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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

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CC:TEGE:EB:QP2
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Date:
October 28, 2015

Legend

Plan A	=
Plan B	=
Company	=
State	=
Country	=
Date 1	=
Date 2	=

Dear :

This letter is in response to your ruling request, dated June 22, 2015, submitted by your authorized representative, and supplemented by correspondence from your authorized representative dated July 31, 2015, concerning the treatment of Plan A and Plan B under section 401(a)(4) of the Internal Revenue Code (the Code) and its accompanying regulations.

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

The Company is a distributor of manufactured goods with its principal offices located in State. The Company maintains Plan A, a defined benefit plan, and Plan B, a defined contribution plan. Plan A was closed to new participants as of Date 1, but continues to provide ongoing accruals to the participants who were participating in the plan prior to Date 2.

Both Plan A and Plan B include single-sum distribution options available to all vested plan participants at termination of employment. The single sum benefit provided by Plan A is unsubsidized and is determined by converting the normal form of annuity benefit to a lump sum using the actuarial assumptions set forth in section 417(e)(3). In

the case of Plan B, the single sum benefit is equal to the participant's vested account balance and, therefore, does not require a similar conversion.

The Company would like to aggregate Plan A and Plan B for purposes of satisfying the coverage and nondiscrimination tests as permitted under §1.401(a)(4)-9.

Based on the above facts and representations, you have requested a ruling that if Plan A and Plan B are aggregated for purposes of nondiscrimination testing, and single sum benefits are available under both plans for all participants upon termination of employment, then it is permissible to test such single sum benefits as a single optional form of benefit for purposes of satisfying the benefits, rights and features test under section 401(a)(4) and §1.401(a)(4)-4.

Section 410(b) provides generally that a plan is a qualified plan only if the classification of employees who benefit under the plan does not discriminate in favor of highly-compensated employees (HCEs).

Section 410(b)(6)(B) provides that two or more plans can be aggregated for purposes of satisfying section 410(b), but only if those plans are also aggregated for purposes of section 401(a)(4).

Section 401(a)(4) provides that a plan is a qualified plan only if the contributions or benefits provided under the plan do not discriminate in favor of HCEs.

Section 1.401(a)(4)-4(a) provides rules for determining whether the benefits, rights, and features provided under a plan (i.e., all optional forms of benefit, ancillary benefits, and other rights and features available to any employee under the plan) are made available in a nondiscriminatory manner. Benefits, rights, and features provided under a plan are made available to employees in a nondiscriminatory manner only if each benefit, right, or feature satisfies the current availability requirement of paragraph (b) of that section and the effective availability requirement of paragraph (c) of that section.

Section 1.401(a)(4)-4(b)(1) provides that the current availability requirement is satisfied if the group of employees to whom a benefit, right, or feature is currently available during the plan year satisfies section 410(b) (without regard to the average benefit percentage test of §1.410(b)–5). In determining whether the group of employees satisfies section 410(b), an employee is treated as benefiting only if the benefit, right, or feature is currently available to the employee.

Section 1.401(a)(4)-4(b)(2)(ii)(B) provides that specified conditions on the availability of a benefit, right, or feature such as requiring a specified percentage of the employee's accrued benefit to be non-forfeitable, termination of employment, death, disability, or hardship are disregarded in determining the employees to whom the benefit, right, or feature is currently available.

Section 1.401(a)(4)-9(b)(3)(i) provides that a DB/DC plan is deemed to satisfy §1.401(a)(4)-4(b)(1) with respect to the current availability of a benefit, right, or feature other than a single sum benefit, loan, ancillary benefit, or benefit commencement date (including the availability of in-service withdrawals), that is provided under only one type of plan (defined benefit or defined contribution) included in the DB/DC plan, if the benefit, right, or feature is currently available to all non-highly compensated employees in all plans of the same type as the plan under which it is provided.

Section 1.401(a)(4)-4(c) provides that the effective availability requirement is satisfied only if, based on all of the relevant facts and circumstances, the group of employees to whom a benefit, right or feature is effectively available does not substantially favor HCEs.

Section 1.401(a)(4)-4(e)(1)(i) provides that different optional forms of benefit exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative. The relevant terms include all terms affecting the value of the optional form, such as the method of benefit calculation and the actuarial assumptions used to determine the amount distributed.

Section 1.401(a)(4)-4(d)(4)(i) provides that an optional form of benefit may be aggregated with another optional form of benefit and treated as a single optional form provided that one of the two optional forms of benefit is of inherently equal or greater value than the other, and the optional form of benefit of inherently equal or greater value separately satisfies the current and effective availability tests.

Under §1.401(a)(4)-4(e)(1)(i), the single sum benefits provided by Plan A and Plan B are two separate optional forms of benefit for purposes of benefits, rights, and features testing because different methods are used to calculate the amount of the two single sum benefits and different actuarial assumptions are used to determine the amount distributed (the amount of the single sum benefit under Plan A is calculated by converting the normal form of annuity benefit using the actuarial assumptions specified under section 417(e), whereas the amount of the single sum benefit under Plan B is the vested account balance.)

In addition, the single sum benefits provided by Plan A and Plan B are not eligible for the “deemed satisfaction” rule set forth in §1.401(a)(4)-9(b)(3)(i) because single sum benefits are explicitly excluded from the list of benefits, rights, or features to which the rule applies.

The single sum benefits can be aggregated pursuant to §1.401(a)(4)-4(d)(4)(i), however, because the single sum benefit provided by Plan A and the single sum benefit provided by Plan B are both of inherently equal or greater value with respect to each other. That is, the single sum benefit provided under each plan is the minimum amount

that can be paid on behalf of the accrued benefit under each plan, and therefore both single sum benefits are of equal value in relation to the accrued benefit under the respective plans.

We conclude that the unsubsidized single sum benefit provided by Plan A upon termination of employment and the single sum benefit provided by Plan B upon termination of employment may not be treated as a single optional form of benefit under §1.401(a)(4)-4(e)(1)(i), but may be aggregated for nondiscrimination testing purposes under §1.401(a)(4)-4(d)(4)(i) notwithstanding that the benefit under Plan A must be converted to a lump sum using section 417(e) assumptions.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties 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 the ruling, it is subject to verification on examination.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

/S/

Linda S.F. Marshall
Senior Attorney, Qualified Plans Branch 1
(Office of Chief Counsel, TEGE)