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:QP3
PLR-100612-22

Date:
November 04, 2022

Taxpayer	=
Retirement Plan A	=
Post-Employment Health Benefit Plan	=
Health and Welfare Plan	=
Date 1	=
Date 2	=
Date 3	=
Year 1	=
Year 2	=

Dear :

This is in response to your letter dated December 21, 2021, as supplemented by information dated May 27, 2022, submitted on your behalf by your authorized representative, in which you request rulings on the continued qualified status under sections 401(a) and 401(h) of the Internal Revenue Code of a pension plan that is amended to expand employee eligibility for benefits under the plan's section 401(h) retiree medical account to include certain employees eligible to commence retirement benefits under the plan upon attainment of age 59½ pursuant to section 401(a)(36).

Facts

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

Taxpayer maintains a pension plan, (Retirement Plan A), that was established in Year 1 and received a favorable determination letter on Date 1. Retirement Plan A maintains a retiree medical account described in section 401(h) (Retirement Plan A's 401(h) account).

Taxpayer represents that Retirement Plan A's 401(h) account was funded in Year 1 when Retirement Plan A received pension assets and 401(h) assets in a spinoff from a predecessor plan. The predecessor plan's 401(h) account had not received a contribution since Year 2, and Retirement Plan A's 401(h) account has not received any further employer contributions. Taxpayer further represents that no section 420 transfers were made to Retirement Plan A's 401(h) account nor to any predecessor plan's 401(h) account. Retirement Plan A has significantly more assets than needed to satisfy liabilities for post-retirement medical benefits. Retirement Plan A's 401(h) account provides for funding and payment of health benefits for Retirement Plan A participants who are eligible to receive benefits under the Post-Employment Health Benefit Plan. Under the Post-Employment Health Plan, participants are eligible for benefits if they meet certain age and service criteria upon termination of employment.

Taxpayer represents that effective on Date 2, in accordance with section 401(a)(36), Taxpayer amended Retirement Plan A to allow participants who have not yet separated from service to begin receipt of pension benefits beginning the first of the month after the attainment of age 59½ (those participants, along with eligible dependents, are referred to as 401(a)(36)-Eligible Participants). A lump sum distribution of pension benefits is not permitted, but all other benefit forms otherwise available under Retirement Plan A may be elected.

Effective on Date 3, Taxpayer amended Retirement Plan A to permit the payment of health benefits from the 401(h) account for 401(a)(36)-Eligible Participants who are eligible to receive benefits under the Health and Welfare Plan, which covers Taxpayer's active employees.

Taxpayer represents that it does not have a contractual obligation to fund health benefits, including those provided under the Health and Welfare Plan, and the Post-Employment Health Benefit Plan.

Ruling Requested

Taxpayer requests a ruling that the payment of health benefits from Retirement Plan A's 401(h) account for participants in Retirement Plan A who are eligible to take pension distributions in accordance with section 401(a)(36) does not violate section 401(h) or

Treas. Reg. § 1.401-14 or otherwise cause Retirement Plan A to lose its tax-qualified status under section 401(a).

Law

Section 401(a) describes requirements for a qualified trust that is created or organized in the United States and forms part of a pension plan of an employer that is for the exclusive benefit of the employer's employees or their beneficiaries. Section 501(a) provides in pertinent part that an organization described in section 401(a) generally is exempt from income tax.

Section 401(a)(36) provides that a trust forming part of a pension plan is not treated as failing to constitute a qualified trust under section 401(a) solely because the plan provides that a distribution may be made to an employee who has attained age 59½ and who is not separated from employment at the time of the distribution.

In pertinent part, section 401(h) provides that, under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) the benefits are subordinate to the retirement benefits provided by the plan;

(2) a separate account is established and maintained for the benefits;

(3) the employer's contributions to the separate account are reasonable and ascertainable;

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide the benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of the benefits; and

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide the benefits, any amount remaining in the separate account must, under the terms of the plan, be returned to the employer.

Treas. Reg. § 1.401-14(a) provides that, under section 401(h), a qualified pension or annuity plan may make provision for the payment of sickness, accident, hospitalization, and medical expenses for retired employees, their spouses, and their dependents. The term "medical benefits described in section 401(h)" is used in this section to describe such payments.

Treas. Reg. § 1.401-14(b)(1) provides that, under section 401(h), a qualified pension or annuity plan may provide for the payment of medical benefits described in section

401(h) only for retired employees, their spouses, or their dependents. To be “retired” for purposes of eligibility to receive medical benefits described in section 401(h), an employee must be eligible to receive retirement benefits provided under the pension plan, or else be retired by an employer providing such medical benefits by reason of permanent disability. For purposes of the preceding sentence, an employee is not considered to be eligible to receive retirement benefits provided under the plan if he is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits.

Analysis

The second sentence of Treas. Reg. § 1.401-14(b)(1) provides that an employee is eligible as a “retired employee” to receive medical benefits from a 401(h) account if the employee is eligible to receive retirement benefits under the associated pension plan. Here, the 401(a)(36)-Eligible Participants are eligible to receive retirement benefits under the terms of Retirement Plan A. Thus, the 401(a)(36)-Eligible Participants satisfy the definition of a “retired employee” as described in the second sentence of Treas. Reg. § 1.401-14(b)(1).

The third sentence of Treas. Reg. § 1.401-14(b)(1) provides that an employee is not considered to be eligible to receive retirement benefits under the plan if he is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits. Because 401(a)(36)-Eligible Participants are eligible to receive pension benefits prior to separation from employment, separation from employment is not a condition to the 401(a)(36)-Eligible Participants receiving retirement benefits under Retirement Plan A. Accordingly, 401(a)(36)-Eligible Participants are not excluded from being considered eligible to receive retirement benefits under the third sentence of Treas. Reg. § 1.401-14(b)(1).

Ruling

We conclude that the payment of health benefits from Retirement Plan A’s 401(h) account for participants in Retirement Plan A who are eligible to take pension distributions in accordance with section 401(a)(36) does not violate section 401(h) or Treas. Reg. § 1.401-14 or otherwise cause Retirement Plan A to lose its tax-qualified status under section 401(a).

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2021-1, 2021-1 IRB 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for rulings, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply 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 rulings 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. 2022-1, § 11.05.

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 ruling. Specifically, no opinion is provided on any income tax consequences to Taxpayer as a result of the use of the 401(h) account to provide health benefits to the employees who have not separated from employment.

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,

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Janet Laufer
Senior Technician Reviewer
Qualified Plans Branch 3
Office of Associate Chief Counsel
(Employee Benefits, Exempt
Organizations, and Employment Taxes)

cc: