



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201228051

APR 19 2012

T: EP: RA: A2

Taxpayer =

Plan X =

Plan Y =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Dear

This letter is in response to your letter of May 5, 2011, in which you request a letter ruling under sections 401(a)(9), 430, and 4974 of the Internal Revenue Code (the "Code") concerning a "window" program pursuant to which participants will be offered single-sum cash settlements of their future annuity payments.

Specifically, you have requested rulings that:

- (1) If the Annuity Settlement Window (as described below), once implemented, does not cause Plan X to experience a significant change in the individuals covered by its plan-specific mortality tables within the meaning of section 1.430(h)(3)-2(d)(4)(ii)(A) or (B) of the Treasury

Regulations (the "regulations" or "Treas. Reg."), the IRS will not revoke the plan-specific mortality tables approved by the IRS in the rulings dated Date 1, provided that Plan X's actuary continues to monitor Plan X's specific mortality to confirm, based on observable data, that the plan-specific tables remain accurately predictive of future mortality of Plan X's population. For the purposes of this ruling request it may be assumed that the requirements of subparagraphs (A), (B), and (E) of Treas. Reg. 1.430(h)(3)-2(d)(4)(i) are not applicable at all times.

- (2) If the Annuity Settlement Window, once implemented, causes Plan X to experience a significant change in the individuals covered by its plan-specific mortality tables within the meaning of Treas. Reg. § 1.430(h)(3)-2(d)(4)(ii)(A) or (B), but Plan X's actuary is able to certify that the plan-specific mortality tables remain accurately predictive of future mortality of Plan X's population (taking into account the effect of the change in Plan X's population), the IRS will permit Plan X to continue to use the plan-specific mortality tables approved by the IRS in the ruling dated Date 1. For the purposes of this ruling request it may be assumed that the requirements of subparagraphs (A), (B), and (E) of Treas. Reg. 1.430(h)(3)-2(d)(4)(i) are not applicable at all times.
- (3) If, following implementation of the Annuity Settlement Window, Plan X's actuary is unable to certify that, as of the end of any particular plan year, that the plan-specific mortality table is accurately predictive of future mortality of Plan X's population based on observable data, the Taxpayer will be permitted to apply for a new plan-specific mortality table to replace the outdated table.
- (4) If, following implementation of the Annuity Settlement Window, the Taxpayer cannot apply for a new plan-specific mortality table for Plan X due to a lack of credible mortality experience pursuant to Treas. Reg. § 1.430(h)(3)-2(c), the approval previously granted for the use of plan-specific mortality tables with respect to Plan Y (or any other qualified defined benefit plan within the controlled group) will not be revoked. For the purposes of this ruling request it may be assumed that the requirements of subparagraphs (A), (C), (D), and (E) of Treas. Reg. 1.430(h)(3)-2(d)(4)(i) are not applicable at all times with respect to Plan Y.
- (5) Implementation of the Annuity Settlement Window will not, in itself, cause Plan X to fail to satisfy the requirements of section 401(a)(9) of the Code.
- (6) Implementation of the Annuity Settlement Window will not, in itself, trigger excise tax under section 4974 of the Code.

Facts

The taxpayer manufactures, assembles, and sells goods both in the United States and throughout the world. It is the sponsor of Plan X and Plan Y, each of which are qualified defined benefit plans.

The automatic form of benefit for a single participant in Plan X is a single life annuity and the automatic form of benefit for a married participant is a 65% joint and survivor annuity. Optional forms of benefit in Plan X include a 50%, 75%, or a 100% joint and survivor annuity.

By letter ruling, dated Date 1, the Taxpayer received approval from the IRS to use substitute mortality tables as defined in section 430(h)(3)(c) of the Code for purposes of making computations under section 430 of the Code for Plan X. By letter ruling, dated Date 2, the Taxpayer received approval from the IRS to use substitute mortality tables for purposes of making computations under section 430 of the Code for Plan Y.

Plan X provides, in the case of employees hired before Year 2, a traditional retirement benefit based on years of service and compensation. Benefits accrued by employees hired after Year 1 are based on a cash balance benefit formula.

Upon early or normal retirement, participants with a benefit calculated under the traditional formula may receive the benefit in the form of a joint and survivor annuity, or as a single life or life-with-contingent-annuitant survivor annuity with proper consent from the participant's spouse, if any. In addition to these options, benefits calculated under the cash balance benefit formula may also be paid in the form of a single lump sum with proper consent from the participant's spouse, if any.

The Taxpayer now proposes to amend Plan X (the "Amendment") to provide an "Annuity Settlement Window." Under the Annuity Settlement Window, during a period not to exceed 60 days¹ (the "60-day period") within Plan X's plan year beginning on or about Date 3, certain participants and beneficiaries in pay status ("Eligible Annuitants") will be given a one-time opportunity to receive what the Taxpayer represents is the actuarial present value of the remaining benefits under Plan X at the time of the election in the form of a single sum benefit. Those Eligible Annuitants receiving benefit payments would be able to elect to receive, in lieu of their current annuity, the actuarial present value of their remaining accrued benefits either in a qualified joint and survivor annuity, the qualified optional survivor annuity that Plan X offers as part of the Annuity Settlement Window, or an immediate lump sum payment.

¹ The Taxpayer represents that the Annuity Settlement Window period will not be less than 30 days.

Annuity Settlement Window elections by Eligible Annuitants will be subject to applicable spousal consent. Each Eligible Annuitant would be offered optional financial counseling provided by independent financial advisors before making his or her election decision. The Taxpayer represents that Eligible Annuitants that elect a new distribution option will be considered to have a new annuity starting date as of the first day of the month in which their new benefit is payable².

The Taxpayer represents that the funding level of Plan X is sufficient so that the Amendment will not trigger benefit restrictions described in section 436 of the Code. In addition, the Taxpayer represents that the amendment will not change the ability of Eligible Annuitants to elect during the 60 day-period to receive qualified joint and survivor annuities or qualified optional survivor annuities in accordance with sections 401(a)(11) and 417 of the Code.

Law

Section 401(a)(9) of the Code and the regulations thereunder ("Regulations") provide rules relating to required minimum distributions from qualified plans. Section 401(a)(9) of the Code was enacted to ensure that the amounts contributed to qualified retirement plans were used for retirement by requiring that retirement payments begin no later than a certain date, with no less than a certain amount being distributed each year of retirement. The legislative history of the original version of section 401(a)(9) of the Code in 1962 stated that its purpose is in "preventing lifetime accumulations which might escape income taxation altogether." 108 Cong. Rec. 18755, 18756 (1962) (statement of Sen. Smathers).

In general, section 401(a)(9)(A) of the Code states that a trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee –

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

² Thus, under the Annuity Settlement Window, all participants must be offered, in addition to their current annuity option, at least a QJSA and a QOSA as well as a lump sum. Participants who make no election would continue to receive payments in their current form.

Section 401(a)(11) of the Code generally provides that a defined benefit plan will not be considered a qualified plan unless vested benefits, with respect to a married participant who dies before the annuity starting date, are payable in the form of a qualified preretirement survivor annuity and, with respect to a married participant who dies after the annuity starting date, a qualified joint and survivor annuity.

Section 415(a)(1)(A) of the Code provides that a trust which is a part of a pension plan will not constitute a qualified trust if the pension plan provides for the payment of benefits which exceed the limitation of section 415(b). Section 415(b)(2)(B) of the Code generally provides that if the benefit under a defined benefit plan is payable in any form other than a straight life annuity, the determination as to whether the section 415(b) limit has been satisfied shall be made by adjusting the benefit so that it is equivalent to a straight life annuity.

Section 417(a) of the Code provides that a plan meets the requirements of section 401(a)(11) if, among other requirements, each participant may elect during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both). Section 417(a)(6) of the Code defines the applicable election period as meaning, in part, in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date.

Section 417(f)(2) of the Code provides that the term annuity starting date, for purposes of section 417 and 411(a)(11) of the Code means (i) the first day of the first period for which an amount is payable as an annuity, or (ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

Section 430(h)(3) of the Code provides rules regarding the mortality assumptions that must be used to determine the minimum required contribution for a single employer defined benefit plan. Section 430(h)(3)(C) provides for the use of plan-specific substitute mortality tables in lieu of the generally applicable mortality tables, subject to the approval of the Service. Under section 430(h)(3)(C), upon request by the plan sponsor and approval by the Secretary, a mortality table that meets the specified requirements is used in determining any present value or making any computation under this section during the period of up to 10 years that is specified in the request. Notwithstanding this rule, a substitute mortality table ceases to be in effect as of the earliest of the date on which there is a significant change in the participants in the plan by reason of a plan spinoff or merger or otherwise, or the date on which the plan actuary determines that the table does not meet applicable requirements. The requirements that a substitute mortality table must satisfy are: (1) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have

credible information necessary to develop the mortality table, and (2) the table reflects the actual experience of the pension plans maintained by the sponsor and projected trends in general mortality experience. Pursuant to section 430(h)(3)(C)(iv), except as provided by the Secretary, a plan sponsor may not use a substitute mortality table for any plan maintained by the plan sponsor unless a separate mortality table is established and used under this subparagraph for each other plan maintained by the plan sponsor and if the plan sponsor is a member of a controlled group, each member of the controlled group, and the applicable requirements are met separately with respect to the table so established for each such plan, determined by only taking into account the participants of such plan, the time such plan has been in existence, and the actual experience of such plan.

Section 4974 of the Code provides, in part, that:

- (a) If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b) of the Code) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.
- (b) For purposes of that section, the term "minimum required distribution" means the minimum amount required to be distributed during a taxable year under section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may be, as determined under regulations prescribed by the Secretary.

Treas. Reg. § 1.401(a)(9)-6, Q&A-1(a), in pertinent part, states that in order to satisfy section 401(a)(9) of the Code, distributions of the employee's entire interest under a defined benefit pension plan must be paid in the form of periodic annuity payments for the employee's life (or the joint lives of the employee and beneficiary) or over a period certain that does not exceed the maximum length of the period certain determined in accordance with A-3 of this section. Once payments have commenced over a period, the period may only be changed in accordance with A-13 or A-14 of this section. Except as otherwise provided in this section (such as permitted increases described in A-14 of this section), all payments (whether paid over an employee's life, joint lives, or a period certain) also must be nonincreasing.

Treas. Reg. § 1.401(a)(9)-6, Q&A-13(a) states that an annuity payment period may be changed in accordance with the provisions set forth in paragraph (b) of this A-13 or in association with an annuity payment increase described in A-14 of this section.

Treas. Reg. § 1.401(a)(9)-6, Q&A-14(a) states that except as otherwise provided in this section, all annuity payments (whether paid over an employee's life, joint lives, or a period certain) must be non-increasing or increase only in accordance with one or more of the following –

- (1) With an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index as defined in paragraph (b) of this A-14 for a 12-month period ending in the year during which the increase occurs or the prior year;
- (2) With a percentage increase that occurs at specified times (e.g., at specified ages) and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index as defined in paragraph (b) of this A-14 since the annuity starting date, or if later, the date of the most recent percentage increase. However, in cases providing such a cumulative increase, an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;
- (3) To the extent of the reduction in the amount of the employee's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the period described in section 401(a)(9)(A)(ii) over which payments were being made dies or is no longer the employee's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);
- (4) To pay increased benefits that result from a plan amendment;
- (5) To allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the employee's death; or
- (6) To the extent increases are permitted in accordance with paragraph (c) or (d) of this A-14.

Treas. Reg. § 1.415(b)-(1)(b)(iii) provides that if a participant will have distributions commencing at more than one annuity starting date, the limitations of section 415 of the Code must be satisfied as of each of the annuity starting dates, taking into account the benefits that have been provided at all of the annuity starting dates.

Treas. Reg. § 1.430(h)(3)-2(b)(1)(i) provides that in order to use substitute mortality tables, a plan sponsor must submit a written request to the Commissioner that demonstrates that those substitute mortality tables meet the requirements of section 430(h)(3)(C) and that section. This request must state the first plan year and the term of years (not more than 10) that the tables are requested to be used.

Treas. Reg. § 1.430(h)(3)-2(d)(1)(i) provides that except as otherwise provided in that paragraph (d)(1), substitute mortality tables are permitted to be used for a plan for a plan year only if, for that plan year (or any portion of that plan year), substitute mortality tables are also approved and used for each other pension plan subject to the requirements of section 430 that is maintained by the sponsor and by each member of the plan sponsor's controlled group. For purposes of that section, the term controlled group means any group treated as a single employer under paragraph (b), (c), (m), or (o) of section 414.

Treas. Reg. § 1.430(h)(3)-2(d)(1)(ii)(A) provides that for the first year for which a plan uses substitute mortality tables, the use of substitute mortality tables is not prohibited merely because another plan described in section (d)(1)(i) of that section cannot use substitute mortality tables because neither the males nor the females under that other plan have credible mortality experience for a plan year. For each subsequent plan year, the plan sponsor may continue to use substitute mortality tables for the plan with credible mortality experience without using substitute mortality tables for the other plan only if neither the males nor the females under that other plan have credible mortality experience for that subsequent plan year.

Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) provides that a plan's substitute mortality tables cannot be used as of the earliest of ---

- (A) The plan year in which the plan fails to satisfy the requirements of paragraph (c)(1) of that section (regarding credible mortality experience requirements and demonstrations);
- (B) The plan year in which the plan fails to satisfy the requirements of paragraph (d)(1) of that section (regarding the use of substitute mortality tables by controlled group members);
- (C) The second plan year following the plan year in which there is a significant change in individuals covered by the plan as described in paragraph (d)(4)(ii) of that section;
- (D) The plan year following the plan year in which a substitute mortality table used for a plan population is no longer predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner; or
- (E) The date specified in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of that chapter) pursuant to a replacement of mortality tables specified under section 430(h)(3)(A) and § 1.430(h)(3)-1 (other than annual updates to the static mortality tables issued pursuant to § 1.430(h)(3)-1(a)(3)).

Treas. Reg. § 1.430(h)(3)-2(d)(4)(ii) provides that ---

- (A) For purposes of applying the rules of paragraph (d)(4)(i)(C) of that section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals of at least 20 percent compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used for the plan's population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population).
- (B) For purposes of applying the rules of paragraph (d)(4)(i)(C) of that section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals covered by a substitute mortality table of at least 20 percent compared to the number of individuals in a plan year for which a certification described in paragraph (d)(4)(ii)(A) of that section was made on account of a prior change in coverage. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used by the plan with respect to the covered population continues to be accurately predictive of future mortality of that population (taking into account the effect of the change in the plan population).

Analysis – Ruling Requests (1) through (4)

Subparagraphs (A) through (E) of Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) list five circumstances in which the continued use of plan-specific mortality tables for which approval has previously been granted must be terminated -- (A) when the plan-specific tables no longer reflect the actual credible mortality experience of the pension plan; (B) when there are members of the employer's controlled group who are no longer using plan-specific tables other than members for whom the use of plan-specific tables is not required under that section of the regulations because of the lack of credible mortality experience; (C) when there is a significant change in the individuals covered by the pension plan; (D) when the plan-specific tables used for a population is no longer accurately predictive of the future mortality of that population; and (E) when the Commissioner prescribes new mortality tables to be used in making computations under section 430 of the Code (other than annual updates to static mortality tables). However, for purposes of subparagraph (C), a change is not considered significant if the plan's actuary certifies to the satisfaction of the Commissioner that the plan-specific mortality tables used for the plan population continue to be accurately predictive of that population (taking into account the effect of the change in the population).

Ruling Request (1) asks for a ruling permitting the continued use of the plan-specific mortality tables for Plan X if, subsequent to the implementation of the Annuity

Settlement Window, Plan X does not experience a significant change in the individuals covered by its plan-specific mortality (that is, the requirements of subparagraph (C) of Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) is not applicable and Plan X's actuary continues to monitor Plan X's mortality to confirm that the tables remain accurately predictive of the future mortality of Plan X's population (that is, subparagraph (D) of Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) is not applicable).

Ruling Request (1) also assumes that subparagraphs (A), (B), and (E) of Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) are not applicable at all times. Accordingly, because none of the five circumstances described Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) are applicable, Plan X may continue to use plan-specific mortality tables under this ruling request.

Ruling Request (2) asks for a ruling permitting the continued use of the plan-specific mortality tables for Plan X if, subsequent to the implementation of the Annuity Settlement Window, Plan X does experience a significant change in the individuals covered by its plan-specific mortality but Plan X's actuary is able to certify that the plan-specific mortality tables remain accurately predictive of Plan X's population (taking into account the effect of the change in Plan X's population)³. Accordingly, even though under this ruling request Plan X experiences a significant change in coverage, subparagraphs (C) and (D) of Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) are not applicable because Plan X's actuary is able to certify that the plan-specific mortality tables remain accurately predictive of Plan X's population.

Ruling Request (2) also assumes that subparagraphs (A), (B), and (E) of Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) are not applicable at all times. Accordingly, because none of the five circumstances described in Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) are applicable, Plan X may continue to use plan-specific mortality tables under this ruling request.

Ruling Request (3) asks for a ruling permitting Plan X to apply for a new plan-specific table if, subsequent to the implementation of the Annuity Settlement Window, Plan X's actuary is unable to certify that the plan-specific mortality table is accurately predictive of the future mortality of Plan X's population.

The procedures for obtaining approval for the use of plan-specific mortality tables are set forth in Treas. Reg. § 1.430(h)(3)-2(b) (as well as Revenue Procedure 2008-62). Nothing therein precludes a Taxpayer from applying for a new plan-specific table subsequent to the termination of a previously approved plan-specific table due to one (or any) of the circumstances described in Treas. Reg. § 1.430(h)(3)-2(d)(4).

³ For the purpose of this analysis we have assumed that Plan X's actuary was able to certify to the satisfaction of the Commissioner that the plan-specific mortality tables remain accurately predictive of Plan X's population (taking into account the effect of the change in Plan X's population). Note that if the Plan X actuary were not able to certify that the plan-specific mortality tables were accurately predictive of Plan X's population, then Plan X would not be able to request the use of substitute mortality tables until, subsequent to the significant decrease in coverage, the mortality experience requirements of Treas. Reg. § 1.430(h)(3)-2(c)(1) were satisfied.

Accordingly, under the ruling requested described in Ruling Request (3), the Taxpayer would be permitted to apply for a new plan-specific table.

Ruling Request (4) asks for a ruling that the approval previously granted for the use of plan-specific mortality tables with respect to Plan Y not be revoked if subsequent to the implementation of the Annuity Settlement Window, the Taxpayer cannot apply for a new plan-specific table due to a lack of credible mortality experience for Plan X.

Ruling Request (4) is essentially asking for a ruling permitting the continued use of the plan-specific mortality tables for Plan Y (or any other qualified defined benefit plan maintained within the controlled group) in a situation in which the Taxpayer can no longer use plan-specific mortality for Plan X because of the lack of credible mortality experience for Plan X. With respect to Plan Y (or any other qualified defined benefit plan maintained within the controlled group), the Taxpayer may continue to use plan-specific mortality table as long as none of the circumstances described in subparagraphs (A) through (E) of Treas. Reg. § 1.430(h)(3)-2(d)(4) are applicable. Under the ruling request described in Ruling Request (4), the circumstance described in subparagraph (B) is not applicable⁴.

Ruling Request (4) also assumes that subparagraphs (A), (C), (D), and (E) of Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) are not applicable at all times with respect to Plan Y. Accordingly, because none of the five circumstances described Treas. Reg. § 1.430(h)(3)-2(d)(4)(i) are applicable, Plan Y may continue to use plan-specific mortality tables under this hypothetical.

Conclusions – Ruling Requests (1) through (4)

Under the ruling request described in Ruling Request (1), Plan X may continue to use plan-specific mortality tables.

Under the ruling request described in Ruling Request (2), Plan X may continue to use plan-specific mortality tables.

Under the ruling request described in Ruling Request (3), the Taxpayer would be permitted to apply for a new plan-specific mortality table.

Under the ruling request described in Ruling Request (4), Plan Y may continue to use plan-specific tables.

⁴ Section 1.430(h)(3)-2(d)(4)(B) is not applicable because of the exception to the general rule (i.e., that all plans used in a controlled group must use substitute mortality tables) provided in 1.430(h)(3)-2(d)(1)(ii) (i.e., for plans without credible experience).

Analysis – Ruling Request (5)

Section 401(a) of the Code provides a tax deferral for retirement benefits accumulated in a qualified pension plan. Section 401(a)(9) of the Code and the regulations ensure that these tax-deferred accumulations are, in fact, used during retirement and do not escape taxation.

Treas. Reg. § 1.401(a)(9)-6 sets forth the rules governing required distributions from defined benefit plans and annuity contracts. Treas. Reg. § 1.401(a)(9)-6, Q&A-13(a) states that an annuity payment period may be changed in association with an annuity payment increase described in A-14 of this section. Treas. Reg. § 1.401(a)(9)-6, Q&A-14(a)(4) provides that annuity payments from a qualified plan may increase if the payment of increased benefits results from a plan amendment.

The Taxpayer's proposed amendment to Plan X adds a lump sum option for Eligible Annuitants under which Eligible Annuitants will have the opportunity to elect, within a one-time only 30 to 60-day period, to receive, in lieu of their current annuity, either a qualified joint and survivor annuity, the qualified optional survivor annuity that Plan X offers as part of the Annuity Settlement Window, or an immediate lump sum payment. Annuity Settlement Window elections by Eligible Annuitants will be subject to applicable spousal consent⁵.

The proposed amendment that adds a lump sum payment option during a one-time only 30 to 60-day period to Eligible Annuitants will result in a change in the annuity payment period. The annuity payment period will be changed in association with the payment of increased benefits as a result of the addition of the lump sum option. Because the ability to select a lump sum option will only be available during a limited window, the increased benefit payments will result from the proposed plan amendment and, as such, are a permitted benefit increase under Treas. Reg. § 1.401(a)(9)-6, Q&A-14(a)(4).

Therefore, in this circumstance, the minimum distribution requirements of section 401(a)(9) of the Code would not be violated if the Taxpayer amended Plan X to offer a lump sum payment option, during a limited window period of no less than 30 days and no more than 60 days, to Eligible Annuitants.

Conclusion – Ruling Request (5)

Implementation of the Annuity Settlement Window would not cause Plan X to fail to satisfy the requirements of section 401(a)(9) of the Code.

⁵ Spousal consent must include, where applicable, both the current spouse and a former spouse if the annuitant has remarried since the annuity starting date.

Analysis – Ruling Request (6)

Section 4974 of the Code provides for a 50% excise tax on the amount by which the required minimum distribution exceeds the actual amount distributed during the taxable year.

In the case of a qualified defined benefit plan, the required minimum distribution is determined under section 401(a)(9) of the Code, and the regulations thereunder.

Q & A-1(d) of Treas. Reg. § 1.401(a)(9)-6 generally provides that, in the case of a single sum distribution, the minimum required distribution may be determined by either (1) treating the single sum distribution as the employee's account balance for the year or (2) expressing the employee's benefit as an annuity that would satisfy that section with an annuity starting date as of the first day of the distribution calendar year for which the required minimum distribution is being determined, and treating one year of annuity payments as the required minimum distribution for that year, and not eligible for rollover.

Section 402(c) of the Code provides rules applicable to rollovers from exempt trusts. Generally, eligible rollover distributions, as defined in paragraph (4) of that section, are not includable in gross income if such distributions are transferred to individual retirement accounts or individual retirement annuities ("IRAs"). In relevant part, paragraph (4) provides that an eligible rollover distribution is the balance to the credit of an employee in a qualified trust other than amounts required to be distributed under section 401(a)(9).

As stated above, under the Annuity Settlement Window, Eligible Annuitants will be given the opportunity to elect a single lump-sum payment in lieu of all future remaining payments. The Taxpayer has represented such lump-sum payments will be distributed to electing participants in a manner that is compliant with requirements of sections 401(a)(9), 401(a)(31), and 402(c) of the Code. Accordingly, to the extent that any amounts transferred from Plan X to the electing participant's IRA (or other eligible retirement plan) as part of the implementation of the Annuity Settlement Window do not include amounts required to be distributed under section 401(a)(9) (and such amounts required to be distributed under section 401(a)(9) to the electing participant are distributed), implementation of the Annuity Settlement Window will not trigger excise tax under section 4974.

Conclusion – Ruling Request (6)

Implementation of the Annuity Settlement Window will not, in itself, trigger excise tax under section 4974.

201228051

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code, including sections 401(a)(4), 411, 415, 417 and 436 or of Title I of ERISA. In addition, no opinion is expressed regarding the qualification of either Plan X or Plan Y.

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

If you wish to inquire about this ruling, please contact.

Please address all correspondence to SE:T:EP:RA:A2.

Sincerely,



William B. Hulteng, Manager,
Employee Plans Technical Group