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CC:TEGE:EB:QP1:
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UIL No. 415.00-00

<u>Via Regular Mail</u>

Dear   :

This is in response to your email inquiry of October 2, 2018, and your follow-up email inquiries of October 9, 2018 and October 15, 2018, regarding the transition rule of section 2004(d)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93-406. This letter provides general information regarding the transition rule of section 2004(d)(2) of ERISA.

Section 2004(a) of ERISA added § 415 to the Internal Revenue Code (Code). Section 415(b) of the Code limits the amount of a participant's annual benefit under a qualified defined benefit plan. At the time this provision became effective in 1976, this limit was equal to the lesser of $75,000 or the average of the participant's highest 3 years of compensation. Due to statutory changes since ERISA and indexing for inflation pursuant to § 415(d), the dollar limit on a participant's annual benefit for 2018 is $220,000.

Section 2004(d)(2) of ERISA provides a transition rule for employees who were pension plan participants before October 3, 1974. This transition rule provides a limited exception from the application of the § 415(b) limit for those participants. Section 2004(d)(2) of ERISA provides:

In the case of an individual who was an active participant in a defined benefit plan before October 3, 1973, if--

(A) the annual benefit (within the meaning of section 415(b)(2)) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on the earlier of (i) October 2, 1973, or (ii) the date on which he separated from the service of the employer,

(B) such annual benefit is no greater than the annual benefit which would have been payable to such participant on retirement if (i) all the terms and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date, and

(C) In the case of a participant who separated from the service of the employer prior to October 2, 1973, such annual benefit is no greater than his vested accrued benefit as of the date he separated from the service,

Then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code.

In order for the transition rule of section 2004(d)(2) of ERISA to apply, a number of requirements must be met. First, the individual must have been an active participant in the defined benefit plan before October 3, 1973. Second, under section 2004(d)(2)(A) of ERISA, the annual benefit payable to the participant on retirement cannot exceed the lesser of the participant's annual rate of compensation on the earlier of October 2, 1973, or the date on which the participant separated from the service of the employer. Third, under section 2004(d)(2)(B) of ERISA, the annual benefit cannot be greater than the benefit that would have been payable to the participant if all terms and conditions of such plan in existence on October 2, 1973 had remained in existence until the participant's retirement and the participant's compensation taken into account for any period after October 2, 1973 had not exceeded his annual rate of compensation on October 2, 1973. Finally, section 2004(d)(2)(C) of ERISA provides for an additional requirement for a participant who separated from service before October 2, 1973.

In the case of a participant who separated from service after October 2, 1973, under section 2004(d)(2)(A) of ERISA, the transition rule does not apply to a participant whose annual benefit payable under the plan is greater than the participant's annual rate of compensation on October 2, 1973.

 We hope this information is helpful. If you need additional assistance, please contact   at   .

By: _____
     Neil Sandhu
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     Qualified Plans Branch 1