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:EEE:EB:QP1
PLR-101801-19

Date:
September 19, 2019

In Re:

Taxpayer =
Plans =

Agency =

Dear :

This is in response to your request dated November 12, 2018, as supplemented by information dated July 10, 2019, in which your authorized representative requested a private letter ruling on your behalf regarding the return of remaining plan assets from Taxpayer's two qualified defined benefit pension plans (the Plans).

Facts

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested:

Taxpayer sponsors the Plans in its capacity as contractor for Agency and successor employer with respect to the Plans. The Plans were frozen before Taxpayer assumed sponsorship of the Plans. Agency has never been the employer maintaining the Plans. Taxpayer's contracts with Agency require Taxpayer to become a sponsor of the Plans and to be responsible for the management and administration of the Plans.

The contracts between Taxpayer and Agency provide that Agency will reimburse Taxpayer for Taxpayer's contributions to the Plans to satisfy minimum required contributions, and for other contributions approved by Agency. Those contracts further provide that Agency will reimburse Taxpayer for administrative costs relating to the

Plans that are not paid by the trust funding the Plans. The contracts do not provide for any additional fees or compensation to Taxpayer for the administration of the Plans.

The contracts between Taxpayer and Agency provide that, upon termination of the Plans and after all liabilities of the Plans have been satisfied, Taxpayer shall return to Agency an amount equaling the asset reversion from the termination of the Plans and any earnings that accrue on that amount because of a delay in the payment to Agency. Your request includes an email exchange between Taxpayer and Agency in which Agency concurs with the following interpretation of this contract provision (which we assume for purposes of this ruling reflects the manner in which the contractual provisions apply):

> [Taxpayer] defines this language as requiring [Taxpayer] to return the entire asset reversion amount to [Agency] by having the amount of the reversion paid directly from the Plan to [Agency] upon Plan termination, and if that is not possible, then any remaining amounts from the Plan plus earnings as necessary. There is no other mechanism in the [contract] under which [Taxpayer] can satisfy this obligation to return the Plan reversion amounts to [Agency].

The Plans provide that upon termination of the Plans and after providing for all benefits payable under the Plans, any excess funds remaining after satisfaction of all benefit liabilities will be returned to Agency. Those plan provisions do not specify whether this disposition of excess funds will be accomplished by a payment from the trust funding the Plans to Agency, or by a payment from the trust to Taxpayer that is then remitted to Agency.

Taxpayer has never reported any contributions or liabilities with respect to the Plans on its financial statements. All contributions to the Plans on behalf of Taxpayer's employees are accounted for as a contract expense. Taxpayer has never reported any reimbursement by Agency for contributions with respect to the Plans on its income tax returns, and has never taken an income tax deduction for any contributions that were made to the Plans.[1]

Taxpayer terminated the Plans at Agency's direction. In anticipation of terminating the Plans, Agency reimbursed Taxpayer's contributions to fully fund the Plans, with some excess to cover the expected costs of termination. However, due to a number of factors, the Plans became substantially overfunded. Pursuant to the provisions in the Plans requiring that excess plan funds upon their termination be returned to Agency and the separate agreement between Taxpayer and Agency, Taxpayer will return all excess funds upon termination of the Plans to Agency.

Taxpayer is requesting the following rulings:

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[1] You have not requested a private letter ruling regarding this treatment, and this private letter ruling does not cover any issues with respect to this treatment.

1. The excess amounts upon termination of the plans that are returned to Agency will not constitute an “employer reversion” to Taxpayer or be subject to reversion tax on Taxpayer under section 4980.

2. Taxpayer, as administrator of the Plans, is not required to report a taxable reversion to Agency on Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, with respect to the excess amounts remaining in the Plans upon their termination.

Law and Analysis

Section 401(a)(2) generally provides that a trust is qualified only if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the trust corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of the employees of the employer or their beneficiaries.

Treas. Reg. § 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 as to mortality, interest, etc., and correct procedures relating to the method of funding.

Pursuant to § 1.401(b)-2(b)(2), the term “liabilities” as used in section 401(a)(2) includes both fixed and contingent obligations to employees. It must be impossible for the employer (or other non-employee) to recover any amounts other than any amounts that remain in the trust because of erroneous actuarial computations after the satisfaction of all fixed and contingent obligations. Furthermore, the trust instrument must contain a definite affirmative provision to this effect.

Rev. Rul. 83-52, 1983-1 C.B. 87, provides that after cash distributions have been made to the participants in a plan in amounts equal to the present value of their total benefits, any remaining assets (that is, those resulting from actuarial error) may revert to the employer without causing a violation of the non-diversion rule of § 1.401-2. Similarly, when fixed and contingent liabilities are discharged through the purchase of a contract or contracts from an insurance company which provides the benefits with respect to individuals for whom the liabilities are determined, the remaining assets may be considered surplus arising from actuarial error and revert to the employer.[2]

Section 4980(a) imposes an excise tax of 20 percent (or 50 percent) of the amount of any employer reversion 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)(2) 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(c)(4) provides that the time for payment of the tax imposed by section 4980(a) shall be the last day of the month following the month in which the employer reversion occurs. This tax is reported on Form 5330.

With regard to your first requested ruling, the excess amounts that will be paid to Agency (directly or through Taxpayer) upon termination of the Plans are an employer reversion with respect to which Taxpayer is liable for the excise tax under section 4980. This tax applies to direct and indirect reversions to the employer upon plan termination. A direct reversion includes a transfer of plan assets to the employer upon plan termination. An indirect reversion includes the use of plan assets for the benefit of the employer upon plan termination. In this case, the Plans are terminated and all of Plans' liabilities to participants have been satisfied, leaving excess assets in the Plans. Therefore, Taxpayer may recover these assets. Here, a reversion exists regardless of whether the excess assets from the Plans are paid directly to Agency, or if the assets are paid to Taxpayer and then subsequently remitted to Agency. If Taxpayer initially receives the excess funds from the Plans and then remits those funds to Agency, Taxpayer has received a direct reversion from the Plans (even though Taxpayer has not kept those funds). If the excess funds are paid directly to Agency, Taxpayer's contractual obligation to Agency to pay an amount equal to the excess funds to Agency would be satisfied; therefore the transmission of the excess funds to Agency would be an indirect reversion for Taxpayer.

The Plans contain provisions that, upon plan termination and after all of the Plans' liabilities are satisfied, any excess funds remaining after satisfaction of all benefit liabilities will be returned to Agency. Taxpayer has argued that because of these plan provisions, no reversion occurs because Taxpayer will not receive any of the assets.

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[2] Rev. Rul. 83-52 was modified and superseded by Rev. Rul. 85-6, 1985-1 C.B. 133, to reflect the required treatment of certain early retirement subsidies in light of amendments made by the Retirement Equity Act of 1984. Rev. Rul. 83-52 did not change the analysis of Rev. Rul. 83-52 regarding when surplus assets arise from erroneous actuarial computations (and therefore may be returned to the employer after plan termination).

However, these provisions in the Plans are assignments of these excess assets by the Taxpayer, who is the plan sponsor and, as such, has the power to amend the Plans. Furthermore, the receipt of excess funds remaining after satisfaction of all benefit liabilities benefits Taxpayer by satisfying Taxpayer's contractual obligation to Agency to remit an amount equal to the excess assets from the Plans.

In addition, Taxpayer, and not Agency, is the employer maintaining the Plans. Section 4980 states that the tax is paid by the employer maintaining the plan, which in this case is Taxpayer. Despite the fact that the contributions to the Plan are reimbursed by Agency, and Taxpayer is contractually obligated to remit the excess funds from the Plans to Agency after the Plans are terminated, Taxpayer has a statutory duty to fund the Plans, along with other statutory duties with respect to the Plans. Taxpayer has the ability to amend the Plans, despite the fact that it does so pursuant to its contracts with Agency. Therefore, because Taxpayer is the employer maintaining the Plans and will either directly or indirectly receive the excess assets, excess amounts upon termination of the Plans that are returned to Agency are a reversion to Taxpayer and are subject to the tax under section 4980.

With regard to your second requested ruling, the first ruling stated above is that the excess amounts that will be paid to Agency (directly or through Taxpayer) upon termination of the Plans are an employer reversion with respect to which Taxpayer is liable for the excise tax under section 4980. This excise tax must be paid by the last day of the month following the month in which the employer reversion occurs. Therefore, Taxpayer is required to report a taxable reversion on Form 5330 with respect to the excess amounts remaining in the Plans upon their termination.

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.

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.

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,

Linda S. F. Marshall
Senior Counsel
Qualified Plans Branch 1
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: