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.

Telephone Number:

Refer Reply To:
CC:EEE:EB:QP3
PLR-110780-23

Date:
November 20, 2023

State A =
County B =
Plan C =
Plan D =
Retirement System E =
Date F =
Date G =

Dear :

This letter is in response to correspondence dated May 15, 2023, and supplemented on November 15, 2023, submitted by County B, in which a request for a letter ruling was submitted with respect to the federal income tax consequences of an elective plan-to-plan transfer of assets from Plan C to Plan D.

The following facts and representations have been submitted under penalties of perjury in support of the request:

County B is a county in State A. County B established and maintains Retirement System E, a defined benefit plan that is a governmental plan within the meaning of section 414(d) of the Internal Revenue Code and a qualified plan within the meaning of section 401(a). Retirement System E contains several different component plans, including a traditional defined benefit plan and Plan D, a cash balance plan.

County B also established and maintains Plan C, a defined contribution plan that is a governmental plan within the meaning of section 414(d) and a qualified plan within the meaning of section 401(a).

Both Plan C and Plan D were established after 1986.

Employees who are eligible to participate in Plans C and D include, but are not limited to, regular full-time or part-time employees who were hired on or after ,
and who either work in non-union-represented positions or who work in certain union-represented positions.

Plan C was established before Plan D. Before Plan D was established, employees now eligible for Plan D participated in Plan C. When Plan D was established, eligible employees had the option, during a specified period, to make a one-time irrevocable election to terminate participation in Plan C and participate in Plan D. Employees who made this election had their account balance transferred from Plan C to Plan D. Employees who did not make this election continued to participate in Plan C.

Eligible full-time employees hired after Date F and before Date G, and full-time non-union-represented employees hired after Date G, automatically participate in Plan C unless they affirmatively elect to participate in Plan D. Specified full-time union-represented employees hired after Date G automatically participate in Plan D unless they elect to participate in Plan C.

Part-time employees can elect to participate in a retirement plan for which they are eligible and cannot discontinue participation in that plan once elected.

Employee contributions are deducted from employee salaries before the computation of applicable taxes and, as the terms of the plans provide, are treated as employer contributions under section 414(h)(2). Under both Plan C and Plan D, employees make employee contributions at the same rate. The allocations resulting from employer contributions that are made under Plan C are made at the same rate as the pay credits that are credited under Plan D. Except in certain situations not relevant to this ruling request, the definition of compensation is the same under both Plan C and Plan D. Employees do not have the option to choose to receive these contributed amounts as salary.

Under Plan C, employees elect investment options and receive earnings on their selected investments. Under Plan D, interest is accrued daily and credited monthly at an annualized rate of %.

County B intends to amend the County B code to provide employees who are currently participating in Plan C with an opportunity to elect to participate in Plan D and transfer their account balance to Plan D. Employees making the election would have a plan-to-plan transfer of their account balance directly from Plan C to Plan D. No amount will be made available or distributed to an employee. The opportunity to make an election will be limited to a specific time period established by County B. After the transfer from Plan C to Plan D, an individual’s Plan D account will equal the amount transferred from Plan C.

Based on the above facts and representations, you request the following rulings in connection with the additional opportunity for an eligible employee to elect to change retirement plan participation and transfer account balances from Plan C to Plan D–

1. The election by an eligible employee between Plan C and Plan D will not constitute a cash or deferred arrangement within the meaning of section 401(k);

2. The transfer of assets from Plan C to Plan D will not result in taxation to an employee under sections 72(t), 401(k), or 402; and

3. Assets transferred from Plan C to Plan D will not be subject to the limitations on benefits under section 415(b).

Section 72 provides generally that gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

Section 72(t) provides for an additional tax on any amount received from a “qualified retirement plan” (as defined in section 4974(c), which includes plans described in section 401(a)). The additional tax for the taxable year in which such amount is received is equal to 10 percent of the portion of such amount which is includible in gross income, unless one or more of the exceptions enumerated in section 72(t)(2) applies.

Section 401(a) provides that 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 constitutes a qualified trust only if the various requirements set out in section 401(a) are met.

Section 401(a)(16) requires that a qualified plan not provide for benefits or contributions that exceed the limitations of section 415.

Section 401(k) provides the rules relating to cash or deferred arrangements.

Section 401(k)(1) provides that a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of section 401(a) merely because the plan includes a qualified cash or deferred arrangement as defined in section 401(k)(2).

Section 401(k)(2)(A) defines a cash or deferred arrangement as any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of section 401(a) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash.

Section 401(k)(4)(B)(ii) provides that a cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. However, section 1116(f)(2)(B)(i) of the Tax Reform Act of 1986, P.L. 99-514, provides a transition rule pursuant to which the prohibition of section 401(k)(4)(B)(ii) does not apply to any cash or deferred arrangement adopted by a State or local government (or political subdivision thereof) before May 6, 1986. Thus, even if a governmental employer maintains a defined contribution plan (as compared to a defined benefit plan), the defined contribution plan cannot generally include a qualified cash or deferred arrangement within the meaning of section 401(k), unless the cash or deferred arrangement was adopted before May 6, 1986.

Section 1.401(k)-1(a)(1) of the Income Tax Regulations provides that a plan, other than a profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan, does not satisfy the requirements of section 401(a) if the plan includes a cash or deferred arrangement. For this purpose, a cash or deferred arrangement is part of a plan if any contributions to the plan, or accruals or other benefits under the plan, are made or provided pursuant to the cash or deferred arrangement. Because a defined benefit plan is not a profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan, if a defined benefit plan includes a cash or deferred arrangement, it does not satisfy the requirements of section 401(a).

Section 1.401(k)-1(a)(2) provides that, subject to certain exceptions, which are inapplicable in this case, a cash or deferred arrangement is an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a).

Section 1.401(k)-1(a)(3)(i) generally defines a cash or deferred election as any direct or indirect election (or modification of an earlier election) by an employee to have the employer either: (A) provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available, or (B) contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation.

Section 1.401(k)-1(a)(3)(iv) provides that an amount is currently available if it has been paid to the employee or if the employee is able currently to receive the cash or other taxable amount at the employee’s discretion. An amount is not currently available if there is a significant limitation or restriction on the employee’s right to receive the amount currently. Similarly, an amount is not currently available as of a date if the employee may under no circumstances receive the amount before a particular time in the future.

Section 1.401(k)-1(a)(3)(vi) provides that an amount generally is includible in an employee’s gross income for the taxable year in which the employee actually or constructively receives the amount. But for section 402(e)(3), an employee is treated as having received an amount that is contributed to an exempt trust or plan described in section 401(a) pursuant to the employee's cash or deferred election.

Section 1.401(k)-1(a)(5)(i) provides that a nonqualified cash or deferred arrangement is a cash or deferred arrangement that fails to satisfy one or more of the requirements in § 1.401(k)-1(b), (c), (d) or (e). Section 1.401(k)-1(a)(5)(iii) provides that elective contributions under a nonqualified cash or deferred arrangement are includible in an employee's gross income at the time the cash or other taxable amount that the employee would have received (but for the cash or deferred election) would have been includible in the employee's gross income.

Section 1.401(k)-1(e)(4) provides that a governmental plan is generally prohibited from creating a cash or deferred arrangement.

Section 402(a) generally provides that any amount actually distributed to any recipient by any employees' trust described in section 401(a), which is exempt from tax under section 501(a), shall be taxable to the recipient in the taxable year of the distribution under section 72 (relating to annuities).

Under section 411(c)(2)(B), in the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) (as of the determination date).

Section 411(c)(2)(C) defines the term "accumulated contributions" as the mandatory contributions made by the employee, increased by interest. With respect to periods during plan years beginning on or after January 1, 1988, section 411(c)(2)(C)(iii) specifies that the interest is determined using the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the first month of each plan year) for the period beginning with the first plan year to which section 411(a)(2) applies (by reason of the applicable effective date) and ending on the date the determination is being made, and using the interest rate under section 417(e)(3) for the period between the determination date and the date on which the employee attains normal retirement age.

Section 411(c)(3) requires that, if the accrued benefit derived from employee contributions is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by the employee shall be the actuarial equivalent of the amount determined under section 411(c)(2).

Section 411(e) provides that a governmental plan (within the meaning of section 414(d)) is treated as meeting the requirements of section 411, provided the governmental plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) as in effect on September 1, 1974.

Section 415(a)(1)(A) provides that a defined benefit plan is not a qualified plan if the plan provides for the payment of benefits with respect to a participant which exceed the limitation of section 415(b). Section 415(b)(1) prescribes limitations that are based on the annual benefit determined under section 415(b)(2). Section 415(b)(2)(B) provides for adjustments, in accordance with regulations, to the benefit determined under the plan if employees contribute or make rollover contributions to the plan.

Section 1.415(b)-1(b)(1) prescribes rules for the determination of the annual benefit for purposes of section 415(b). Under § 1.415(b)-1(b)(1)(ii), the annual benefit, for purposes of determining the section 415(b) limitation, does not include the annual benefit attributable to either employee contributions or rollover contributions (as described in section 401(a)(31) and section 402(c)(1)). Furthermore, pursuant to § 1.415(b)-1(b)(1)(ii), the treatment of transferred benefits is determined under the rules of § 1.415(b)-1(b)(3).

Under § 1.415(b)-1(b)(2)(v), the annual benefit attributable to rollover contributions is determined by using the factors applicable to mandatory employee contributions as described in sections 411(c)(2)(B) and (C) and regulations promulgated under section 411, regardless of whether the requirements of sections 411 and 417 apply to the plan. Thus, in the case of rollover contributions from a defined contribution plan to a defined benefit plan to provide an annuity distribution, the annual benefit attributable to those rollover contributions, for purposes of section 415(b), is determined by applying the rules of section 411(c) as described in § 1.415(b)-1(b)(2)(iii), regardless of the assumptions used to compute the annuity distribution under the plan and regardless of whether the plan is subject to the requirements of sections 411 and 417. Accordingly, in such a case, if the plan uses more favorable factors than those specified in section 411(c) to determine the amount of annuity payments arising from rollover contributions, the annual benefit under the plan would reflect the excess of those annuity payments over the amounts that would be payable using the factors specified in section 411(c).

Section 1.415(b)-1(b)(3)(ii) provides that where, as described in § 1.411(d)-4, Q&A-3(c) (permitting certain elective transfers of distributable benefits), a distributable benefit is transferred to a defined benefit plan from either a defined contribution plan or a defined benefit plan, the amount transferred is treated as a benefit paid from the transferor plan and the annual benefit provided by the transferee defined benefit plan does not include the annual benefit attributable to the amount transferred (determined as if the transferred amount were a rollover contribution subject to the rules of § 1.415(b)-1(b)(2)(v)). Section 1.415(b)-1(b)(3)(ii) further states that the rule in the preceding sentence applies regardless of whether the requirements of section 411 apply to the plan and, in the case of a transfer from a defined contribution plan that is not subject to the requirements of section 411 (such as a governmental plan) to a defined benefit plan, the rule applies even if the participant's benefits are not distributable from the defined contribution plan at the time of the transfer.

Revenue Ruling 67-213, 1967-2 CB 149, provides that if a participant's interest in a qualified plan is transferred from the trust forming part of that plan to the trust forming part of another qualified plan, there is no distribution of the participant's interest in the plan and no taxable income will be recognized by reason of such transfer.

With respect to the first ruling request, an election by an employee between Plan C and Plan D will not result in a nonqualified or impermissible cash or deferred arrangement. The mandatory employee contributions are the same whether contributed to Plan C or Plan D and the definition of compensation is the same under Plan C and Plan D. Since employees are not given a choice between receiving an amount in the form of cash (or some other taxable benefit) that is not currently available or deferring the receipt of compensation, there is no cash or deferred election. Thus, the election will not result in a cash or deferred arrangement within the meaning of section 401(k).

With respect to the second ruling request, pursuant to Revenue Ruling 67-213, the trustee-to-trustee transfer of assets from Plan C to Plan D is not deemed to be an actual distribution to a participant of the amount transferred. Therefore, the transfer of assets from Plan C to Plan D will not result in taxation to an employee under sections 72(t), 401(k), or 402.

With respect to the third ruling request, pursuant to § 1.415(b)-1(b)(3)(ii), the annual benefit provided by Plan D generally does not include the annual benefit attributable to the amount transferred from Plan C (determined as if the transferred amount were a rollover contribution subject to the rules of § 1.415(b)-1(b)(2)(v)). In accordance with § 1.415(b)-1(b)(2)(v), the annual benefit attributable to the plan-to-plan transfers from Plan C to Plan D, for purposes of section 415(b), is determined by applying the rules of section 411(c) as described in § 1.415(b)-1(b)(2)(iii). Therefore, if Plan D uses the factors specified in section 411(c) to calculate the annual benefit under the plan, then, for purposes of the limitation of section 415(b), as provided in § 1.415(b)-1(b)(3)(ii), the annual benefit provided under Plan D will not include the annual benefit attributable to the amounts transferred from Plan C. However, pursuant to § 1.415(b)-1(b)(2)(v), if Plan D uses more favorable factors than those specified in section 411(c) to determine the amount of annuity payments arising from the transferred amounts, the annual benefit under Plan D, for purposes of the limitation of section 415(b), would reflect the excess of those annuity payments over the amounts that would be payable using the factors specified in section 411(c).

This ruling is based on the assumption that Plan C and Plan D satisfy the qualification requirements set forth in section 401(a), and constitute governmental plans within the meaning of section 414(d), at all relevant times.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2023-1, 2023-1 I.R.B. 1, section 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. 2023-1, section 11.05.

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 ruling.

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

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

Sincerely,

Brandon Ford
Acting Branch Chief, Qualified Plans Branch 4
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: