



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

201422030

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 05 2014

Uniform Issue List: 401.06-01

SE:T:EP:RA:T2

Legend:

- Company = *****
- Plan A = *****
- Plan B = *****
- Plan C = *****
- Plan D = *****

- Plan E = *****

Dear *****,

This is in response to your letter dated August 15, 2013, in which you request a Private Letter Ruling that the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code ("Code") would not be violated if the Company amended Plans A, B, C, D, and E (collectively, "the Plans") to offer a lump sum payment option, during a limited window period, to the Plan's retirees and other participants, alternate payees, and beneficiaries, including those for whom annuity payments have already begun.

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

FACTS

The taxpayer, Company, designs, manufactures, and sells goods both in the United States and throughout the world. It is the sponsor of the Plans, which are intended to be tax-qualified, defined benefit plans that received their most recent favorable determination letters dated July 13, 2012, August 3, 2011, July 31, 2012, April 13, 2011, and December 3, 2012 respectively. The Plans cover a significant number of employees and former employees of the Company, as well as beneficiaries.

The automatic form of benefit for a single participant in Plan A is a single life annuity and the automatic form of benefit for a married participant is a 50% joint and survivor annuity. Optional forms of benefit in the Plans include a 50%, a 75% or 100% joint and survivor annuity, a period certain annuity, or lump sum payments in certain cases.

The automatic form of benefit for a single participant in Plan B is a single life annuity and the automatic form of benefit for a married participant is a 50% joint and survivor annuity (a 50% joint and survivor annuity for disabled participants). Optional forms of benefit in the Plans include a 50%, a 75% or 100% joint and survivor annuity, and a period certain annuity.

The automatic form of benefit for a single participant in Plan C is a single life annuity and the automatic form of benefit for a married participant is a 50% joint and survivor annuity. Optional forms of benefit in the Plans include a 50%, a 75% or 100% joint and survivor annuity, or a period certain annuity, or lump sum payments in certain cases.

The automatic form of benefit for a single participant in Plan D is a single life annuity and the automatic form of benefit for a married participant is a 50% joint and survivor annuity (a 50% joint and survivor annuity for disabled participants). Optional forms of benefit in the Plans include a 50%, a 75% or 100% joint and survivor annuity, or a period certain annuity, or lump sum payments in certain cases.

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

The Company represents that the pension benefit obligations attributable to the Plans and reported on the Company's financial statements are disproportionately large and very sensitive to swings in interest rates. Over time these obligations have skewed disproportionately towards retirees. Swings in interest rates and changes in economic conditions have caused the Plans' pension obligations to be very volatile. The Company represents that this volatility may adversely impact its ability to obtain required financing, and may impact its cash flow profile thus making the Company less competitive in the marketplace.

To reduce the impact of the volatility of the large pension obligations, the Company proposes to amend the Plans to offer, during a limited period of time, a lump sum payment option to certain participants and beneficiaries of the Plans. The window would be offered to a broad group of the Plans' participants and beneficiaries in four categories: (1) participants currently receiving benefit payments; (2) participants who have retired upon attaining normal retirement age or early retirement age but have not begun receiving benefit payments; (3) beneficiaries who presently are receiving either pre-retirement or post-retirement survivor benefits, or are eligible to receive survivor benefits under the Plans; and (4) alternate payees currently receiving benefits, collectively ("Window-eligible Participants"). The Company represents that this window period to select a lump sum payment will be offered on a one-time basis to Window-eligible Participants.

Under the amendment, Window-eligible Participants would have a specified limited window period of between 60 and 90 days during which they could elect to receive what the Company represents is the actuarial present value of their remaining benefits under the Plans at the time of such election in the form of a single lump sum payment. In addition to the single lump-sum option, those Window-eligible Participants 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 as a single life annuity, a qualified joint and survivor annuity, or a qualified optional survivor annuity. Elections by Window-eligible Participants to receive a new distribution option will be subject to applicable spousal consent.¹ The Company represents that each Window-eligible Participant would be provided information and guidance sufficient to enable participants to clearly understand their options without steering participants to a particular result. The Company represents that Window-eligible Participants 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 payable.

The Company represents that the funding levels of the Plans are sufficient so that the window programs will not trigger benefit restrictions described in section 436 of the Code. In addition, the Company represents that the amendment will not change the ability of Window-eligible Participants 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, Company requests a ruling that the minimum distribution requirements of section 401(a)(9) of the Code would not be violated if the Company amended the Plans to offer the lump sum window to participants and beneficiaries, including those for whom annuity payments have commenced under the Plans.²

¹ Spousal consent must include, where the law requires, both the current spouse and a former spouse if the annuitant has remarried since the annuity starting date.

² The Company is not requesting a ruling with respect to Window-eligible Participants for whom annuity payments have not commenced.

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 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 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 nonincreasing 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)(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 Company's proposed amendments to each of the Plans adds a lump sum option for Window-eligible Participants under which they will have the opportunity to elect, within a window period of no less than 60 days and no more than 90 days, to receive, in lieu of their current annuity, either the automatic annuity form of benefit (including a qualified joint and survivor annuity and a qualified optional survivor annuity) or a lump sum payment. Elections by Window-eligible Participants to receive a new distribution option will be subject to applicable spousal consent.³

The proposed 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, Window-eligible Participants 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 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).

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

³ Spousal consent must include, where the law requires, both the current spouse and a former spouse if the annuitant has remarried since the annuity starting date.

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 representation that the limited window period 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 would not be violated if the Company amended the Plans 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 the Plans' participants and beneficiaries for whom annuity payments have already begun.

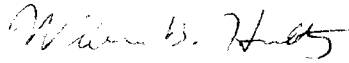
Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code, including sections 401(a)(4), 411, 415, 417 and 436 or of Title I of ERISA. No opinion is expressed regarding the qualification of the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

In addition, no opinion is expressed on whether the method for valuing benefits under the limited window period 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 ***** at (***) ***-****.
Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



William B. Hulteng, Manager,
Employee Plans Technical Group

Enclosures:

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

CC: *****

