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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

AUG 01 2012

Uniform Issue List: 4980F-00

T:EP:RA:TL

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Legend:

- Company = \*\*\*\*\*
- Plan = \*\*\*\*\*
- Date 1 = \*\*\*\*\*
- Date 2 = \*\*\*\*\*
- Date 3 = \*\*\*\*\*
- Date 4 = \*\*\*\*\*
- Date 5 = \*\*\*\*\*
- Date 6 = \*\*\*\*\*
- Date 7 = \*\*\*\*\*
- Date 8 = \*\*\*\*\*
- Date 9 = \*\*\*\*\*
- Date 10 = \*\*\*\*\*

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Date 11 = \*\*\*\*\*

Date 12 = \*\*\*\*\*

Date 13 = \*\*\*\*\*

Counsel C = \*\*\*\*\*

Consulting Firm F = \*\*\*\*\*

Consulting Firm B = \*\*\*\*\*

Dear \*\*\*\*\*,

This is in response to your request dated July 8, 2011, in which you request a Private Letter Ruling to waive the excise tax under section 4980F of the Internal Revenue Code ("Code") as it applies to Plan.

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

Company is a manufacturer of industrial and automotive products.

On Date 1, Company amended the Plan to freeze benefit accruals for non-unionized employees effective Date 2. Pursuant to advice from Counsel C (a law firm experienced in pension and employee benefits law) and Consulting Firm F (a pension and employee benefits consulting firm), Company provided active employees with a Notice of Cessation of Future Benefit Accruals in accordance of 204(h) of ERISA and IRC 4980F (a "204(h) notice"). The 204(h) notices were delivered to approximately 1167 affected employees on or about Date 3. Neither Counsel C nor Consulting Firm F advised Company that alternate payees were also required to be provided 204(h) notices.

On Date 4, Company and the union representing employees at another plant agreed to freeze benefit accruals for unionized employees effective Date 5. Pursuant to advice from Consulting Firm F, approximately 88 affected employees received 204(h) notices on or about Date 6. Consulting Firm F did not advise Company that alternate payees and the union representing the affected employees were also required to be provided 204(h) notices.

On Date 7, Company and the union representing employees at another plant agreed to freeze benefits for unionized employees effective Date 8. Pursuant to advice from the Consulting Firm F as well as Consulting Firm B (another pension and employee benefits

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consulting firm) approximately 31 affected employees received 204(h) notices on or about Date 9. Neither Consulting Firm F nor B advised Company that alternate payees and the union representing the affected employees were also entitled to 204(h) notices.

On Date 10, outside counsel to Company discovered that Company had not provided alternate payees with the required 204(h) notices. This was conveyed to a Company representative on the same day. Also, on Date 11, outside counsel to Company discovered that Company had not provided the unions representing affected employees with 204(h) notices. This discovery was conveyed to a Company representative on Date 12.

Company immediately undertook steps to remedy the failure to notify alternate payees and the unions. Company determined that there were 17 alternate payees whose affiliated participants were active employees at the time of the respective freezes, and two individuals whose status as alternate payees is uncertain. In addition, Company determined that it would provide 204(h) notices to the two unions representing participants with respect to the effective Date 5 and Date 8 freezes.

The notices were mailed on Date 13 to the last known address of each alternate payee and the unions. Date 13 was less than 30 days after Date 10.

#### Issue

Based on the facts and representations stated above, Company requests a ruling that the tax imposed under section 4980F of the Code be waived under the provisions of section 4980F(C)(2) with respect to the Company's failure to timely provide the section 204(h) notice to alternate payees and the unions with respect to freezing the benefits under the plan.

#### Applicable Law

Section 4980F of the Code applies to plan amendments taking effect on or after June 7, 2001.

Section 4980F(a) of the Code imposes a tax on the failure of any applicable pension plan to meet the requirements of section 4980F(e) with respect to any applicable individual.

Section 4980F(b)(1) of the Code states that the amount of the tax imposed by the failure to comply with subsection (a) shall be \$100 for each day of noncompliance.

Section 4980F(c)(1) of the Code provides that no tax shall be imposed by section 4980F(a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for such tax did not know that the failure existed and exercised reasonable diligence to meet the requirements of section 4980F(e).

Section 4980F(c)(2) of the Code provides that no tax shall be imposed by section 4980F(a) on any failure if (A) any person subject to liability for the tax exercises reasonable diligence to meet the requirements of section 4980F(e) and (B) such person provides the notice described in section 4980F(e) during the 30-day period beginning on the first day such person knew, or exercising reasonable diligence would have known, that such failure existed.

Section 4980F(c)(4) of the Code provides that in the case of a failure that is due to a reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by section 4980F(a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

Section 4980F(e)(3) of the Code provides that the notice required in section 4980F(e)(1) shall be provided within a reasonable time before the effective date of the plan amendment.

Section 4980F(e)(1) of the Code provides that if an "applicable pension plan" is amended to provide for a significant reduction in the rate of future accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual.

### Analysis

Based on the facts provided, Plan is an applicable pension plan for the purposes of section 4980F(e)(1) of the Code. Further, the facts indicate that Company exercised reasonable diligence to provide 204(h) notices to affected employees. In this case, Company was unaware that it was required to provide notice to alternate payees and the unions, and it exercised reasonable diligence to comply with the notice requirement by providing notice to the applicable individuals within 30 days of discovering its failure to do so. Company reasonably relied on several experienced pension and employee benefit plan service providers who provided advice containing incomplete information as to who is required to receive notice regarding the freezing of benefits under the Plan. Company made a good faith effort to provide notice to each affected employee, and if the professionals that were consulted had advised them to provide the notices to the alternate employees and the unions, Company would have timely provided the notices to those parties as well. Also, Company provided notice to each alternate payee within 30 days after it realized its error, which falls within the timeframe set forth in the exception to the imposition of the tax under section 4980F(c)(2) of the Code.

Once Company's outside counsel realized the need to provide 204(h) notices for alternate payees, Company took prompt action and delivered notices expeditiously. Thus, from the dates that the benefit accruals for each respective group of employees was frozen through Date 10, the date outside counsel informed Company that it had not sent 204(h) notices to all required parties, Company was not aware of the necessity to provide the section 204(h) notice to alternate payees and the respective unions

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involved; and once aware, took timely and appropriate action to provide the notices. Thus, Company's failure to timely provide the required 204(h) notices to alternate payees and unions was due to Company's reasonable reliance on experienced service providers and justifies a waiver of the excise tax penalty for the period.

Conclusion

Thus, with respect to your ruling requests, we conclude as follows:

The tax imposed under section 4980F of the Code is waived under the provisions of section 4980F(c)(2) of the Code for the periods during which Company was unaware of the necessity for making the election to alternative payees and the unions.

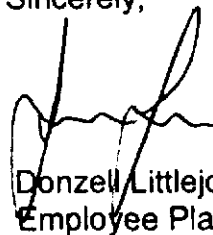
No opinion is expressed as to the qualification of the Plan under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact \*\*\*\*\* at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



(Jawn Levine  
Acting for  
Donzell Littlejohn)

Donzell Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose