Internal Revenue Service

Number: **201935003**
Release Date: 8/30/2019

Index Number: 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:EEE:EB:QP2
PLR-103736-19

Date:
June 04, 2019

Legend:

Company	=
Hourly Plan	=
Bargaining Unit 401(k) Plan	=
Non-Bargaining Unit 401(k) Plan	=
Salaried Plan	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Amount 1	=

Dear :

This letter is in response to your request, submitted by your authorized representative, in which you request rulings concerning the proper treatment under section 4980 of the Internal Revenue Code ("Code"), of a transfer of surplus assets from a terminated defined benefit plan to two ongoing 401(k) plans together designated as a "qualified replacement plan".

The following facts and representations have been submitted under penalties of perjury:

The Company established the Hourly Plan on Date 1. The Hourly Plan is a defined benefit plan which, since its inception, has been qualified under section 401(a).

The Hourly Plan covers two groups of employees that will be referred to for purposes of this ruling as bargaining unit employees and non-bargaining unit hourly employees.

All benefit accruals under the Hourly Plan were discontinued effective as of Date 3 and the Hourly Plan continued in operation thereafter as a frozen plan.

As part of the collective bargaining that resulted in the freeze of the Hourly Plan, the Company agreed to establish a replacement defined contribution plan for bargaining unit employees effective as of Date 2. The negotiated replacement plan, the Bargaining Unit 401(k) Plan, is a qualified plan which includes a 401(k) feature and an employer non-elective contribution feature pursuant to which the Company makes weekly contributions on behalf of participants at negotiated rates.

Non-bargaining unit hourly employees were already included in a qualified defined contribution plan when the Hourly Plan was frozen on Date 3. The Company significantly enhanced that plan, effective as of Date 2, by redesigning the plan as a 401(k) plan with a safe-harbor employer non-elective contribution feature and a discretionary employer matching contribution feature. The enhanced plan, the Non-Bargaining Unit 401(k) Plan, serves as a replacement plan to the Hourly Plan for non-bargaining unit hourly employees as well as for other non-bargaining unit employees who were participants in the Salaried Plan, a qualified defined benefit plan maintained by the Company under which all benefits accruals were also discontinued effective as of Date 3.

The Company terminated the Hourly Plan effective Date 4.[1] The Internal Revenue Service issued a favorable determination letter as to the effect of the termination of the Hourly Plan on its qualified status on Date 5. The Hourly Plan was terminated in a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 (“ERISA”) and a Standard Termination Notice was filed with Pension Benefit Guaranty Corporation (“PBGC”) for the Hourly Plan on Date 6. The distribution of all benefits due to participants, surviving spouses, other beneficiaries, and alternative payees is expected to be completed by Date 7.

Prior to the plan termination, the actuary for the Hourly Plan estimated that the plan had a deficit on a termination basis and that the Company would be required to make a contribution to the plan in order for the plan to be sufficient. In late 2018, the actuary completed another estimate that indicated that the Hourly Plan had changed from a deficit to surplus status because of the increase in interest rates for annuities and lump sums during 2018, and in early 2019, the actuary estimated that the Hourly Plan had a surplus of Amount 1.

[1] The Company also terminated the Salaried Plan effective as of Date 4.

The Hourly Plan was amended in conjunction with its termination to permit the Company, in its discretion, to use all or part of any surplus funds to "…fund a direct transfer from this plan to one or more 'qualified replacement plans' established or maintained by the Employer in accordance with the provisions of Code Section 4980(d)(2), such direct transfer to be an amount determined by the Employer that equals or exceeds the minimum amount required by Code Section 4980(d)(2)(B)."

Immediately after the termination of the Hourly Plan on Date 4, 100% of the participants in the Hourly Plan who remained as current employees of the Company were active participants in either the Bargaining Unit 401(k) Plan or the Non-Bargaining Unit 401(k) Plan. As of Date 8, 67.1% of those participants were active participants in the Bargaining Unit 401(k) Plan and 32.9% were active participants in the Non-Bargaining Unit 401(k) Plan.

After all plan liabilities have been satisfied and before the reversion of any surplus funds to the Company, the Company intends to instruct the trustees of the Hourly Plan to effect a direct transfer from the Hourly Plan to the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan of an aggregate amount equal to the total amount of the Hourly Plan's remaining surplus. The Company further intends to direct that this aggregate amount be divided between the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan in proportion to the number of participants in the Hourly Plan who remained as current employees of the Company as of Date 8 and were active participants in each plan as of that date. The Bargaining Unit 401(k) Plan and Non-Bargaining Unit 401(k) Plan are both calendar year plans.

The Company intends to cause the amount transferred to the Bargaining Unit 401(k) Plan to be credited to a suspense account in that plan and to allocate amounts from that account to fund all or a portion of weekly employer non-elective contributions due in accordance with the terms of the plan (after the offset of forfeitures) and all or a portion of the plan administrative expenses otherwise payable by the Company. The allocation from the suspense account will be at least as rapidly as ratably on a periodic basis over an allocation period beginning on the date of the transfer and ending on the last day of the sixth plan year after the plan year of transfer. The minimum ratable drawdown of the suspense account over this allocation period will be measured by the Company on periodic intervals designated by the Company, which will be at least annual. Any income earned by the suspense account will be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the allocation period under the same procedure.

The Company intends to cause the amount transferred to the Non-Bargaining Unit 401(k) Plan to be credited to a suspense account[2] in that plan and to allocate amounts

[2] The Company also intends to effect a direct transfer from the Salaried Plan to the Non-Bargaining Unit 401(k) Plan of all Salaried Plan's remaining surplus. The amount of this direct transfer will also be credited to the suspense account in the Non-Bargaining Unit 401(k) Plan and allocated from that account to fund safe-harbor employer non-elective contributions due in accordance with the terms of the plan and

from that account to fund all or a portion of the safe-harbor employer non-elective contributions due in accordance with the terms of the plan and all or a portion of the plan administrative expenses otherwise payable by the Company. The suspense account will not be applied to fund employer matching contribution under the Non-Bargaining Unit 401(k) Plan. The allocation from the suspense account will be at least as rapidly as ratably on a periodic basis over an allocation period beginning on the date of the transfer and ending on the last day of the sixth plan year after the plan year of transfer. The minimum ratable drawdown of the suspense account over this allocation period will be measured by the Company on periodic intervals designated by the Company, which will be at least annual. Any income earned by the suspense account will be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the allocation period under the same procedure.

Any amounts allocated from the suspense accounts in the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan attributable to the transfers from the Hourly Plan and any income earned thereon will be treated as employer contributions for purposes of sections 401 and 415.

Although it is anticipated that all benefits due under the Hourly Plan will be distributed within one year after the date of the plan's termination, the remaining surplus assets will be retained in the trust through which the Hourly Plan is funded pending receipt of the requested rulings.

The business reason for the proposed transactions outlined above is to effectuate the Company's objective to maintain and operate the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan as appropriate replacement plans to the Hourly Plan by applying 100% of the Hourly Plan's surplus funds in accordance with the terms of those replacement plans.

Based on the forgoing facts and correspondence, the following rulings have been requested:

1. The Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan may be treated as one plan for purposes of section 4980 pursuant to section 4980(d)(5)(D) and together constitute a "qualified replacement plan" for purposes of section 4980(d)(2).
2. The direct transfer from the Hourly Plan to the Bargaining Unit 401(k) Plan and Non-Bargaining Unit 401(k) Plan of an aggregate amount equal to 100% of the maximum amount that the Company could receive as an employer reversion from the Hourly Plan will be treated as follows:

a. the amount transferred will not be included in the gross income of the Company;
b. no deduction will be allowable with respect to the amount transferred; and

---

plan administrative expenses otherwise payable by the Company. The suspense account consisting of surplus funds from both the Salaried Plan and the Hourly Plan will be allocated in accordance with the procedure described above.

c. the amount transferred will not be treated as an employer reversion for purposes of section 4980, and the Company will not be subject to excise tax under section 4980 with respect to such amount transferred.

3. The allocation of the aggregate amount of the direct transfer from the Hourly Plan between the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan in proportion to the number of participants in the Hourly Plan who remained as current employees of the Company as of Date 8 and were active participants in each plan as of that date is consistent with the treatment of the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan as a single qualified replacement plan for the purposes of section 4980(d)(2) and the requirements of that provision.
4. The crediting of the amounts transferred from the Hourly Plan to suspense accounts in the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan and the allocation of such suspense account to fund all or a portion of the periodic employer non-elective contributions due in accordance with the terms of each plan and all or a portion of the plan administrative expenses otherwise payable by the Company as least as rapidly as ratably on a periodic basis over an allocation period beginning on the date of transfer and ending on the last day of the sixth plan year after the plan year of transfer, with the minimum ratable drawdown of the suspense account measured by the Company on periodic intervals designated by the Company over such allocation period, and the allocation of any income earned by the suspense accounts at least as rapidly as ratably on the same periodic basis over the remainder of such allocation period under the same procedure, will satisfy the allocation requirement of section 4980(d)(2)(C).

Section 4980(a) provides for a 20 percent excise tax on the amount of any reversion from a qualified plan. Section 4980(d)(1) provides, in pertinent part, that the excise tax under section 4980(a) shall be increased to 50 percent with respect to any 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 immediately on the termination date.

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

Section 4980(d)(2) provides that 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.

Section 4980(d)(2)(B)(iii) provides that 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.

Section 4980(d)(2)(C)(i) provides that, 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 seven-plan-year period beginning with the year of the transfer.

Section 4980(d)(2)(C)(ii) provides that 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 seven-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 any such limitation, it shall be allocated to the participant as provided in section 415.

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

Section 4980(d)(2)(C)(iv) provides that if any amount credited to a suspense account under clause (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 subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which this section applies.

Section 4980(d)(5)(D)(i) authorizes the Secretary of Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan.

Revenue Ruling 2003-85, 2003-32 I.R.B. 291 (Rev. Rul. 2003-85), provides that in accordance with section 4980(d)(2)(B)(iii), the direct transfer of an amount that is at least 25 percent of the maximum amount which the employer could receive as an employer reversion from a terminated plan which was transferred to a qualified replacement plan is not includible in the employer's gross income. In addition, the Service held that no deduction was allowable with respect to the amount transferred, and the amount transferred was not treated as an employer reversion. Further, the Service concluded that the amount that the employer received was subject to the 20 percent excise tax under section 4980(a) and was includible in income under section 61.

Under section 501(a), an organization described in section 401(a) (that is, a trust which is part of a qualified pension, profit-sharing or stock bonus plan) is generally exempt from taxation.

Regarding ruling requests numbers 1 through 4, this office must first determine whether the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan can be treated as a qualified replacement plan under section 4980(d)(2).

Section 4980(d)(5)(D)(i) authorizes the Secretary of Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan. Thus, pursuant to this provision, we rule that, assuming the requirements of a qualified replacement plan under paragraphs (A), (B) and (C) section 4980(d)(2) are satisfied, the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan together may constitute a qualified replacement plan for purposes of section 4980(d)(2).

Having ruled that the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan together may constitute a qualified replacement plan, we now must determine whether the requirements of section 4980(d)(2) are satisfied. You have represented that all active participants of Plan X who remain employees of Company are eligible to participate in the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan. You have also represented that the aggregate amount of the direct transfer from the Hourly Plan between the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan will be allocated to the Plans in proportion to the number of participants in the Hourly Plan who remained as current employees of Company on Date 8 and were active participants in each of the recipient Plans. This is consistent with the treatment of the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan as a single qualified replacement plan. Therefore, because the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan together will cover 100 percent of the participants of Hourly Plan who remain in the employ of Company, the requirements of section 4980(d)(2)(A) are satisfied.

You have also represented that the Company will transfer to the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan an aggregate amount equal to the total amount of the Hourly Plan's remaining surplus after all plan liabilities have been satisfied. In accordance with Rev. Rul. 2003-85, the transfer of at least 25 percent of

the maximum amount which the employer could receive as an employer reversion satisfies the requirement of section 4980(d)(2)(B).

Further, you have represented that the amount transferred from the Hourly Plan to the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan is expected to be allocated under each plan to the accounts of participants in the plan year in which the transfer occurs, or credited to a suspense account and allocated to accounts of participants no less rapidly than ratably over a 6 year period beginning with the year of the transfer, and that the allocations will otherwise be made in accordance with the requirements of section 4980(d)(2)(C). Therefore, we conclude that the crediting of the amounts transferred from the Hourly Plan to suspense accounts in the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan and the allocation of such suspense account to fund all or a portion of the periodic employer non-elective contributions due in accordance with the terms of each plan and all or a portion of the plan administrative expenses otherwise payable by the Company as least as rapidly as ratably on a periodic basis over an allocation period beginning on the date of transfer and ending on the last day of the sixth year after the plan year of transfer, with the minimum ratable drawdown of the suspense account measured by the Company on periodic interval designated by the Company over such allocation period, and the allocation of any income earned by the suspense accounts at least as rapidly as ratably on the same periodic basis over the remainder of such allocation period under the same procedure, will satisfy the allocation requirement of section 4980(d)(2)(C).

Accordingly, we rule that the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan together constitute a qualified replacement plan within the meaning of section 4980(d)(2). Therefore, the direct transfer from the Hourly Plan to the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan of an aggregate amount equal to 100 percent of the maximum amount that the Company could receive as an employer reversion from the Hourly Plan will be treated as follows:

a. the amount transferred will not be included in the gross income of the Company;
b. no deduction will be allowable with respect to the amount transferred; and
c. the amount transferred will not be treated as an employer reversion for purposes of section 4980, and the Company will not be subject to excise tax under section 4980 with respect to that amount.

Please note that, although we rule that the use of amounts transferred from the Hourly Plan to the suspense accounts under the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan (and/or the earnings thereon) to pay reasonable administrative expenses of the Bargaining Unit 401(k) Plan and the Non-Bargaining Unit 401(k) Plan does not violate section 4980(d)(2)(C), we do not express an opinion regarding whether such use is permitted under Title I of the Employee Retirement Income Security Act of 1974.

This ruling letter is based on the representation that the Hourly Plan, the Hourly Bargaining Unit 401(k) Plan, and the Non-Bargaining Unit 401(k) Plan are qualified

under section 401(a) and that their related trusts are tax-exempt under section 501(a) at all times relevant to this ruling letter.

The rulings contained in this letter are based upon information and representations submitted by your authorized representatives and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2019-1, 2019-1 I.R.B. 1, § 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. 2019-1, § 11.05.

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.

A copy of this ruling letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely,

Laura Warshawsky
Branch Chief
Qualified Plans Branch 1
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations and Employment Tax)

cc: