



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201422028

MAR 07 2014

**Uniform Issue List: 401-06-01**

SE:T:EP:RA:T2

**Legend:**

Sponsor =

Company =

Plan A =

Plan B =

Dear ,

This is in response to your letter dated November 27, 2012, in which your authorized representative, on your behalf, requested a Private Letter Ruling that the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code (the "Code") would not be violated if the Sponsor amended Plan A and Plan B (the "Plans") to offer, during a limited window period, a lump sum payment option to the Plans' participants, alternate payees and beneficiaries for whom annuity payments have already begun.

The Sponsor maintains Plan A and Plan B pursuant to a single plan document (the "Plan Document".) The Plans are multiple employer, tax qualified, defined benefit plans that are subject to Section 413(c) of the Code. Plan A received a favorable determination letter on March 30, 2009 and Plan B received a favorable determination letter on February 12, 2009. Plan participants include eligible employees of the Company and of certain other organizations that have elected to participate in the Plans (collectively referred to as the "Participating Companies").

The normal form of benefit for a single Plan A participant is a single life annuity and the normal form of benefit for a married Plan participant is a 50% joint and survivor annuity. Optional forms of benefits payable under the Plan include a straight life annuity, a 100%, 75% or 50% joint and survivor annuity, a 10 year certain and life annuity, a contingent annuity with 10 years certain, a level income benefit option, or a lump sum withdrawal of all of the Plan participant's accumulated contributions under the Plan with the remainder payable under one of the aforesaid options.

The normal form of benefit for a single Plan B participant is a single life annuity and the normal form of benefit for a married Plan participant is a 50% joint and survivor annuity. Optional forms of benefits payable under the Plan include a straight life annuity, a 100%, 75% or 50% joint and survivor annuity, a 10 year certain and life annuity, a contingent annuity with 10 years certain, a level income benefit option, or a lump sum withdrawal of all of the Plan participant's accumulated contributions under the Plan with the remainder payable under one of the aforesaid options.

The Sponsor represents that because of various factors affecting the Participating Companies, including sensitivity to shifts in interest rates and the fact that the industry in which the Participating Companies participate is highly susceptible to local, regional and, to an extent, global economic changes, the pension benefit obligations under the Plan have become disproportionately large and increasingly volatile. Such volatility has widespread effects on the Participating Companies, including increased financing costs, increased difficulty with respect to cash flow management, and generally hinders the ability of the Participating Companies to remain competitive in the industry in which they operate.

To reduce the impact of the volatility of the large pension obligations, the Sponsor proposes to amend the plans (the "Plan Amendment") to offer, during a one-time limited period of time of no less than sixty (60) days but no longer than ninety (90) days, (the "Window Period") an opportunity to elect a lump sum distribution representing the actuarial value of the participant's remaining monthly benefits, calculated at the time of such election. The option will be offered to certain<sup>1</sup> retired Plan participants, alternate payees<sup>2</sup> and surviving spouses or other beneficiaries of deceased Plan participants who are receiving a monthly annuity benefit under the Plan (collectively referred to as the "Covered Individuals").<sup>3</sup>

Under the Plan Amendment, a Covered Individual who is a married Plan participant will be offered the following options in lieu of the form of payment previously elected by the participant, an amount actuarially equivalent of his or her remaining benefit under the Plan at the time of such election:

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<sup>1</sup> A certain subset of these groups, in objectively determined and nondiscriminatory categories, may be excluded on account of administrative practicalities.

<sup>2</sup> An alternate payee is a person eligible under a qualified domestic relations order entered and served on the Plan who has commenced monthly benefits.

<sup>3</sup> The Sponsor is not requesting a ruling with respect to Plan participants for whom annuity payments under the plan have not yet commenced.

- (1) lump sum benefit described above;
- (2) a qualified joint and survivor annuity; or
- (3) contingent annuity with the participant's spouse as the contingent annuitant and a specified percentage of 75%.

A Covered Individual who is an unmarried Plan participant will be offered the following options in lieu of the form of payment previously elected by the participant:

- (1) the lump sum benefit described above; or
- (2) a straight life annuity.

A Covered Individual who is an alternate payee or a Covered Individual who is a surviving spouse or other beneficiary of a deceased Plan participant, will be offered only the lump sum benefit described above in lieu of the form of payment such individual had been previously been receiving.

Elections by Covered Individuals to receive a new distribution option will be subject to applicable spousal consent.<sup>4</sup> If a Covered Individual does not elect a new benefit payment option, benefit payments will continue according to the form of benefits previously payable to the Covered Individual.

The Sponsor represents that the funding levels of Plan A and Plan B are sufficient so that implementation of the Plan Amendment will not trigger benefit restrictions described in Section 436 of the Code. In addition, the Sponsor represents that the Plan Amendment will not change the ability of Covered Individuals to elect during the Window 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.

Based on the facts and representations stated above, the Sponsor requests a ruling that the minimum distribution requirements of section 401(a)(9) of the Code would not be violated if the Sponsor amended the Plans to offer during the one time limited Window Period, a lump sum payment option to the Covered Individuals under the Plans, with the lump sum benefit to be the actuarial value of the Covered Individual's remaining monthly benefits under the Plans.

#### APPLICABLE 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

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<sup>4</sup> Spousal Consent must include, where applicable, both the current spouse and a former spouse if the annuitant has remarried since the annuity starting date.

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).

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.

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 a 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)(1)(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.

## ANALYSIS

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 proposed Plan Amendment adds a lump sum option which provides Covered Individuals the option to elect, within a specified window period of no less than 60 days and no more than 90 days the actuarial present value of their remaining benefits under the Plans at the time of such election. Under the Plan Amendment Covered Individuals, depending on their status, will be offered the following options in lieu of the form of payment previously elected by the participant: (i) a lump sum benefit; (ii) a qualified joint and survivor annuity; (iii) a contingent annuity with the participant's spouse as the contingent annuitant and a specified percentage of 75% or (iv) a straight life annuity. Under the Plan Amendment, any election by a Covered Individual who is a married Plan participant is subject to any required spousal consent.

The proposed Plan Amendment 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. In addition, Covered Individuals who wish to change their current distribution option will be considered to have a new annuity starting date as of the first date of the month in which their new benefit is payable. Because the ability to select a lump sum 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).

In order for a plan to remain qualified under section 401(a) of the Code, the calculation of the value of the benefit elected under the lump sum window option must comply with the requirements of section 417(e) and the regulations thereunder. Under section 6.03 of Revenue Procedure 2014-4, subject to certain exceptions, the IRS generally does not issue letter rulings on matters involving qualification issues under section 401 through 420 of the Code. Qualification matters are generally handled by the Employee Plans

Determination letter program as provided in Revenue Procedure 2014-6. Accordingly, we have not considered, among other matters, whether the lump sum window benefits comply with the requirements of section 417(e) and the regulations thereunder with respect to the amount of the distribution and minimum present value requirement that is applied based on the present value of the normal retirement benefit. Instead, this letter ruling is based on your representations that the lump sum window option satisfies section 417(e) of the Code and section 1.417(e)-1 of the regulations.

#### RULING

Therefore, in this circumstance, the minimum distribution requirements of Section 401(a)(9) of the Code will not be violated if the Sponsor amends Plan A and Plan B to offer a lump sum payment option during a limited Window Period of no less than 60 days and no more than 90 days to Covered Individuals for whom annuity payments have already begun.

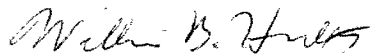
Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction above under any other provision of the Code, including Sections 401(a)(4), 411, 415, 417 and 436 or of Title I of ERISA. No opinion is expressed regarding the qualification of the Plan.

In addition, no opinion is expressed on whether the method for valuing benefits under the lump sum window option satisfies the requirements of section 417(e) and the regulations thereunder.

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:T2.

Sincerely,



William B. Hulteng, Manager  
Employee Plans Technical

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose

cc: