Internal Revenue Service

Number: **200113009**
Release Date: 3/30/2001

Index Number: 419.00-00; 419A.00-00
4976.00-00; 4976.01-00

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EB:HW:PLR-114219-00
Date:
December 20, 2000

LEGEND:

Dear:

This is in response to your ruling request dated March 31, 2000, requesting rulings regarding the tax consequences of several proposed transactions involving welfare plan assets. That ruling request was supplemented by additional submissions dated September 1, November 2, November 13, and December 19, 2000.

FACTS

A. Background

Taxpayer is an accrual basis, calendar-year taxpayer that is the common parent of a group of affiliated corporations that files a consolidated federal income tax return under section 1501 of the Internal Revenue Code. Taxpayer and its affiliated corporations employ approximately n active employees. Approximately p of those active employees are presently eligible to retire and participate in Taxpayer's postretirement life and health plans. Approximately q retired employees participate in Taxpayer's postretirement life and health plans.

Taxpayer maintains several welfare benefit plans for its retired employees (and, where applicable, their spouses and eligible dependents), including the Basic Life Plan, the Medical Plan, and the Dental Plan.

The Basic Life Plan was established by Taxpayer in Date A to provide group term life insurance coverage for both active and retired employees. It was initially funded through the issuance of a series of uniform group-term life insurance policies. The initial series of policies (including a policy containing the Retired Lives Reserve (RLR)) was consolidated into one life insurance contract (the Insurance Contract) issued to Taxpayer by Insurance Company. In Date B, Taxpayer established the Life Trust, a voluntary employees' beneficiary association, that has obtained a favorable determination letter with respect to its tax-exempt status under section 501(c)(9), and at that time transferred the Insurance Contract to the Life Trust. The Life Trust funds postretirement life insurance benefits for both represented and nonrepresented employees. The principal asset of the Life Trust is the Insurance Contract. The Life Trust provides, inter alia, that at no time is any part of the trust to be used for, or diverted to, any purposes other than the purpose of providing postretirement life insurance benefits under the Basic Life Plan with respect to those participants of the Basic Life Plan entitled to benefits, and for defraying the reasonable expenses of the Basic Life Plan and the Life Trust. Before the establishment of the Life Trust, Taxpayer made deductible contributions to the RLR to fund postretirement life insurance benefits for retired employees. The RLR is a welfare benefit fund as defined in section 419(e). Taxpayer has not made contributions to the RLR since 1991. Taxpayer has consistently used the aggregate funding method to calculate the reserve for postretirement life insurance benefits under section 419A(c)(2), and used substantially similar methods to calculate the reserve before the effective date of section 419A. In accordance with the aggregate funding method, the present value of postretirement life insurance benefits for all active and retired employees covered by the Basic Life Plan (to the extent that such present value exceeds the value of accumulated assets) is amortized over the aggregate future earnings of active participants. Only postretirement life insurance benefits (and not postretirement health benefits) are taken into account in the calculations for the Life Trust.

The terms of the Insurance Contract provide that upon 60 days written notice from the trustee of the Life Trust, an amount under the RLR may be transferred to a trustee or another life insurance company, as designated by Taxpayer, to be held by the trustee solely for the purpose of providing life insurance on employees and retirees, so long as any employee remains alive, with any balance remaining at the death of the last surviving employee being used to provide life insurance for other active or retired employees, other than key employees. Further, the terms of the Insurance Company separate account agreement (which forms part of the Insurance Contract) provide in pertinent part that no modification of the separate account "may permit assets to be used for, or diverted to, purposes other than the exclusive purpose of providing postretirement insurance benefits to participants under the [Basic Life Plan] and defraying the legitimate expenses associated with this exclusive purpose."

The Service previously issued to Taxpayer PLR 9701010 regarding the treatment of the Insurance Contract in connection with Taxpayer's spinoff of

Corporation. In that PLR, the Service addressed the transfer of assets the RLR to a retired lives reserve under a newly-issued postretirement life insurance contract owned by Corporation, and the transfer of ownership of the Insurance Contract from Taxpayer to the Life Trust. The Service ruled that those transactions would not cause Taxpayer to recognize income under section 61, and that the transaction would not constitute a reversion subject to excise tax under section 4976. Those rulings were based in part upon representations by Taxpayer that the funds in the Life Trust would be used exclusively to provide postretirement life insurance benefits and to pay related administrative expenses.

The Life Trust holds assets attributable to assets set aside for purposes of postretirement life insurance benefits on July 18, 1984, as adjusted for subsequent earnings and payments (the 1984 Reserve). Since July 18, 1984, the 1984 Reserve has been adjusted to reflect all investment earnings, investment income (interest, dividends, etc.) and both realized and unrealized net capital gains and losses. The investment earnings have been allocated between the 1984 Reserve and the Life Trust's other reserves on a proportional basis. The 1984 Reserve has been reduced by all postretirement life insurance benefit payments made after July 18, 1984 (including life insurance benefit payments in excess of the $50,000 DEFRA limit that were not paid from the retired lives reserve). The 1984 Reserve was $r as of July 18, 1984. As of December 31, 1999, its value was approximately $s.

Taxpayer will retain an actuary who will from time to time determine the assets in the Life Trust in excess of the assets needed to fully fund Taxpayer's postretirement life insurance benefit obligation on an ongoing basis (Excess Assets). "Excess Assets" is a nonnegative amount that is equal to the excess (if any) of (i) the fair market value of the assets in the retired lives reserve (together with any other Life Trust assets) over (ii) the present value of the postretirement insurance obligations that are funded through the Life Trust, minus the amount of any unrelated business income tax liability for the year.

Taxpayer estimates that, as of December 31, 1999, the present value of the postretirement life insurance benefit obligations for all active and retired employees was approximately $t on an ongoing basis. The value of the Life Trust assets was approximately $u as of December 31, 1999. Accordingly, as of December 31, 1999, the value of the Excess Assets was approximately $v ($u in assets minus $t in liabilities). The Excess Assets attributable to represented employees were approximately $w, the remaining $x were attributable to nonrepresented employees.

The Represented Health Trust funds that portion of the Medical Plan and Dental Plan covering represented employees. The Nonrepresented Health Trust funds that portion of the Medical Plan and Dental plan covering nonrepresented employees. Both the Represented Health Trust and the Nonrepresented Health Trust are voluntary employees' beneficiary associations that have received favorable determination letters with respect to tax-exempt status under section 501(c)(9). The obligations of the Represented Health Trust and the Nonrepresented Health Trust are not fully funded. Taxpayer estimates that as of December 31, 1999, the present value of the unfunded postretirement health benefit obligations exceeded $y. Of this amount, approximately $z was attributable to represented employees and approximately $nn was attributable to nonrepresented employees.

B. Transfer of Life Trust Assets

Taxpayer proposes to establish a new, substantially identical trust, the Nonrepresented Life Trust. Assets in the Life Trust attributable to nonrepresented employees (including an allocable portion of the Excess Assets) will be transferred to the Nonrepresented Life Trust. The actuarial assumptions that will be used for purposes of determining the appropriate allocation of assets between the Represented Life Trust and the Nonrepresented Life Trust will be the same assumptions that Taxpayer has consistently used to calculate the portion of the Life Trust that has been maintained pursuant to a collective bargaining agreement.

This transfer will include a transfer of an allocable portion of the assets held under the Life Insurance Contract to the Nonrepresented Life Insurance Contract (which will be the principal asset of the Nonrepresented Life Insurance Trust). The Nonrepresented Life Insurance Contract will permit the distribution of Excess Assets to the Nonrepresented Life Trust.

The Life Trust will be amended to cover only represented employees and will be renamed the “Represented Life Trust”. The Insurance Contract will also be amended to cover only represented employees, and will be referred to as the Represented Insurance Contract. The Represented Insurance Contract will permit the distribution of Excess Assets attributable to represented employees to the Represented Life Trust.

Taxpayer will continue to use the Represented Life Trust and the Nonrepresented Life Trust (collectively, New Life Trusts) to fund postretirement life insurance benefits. Each New Life Trust agreement will provide that the New Life Trust will accept contributions from Taxpayer only to the extent that those contributions do not exceed an amount that is the sum of: (1) amounts reasonably and actuarially necessary to fund claims incurred but unpaid for postretirement life insurance for the employee population covered by the New Life Trusts; (2) administrative costs with respect to such claims, and (3) a contribution to fund a reserve over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary to provide postretirement life insurance benefits for the covered employees. Neither the Represented Life Trust nor the Nonrepresented Life Trust will accept employer contributions for amounts pertaining to health coverage, other than through the transfer of Excess 1984 Reserves, as described below.

C. Use of Life Trust Assets to Fund Postretirement Health Benefits

Taxpayer intends to merge the Basic Life Plan (to the extent it provides benefits to retired employees) with the Medical Plan and the Dental Plan into a single welfare benefit plan (the Postretirement Welfare Plan). The Postretirement Welfare Plan will provide life and health coverage to all eligible retired employees (and, to the extent applicable, their spouses and eligible dependents). The obligations of the Postretirement Welfare Plan will be funded by four separate trusts: (1) the Represented Life Trust; (2) the Nonrepresented Life Trust; (3) the Represented Health Trust; and (4) the Nonrepresented Health Trust.

Each of the New Life Trust agreements, the Represented Insurance Contract, and the Nonrepresented Insurance Contract, will provide that the Excess 1984 Reserve held under each contract may be applied toward the payment of Taxpayer's represented and nonrepresented postretirement health benefit obligations respectively. The Excess 1984 Reserve under each contract is an amount that is the lesser of the 1984 Reserve under that contract and the Excess Assets under that contract. An actuary retained by Taxpayer will determine the amount of the Excess 1984 Reserve as of a day that is during the year of the transfer and that is not later than the date of the transfer. Taxpayer proposes to release assets from the retired lives reserves in the Represented Insurance Contract and the Nonrepresented Insurance Contract, respectively, to be applied to postretirement health costs and related expenses in that taxable year. The amounts so released may be used to pay postretirement health costs and related expenses directly. Alternatively, to the extent Taxpayer initially pays the costs and expenses with its own funds (whether before or after the release during any year), Taxpayer will be reimbursed from the amounts released.

The following restrictions will apply:

(1) No amounts other than Excess 1984 Reserves will be released to provide postretirement health benefits;

(2) No funds will be released from the Represented Insurance Contract or the Nonrepresented Insurance Contract to provide postretirement health benefits unless the amount of the respective Excess 1984 Reserve is at least as great as the amount to be released;

(3) No funds from an Excess 1984 Reserve under a New Life Trust will be released for postretirement health benefits for any year if Taxpayer may make any additional currently deductible contributions to that trust's postretirement life insurance reserve for that year;

(4) Only an amount that would otherwise be currently deductible as a contribution to fund postretirement health benefits will be released to provide

postretirement health benefits.

(5) Taxpayer will not contribute an amount to the Represented Health Trust in any taxable year exceeding the excess of (a) the maximum contribution that Taxpayer may deduct in such year, determined without regard to any amount released from the retired lives reserve under the Represented Life Insurance Contract in such year to provide postretirement health benefits, over (b) any such released amount.

(6) Taxpayer will not contribute an amount to the Nonrepresented Health Trust in any taxable year exceeding the excess of (a) the maximum contribution that Taxpayer may deduct in such year, determined without regard to any amount released from the retired lives reserve under the Nonrepresented Life Insurance Contract in such year to provide postretirement health benefits, over (b) any such released amount.

(7) After any assets in the Represented Life Trust are designated to pay postretirement health benefits, those assets will be applied to pay postretirement health benefits before any of the assets in the Represented Health Trust are so used. Likewise, after any assets in the Nonrepresented Life Trust are designated to pay postretirement health benefits, those assets will be applied to pay postretirement health benefits before any of the assets in the Nonrepresented Health Trust are so used. The respective trust documents will be amended to reflect those priorities.

(8) For purposes of the representations and conditions contained in this ruling, amounts in the New Life Trusts that Taxpayer designates to be released to pay postretirement health benefits will be treated as if they were actually released on the date so designated.

(9) All amounts in the New Life Trusts that are designated by Taxpayer as available to pay postretirement health benefits will be treated as reducing the applicable 1984 Reserve.

RULINGS REQUESTED

(1) The proposed transactions will not cause the Life trust or the New Life Trusts to fail to be exempt from tax under section 501(a) as organizations described in section 501(c)(9).

(2) If the proposed use of the assets of the New Life Trusts results in the realization or recognition of gross income to Taxpayer, Taxpayer would be entitled to an offsetting deduction under section 419 for the qualified direct costs of providing welfare benefits.

(3) The proposed transactions will not constitute a reversion of any portion of a welfare benefit fund to the benefit of the employer as described in section

4976(b)(1)(C).

(4) Neither the Life Trust nor the New Life Trusts will recognize unrelated business taxable income solely as a result of the designation and the transfer of assets from the applicable retired lives reserve to pay postretirement health benefits.

(5) As of the end of a plan year, Taxpayer must take into account under section 420(e)(1)(B) as assets “set aside to pay for the qualified current retiree health liability” any portion of the Excess 1984 Reserve that Taxpayer has set aside in that year to pay postretirement health benefits and that has not been expended on such benefits before the end of that year. However, the remaining retired lives reserve assets of the Life Trust and the new Life Trusts as of the end of such plan year will not be taken into account under section 420(e)(1)(B) as assets “set aside to pay for the qualified current retiree health liability.”

(6) The proposed transactions will not diminish the effectiveness of PLR 9701010.

LAW AND ANALYSIS

Section 61(a) of the Code provides that, unless otherwise excepted, gross income includes all income from whatever source derived, including income from life insurance and endowment contracts.

Section 419(e)(1) of the Code defines the term “welfare benefit fund” to include any fund through which the employer provides welfare benefits to employees or their beneficiaries. The term “fund” is defined in section 419(e)(3) to include an organization described in section 501(c)(9) of the Code, and also, to the extent provided in regulations, any account held for an employer by any person. Paragraph (c) of regulation § 1.419-1T, Q&A-3 states that a retired lives reserve maintained by an insurance company is a “fund,” or part of a “fund,” if it is maintained for a particular employer and the employer has the right to have any amount in the reserve applied against its future years’ benefit costs or insurance premiums.

Section 419(a) of the Code provides that contributions paid or accrued by an employer to a welfare benefit fund shall not be deductible under Chapter 1 of the Code, but if they would otherwise be deductible, shall (subject to the limitation of section 419(b)) be deductible under section 419 for the taxable year in which paid.

Section 419(b) limits the employer's deduction under section 419(a) to a welfare benefit fund's qualified cost for the taxable year. The qualified cost of a welfare benefit fund for a taxable year is defined in section 419(c)(1) of the Code as the sum of the qualified direct cost for the taxable year and, subject to the limitation of section 419A(b), any addition to a qualified asset account for the taxable year. Under section 419(c)(2), the qualified cost for any taxable year is reduced by the welfare benefit fund's after-tax income for the taxable year.

Section 419(c)(3)(A) provides that the term "qualified direct cost" means, with respect to any taxable year, the aggregate amount (including administrative expenses) that would have been allowable as a deduction to the employer with respect to the benefits provided during the taxable year, if those benefits were provided directly by the employer and the employer used the cash receipts and disbursements method of accounting.

Section 419(c)(3)(B) provides that, for purposes of section 419(c)(3)(A), a benefit is treated as provided when that benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for any provision of Chapter 1 of the Code excluding that benefit from gross income).

Section 419A(a) of the Code defines the term "qualified asset account" to include any account consisting of assets set aside to provide for the payment of medical or life insurance benefits.

Section 419A(b) of the Code provides that no addition to any qualified asset account may be taken into account under section 419(c)(1) to the extent such addition results in the amount of such account exceeding the account limit.

Under section 419A(c)(1) of the Code, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund claims incurred but unpaid (as of the close of the taxable year), and administrative costs with respect to those claims. Section 419A(c)(2) provides that the account limit for any taxable year may also include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis as necessary for postretirement medical benefits or postretirement life insurance benefits to be provided to covered employees.

Regulation §1.419-1T, Q&A-2(a), provides that section 419 generally applies to contributions paid or accrued with respect to a welfare benefit fund after December 31, 1985, in taxable years of employers ending after that date. Q&A-2(b) of that regulation provides a special transition rule for certain welfare benefit funds that are part of a plan maintained pursuant to one or more collective bargaining agreements, and Q&A-9 of that regulation provides special transition rules for the first taxable year of a fiscal year employer ending after December 31, 1985.

Section 420 permits, subject to specified conditions and limitations, a qualified transfer of excess pension assets of a defined benefit plan (other than a multiemployer plan) to a health benefits account (under section 401(h)) that is part of the plan.

Section 420(b)(3) limits the amount that may be transferred to the amount that is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of the account during the taxable year of the transfer for qualified current retiree health liabilities.

Section 420(e)(1)(A) provides that, generally, the term “qualified current retiree health liabilities” means, with respect to any taxable year, the aggregate amounts (including administrative expenses) that would have been allowable as a deduction to the employer for the taxable year with respect to applicable health benefits provided during the taxable year, if those benefits were provided directly by the employer, and the employer used the cash receipts and disbursements method of accounting.

Section 420(e)(3)(B) provides that the amount determined under section 420(e)(1)(A) shall be reduced by amounts in health benefits accounts or welfare benefit funds set aside to pay for the qualified current retiree health liability. This reduction is based on the ratio of (i) the value, as of the close of the plan year preceding the section 420 transfer, of the assets in all health benefits accounts or welfare benefit funds set aside to pay for qualified current retiree health liabilities, to (ii) the present value of the qualified current retiree health liabilities for all plan years.

Section 501(a) exempts from federal income tax those organizations described in subsection (c).

Section 501(c)(9) describes voluntary employees’ beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or designated beneficiaries, if no part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-4 of the Income Tax Regulations provides that whether prohibited inurement has occurred is a question to be determined with regard to all the facts and circumstances.

Section 4976(a) of the Code imposes an excise tax in the amount of 100 percent of the amount of any disqualified benefit provided by a welfare benefit plan.

Section 4976(b)(1) provides that the term "disqualified benefit" means --

> (A) any post-retirement medical benefit or life insurance benefit provided with respect to a key employee if a separate account is required to be established for such employee under section 419A(d) and such payment is not from such account,
>
> (B) any post-retirement medical benefit or life insurance benefit provided

with respect to an individual in whose favor discrimination is prohibited unless the plan meets the requirements of section 505(b) with respect to such benefit (whether or not such requirements apply to such plan), and

(C) any portion of a welfare benefit fund reverting to the benefit of the employer.

Section 4976(b)(3) of the Code provides that section 4976(b)(1)(C) does not apply to any amount attributable to a contribution to the fund that is not allowable as a deduction under section 419 for the taxable year or any prior taxable year.

Revenue Ruling 69-382 holds, in part, that for taxable years ending on or before June 17, 1969, premiums paid or incurred by an employer policyholder under contracts providing group term life and health and accident coverage for its active and retired employees were deductible in full even though a portion of the premium was credited to a retired lives reserve if (1) the balance in the reserve was held by the insurance company solely for the purpose of providing insurance coverage on active and retired lives so long as any active or retired employees remained alive, and (2) the amount added to the retired lives reserve was not greater than an amount that would be required to fairly allocate the cost of the insurance coverage provided over the working lives of the employees involved. Further, the ruling holds, in pertinent part, that these conclusions would be applicable to taxable years ending after June 17, 1969, provided that the employer policyholder promptly amended the contract to provide that it did not retain any right to recapture any portion of the reserve so long as any active or retired employee remains alive.

Transfer of Life Trust Assets

The RLR was established to provide group life insurance to retirees of Taxpayer and is a welfare benefit fund within the meaning of section 419(e). The Life Trust is a welfare benefit fund as defined in section 419(e) because it is described in section 501(c)(9) of the Code and provides welfare benefits to employees and retirees of Taxpayer. Consequently, the deductibility of any contributions made to the Life Trust and the RLR after the effective date of section 419 is governed by section 419 of the Code, and any reversion to the benefit of Taxpayer of any portion of the Trust attributable to those contributions would be subject to the excise tax under section 4976.

The Life Trust and the New Life Trusts contain provisions prohibiting the reversion of any amount held in the retirement funding account maintained thereunder to Taxpayer or to any member of its controlled group as long as any employee or retiree of the sponsoring employer remains alive. In addition, the New Life Trusts will provide that retired lives reserve assets will be used exclusively to provide postretirement life insurance benefits and to pay related administrative expenses, except to the extent that Excess 1984 Reserves are released to pay postretirement health insurance benefits and related administrative expenses as described above. In view of our conclusions below concerning the release of Excess 1984 Reserves, these provisions are effective to preserve the integrity of the postretirement life reserves after the transfer of assets from the Life Trust to the Nonrepresented Life Trust. Accordingly, that transfer of assets will not create a reversion to Taxpayer that is subject to the excise tax imposed by § 4976(b)(1)(C).

Use of Life Trust Assets to Fund Postretirement Health Benefits

Treasury Regulation section 1.419-1T, Q&A-2, provides that section 419 applies only to contributions paid or accrued with respect to a welfare benefit fund (such as the RLR and the Life Trust) after December 31, 1985, in taxable years of employers ending after that date. In this case, only Excess 1984 Reserves will be applied to provide postretirement health benefits. Excess 1984 Reserves are attributable only to contributions to the RLR and the Life Trust that were not “allowable as a deduction under section 419 for the taxable year or any prior taxable year” within the meaning of section 4976(b)(3) of the Code. Accordingly, pursuant to section 4976(b)(3), section 4976(b)(1)(C) does not apply to the use of the Excess 1984 Reserves.

Any postretirement health benefits paid from the Excess 1984 Reserves in the New Life Trusts and RLRs will be welfare benefits constituting “life, sick, accident, or other benefits” within the meaning of section 501(c)(9) and the regulations thereunder. Accordingly, payment of such benefits from those reserves will not result in prohibited inurement or otherwise affect the exempt status of the Life Trust or the New Life Trusts under section 501(c)(9) of the Code.

You represent that Excess 1984 Reserve amounts that are designated by Taxpayer as available to pay postretirement health benefits will consist solely of an existing reserve for postretirement medical or life insurance benefits within the meaning of section 512(a)(3)(E)(ii). Accordingly, neither the Life Trust nor the New Life Trusts will recognize unrelated business taxable income solely as a result of the designation and the transfer of assets from the applicable retired lives reserve to pay postretirement health benefits.

We are not addressing herein the issue of whether the release of Excess 1984 Reserve amounts to provide postretirement health benefits will result in the realization and recognition of gross income to Taxpayer under section 61 of the Code. However, if such release does result in the realization and recognition of gross income to Taxpayer under section 61, Taxpayer would be entitled to an offsetting deduction to the extent permitted under section 419 for the qualified direct costs of providing postretirement health benefits.

Application to Section 420

Once Excess 1984 Reserve amounts in the New Life Trusts are designated to be released to be applied to postretirement health benefits and related expenses in a taxable year, those amounts are committed to pay current retiree health liabilities for that year. Thus, as of the end of any plan year, assets "set aside to pay the qualified current retiree health liability" under section 420(e)(1)(B) includes any portion of the Excess 1984 Reserve that Taxpayer has designated to be released in that year to pay postretirement health benefits. In contrast, however, the terms of the retired lives reserves, the Life Trust, and the New Life Trusts require that the remaining retired lives reserve assets be applied only to pay retiree life insurance liabilities, unless and until they are determined to be Excess 1984 Reserve amounts and designated to be released and applied to postretirement health benefits. Thus, those remaining assets are not assets "set aside to pay the qualified current retiree health liability" under section 420(e)(1)(B).

Conclusions

(1) The proposed transactions will not cause the Life Trust or the New Life Trusts to fail to be exempt from tax under section 501(a) as organizations described in section 501(c)(9).

(2) If the release of Excess 1984 Reserve amounts to provide postretirement health benefits results in the realization and recognition of gross income to Taxpayer under section 61 of the Code, Taxpayer would be entitled to an offsetting deduction to the extent permitted under section 419 for the qualified direct costs of providing postretirement health benefits.

(3) The transfer of assets from the Life Trust to the Represented Life Trust will not constitute a reversion to the benefit of the employer under section 4976(b)(1)(C) of the Code. Furthermore, pursuant to section 4976(b)(3), section 4976(b)(1)(C) does not apply to the use of the Excess 1984 Reserves with respect to either of the New Life Trusts.

(4) Neither the Life Trust nor the New Life Trusts will recognize unrelated business taxable income solely as a result of the designation and the transfer of assets from the applicable retired lives reserve to pay postretirement health benefits.

(5) As of the end of any plan year, assets "set aside to pay the qualified current retiree health liability" under section 420(e)(1)(B) includes any portion of the Excess 1984 Reserve that Taxpayer has designated to be set aside in such plan year to pay postretirement health benefits and that has not been expended on such benefits before the end of the plan year. However, the remaining retired lives reserve assets of the Life Trust and the New Life Trusts as of the end of such plan year are not assets "set aside

to pay the qualified current retiree health liability" under section 420(e)(1)(B).

(6) The proposed transactions will not diminish the effectiveness of PLR 9701010.

These rulings are contingent upon adoption of the trust amendments described in your application and your representative's letters of November 2, November 13, and December 19, 2000. .

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any provision of the Code. Specifically, no opinion is expressed about the computation of the account limit under section 419A(c) for purposes of computing Trust's unrelated business income under section 512(a)(3) of the Code. Moreover, if Trust or Plan is amended, these rulings may not remain in effect.

Sincerely,

MARK SCHWIMMER
Senior Technician Reviewer
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)

CC: