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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 0 4 2011

T:EP:RA:A2

In re: Private Letter Ruling Request – Limitations on contributions under section 415(c) of the Internal Revenue Code ("Code") and limit on contributions that may be deducted under section 404(a)(3)(A) of the Code

Dear

This letter is in response to your authorized representative's request of July 23, 2007, as revised and supplemented by your authorized representative's correspondence of August 10, 2009, for the following rulings with regard to the above Plans:

(1) That the limits imposed under section 415(c) of the Code on the annual additions to an individual's account under Plan O do not take into account the annual additions to that individual's account under Plan P, and vice versa, regardless of whether the annual additions under both Plans are attributable to contributions made by the same employer; and

(2) That contributions made by each company to each of the two Plans will not exceed the deduction limit imposed by section 404(a)(3)(A) of the Code if the sum of contributions to each Plan made by all contributing companies does not exceed 25% of the compensation of all employees who are eligible to make elective deferrals to either Plan, determined by treating all such employees as if employed by a single employer.

According to information submitted by the authorized representative, the Association is an unincorporated, not-for-profit association of companies. The Association and each Member Company are separate entities. The representative states that no company is aggregated with the Association or with any other company pursuant to sections 414(b), (c), (m), or (o) of the Code.

Benefits provided to employees employed by each of the Association's member companies are specified under a collectively bargained agreement. Benefits provided under the agreement include Plan O and Plan P.

According to information submitted by the authorized representative, both Plan O and Plan P are qualified defined contribution multiemployer plans as defined under section 414(f) of the Code. Each of the Plans is maintained pursuant to a collectively bargained agreement for purposes of sections 404, 413, 414, and 415 of the Code. Plan P permits an individual who is eligible to benefit under the Plan to make a cash or deferred election under section 401(k) of the Code. However, not all of the participants in Plan O and Plan P are eligible for employer contributions other than elective deferrals.

Plan O and Plan P are separate plans with separate trusts. According to information submitted by the Plans' authorized representative, an individual who participates in Plan O during a plan year is not precluded from participation under Plan P, and vice versa. However, during any year that any individual is eligible to benefit under one or both of these two Plans, the individual is not eligible to benefit under any other defined contribution plan maintained by any employer that is a party to the collectively bargained agreement.

Issue 1

Section 415(c) of the Code limits the contributions and other additions with respect to a participant under a defined contribution plan. Section 415(f)(1)(B) of the Code requires that for purposes of applying the limitations of section 415(c) of the Code, all defined contribution plans of an employer are to be treated as one defined contribution plan. However, under an exception prescribed by section 415(f)(2)(B) of the Code, any plan which is a multiemployer plan, as defined in section 414(f) of the Code, is not to be combined or aggregated with any other multiemployer plan for purposes of applying the limitations of section 415 of the Code.

Section 1.415(a)-1(e) of the Income Tax Regulations ("regulations") provides in relevant part that for purposes of applying the limitations of section 415 of the Code with respect to a participant in a plan maintained by more than one employer, benefits and contributions attributable to such participant from all of the employers maintaining the plan must be taken into account.

Section 1.415(f)-1(g)(1) of the regulations provides that any multiemployer plan, as defined in section 414(f) of the Code, is not to be aggregated with any other

multiemployer plan for purposes of applying the limitations of section 415 of the Code.

According to information submitted with the request, each of the two Plans is considered to be a multiemployer plan. Accordingly, contributions under either Plan are not aggregated with contributions under the other Plan for purposes of applying the limits of section 415 of the Code. Accordingly, with respect to Issue 1, we conclude that the limits imposed under section 415(c) of the Code with respect to a participant under Plan O are applied without taking account annual additions to the same individual's account under Plan P into account. Similarly, the limits imposed under section 415(c) of the Code with respect to a participant under Plan P are applied without taking annual additions to the same individual's account under Plan O into account. This is true regardless of whether the annual additions under both Plans are attributable to contributions made by the same employer for the same limitation year.

Issue 2

Section 404(a)(3)(A)(i)(I) of the Code limits the deduction for contributions to a profit-sharing or stock bonus plan in the taxable year when paid, 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), to 25 percent of the compensation otherwise paid or accrued during the taxable year to all beneficiaries under the plan.

Section 404(a)(3)(A)(iv) of the Code provides that when contributions are made to two or more stock bonus or profit-sharing trusts, the trusts shall be considered a single trust for purposes of applying the limitation on deductible contributions for stock bonus and profit-sharing trusts under section 404(a)(3)(A) of the Code.

Section 404(n) of the Code, as added by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA," P.L. 107-16), states that the amount of an elective deferral as defined in section 402(g)(3) of the Code shall not be subject to any limitation contained in section 404(a)(3) of the Code. Section 404(n) of the Code further states that such elective deferrals shall not be taken into account in applying any such limitation to any other contributions. The effect of section 404(n) of the Code is to apply the limitations of section 404 of the Code without regard to the existence or absence of elective deferrals.

Section 404(a)(12) of the Code, as added by EGTRRA, states that for purposes of section 404(a)(3) of the Code, the term "compensation" shall include amounts that are treated as a participant's compensation under section 415(c)(3)(D) of the Code. Section 415(c)(3)(D) of the Code provides that the term "participant's compensation" shall include any elective deferral as defined in section 402(g)(3) of the Code. Accordingly, the amount of any elective deferral is included in the determination of

the compensation otherwise paid or accrued during the taxable year for purposes of applying the limitation prescribed by section 404(a)(3)(A)(i)(I) of the Code. That is, the effect of section 404(a)(12) of the Code is to determine the amount of the compensation-based limitation of section 404(a)(e)(A)(i)(I) of the Code without regard to the existence or absence of elective deferrals. This is consistent with the effect of section 404(n) of the Code, as described earlier in this ruling.

Section 1.404(a)-9(b) of the regulations provides that the limitation under section 404(a)(3)(A) of the Code shall be based on the compensation otherwise paid or accrued by an employer during the taxable year to employees who are beneficiaries of the trust funds accumulated under the plan. Section 1.404(a)-9(b) of the regulations further provides that where contributions are paid to two or more profit-sharing or stock bonus trusts satisfying the conditions for deductions under section 404(a)(3)(A) of the Code, such trusts are considered as a single trust in applying the limitation of section 404(a)(3)(A) of the Code. Section 1.404(a)-9(g) of the regulations illustrates the application of the limit under section 404(a)(3)(A) of the Code.

Revenue Ruling 65-295, 1965-2 CB 148, provides that in the case of a terminating employee who does not participate in the allocation of the employer contributions to the trust of a profit-sharing plan for the taxable year in which such termination occurs, the compensation paid to such terminating employee in such taxable year may not be included in the total compensation paid or accrued during the taxable year for the purpose of determining the deduction limitation provided in section 404(a)(3)(A) of the Code. In reaching that conclusion, the Revenue Ruling 65-295 references the illustration contained in section 1.404(a)-9(g) of the regulations, which states that the compensation against which the limitation applies is "compensation otherwise paid or accrued during the year to the employees who are beneficiaries of trust funds accumulated under the plan in the year." Therefore, the term "all employees," as used in section 404(a)(3)(A) of the Code, refers to those employees who participate in the allocation of the employer's contribution to the plan in the year for which such contribution is made.

In general, as prescribed by section 413(a) of the Code, section 413(b) of the Code provides rules applicable, notwithstanding any other provision of the Code, to a plan maintained pursuant to a collective-bargaining agreement between employee representatives and one or more employers.

For plans for which section 413(b) of the Code is applicable, section 413(b)(7) of the Code provides that each applicable limitation provided by section 404(a) of the Code shall be determined as if all participants in the plan were employed by a single employer. Section 413(b)(7) of the Code further provides that amounts contributed to or under the plan by each employer who is a party to the collective-bargaining agreement, for the portion of the employer's taxable year which is included within a

given plan year, shall be considered not to exceed an applicable limitation under section 404(a) of the Code if the anticipated contributions for such plan year, determined on the basis prescribed by section 413(b)(7) of the Code, do not exceed such limitation.

Contributions made by member companies to each of the two Plans are employer contributions for purposes of section 404 of the Code. If an employer makes contributions to both defined contribution plans Plan O and Plan P, then the Plans are considered a single trust under section 404(a)(3)(A)(iv) of the Code for purposes of applying the deduction limits of 404(a) of the Code with respect to the contributions made by the employer.

The compensation-based deduction limitation under section 404(a)(3)(A)(i)(I) of the Code incorporates two main elements: the amount of the contributions paid to the profit-sharing or stock bonus plan within or with the taxable year, and the compensation otherwise paid or accrued during the taxable year with respect to the beneficiaries taken into account.

Under section 404(n) of the Code, elective deferrals (as defined in section 402(g)(3) of the Code) are not taken into account in applying the limitations of section 404(a)(3)(A)(i) of the Code to other contributions. An elective deferral under a qualified cash or deferred arrangement under section 401(k) of the Code would be taken into account (in violation of section 404(n) of the Code) if eligibility to make such an elective contribution is taken into account in determining either of the two main elements described in the preceding paragraph. Therefore, the elective deferrals are to be disregarded in determining which employees are beneficiaries under the plan for purpose of applying the limit on deductible contributions under section 404(a)(3)(A)(i) of the Code.

Suggestions by your authorized representative that the beneficiaries under the trust for purposes of section 404(a)(3)(A)(i)(I) of the Code should be determined using the rules of section 410(b)(6)(E) of the Code were considered. However, in contrast with section 404 of the Code, which sets forth rules based on employees who are beneficiaries under a plan for purposes of applying the limits on deductible contributions, section 410(b) of the Code prescribes rules for employees who are benefitting under a plan for purposes of the nondiscriminatory coverage requirements. Section 410(b)(6)(E) of the Code provides that for purposes of subsection 410(b) of the Code,

> "In the case of contributions which are subject to section 401(k) or 401(m), employees who are eligible to contribute (or elect to have contributions made on their behalf) shall be treated as benefiting under the plan..."

Section 410(b)(6)(G) of the Code provides that the Secretary of Treasury shall prescribe regulations necessary or appropriate to carry out the purposes of subsection 410(b) of the Code. In the context of that regulatory authority, section 1.410(b)-3(a)(2)(i) of the regulations provides that,

> "...an employee is treated as benefiting under a section 401(k) plan for a plan year if and only if the employee is an eligible employee under the plan...for the plan year."

This special rule may be explicitly referenced by other qualification provisions that relate to or reflect the coverage requirement of section 410(b) of the Code. However, the presence of such explicit references relying on the special rule of section 410(b)(6)(E) of the Code does not thereby provide a broad basis for expansion of the scope of that special rule beyond the scope indicated in the leading phrase of section 410(b)(6) of the Code. That is, absent an explicit reference, the scope of the special rule of section 410(b)(6)(G) of the Code should be considered to be restricted to subsection 410(b) of the Code.

In any event, an employee who is treated as benefitting under a section 401(k) plan for a plan year, but who is not eligible for any employer contributions other than elective deferrals, would not be considered a beneficiary of the trust for purposes of section 404(a)(3)(i)(I) since section 404(n) of the Code requires the limits on deductible contributions to be applied without regard to the existence or absence of elective deferrals, as discussed earlier in this ruling.

Accordingly, the deductible limit under section 404(a)(3)(A) of the Code with respect to the Plans is determined based on compensation paid or accrued during the taxable year to all employees who are beneficiaries under one or both of the Plans during the taxable year, treating all employers who contribute to the Plan as a single employer under section 413(b) of the Code, but taking into account only those employees who have allocations other than elective deferrals. The amounts contributed to or under the Plans during the taxable year by any employer who is a party to the collective-bargaining agreement will not exceed the applicable limitation under section 404(a) of the Code if the aggregate of all employer contributions (other than elective deferrals) to the Plans for the taxable year, as determined on the basis of treatment as a single employer under section 413(b) of the Code, does not exceed such limitation.

Conclusions

(1) The limits imposed under section 415(c) of the Code with respect to a participant under Plan O do not take into account annual additions to the same individual's account under Plan P, and vice versa. In this regard, it does not matter whether the annual additions under both Plans are attributable to contributions made by the same employer.

(2) The limit on deductible contributions under section 404(a)(3)(A) of the Code is applied aggregating the compensation of the employees who are beneficiaries under Plan O and Plan P as if all such employees were employed by a single employer under section 413(b) of the Code, taking into account only those employees who have allocations other than elective deferrals. If the aggregate of all contributions (other than elective deferrals) made by the all employers for the taxable year does not exceed the limit determined on such basis, then the contributions made by any and each employer during the taxable year satisfy the deduction limit under section 404(a)(3)(A) of the Code for the taxable year, without regard to whether or not such contributions would have exceeded the deduction limit determined on the basis of each separate employer.

This ruling addresses only the issues outlined above and does not address any other issues that may arise under the Internal Revenue 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,

David M. Ziegler, Manager
Employee Plans Actuarial Group 2