Internal Revenue Service

Number: **201839010**
Release Date: 9/28/2018

Index Number: 401.03-00, 4980.02-00

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-107094-18

Date:
June 28, 2018

Legend

Sponsor =
Plan =
Amount =
Excess Amount =

Dear :

This letter is in response to your request, submitted by your authorized representative, for rulings that the return of the Excess Amount to the Sponsor will not violate section 401(a)(2) of the Internal Revenue Code and will not constitute an employer reversion under section 4980.

The following facts and representations have been submitted:

The Sponsor established and maintained the Plan for certain of its employees. The Plan is a single-employer tax-qualified defined benefit pension plan that is subject to the provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”).

In 2017, the Sponsor terminated the Plan, filed a Form 5310, Application for Determination for Terminating Plan, with the Internal Revenue Service (“IRS”), and filed a Form 500, Standard Termination Notice, with the Pension Benefit Guarantee Corporation (“PBGC”). The Sponsor subsequently received a favorable determination letter for the Plan and filed Form 501 and Schedule MP with PBGC.

In order to fully fund the Plan’s estimated liabilities upon termination, the Sponsor

contributed Amount to cover the unfunded cost of a group annuity contract (the Contract) for the Plan participants and beneficiaries. After the Contract was purchased, it was determined that the Plan had overpaid because a number of annuitants covered by the Contract were no longer living. The amount of this overpayment (the Excess Amount) was returned to the Plan and will be returned to the Sponsor.

Section 7.2 of the Plan permits the Sponsor to request the return of "a contribution which was made by mistake of fact . . . within one (1) year after the payment of the contribution . . ."

Section 12.1(b) of the Plan provides that, "if all liabilities with respect to Participants and Beneficiaries under the Plan have been satisfied and there remains a balance in the Trust due to erroneous actuarial computation, such balance, if any, shall be returned to the Employer."

Based on the above facts and representations, you, through your authorized representative, requested the following rulings:

(1) That the return of the Excess Amount to the Sponsor will not violate section 401(a)(2); and

(2) That the return of the Excess Amount to the Sponsor will not constitute an employer reversion under section 4980.

Law

Section 1.401-2(b)(1) of the Income Tax Regulations provides that the intent and purpose of the phrase "prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust" in section 401(a)(2) is to permit an 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 a tax of 20 percent on the amount of any employer reversion from a qualified plan. Section 4980(d) provides for an increase in that tax for failure to establish a replacement plan or increase benefits.

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 relevant part and with respect to plans that are not multiemployer plans, section 4980(c)(2)(B) provides that the term employer reversion shall not include any distribution to the employer allowable under section 401(a)(2) by reason of mistake of fact.

Section 403(c)(2)(A) of ERISA, for which there is no parallel provision in the Code, provides that a contribution which is made by an employer by a mistake of fact may be returned to the employer within one year after payment of the contribution.

Revenue Ruling 91-4, 1991-1 CB 57, provides that a qualified plan may contain a provision authorizing return of employer contributions made because of a mistake of fact as provided in section 403(c)(2)(A) of ERISA.

Analysis

Because of the mistaken belief about the number of participants and beneficiaries that remained alive at the time, the Sponsor contributed an amount to the Plan that was in excess of what should have been necessary to fund the purchase of the Contract. This mistaken belief was a mistake of fact as contemplated in section 4980(c)(2)(B)(ii)(II) and section 403(c)(2)(A) of ERISA, and resulted in erroneous actuarial calculations under section 1.401-2(b)(1). Accordingly, the return of the Excess Amount will not violate section 401(a)(2) or constitute an employer reversion under section 4980(c)(2)(B).

Rulings

Thus, with respect to your ruling requests, we conclude as follows:

1. That the return of the Excess Amount to the Sponsor will not violate section 401(a)(2); and

2. That the return of the Excess Amount to the Sponsor will not constitute an employer reversion under section 4980.

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, as specified in Rev. Proc. 2018-1, 2018-1 I.R.B. 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling

facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, section 11.05.

These rulings are directed only to the taxpayer that requested them. Section 6110(k)(3) provides that this this letter may not be used or cited by others 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 representative.

Sincerely,

Keith R. Kost
Senior Technician Reviewer
Qualified Plans Branch 2
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)

cc: