



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

201422031

MAR 05 2014

Uniform Issue List: 401.06-01

SE: T: EP: RA: T2

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

Legend:

Company = \*\*\*\*\*  
Plan A = \*\*\*\*\*  
Plan B = \*\*\*\*\*

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

This is in response to your letter dated January 4, 2013, as supplemented by correspondence dated April 22, 2013, 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 Company amended Plan A and Plan B to offer, during a limited period of time, the option to change annuity payment terms to certain retired Plan participants, alternate payees<sup>1</sup> and surviving spouses or other beneficiaries of deceased Plan participants already receiving a monthly annuity benefit (collectively referred to as the "Eligible Individuals"). In addition, you requested a ruling that a lump sum payment paid during this limited period of time will not, in itself, trigger excise tax under section 4974 of the Code when a portion of the payment is not paid in a taxable distribution.

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

<sup>1</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.

**201422031**

## FACTS

The Company maintains Plan A and Plan B each pursuant to its respective plan document (the "Plan Document"). Both plans are single employer, tax qualified, defined benefit plans. Both plans most recently received favorable determination letters on May 24, 2012. Both plans' participants include eligible employees of the Company, as well as terminated vested employees and retirees of the Company. In addition, both plans offer a traditional formula benefit as well as a cash balance formula benefit.

The normal form of benefit for a participant of Plan A with respect to the plan's traditional retirement benefit formula is a single life annuity and the normal form of benefit for a married plan participant is a qualified 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, or with respect to the pension attributable to the cash balance formula, a single lump sum payment.

The normal form of benefit for a participant of Plan B with respect to the plan's traditional retirement benefit formula is a single life annuity and the normal form of benefit for a married plan participant is a qualified 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, or with respect to the pension attributable to the cash balance formula, a single lump sum payment.

The Company represents that because of various factors, including sensitivity to large shifts in interest rates and investment returns and the fact that the industry in which the Company participates is susceptible to global economic changes, the pension benefit obligations under the plans have become increasingly volatile. Such volatility has widespread effects on the Company, including increased difficulty with respect to cash flow forecasting and management.

In order to reduce the impact of the volatility of the pension obligations with respect to benefits under the plans, the Company proposes to amend both plans (the "Plan Amendments") to offer, during a one-time limited period of time of between sixty (60) and ninety (90) days (the "Window Period"), an opportunity to elect a change in the method of distribution, including 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>2</sup> retired plan participants, alternate payees and surviving spouses or other beneficiaries of deceased plan participants who are receiving a monthly annuity benefit under the plan.<sup>3</sup>

---

<sup>2</sup> A certain subset of these groups, in objectively determined and nondiscriminatory categories, may be excluded on account of administrative practicalities.

<sup>3</sup> The Company is not requesting a ruling with respect participants, beneficiaries, or alternate payees for whom annuity payments under the plan have not yet commenced.

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

- (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%.

An Eligible Individual who is a surviving spouse, other beneficiary, or alternate payee will be offered the following options in lieu of the form of payment previously elected by the participant, an amount actuarially equivalent to his or her remaining benefit under the plan at the time of such election, payable in one of the following options:

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

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

The Company represents that the funding level of the plan is sufficient so that implementation of the Plan Amendments will not trigger benefit restrictions described in Section 436 of the Code. In addition, the Company represents that the Plan Amendments will not change the ability of Eligible 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 circumstances stated above the Company requests a ruling that the minimum distribution requirements of section 401(a)(9) of the Code will not be violated if the Company amends the Plan to offer to the Eligible Individuals, during the one-time Window Period, the option to change their annuity payments under the Plan, with the elected form of benefit being the actuarial equivalent of the Eligible Individual's remaining monthly benefits under the Plan. In addition, the Company requests a ruling that a lump sum payment paid during this period of time will not, in itself, trigger excise tax under section

---

<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.

4974 of the Code when a portion of the payment is not paid in a taxable distribution.

#### 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 amounts contributed to qualified retirement plans were used for retirement purposes 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." (See: 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 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).

Section 415(a)(1)(A) of the Code provides that a trust which is 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)(A) 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 4974 of the Code provides that if the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan is less than the minimum required distribution (pursuant to sections 401(a)(9), 403(b)(10), 408(b)(3), of 457(d)(2) of the Code) 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. This tax shall be paid by the payee.

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 increased 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-1(d) 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.

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 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)(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.

**201422031****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 Plan Amendments would add for each plan, a Window Period which provides Eligible 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 Plan at the time of such election. Under the Plan Amendments, Eligible 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 Amendments, any election by an Eligible Individual who is a married Plan participant is subject to any required spousal consent.

The Plan Amendments 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 options offered under the Window Period. In addition, Eligible 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 change the current annuity payment will only be available during a limited window, the increased benefit payments will result from the proposed Plan Amendments and, as such, are a permitted benefit increase under Treas. Reg. § 1.401(a)(9)-6, Q&A-14(a)(4).

With respect to the second ruling request, under the Window Period, Eligible Individuals will be given, among other options, the opportunity to elect a single lump sum payment in lieu of all future remaining payments. The Company has represented that for those who elect to receive that lump sum payment, Company will determine that portion of the payment that is the required minimum distribution for the year of the payment in accordance with the methods described in Treas. Reg. 1.401(a)(9)-6, Q&A-1(d). At the rollover election, Company will directly roll over only the portion of the payment that exceeds the

amount of the required minimum distribution and distribute the required minimum distribution portion of the payment in cash. Accordingly, to the extent that any amounts transferred from Plan A or Plan B to each Eligible Individual's IRA (or other eligible retirement plan) as part of the implementation of the lump sum 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 Window Period will not trigger excise tax under section 4974 of the Code.

Finally, 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 representation that the Window Period satisfies section 417(e) of the Code and section 1.417(e)-1 of the Regulations.

#### RULING

Therefore, in this circumstance, with respect to the first ruling request, the minimum distribution requirements of Section 401(a)(9) of the Code will not be violated if the Company amends Plan A and Plan B to offer the option, during a limited Window Period of no less than 60 days and no more than 90 days to Eligible Individuals, to change their benefit payment form as described above. With respect to the second ruling request, the payment of a lump sum elected during the Window Period will not, in itself, trigger excise tax under section 4974.

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), 410(b), 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 \*\*\*\*\* at \*\*\*\*-\*\*\*\*-  
\*\*\*\*\*. 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: \*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*