Uniform Issue List Number 4980.02-00

200051045

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to T:EP:RA:T1

Date: SEP 13 2000

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XXXX

Legend:

Company A = XXXX

Plan P = XXXX

Plan K = XXXX

Dear Sir:

This letter is in response to your correspondence dated xxxx, as supplemented by additional correspondence dated xxxxxxxxxxxx, and xxxxxxxxxxxxxxx, submitted on your behalf by your authorized representative, requesting a private letter ruling under section 4980 of the Internal Revenue Code (the "Code"). The following facts and representations were submitted in support of your ruling request.

Company A maintains Plan P, a defined benefit pension plan, which it established and made effective xxxxxxxx, to provide retirement benefits to its eligible employees and the eligible employees of certain affiliated entities. Plan P was amended and restated effective xxxxxxxxxxxxxxx. Plan P received its most recent determination letter from the Internal Revenue Service (the "Service") on xxxxx, as being a qualified plan within the meaning of Code section 401(a). Company A intends to terminate Plan P by adopting one or more amendments to cease benefit accruals and establish an effective termination date. You represent that based on the most recent actuarial valuation reports, Plan P's assets significantly exceed its benefit liabilities on a termination basis.

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Company A also maintains Plan K, a profit sharing plan that includes a cash or deferred arrangement under section 401(k) of the Code and an employer matching feature under section 401(m) of the Code. Plan K was established and made effective xxxxxxxxxx, to permit its eligible employees and the eligible employees of its affiliates that adopt Plan K to elect to defer a portion of their compensation by means of employer contributions on their behalf. Plan K's most recent determination letter from the Service is dated xxxxxxxxxxxx. Company A intends to make a direct transfer to Plan K of an amount equal to 25 percent of the maximum amount it could receive as an employer reversion. Plan K is intended to qualify as a "qualified replacement plan" within the meaning of section 4980(d) of the Code.

You represent that after Plan P's termination at least 95 percent of the active participants in Plan P who will remain employed by Company A or any of its affiliates will be eligible to participate in Plan K. Eligible employees who do not choose to make elective deferrals will not have contributions allocated to an account in their names under Plan K, because the transferred amounts will be used to make matching contributions to Plan K. They will be eligible to roll over into Plan K lump sum distributions received on termination of Plan P and will continue to earn service credit for vesting purposes in the event the employee later elects to have contributions made to Plan K on his or her behalf. Eligible employees may elect at any time to begin, cease or resume contributions to Plan K.

You further represent that the proposed amendment to Plan P will provide that 25 percent of the assets in Plan P remaining in the trust after the satisfaction of all accrued benefits under the plan and after payment of termination expenses of Plan P, will be transferred to Plan K for allocation in accordance with section 4980(d)(2)(C) of the Code. The transferred assets will be allocated as an employer contribution among the accounts of participants who elect to have section 401(k) contributions made on their behalf. You anticipate that the transferred assets will be allocated over five to seven years, but in any event within the time- frame set by Code section 4980(d)(2)(C). Company A will seek a determination from the Service on Form 5300 that the transfer of funds to Plan K and the allocation of such funds in accordance with section 4980(d)(2)(C) of the Code will not affect Plan K's status as a qualified plan under section 401(a) of the Code.

The proposed amendment to Plan P will also increase the value of benefits payable to participants who are closer to retirement age and will be nondiscriminatory, within the meaning of section 401(a)(4) of the Code. The amendment to Plan P will be adopted more than 60 days prior to the effective date of termination. Company A will seek a determination from the Service on Form 5310 that the termination of Plan P will not affect the plan's qualified status under section 401(a) of the Code.

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Based on the above factual representations, you, through your authorized representative, request the following letter rulings:

1. that Plan K will be a "qualified replacement plan" under section 4980(d)(2) of the Code; and

2. that increases in the cost of benefits resulting from amendments to Plan P made in anticipation of its termination but more that 60 days prior to the date of Plan P's termination will not be considered part of the 25 percent cushion described in Code section 4980(d)(2)(B)(i) and therefore the value of such increases will not be subject to the excise tax of Code section 4980.

Section 4980(a) of the Code provides for a 20 percent excise tax on the amount of any reversion from a qualified plan. Section 4980(d) of the Code provides 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 benefit increases which take effect immediately on the termination date.

Section 4980(d)(2) of the Code, in relevant part, defines a "qualified replacement plan" as a qualified plan established or maintained by the employer in connection with a qualified plan termination with respect to which the participation, asset transfer, and allocation requirements of section 4980(d)(2)(A),(B), and (C) are met.

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 are active participants in the replacement plan.

Section 4980(d)(2)(B) requires that a direct transfer be made from the terminated plan to the replacement plan before any employer reversion, and the transfer is an amount equal to the excess (if any) of 25 percent of the of the maximum amount the employer could receive as an employer revision without regard to section 4980(d), over the amount equal to the present value of the aggregate increases in 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), 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) of the Code 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. Code section

4980(d)(4)(B) provides, in part, that the allocation of any amount under section 4980(d)(2)(C) shall be treated as an annual addition for purposes of section 415 of the Code.

With respect to your first ruling request, your authorized representative asserts that at least 95 percent of the employees of Company A and its affiliates, who are active participants in Plan P and who will remain employees of Company A or any of its affiliates will be eligible to participate in Plan K. These participants will remain eligible to Participate in Plan K after Plan P is terminated. Further, they will remain eligible to participate in Plan K even though they do not initially elect to have elective deferrals made on their behalf and will therefore not have contributions allocated to an account in their name in Plan K. Eligible employees may elect at any time to participate in Plan K. Prior to any employer reversion to Company A, an amount equal to 25 percent of the surplus remaining after the termination of Plan P will be directly transferred to the trust which holds Plan K's assets. In addition, the transferred amounts will be allocated to participants' accounts over a five-to seven-year period. Therefore, with respect to your first ruling request, we conclude that Plan K constitutes a "qualified replacement plan" within meaning of Code section 4980(d)(2).

With respect to your second ruling request, as indicated above, the 25 percent required transfer amount is reduced by an amount equal to the present value of the aggregate benefit increases in the accrued benefits under the terminated plan pursuant to a plan amendment which (1) is adopted during the 60-day period ending on the date of termination and (2) takes effect immediately on the termination date.

Company A intends to adopt an amendment which will increase the value of benefits payable to participants more than 60 days prior to the date of termination, and will be effective as of the date of termination. Therefore, the amount of benefit increases will not reduce the 25 percent amount.

Therefore, with respect to your second ruling request, we conclude that an amendment to Plan P which increases the value of benefits, that is adopted more than 60 days prior to the date of Plan P's termination, and is made effective on the termination date, will not be considered part of the 25 percent cushion described in Code section 4980(d)(2)(B)(i) and therefore the value of such increases will not be subject to an excise tax under Code section 4980.

These rulings are based on the assumptions that Plan P and Plan K are qualified plans under section 401(a) of the Code, and that their trusts are tax-exempt under section 501(a) of the Code at all times relevant to this ruling.

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

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

Sincerely yours,

John Swieca,
Manager, Employee Plans
Technical Group 1
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of ruling letter
Notice 437

cc:

cc: