



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

DEC 28 2005

200612018

SE:T:EP:RA:T:AZ

Re: Plan A =

Plan B =

Taxpayer =
EIN:

This letter is in response to your ruling request dated September 30, 2005, in which your authorized representative requested a ruling on your behalf concerning the determination of the maximum deductible limits allowable under section 404(a)(7) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling request.

The Taxpayer maintains a multiemployer defined benefit plan (Plan A) and a multiemployer defined contribution plan (Plan B), for the benefit of its eligible employees.

Plan A is not fully funded and was in existence prior to [REDACTED] Plan B was established in [REDACTED] Plan A participants who terminated employment prior to [REDACTED] never became eligible to participate in Plan B. Plan A participants hired after [REDACTED] are eligible to participate in Plan B.

The Taxpayer proposes having Plan A transfer, in a spin-off transaction, the assets and liabilities attributable to former employees who never were eligible to participate in Plan B, into a newly established multiemployer defined benefit plan (Plan C). The spin-off would comply with the provisions of Section 4231 of the Employee Retirement Income Security Act, as amended, and result in three plans. Plan A and Plan B would cover only active employees and former employees who currently participate or were eligible to participate in Plan B. Plan C would cover only the former employees of Plan A who terminated before [REDACTED] and were never eligible to participate in Plan B.

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Based on these facts and representations, you requested the following rulings:

- 1) Contributions to Plan A and Plan B will continue to be subject to the overall deductible contribution limit of section 404(a)(7); and
- 2) Contributions to Plan C will be subject only to the deductible contribution limit of section 404(a)(1)(A) and will not be subject to the overall deductible limit of section 404(a)(7).

Section 404(a) of the Code provides that 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 on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under Chapter I of the Code; but, if they would otherwise be deductible, they shall be deductible under section 404, subject, however, to the limitations therein as to the amounts deductible in any year.

Section 404(a)(1)(A) of the Code provides that deductible contributions under section 404 made by an employer to a pension trust shall be deductible, in general, in the taxable year when paid, if the contributions are paid into a pension trust, (other than a trust to which paragraph (3) applies), and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in an amount determined as follows: (i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan), (ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years, (iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments (until fully amortized) over 10 years as determined under regulations prescribed by the Secretary.

Section 404(a)(3)(A) of the Code provides that deductible contributions under section 404 made by an employer to a profit-sharing trust shall be deductible in the taxable year when paid, if the contributions are paid into a such bonus or profit sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of the greater of (I) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan, or (II) the amount such employer is required to contribute to such trust under section 401(k)(11) for such year.

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Section 404(a)(7) of the Code provides, in part, that if amounts are deductible under paragraphs (1) and (3), in connection with two or more trusts, the total amount deductible in a taxable year under such trusts and plans shall not exceed the greater of 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries of the trusts or plans, or the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year). This paragraph, however, shall not have the effect of reducing the amount otherwise deductible under paragraphs (1) and (3) if no employee is a beneficiary under more than one trust.

Section 1.404(a)-13 of the Income Tax Regulations provides, in part, that the provisions of Section 404(a)(7) apply only to deductions for overlapping trust or plans, i.e., for all trusts or plans for which deductions are allowable under section 404(a)(1), (2), or (3) except (1) any trust or plan for which deductions are allowable under section 404(a)(1) or (2) and which does not cover any employee who is also covered under a trust for which deductions are allowable under section 404(a)(3), and (2) any trust for which deductions are allowable under section 404(a)(3) and which does not cover any employee who is also covered under a trust or plan for which deductions are allowable under section 404(a)(1) or (2). The limitations under section 404(a)(7) for any taxable year of the employer are based on the compensation otherwise paid or accrued during the year by the employer to all employees who, in such year, are beneficiaries of the funds accumulated under one or more of the overlapping trusts or plans.

Section 1.404(a)-14(c) of the Income Tax Regulations provides, in part, that although the deductible limit for a defined benefit plan applies for an employer's taxable year, the deductible limit is determined on the basis of a plan year.

Section 404(a)(12) states that the term "compensation" shall include amounts treated as "participant's compensation" under subparagraph (C) or (D) of section 415(c)(3).

After the spin-off is complete, there will continue to be active and inactive participants that are benefiting from both Plan A and Plan B. Pursuant to Section 1.404(a)-13 of the Income Tax Regulations, Plan A and Plan B are overlapping plans.

The participants benefiting from Plan C will not be eligible to benefit from either Plan A or Plan B. Pursuant to section 1.404(a)-13 of the Income Tax Regulations, Plan C does not overlap with Plan A or Plan B because no employee who is a beneficiary under the trust or plan for which deductions are allowable under section 404(a)(1) is also a beneficiary under the trust for which deductions are allowable under sections 404(a)(3).

Accordingly, with respect to your first requested ruling, Plan A and Plan B together, will continue to be subject to the limitation of section 404(a)(7) pertaining to allowable deductions when there exists a combination of a defined contribution plan and a defined benefit plan. Further, with respect to your second requested ruling, Plan C will be subject to the limitations of section 404(a)(1) pertaining to a pension trust, but will not be

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subject to the limitation of section 404(a)(7). Further, the contributions to Plan C will not affect the section 404(a)(7) limit that is applicable to Plan A and Plan B.

This ruling is directed only to the Taxpayer and is applicable in determining the deductible limit with regard to the first full and all subsequent plan years that follow the plan year which contains the spin-off. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent. A copy of this letter is being sent to your authorized representative in accordance with the power of attorney on file in this office.

If you wish to inquire more about this ruling, please contact
Please address all correspondence to

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Donna M. Prestia', with a stylized flourish at the end.

Donna M. Prestia, Manager
Employee Plans Actuarial Group 2