**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Date:
March 23, 2016

Taxpayer A =
Company B =
Parent Company =
Plaintiffs =

Plan X =
Plan Y =
Trustee C =
Month 1 =
Amount 1 =
Amount 2 =
Amount 3 =
Amount 4 =

Dear :

This letter responds to your request dated September 2, 2015, as supplemented by correspondence dated November 30, 2015, December 9, 2015, December 15, 2015, and February 25, 2016 submitted on your behalf by your authorized representatives regarding the proper treatment of the transfer of surplus assets to Plan Y under section 4980 of the Internal Revenue Code ("Code") and Revenue Ruling 89-87, 1989-2 C.B. 81 (Rev. Rul. 89-87) following the termination of Plan X.

The following facts and representations were submitted under penalty of perjury on your behalf:

Taxpayer A is a limited liability company that is a disregarded entity for tax purposes and that provides services to affiliated companies within the U.S. consolidated group of corporations with Parent Company. Taxpayer A sponsors Plan X, a defined benefit pension plan, and Plan Y, a defined contribution retirement plan with section 401(k),

section 401(m) and employee stock ownership plan (ESOP) features. Both Plan X and Plan Y have current favorable determination letters.

In Month 1, Plaintiffs,
filed lawsuits

In addition, the Defendants,
have been named as
defendants in an adversary proceeding

Plan X
and Plan Y remain defendants in the litigation
It should be noted that Plan X and Plan Y are merely two of many defendants in the litigation. As defendants in the litigation, Plan X and Plan Y have contingent liabilities with respect to the litigation. Only the contingent liability with respect to Plan X is at issue in this ruling (the "Contingent Liability"). Taxpayer A represents that no further efforts to resolve the litigation are warranted pending resolution of the Plaintiffs' appeal and the motion to dismiss . Taxpayer A further represents that resolution of the Contingent Liability is outside of its control.

Taxpayer A terminated Plan X effective as of June 30, 2014. Taxpayer A applied for a favorable determination letter with respect to Plan X's termination and received a favorable determination letter dated July 23, 2015.

Taxpayer A intends to distribute assets, either by payment of lump sums to plan participants or by the purchase of irrevocable commitments from an insurance company to pay annuities to plan participants, sufficient to satisfy all Plan X's benefit liabilities as soon as administratively feasible.

After the satisfaction of all Plan X's benefit liabilities, Plan X's Trust will have assets remaining (Surplus Assets). With respect to the Surplus Assets, Taxpayer A's Board of Managers has adopted a resolution under which any and all assets remaining in the Plan X Trust after Plan X has terminated with respect to all participating employers and after all Plan X liabilities have been satisfied shall be transferred to a qualified replacement plan (within the meaning of section 4980(d)(2) as soon as administratively feasible. The Board further resolved that the assets shall be transferred to the qualified replacement plan as follows: (1) retain in Plan X's Trust an amount deemed [by Taxpayer A] sufficient to pay Plan X's maximum estimated potential contingent liability; (2) transfer the balance of the Surplus Assets, which will be at least 25 percent of the Surplus Assets, as soon as administratively feasible to a qualified replacement plan, as defined in section 4980(d)(2); and (3) as soon as administratively feasible following the satisfaction of the contingent liability, transfer any remaining assets to a qualified replacement plan as defined in section 4980(d)(2). Thus, no Plan X assets will revert to Taxpayer A.

Taxpayer A anticipates that after satisfaction of all benefit liabilities, approximately Amount 2 will remain in the Plan X Trust, of which approximately Amount 3 will be withheld for the Contingent Liability and approximately Amount 4 will be transferred, as soon as administratively feasible, to Plan Y as the qualified replacement plan.

Plan Y provides a discretionary contribution of from 0 percent to 3 percent of compensation (DC1) as well as a discretionary contribution of from 0 percent to 6 percent of compensation (DC2). No DC2 contributions are made unless DC1 contributions are made in an amount equal to 3 percent of compensation. At least 95 percent of the employee participants in Plan X will participate in Plan Y and be eligible to receive DC1 contributions. Somewhat less than 95 percent of the employee participants in Plan Y will receive DC2 contributions because a certain group of highly compensated employees, as defined in section 414(q), are not eligible under the terms of Plan Y to receive DC2 contributions, although this group is eligible to receive DC1 contributions.

Based on the foregoing you request the following rulings:

1. The initial transfer of assets from Plan X's Trust to Plan Y in an amount at least equal to 25 percent of the Surplus Assets will constitute a transfer of amounts to a qualified replacement plan under section 4980, notwithstanding that when such transfer occurs, the Contingent Liability will not have been satisfied and assets will remain in the Plan X Trust.
2. Any additional transfer of assets from the Plan X Trust to the qualified replacement plan after the Contingent Liability has been satisfied will not constitute a reversion under section 4980 and will be subject to a 7-plan-year allocation period under section 4980(d)(2)(C)(i)(II) beginning with the plan year in

which such transfer occurs.

3. Because at least 95 percent of all employee participants in Plan X are, or will become, participants in Plan Y entitled to DC1 contributions, the participation requirement of section 4980(d)(2)(A) will be satisfied even though somewhat less than 95 percent of all employee participants in Plan X will be eligible to receive DC2 contributions. Additionally, if this participation requirement is met at the time of the initial transfer of Surplus Assets, it will be deemed to be met when the second transfer is made following satisfaction of the Contingent Liability.

Section 4980(a) imposes a 20 percent excise tax on the amount of any reversion from a qualified plan. Under section 4980(d)(1), the excise tax under section 4980 shall be increased to 50 percent with respect to an employer reversion from a qualified plan unless the employer either establishes or maintains a "qualified replacement plan", or the plan provides for certain benefit increases which take effect on the termination date.

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

Under section 4980(d)(2) a "qualified replacement plan" is a qualified plan established or maintained by the employer in connection with a qualified plan termination, which satisfies the participation, asset transfer and allocation requirements of sections 4980(d)(2)(A),(B) and (C).

Section 4980(d)(2)(A) requires that at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination be active participants in the replacement plan.

Section 4980(d)(2)(B) requires that a direct transfer from the terminated plan to the replacement plan be made before any employer reversion, and that the transfer be an amount equal to the excess (if any) of (i) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to section 4980(d), over (ii) the amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment adopted during the 60-day period ending on the date of termination of the qualified plan, and which takes effect immediately on the termination date.

Under section 4980(d)(2)(B)(iii), in the case of the transfer of any amount under section 4980(d)(2)(B)(i) from a terminated plan, such amount is not includible in the gross income of the employer, no deduction is allowable with respect to such transfer, and the transfer is not treated as an employer reversion for purposes of section 4980.

Under section 4980(d)(2)(C)(i), if the replacement plan is a defined contribution plan, the amount transferred to the replacement plan must be (I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or (II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer.

Under section 4980(d)(2)(C)(ii), if by reason of any limitation under section 415, any amount credited to a suspense account under section 4980(d)(2)(C)(i)(II) may not be allocated to a participant before the close of the 7-plan-year period, such amount shall be allocated to the accounts of other participants, and if any portion of such amount may not be allocated to other participants by reason of such limitation, it shall be allocated to the participant as provided in section 415.

Under section 4980(d)(2)(C)(iii), any income on any amount credited to a suspense account under section 4980(d)(2)(C)(i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under section 4980(d)(2)(C)(i)(II) (after application of section 4980(d)(2)(C)(ii)).

Under section 4980(d)(2)(C)(iv), if any amount credited to a suspense account under section 4980(d)(2)(C)(i)(II) is not allocated as of the termination date of the replacement plan, (I) such amount shall be allocated to the accounts of the participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and (II) if any portion of such amount may not be allocated to other participants under the preceding subclause by reason of such limitation, such portion shall be treated as an employer reversion to which section 4980 applies.

Under Revenue Ruling 2003-85, 2003-32 I.R.B. 291, the direct transfer from a terminating plan that did not increase benefits to a plan intending to be a qualified replacement plan satisfied the requirements of section 4980(d)(2)(B) when the amount was at least 25 percent of the maximum amount which the employer could receive as an employer reversion.

In the present case, Plan Y will be a qualified replacement plan if it is maintained by Taxpayer A in connection with a qualified plan termination that satisfies the participation, asset transfer and allocation requirements of sections 4980(d)(2)(A),(B) and (C). Based on the information provided, we find that the proposed transfer of assets will occur in connection with a qualified plan termination. In addition, Taxpayer A has represented that at least 95 percent of the active participants in Plan X will remain as employees of Taxpayer A after the termination of Plan X and will be eligible for DC1 contributions under Plan Y, thus satisfying the participation requirement of section 4980(d)(2)(A) that at least 95 percent of Plan X participants be active participants in

Plan Y. Taxpayer A has also represented that 100 percent of the assets remaining in the Plan X Trust will be transferred to Plan Y. Although the transaction is expected to take place in two transfers, the resolution adopted by the Board of Managers binds Taxpayer A to transfer the entire amount. Therefore, the transfer of Surplus Assets and any related earnings to Plan Y will be treated as a single transaction involving at least 25 percent of the Surplus Assets upon termination of Plan X for purposes of satisfying the asset transfer requirement of section 4980(d)(2)(B). Finally, each of the two transfers will be subject to a 7-plan-year allocation period under section 4980(d)(2)(C)(i)(II) beginning with the plan year in which the transfer occurs.

Accordingly, we rule that the initial transfer of assets from Plan X's Trust to Plan Y in an amount at least equal to 25 percent of the Surplus Assets will constitute the transfer of an amount to a qualified replacement plan under section 4980, notwithstanding that when such transfer occurs, the Contingent Liability will not have been satisfied and assets will remain in the Plan X Trust. In addition, any transfer of assets from the Plan X Trust to Plan Y after the Contingent Liability has been satisfied will not constitute a reversion under section 4980 and will be subject to a 7-plan-year allocation period under section 4980(d)(2)(C)(i)(II) beginning with the plan year in which such transfer occurs. Finally, because at least 95 percent of all employee participants in Plan X will remain as employees of Taxpayer A after the termination of Plan X and will be eligible for DC 1 contributions under Plan Y, the participation requirement of section 4980(d)(2)(A) will be satisfied even though somewhat less than 95 percent of all employee participants in Plan X will be eligible to receive DC2 contributions. Additionally, if this participation requirement is met at the time of the initial transfer of assets, it will be deemed to be met when the second transfer is made following satisfaction or elimination of the Contingent Liability.

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

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

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

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.

Sincerely,

Laura B. Warshawsky
Senior Tax Law Specialist
Qualified Plans Branch 2
Office of the Associate Chief Counsel
(Tax Exempt and Government Entities)

cc: