

Internal Revenue Service

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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:QP3

PLR-102040-25

Date:

April 30, 2025

Legend

Taxpayer =
Pension Plan =

Entity A =
Retiree Health Benefits Plan 1 =

Retiree Health Benefits Plan 2 =

Active Employee Medical Plan =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Amount Z =
Year XX =

Dear :

This is in response to your letter, dated January 30, 2025, as supplemented by information dated March 27, 2025, submitted on your behalf by your authorized representative. The letter requests rulings related to the adoption of a plan amendment to permit active employees to receive benefits under the Pension Plan's retiree medical benefits account ("401(h) Account") while eligible to commence in-service retirement benefits under the Pension Plan pursuant to Internal Revenue Code section 401(a)(36).

Facts

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

Taxpayer's annual accounting period is the calendar year. Taxpayer uses the accrual method of accounting. The Pension Plan's plan year is the calendar year.

Taxpayer maintains the Pension Plan, a cash balance plan, for eligible employees of Entity A and other affiliated participating employers. The Pension Plan includes the 401(h) Account.

The Pension Plan was established effective Date 1. Taxpayer continues to sponsor and maintain the Pension Plan, which was last amended and restated effective as of Date 2 and has been subsequently amended from time to time thereafter. The Pension Plan, including the 401(h) Account, most recently received a favorable determination letter on Date 3.

The last contribution Taxpayer made to the 401(h) Account was on Date 4, in the amount of Amount Z for the Year XX plan year. Taxpayer has not made any contributions to the 401(h) Account since the Year XX plan year.

Since the 401(h) Account was established, Taxpayer has made deductible contributions to the 401(h) Account in accordance with section 401(h). Contributions to the 401(h) Account have been used to pay or reimburse Taxpayer for postretirement medical expenses incurred for eligible retired employees under the Retiree Health Benefits Plan 1 and the Retiree Health Benefits Plan 2 (collectively, "Retiree Medical Plan").

Taxpayer also maintains the Active Employee Medical Plan, which includes medical, dental, and vision plans, and various options and component benefit programs. The terms of the Pension Plan permit a portion of the cost of medical benefits, as described in section 401(h), to be provided to an eligible retired participant (and the retired participant's eligible dependents) to the extent eligible for benefits under the Retiree Medical Plan. Under the Pension Plan, payments of medical expenses under the 401(h) Account are only made for eligible retired participants (and their eligible dependents) as described in the Retiree Medical Plan.

The Pension Plan does not permit 401(h) Account assets to be used for any participant who is or was a key employee (as defined in section 416(i)) during a plan year or any preceding plan year in which contributions to the 401(h) Account were made, or for the eligible dependents of such participants.

The Pension Plan permits a nonunion participant who is actively employed with a participating employer to elect, on the first day of any calendar month coincident with or

following the date the participant attains the Applicable Age (age 59 ½), to commence in-service benefit payments in accordance with the Pension Plan's terms.

Taxpayer proposes to amend the Pension Plan to permit the 401(h) Account assets to be used to reimburse medical expenses incurred on behalf of Pension Plan participants who have not separated from employment but are eligible for in-service distributions under the Pension Plan (including Pension Plan participants who may have received their entire vested benefits upon electing the in-service distribution option).

Taxpayer represents that the 401(h) Account was not funded, directly or indirectly, by transferred excess pension assets to the 401(h) Account in accordance with section 420.

Taxpayer represents that it does not have a contractual obligation to fund health benefits, including health benefits that may be provided under the Retiree Medical Plan and its various options and component benefit programs, or the Active Employee Medical Plan and its various options and component benefit programs.

Rulings Requested

Taxpayer requests rulings that:

1. The payment of active employee health benefits (limited to medical, dental, and vision) from the Pension Plan's 401(h) Account to employees who are eligible for in-service retirement benefits from the Pension Plan does not violate section 401(a), (a)(36), or (h) or § 1.401-14.
2. The adoption of the proposed amendment will not adversely affect the qualified status of the Pension Plan or the tax-exempt status of its trust.

Law

Section 401(a) describes the requirements for a qualified trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of the employer's employees or their beneficiaries.

Section 501(a) provides that an organization described in section 401(a) is generally exempt from federal income tax.

Section 401(a)(36) provides that a trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under section 401 solely because the plan provides that a distribution may be made from the trust to an employee who has attained age 59½ and who is not separated from employment at the time of the distribution.

Section 401(h) provides that, under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses, and their dependents, but only if—

- (1) such benefits are subordinate to the retirement benefits provided by the plan;
- (2) a separate account is established and maintained for such benefits;
- (3) the employer's contributions to such separate account are reasonable and ascertainable;
- (4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits;
- (5) notwithstanding the provisions of section 401(a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer; and
- (6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

For the purposes of paragraph (6), the term “key employee” means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of the employee, is or was a key employee as defined in section 416(i).

Section 1.401-14(a) provides that, under section 401(h), a qualified pension or annuity plan may make provision for the payment of sickness, accident, hospitalization, and medical expenses for retired employees, their spouses, and their dependents. The term “medical benefits described in section 401(h)” is used in § 1.401-14 to describe such payments.

Section 1.401-14(b)(1) provides that, under section 401(h), a qualified pension or annuity plan may provide for the payment of medical benefits described in section 401(h) only for retired employees, their spouses, or their dependents. To be “retired” for purposes of eligibility to receive medical benefits described in section 401(h), an employee must be eligible to receive retirement benefits provided under the pension plan, or else be retired by an employer providing such medical

benefits by reason of permanent disability. For purposes of the preceding sentence, an employee is not considered to be eligible to receive retirement benefits provided under the plan if he is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits.

Section 1.401-14(c) sets forth requirements which must be met for a qualified pension or annuity plan to provide medical benefits described in section 401(h):

- (1) The plan must specify the medical benefits described in section 401(h) which will be available and must contain provisions for determining the amount which will be paid. Such benefits, when added to any life insurance protection provided for under the plan, must be subordinate to the retirement benefits provided by such plan.
- (2) A separate account must be maintained with respect to contributions to fund medical benefits described in section 401(h).
- (3) Amounts contributed to fund medical benefits, as described in section 401(h), must be reasonable and ascertainable.
- (4) It must be impossible, at any time prior to the satisfaction of all liabilities under the plan to provide for the payment of medical benefits described in section 401(h), for any part of the corpus or income of the medical benefits account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits.
- (5) The plan must provide that any amounts which are contributed to fund medical benefits described in section 401(h) and which remain in the medical benefits account upon the satisfaction of all liabilities arising out of the operation of the medical benefits portion of the plan are to be returned to the employer.

Analysis

The second sentence of § 1.401-14(b)(1) provides that an employee is eligible to receive medical benefits from a 401(h) account as a “retired employee” if the employee is eligible to receive retirement benefits under the associated pension plan. Certain participants who, pursuant to section 401(a)(36), are eligible to receive retirement benefits under the terms of the Pension Plan upon attainment of the Applicable Age, thereby satisfying the definition of a “retired employee” as described in the second sentence of § 1.401-14(b)(1).

The third sentence of § 1.401-14(b)(1) provides that an employee is not considered to be eligible to receive retirement benefits under the plan if he is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits. Because certain Pension Plan participants who, pursuant to

section 401(a)(36), are eligible to receive retirement benefits prior to their separation from employment once they attain the Applicable Age under the Pension Plan's terms, separation from employment is not a condition to receiving retirement benefits under the Pension Plan for those participants. Accordingly, the participants covered by the proposed plan amendment who have reached the Applicable Age and are still actively employed would not be excluded from being considered eligible to receive retirement benefits under the third sentence of § 1.401-14(b)(1).

Rulings

We conclude that:

1. The payment of active employee health benefits (limited to medical, dental, and vision) from the Pension Plan's 401(h) Account to employees who are eligible to receive in-service retirement benefits from the Pension Plan does not violate section 401(a), (a)(36), or (h) or § 1.401-14.
2. The adoption of the proposed amendment will not adversely affect the qualified status of the Pension Plan under section 401(a) or the related trust's tax-exempt status under section 501(a).

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2025-1, 2025-1 I.R.B. 1, section 7.01(16). This office has not verified any of the material submitted in support of the request for rulings. This material is subject to verification upon 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 rulings were 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. 2025-1, 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. Specifically, no opinion is provided on any income tax consequences to Taxpayer as a result of the use of the Pension Plan's 401(h) Account to provide health benefits to the employees who have not separated from employment. In addition, no opinion is expressed as to whether the Pension Plan satisfies any requirements of section 401(a) not expressly discussed.

These rulings are directed only to the taxpayer requesting them. Section 6110(k)(3) provides that they 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 your authorized representative.

Sincerely,

Jeremy D. Lamb
Senior Counsel
Qualified Plans Branch 2
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: