and Plan X benefits are distributed are active participants in Plan Y. Taxpayer will either allocate the transferred funds from Plan X to the accounts of Plan Y participants, in the plan year in which the transfer occurs, treating the transferred funds in the same manner as a non-elective contribution to Plan Y by Taxpayer, or in the alternative, credit the transferred funds to a suspense account in Plan Y. If the transferred funds are credited to a suspense account, the transferred funds will be allocated from the suspense account to participants' accounts in Plan Y no less rapidly than ratably over a 7-year period, beginning with the year in which the transfer occurs, and the transferred funds will be treated in the same manner as a non-elective contribution by Taxpayer. In no event will Taxpayer use or apply any transferred funds or any funds in the suspense account to satisfy any matching contribution obligation Taxpayer may have with respect to Plan Y.

In addition, Taxpayer represents that Plan Y is being amended to provide that it will not engage in, and there will not be, any leveraged ESOP transaction involving Plan Y within the meaning of § 4975(d)(3) and Treas. Reg. § 54.4975-7(b) while a § 4980 suspense account continues to exist and is in effect in Plan Y.

Taxpayer states that it does not anticipate that any amounts to be allocated from the transferred funds will exceed the limits under § 415, whether allocated in a single year, or placed in the suspense account and allocated ratably over multiple plan years. Taxpayer further represents that if the limits imposed by § 415 prevent the allocation of any amount in the suspense account to a participant before the close of the 7-year period, that amount will be allocated to the accounts of other participants. If any portion of the suspense account amount may not be allocated to other participants by reason of any limitation, it will be allocated to participant accounts as otherwise provided under § 415. Taxpayer requests the following rulings:

1. Plan Y is a "qualified plan" within the meaning of § 4980(c)(1).
2. Based on Taxpayer's compliance with the requirements in § 4980(d)(2)(A) and (B), Plan Y is a "qualified replacement plan" within the meaning of § 4980(d)(2).
3. The excess assets transferred from Plan X to Plan Y will not be includible in the gross income of Taxpayer.
4. With respect to the transfer of the excess assets from Plan X to Plan Y, no deduction is allowable to Taxpayer under § 404 and the amount transferred will not offset the maximum deductible amount otherwise available to Taxpayer under § 404.
5. The excess assets transferred from Plan X to Plan Y will not constitute or be treated as a reversion to Taxpayer.
6. No amount of the excess assets transferred from Plan X to Plan Y will be subject to any excise tax under § 4980.
7. The excess assets transferred from Plan X to Plan Y will not be treated as annual additions to Plan Y under § 415 until allocated to participant accounts.

Applicable Law

Section 61 provides that, except as otherwise provided in Subtitle A of the Code, gross income means all income from whatever source derived.

Section 415(c) provides that contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition to the participant's account, such annual addition is greater than the lesser of $40,000 (as indexed in accordance with § 415(d)(1)(C)), or 100 percent of the participant's compensation.

Section 415(c)(2) provides that, for purposes of § 415(c)(1), the term “annual addition” means the sum for any year of employer contributions, employee contributions, and forfeitures.

Section 4980(a) imposes a 20 percent excise tax on the amount of any employer reversion from a qualified plan. Under § 4980(d)(1), the excise tax under § 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 § 401(a) or § 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 § 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 § 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 § 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 § 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 § 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 § 415, any amount credited to a suspense account under § 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 § 415.

Section 4980(d)(2)(C)(iii) provides that any income on any amount credited to a suspense account under § 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 § 4980(d)(2)(C)(i)(II) (after application of § 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 § 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 § 4980 applies.

Section 4980(d)(4)(A) provides that a benefit may not be increased under § 4980(d)(2)(B)(ii) or § 4980(d)(3)(A), and an amount may not be allocated to a participant under § 4980(d)(2)(C), if such increase or allocation would result in a failure to meet any requirement under § 401(a)(4) or § 415.

Section 4980(d)(4)(B) provides that any increase in benefits under § 4980(d)(2)(B)(ii) or § 4980(d)(3)(A), or any allocation of any amount (or income allocable thereto) to any

account under § 4980(d)(2)(C), shall be treated as an annual benefit or annual addition for purposes of § 415.

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 § 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 Taxpayer's first request, Taxpayer represents that Plan Y has received a determination letter, which indicates that it satisfies the requirements of § 401(a) and is thus, a qualified plan. In addition, Taxpayer represents that Plan Y is neither sponsored by an employer that is exempt from tax under Subtitle A, nor is it a governmental plan as defined in § 414(d). Therefore, Plan Y is a "qualified plan" within the meaning of § 4980(c)(1).

With respect to Taxpayer's second request, Taxpayer represents that at least 95 percent of the active participants in Plan X who remain as employees of Taxpayer after Plan X was terminated and Plan X benefits are distributed are active participants in Plan Y. In addition, Taxpayer represents that all remaining excess assets in Plan X will be transferred to Plan Y, and all of those assets could revert to Taxpayer if not transferred to Plan Y. Further, Taxpayer represents that Plan Y will satisfy the participation, asset transfer, and allocation requirements of §§ 4980(d)(2)(A), (B), and (C). Based on those representations, Plan Y is a qualified replacement plan within the meaning of § 4980(d)(2).

With respect to Taxpayer's third request, Taxpayer represents that Plan X has been terminated, and after payment of Plan X benefits and expenses, all remaining assets from Plan X will be transferred to Plan Y. Section 4980(d)(2)(B)(iii) provides that in the case of the transfer of any amount under § 4980(d)(2)(B)(i) from a terminated plan, that amount is not includible in the gross income of the employer. Therefore, the amount to be transferred from Plan X to Plan Y will not be includable in the gross income of the Taxpayer.

With respect to Taxpayer's fourth request, with respect to the transfer of excess assets from Plan X to Plan Y, the assets from Plan X are being directly transferred to Plan Y pursuant to § 4980(d)(2)(B)(i). Therefore, no deduction is allowable to Taxpayer under § 404 under § 4980(d)(2)(B)(iii), and the amount transferred will not offset the maximum deductible amount with respect to Plan Y otherwise available to Taxpayer under § 404.

With respect to Taxpayer's fifth request, Taxpayer represents that it will not receive directly or indirectly any of the excess assets from Plan X. Section 4980(d)(2)(B)(iii) provides, in part, that in the case of the transfer of any amount under § 4980(d)(2)(B)(i)

from a terminated plan, the transfer is not treated as an employer reversion for purposes of § 4980. Therefore, the transfer of excess assets from Plan X to Plan Y will not constitute or be treated as a reversion to Taxpayer under § 4980.

With respect to Taxpayer's sixth request, because the transfer of excess assets from Plan X to Plan Y will not constitute or be treated as a reversion to Taxpayer, the amount transferred will not be subject to the excise tax under § 4980.

With respect to Taxpayer's seventh request, § 4980(d)(4)(B) provides that any allocation of any amount (or income allocable thereto) to any account under § 4980(d)(2)(C), is treated as an annual benefit or annual addition for purposes of § 415. Therefore, excess assets transferred from Plan X to Plan Y will not be treated as annual additions to Plan Y accounts under § 415 until amounts are allocated to Plan Y participant accounts from the suspense account.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer's authorized representatives and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2020-1, 2020-1 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. 2020-1, § 11.05.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling letter 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,

Janet Laufer
Senior Technician Reviewer
Qualified Plans Branch 3
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: