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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 14 2010

Uniform Issue List: 402.08-01

T: EP: RA: T2

Legend:

Taxpayer = *****

Dear *****,

This is in response to your request dated July 31, 2009, as supplemented by information from a Conference of Right on January 11, 2010 and correspondence dated January 13, 2010, in which you request a Private Letter Ruling.

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

Participant in Taxpayer's defined benefit pension plan is 65 years of age, a highly compensated employee and is one of the 25 individuals with the highest compensation in the current or any prior year. The plan provides an option for a participant to receive the benefit in the form of a lump sum payment. Participant elected to receive a lump sum distribution of his benefit upon retirement; the lump sum payment would reduce the asset value of the plan below 110 percent of the value of the plan's current liabilities. The Participant's elected distribution represents a restricted benefit, so the Participant and Taxpayer prepared an agreement to a modified distribution arrangement wherein the payments do not exceed the restrictions.

Taxpayer proposed a _____ year payment schedule for the distribution of Participant's accrued benefit. The payment amounts represent Participant's unrestricted benefit he can receive for the year. Payments are made on _____ of each year. The first payments are identical; the _____ payment constitutes the remaining balance of Participant's benefit. Taxpayer calculated the _____ payments using a formula that writes-down the value of the lump sum distribution by the annual payment made each year

adjusted with interest. The annual payments will be made until the earlier of the date the funding level of the plan permits Participant to receive the remainder of the lump sum benefit, or when Participant has received all payments under the payment schedule.

The Taxpayer represents that during plan years such as 20 or 20 before a period of 10 years ends, the plan is to be sufficiently funded to the level where the limitations on the Participant's benefit required by Treas. Reg. § 1.401(a)(4)-5(b)(3)(i) no longer apply and the Participant is to receive the remainder of his elected lump sum benefit immediately.

Based on the facts and representations stated above, Taxpayer requests a ruling that, upon the Plan being sufficiently funded, within the period as represented, to the level where the limitations on the Participant's benefit required by Treas. Reg. § 1.401(a)(4)-5(b)(3)(i) no longer apply, the payment of the remainder of Participant's elected lump sum benefit as described above be deemed an eligible rollover distribution under Code § 402(c)(4).

Section 402(c)(4) states that an "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include--

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made--

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9) and

(C) any distribution which is made upon hardship of the employee.

Treas. Reg. 1.401(a)(4)-5(b)(3)(i) states that a plan cannot make a lump sum payment to a highly compensated employee ("a restricted employee") in the top 25 of employees in terms of compensation if the payment reduces the asset value of the plan below 110 percent of the value of the plan's current liabilities.

Section 401(a)(9) states that a trust shall not constitute a qualified trust unless the plan provides that the entire interest of each employee will be distributed to such employee not later than the required beginning date, defined as April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 1/2, or the calendar year in which the employee retires.

Treas. Reg. § 1.402(c)-2, A-7 states that if a minimum distribution is required for a calendar year, the amounts distributed during that calendar year are treated as required minimum distributions under section 401(a)(9), to the extent that the total required minimum distribution under section 401(a)(9) for the calendar year has not been satisfied. These amounts are not eligible rollover distributions.

In the circumstances as represented, the plan is to be sufficiently funded within a short, limited period to allow for the Participant to collect remainder of his benefit under the plan. The final payment will be substantially larger than the other payments, those payments will not last for 10 years or more or for the life of the annuitant under Code § 402(c)(4), the payment will occur upon the stated event within a limited period less than 10 years, and it is the remainder of the balance for that participant. Upon the plan's funding level reaching 110 percent within a ten year period beginning on the date of the first payment of the plan, the distribution of the remaining balance will be an eligible rollover distribution under Code § 402(c)(4).

If the Participant under these facts is at or above 70.5 years of age and is paid an amount that qualifies as a required minimum distribution in whole or in part, the amount that represents a required minimum distribution is not an eligible rollover distribution.

Therefore, the Service hereby rules that the final payment of Participant's benefit is an eligible rollover distribution, under the circumstances stated above. To the extent that the Taxpayer's representation is not applicable, this ruling does not apply.

If you wish to inquire about this ruling, please contact ***** at (***) ***-****. Please address all correspondence to

Sincerely,



Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose