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:TEGE:EB:QP2
PLR-T-103108-15

Date:
June 16, 2015

Re:

Employer =
Plan =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Amount 1 =
Amount 2 =

Dear :

This letter is in response to your request for a ruling concerning the Plan which was submitted by your authorized representative on November 4, 2014 as supplemented by your representative's letter dated March 2, 2015.

The following facts and representations are submitted under penalties of perjury in support of your request:

Employer represents that it is an entity that is tax-exempt under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). On Date 1, Employer established the Plan, a single-employer defined benefit pension plan for the benefit of its employees. Benefit accruals under the Plan ceased effective Date 2.

On Date 3, Employer took action to terminate the Plan effective Date 4. Employer filed Form 5310, Application for Determination for Terminating Plan, with the Internal Revenue Service

(IRS), and IRS issued a favorable determination letter dated Date 5. Employer also filed Form 500, Standard Termination Notice Single Employer Plan Termination, with the Pension Benefit Guaranty Corporation (PBGC), and PBGC did not object to the notice.

In connection with the termination of the Plan, Employer intended to contribute up to the amount necessary to ensure that there were sufficient assets in the Plan to effect a standard termination, including paying all accrued benefits and liabilities of the Plan. Based on calculations made by the Plan's enrolled actuary as to the amount necessary to be contributed to the Plan in order to effect a standard termination, Employer contributed Amount 1 to the Plan on Date 6 (the Contribution Date). In conjunction with the termination of the Plan, participants who had not yet begun to receive benefits under the Plan were given the choice to elect either a lump sum distribution of their benefits or an annuity. The Employer obtained bids from several annuity providers, and the Plan worked with its actuary to provide relevant participant data.

After Date 7, the Plan paid lump sum distributions to participants who elected lump sum distributions. On Date 8, Employer purchased a single-premium group annuity from a commercial annuity provider to provide benefits to the remaining Plan participants.

After all the benefit liabilities in the Plan were satisfied, approximately Amount 2 remained in the Plan trust (the "Excess Amount"). This surplus was the result of (1) revisions to participant data since the actuary first calculated the amount to be contributed, (2) revisions to participant data based on new information concerning deceased participants affecting group annuity contract premium prices, and (3) unexpected market performance. The Plan provides that upon termination of the Plan, if all liabilities with respect to participants and beneficiaries have been satisfied and there remains a balance in the trust due to erroneous actuarial computation, such balance shall be returned to the Employer. This provision has been in the Plan document for more than five years.

Employer further represents that it made contributions to the Plan during periods in which it also incurred unrelated business taxable income (UBTI) within the meaning of section 512.

Based on the above facts and representations, you request the following rulings:

(1) The return to Employer of the Excess Amount does not violate section 401(a)(2); and
(2) The return to Employer of the Excess Amount does not constitute an employer reversion that is subject to the excise tax on reversions of qualified plan assets under section 4980.

Section 401(a)(2) generally prohibits, prior to the satisfaction of all liabilities with respect to employees and beneficiaries under the trust, the diversion of trust assets for purposes other than for the exclusive benefit of the employees or beneficiaries for whom an employer maintains a qualified pension plan.

Section 1.401(a)-2 of the Income Tax Regulations provides that §1.401-2, a regulation promulgated prior to the Employee Retirement Income Security Act of 1974 ("ERISA"), provides rules under section 401(a)(2), and that regulation is applicable unless otherwise provided.

Section 1.401-2 provides rules under section 401(a)(2) for the impossibility of diversion under the trust instrument. Section 1.401-2(b)(1) provides that the intent and purpose in section 401(a)(2) of the phrase "prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust" is to permit the employer to reserve the right to recover at the termination of the trust, and only at such termination, any balance remaining in the trust which is due to erroneous actuarial computations during the previous life of the trust. A balance due to an "erroneous actuarial computation" is the surplus arising because actual requirements differ from the expected requirements even though the latter were based upon previous actuarial valuations of liabilities or determinations of costs of providing pension benefits under the plan and were made by a person competent to make such determinations in accordance with reasonable assumptions and correct procedures related to the method of funding.

Section 4980(a) provides for an excise tax on the amount of any reversion of plan assets to the employer from a qualified plan. Section 4980(b) provides that the tax imposed by section 4980(a) shall be paid by the employer maintaining the plan.

Section 4980(c)(1)(A) provides, in part, that the term "qualified plan" means any plan meeting the requirements of section 401(a) or section 403(a) other than a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A. Such term shall include any plan which, at any time, has been determined by the Secretary of the Treasury to be a qualified plan.

Section 4980(c)(2)(A) defines the term "employer reversion" to mean the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

In Research Corporation v. Commissioner of Internal Revenue, 138 T.C. No. 7 (2012), the Tax Court held that the taxpayer was a section 501(c)(3) organization exempt from income tax for the purpose of any law referring to organizations exempt from income taxes, including Code section 4980, notwithstanding that the organization had been subject to tax on its UBTI.

With respect to your first requested ruling, Employer made contributions totaling Amount 1 to the Plan in order to effect the standard termination of the Plan. Amount 1 was determined by the enrolled actuary servicing the Plan using reasonable assumptions and following the correct procedures related to the method of funding. However, the actual requirements to fully fund the Plan differed from the expected requirements. As a result, the Excess Amount, approximately Amount 2, remains in the Plan after all of the Plan's benefit liabilities are satisfied. Based on the facts and representations, the Excess Amount is the result of erroneous actuarial computations within the meaning of §1.401-2(b)(1). The Plan document

permits the return of excess trust assets due to erroneous actuarial computation if all liabilities with respect to participants and beneficiaries have been satisfied. In the present case, the return of the Excess Amount to Employer will not occur until after the satisfaction of all liabilities with respect to employees and beneficiaries of the trust of the Plan. Accordingly, the return to Employer of the Excess Amount will not violate section 401(a)(2).

With respect to your second requested ruling, Employer represents that it is a 501(c)(3) tax-exempt entity that incurred UBTI. In accordance with Research Corporation, however, the existence of UBTI does not prevent Employer from having been, at all times, exempt from tax under subtitle A for purposes of section 4980(c)(1)(A). Therefore, the Plan is not a qualified plan within the meaning of section 4980(c)(1), and the return to Employer of Amount 2 is not subject to the section 4980 excise tax.

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party.

While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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,

Laura B. Warshawsky
Senior Tax Law Specialist
Qualified Plans Branch 2
(Tax Exempt & Government Entities)

cc: