



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200526022

APR 07 2005

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Indirect Owner =

Plan E =

Date 1 = April 1, 2005

Date 2 = April 2, 2005

Amount 1 = \$2 Billion

This is in response to the request dated January 14, 2005, for rulings under section 404(a)(6) of the Internal Revenue Code (the "Code").

Facts

The Taxpayer is a calendar year taxpayer that maintains its books and records under the accrual method of accounting. Plan E is a defined benefit plan intended to be qualified under section 401(a) of the Code. The Plan has a calendar plan year. The Indirect Owner indirectly owns one hundred percent of the Taxpayer's membership interests.

The Indirect Owner intends to make contributions of capital to the Taxpayer for the purpose of funding Plan E. The Taxpayer, in turn, intends to contribute such contributions of capital to Plan E. Hereinafter, such contributions of capital to the Taxpayer for the purpose of funding Plan E will be known as the "Proposed Contributions".

On or about Date 1, a significant portion of the Proposed Contributions (the [REDACTED] Plan E Contribution") will be made to Plan E. The remaining portion of the Proposed Contributions (the [REDACTED] Plan E Contribution") will be made on or about Date 2 (but in no event earlier than the date of the [REDACTED] Contributions and in no event later than the date on which the Taxpayer files the [REDACTED] federal income tax return).

The [REDACTED] Plan E Contribution will be accompanied by a letter from the Taxpayer to the Plan E trustee to the effect that the contribution is on account of the [REDACTED] plan and tax years. The Taxpayer has been advised by its actuary that the [REDACTED] Plan E Contribution is less than the unfunded liability described in section 404(a)(1)(D) of the Code with respect to Plan E.

The [REDACTED] Plan E Contribution will be accompanied by a letter from the Taxpayer to the Plan E trustee to the effect that the contribution is on account of the [REDACTED] plan and tax years. The Taxpayer has been advised by its actuary that the [REDACTED] Plan E Contribution is less than the projected unfunded liability described in section 404(a)(1)(D) of the Code with respect to Plan E.

Subject to the uniform capitalization rules of section 263A of the Code, the Taxpayer will deduct the [REDACTED] Plan E Contribution on its [REDACTED] partnership tax return and will report the [REDACTED] Plan E Contribution as a contribution for the 2004 plan year on the Schedule B of the [REDACTED] Form 5500 filed by Plan E.

Subject to the uniform capitalization rules of section 263A of the Code, the Taxpayer will deduct the [REDACTED] Plan E Contribution on its [REDACTED] partnership tax return and will report the [REDACTED] Plan E Contribution as a contribution for the [REDACTED] plan year on the Schedule B of the [REDACTED] Form 5500 filed by Plan E.

The credit balance in the funding standard account for Plan E as of December 31, 2004, will reflect the [REDACTED] Plan E Contribution but will not reflect the [REDACTED] Plan E Contribution. In addition, Plan E will not record any amount on line 9k of Schedule B of the Form 5500 filed for the [REDACTED] plan year for interest earned on the [REDACTED] Plan E Contribution.

The credit balance in the funding standard account for Plan E will reflect the [REDACTED] Plan E Contribution. Plan E will record an amount on line 9k of Schedule B of the Form 5500 filed for the [REDACTED] plan year for interest earned on the [REDACTED] Plan E Contribution from the date of such contribution through the end of the plan year.

In accordance with the foregoing, you have requested rulings that:

- (1) For purposes of section 404(a)(6) of the Code, the [REDACTED] Plan E Contribution will be on account of the [REDACTED] tax year, and accordingly, because the [REDACTED] Plan E Contribution will be made not later than the time prescribed by law for filing the [REDACTED] return (including extensions thereof), the Taxpayer will be deemed under section 404(a)(6) to have made a payment on the last day of [REDACTED] and, subject to the uniform capitalization rules in section 263A of the Code, will be entitled to take a deduction in the amount of the [REDACTED] Plan E Contribution.
- (2) Pursuant to section 404(a) of the Code, the [REDACTED] Plan E Contribution will be on account of the [REDACTED] tax year, and subject to the uniform capitalization rules in section 263A of the Code, the Taxpayer will be entitled to take a deduction on its [REDACTED] tax return in the amount of the [REDACTED] Plan E Contribution.

Law

Section 263A(a)(1) of the Code provides that, in the case of any property to which that section applies, any cost described in paragraph (2) -----

- (A) in the case of property which is inventory in the hands of the taxpayer, shall be included in inventory costs, and
- (B) in the case of any other property, shall be capitalized.

Section 263A(a)(2) of the Code provides that the costs described in that paragraph with respect to any property are ----

- (A) the direct costs of such property, and
- (B) such property's proper share of those indirect costs (including taxes) part or all of which are allocable to such property.

Any costs which (but for that subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in that paragraph.

Section 404(a) of the Code provides if contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued by an employer on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation is not deductible under Chapter 1 of the Code, but, if it would otherwise be deductible, is deductible under section 404, subject to the limitations of that section.

Section 404 (a)(6) of the Code provides that for purposes of paragraphs (1), (2), and (3) of section 404(a), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year, if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (or extensions thereof).

Rev. Rul. 76-28, 1976-1 CB 106, provides that a payment made after the close of an employer's taxable year to which section 404(a)(6) applies shall be considered to be on account of the preceding taxable year if:

- (a) the payment is treated by the plan in the same manner that the plan would treat a payment actually received on the last day of such preceding taxable year of the employer, and
- (b) either of the following conditions are satisfied
 - (1) The employer designates the payment in writing to the plan administrator or trustee as a payment on account of the employer's preceding taxable year, or
 - (2) The employer claims such payment as a deduction on his tax return for such preceding taxable year

Rev. Rul. 76-28 further provides that for purposes of the above requirements, a payment may be designated on account of the preceding taxable year in the manner provided above at any time on or before the due date of the employer's tax return for such year (including extensions thereof). In addition, Rev. Rul. 76-28 provides that once a payment has been designated or claimed on a return in the manner provided above as being on account of a preceding taxable year, the choice made shall be irrevocable and an employer may not retract or change such designation or claim.

Analysis

In the instant case, the preceding taxable year is the taxable year beginning January 1, 2004, and ending December 31, 2004. Thus, the last day of the preceding taxable year was December 31, 2004. The Taxpayer intends to make the 2004 Plan E Contribution on or about Date 1, a date after the close of the 2004 taxable year and not later than the time prescribed by law for filing the return for such taxable year (or extensions thereof).

Rev. Rul. 76-28 provides two conditions that must be satisfied in order for a payment made after the close of an employer's taxable year to which section 404(a)(6) applies to be considered to be on account of such preceding taxable year. The first condition is that the payment is treated by the plan in the same manner that the plan would treat a payment actually received on the last day of such preceding taxable year of the employer.

In the instant case the Taxpayer intends to record, on the Schedule B of Form 5500, the 2004 Plan E Contribution as a contribution to Plan E for the 2004 plan year. The credit balance in the Plan E funding standard account as of December 31, 2004, will include the 2004 Plan E Contribution. In addition, no amount will be recorded on line 9k of the Schedule B of Form 5500 for the 2004 plan year for interest earned on the 2004 Plan E Contribution. Thus, the 2004 Plan E Contribution will be treated in the same manner as if it had been actually received on December 31, 2004. Therefore the first condition of Rev. Rul. 76-28 will be satisfied.

The second condition of Rev. Rul. 76-28 is satisfied if either the employer designates the payment in writing to the plan administrator or trustee as a payment on account of the employer's preceding taxable year or the employer claims such payment as a deduction on his tax return for such preceding taxable year. In the instant case, the Taxpayer intends to both claim the 2004 Plan E Contribution as a deduction on its tax return for the taxable year ending December 31, 2004, and designate the 2004 Plan E Contribution as a payment on account of such year. Therefore, the second condition of Rev. Rul. 76-28 will also be satisfied.

Thus, the two conditions that must be satisfied under Rev. Rul. 76-28, in order for a payment that is made after the close of an employer's taxable year to which section 404(a)(6) applies, to be considered to be on account of the preceding taxable year, will be satisfied. Accordingly, it is ruled that for purposes of section 404(a)(6) of the Code, the [REDACTED] Plan E Contribution will be on account of the [REDACTED] tax year, and thus, because the [REDACTED] Plan E Contribution will be made not later than the time prescribed by law for filing the [REDACTED] return (including extensions thereof), the Taxpayer will be deemed under section 404(a)(6) to have made a payment on the last day of [REDACTED] and will be entitled to take a deduction on its [REDACTED] tax return in the amount of the [REDACTED] Plan E Contribution, subject to the uniform capitalization rules under section 263A of the Code and the applicable deduction limitations of section 404(a)(1) of the Code.

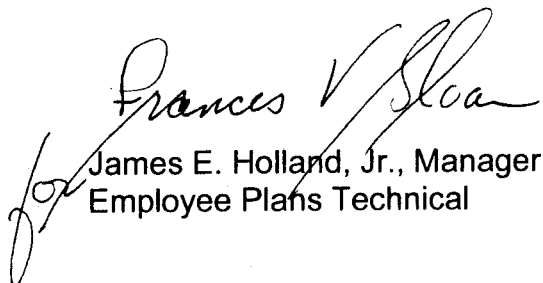
In the instant case, the Taxpayer intends to make the [REDACTED] Plan E Contribution on or about Date 2, a date within the [REDACTED] taxable and plan years. The Taxpayer also intends to instruct the Plan E trustee to the effect that the [REDACTED] Plan E Contribution is on account of the [REDACTED] plan and tax years. The Taxpayer also intends to record, on the Plan E Schedule B of Form 5500, the [REDACTED] Plan E Contribution as a contribution to Plan E for the [REDACTED] plan year. Thus, the 2005 Plan E Contribution will be on account of the [REDACTED] tax year. Accordingly, the Taxpayer will be entitled to take a deduction on its [REDACTED] tax return in the amount of the [REDACTED] Plan E Contribution, subject to the uniform capitalization rules under section 263A of the Code and the applicable deduction limitations of section 404(a)(1) of the Code.

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 letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file.

If you have any questions on this ruling letter, please contact

Sincerely,


James E. Holland, Jr., Manager
Employee Plans Technical