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Department of the Treasury  
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CC:TEGE:EB:QP1  
PLR-T-104111-16  
PLR-T-104114-16

Date:  
July 18, 2016

In Re:

Pension Fund A =

Annuity Fund B =

Plan C =

Dear

This letter is in response to correspondence, dated August 2, 2013, submitted on behalf of Pension Fund A and Annuity Fund B (collectively "the Funds") by their authorized representatives, requesting a ruling to permit Pension Fund A to accept direct rollovers of eligible rollover distributions from Annuity Fund B and to provide annuities resulting from those direct rollovers.

The following facts and representations are submitted under penalties of perjury in support of your request:

Pension Fund A is a multiemployer defined benefit pension trust, and Annuity Fund B is a multiemployer defined contribution pension trust. The Funds represent that both Pension Fund A and Annuity Fund B were established under a series of collective bargaining agreements between the same participating employers and the same local unions. The Funds represent that in general, participants and beneficiaries in Pension Fund A are also participants and beneficiaries in Annuity Fund B.

The Funds represent that neither Pension Fund A nor Annuity Fund B is a governmental plan, a non-electing church plan, or another plan to which § 411 of the Internal Revenue Code does not apply under § 411(e)(1). Annuity Fund B represents that it does not permit after-tax participant contributions.

Pension Fund A represents that it is neither in "endangered" or "critical" funded status (as defined in § 432), but that it is in the "green zone" funded status. Accordingly, Pension Fund A is not under a funding improvement plan or a rehabilitation plan.

Pension Fund A represent that the Board of Trustees of Pension Fund A wishes to amend Plan C (the pension plan that is funded by Pension Fund A) to permit individuals who establish that they are participants in both Pension Fund A and Annuity Fund B to roll over eligible rollover distributions (as defined in § 402(c)(4)) from Annuity Fund B to Pension Fund A.

Pension Fund A represents that the Board of Trustees will amend Plan C to accept transfers or rollovers from Annuity Fund B, if certain conditions are met. Pension Fund A proposes that an amendment to Plan C would include the following conditions:

The transfer from Annuity Fund B to Pension Fund A must be completed within three days before the participant begins to receive monthly benefits from Pension Fund A;

Pension Fund A shall determine the benefits resulting from the rollover in the form of an annuity that is the actuarial equivalent of the amount rolled over, where actuarial equivalence is determined using the applicable interest rate and mortality table under § 417(e). In the event of a delay between the transfer or rollover and the annuity starting date, interest on the rollover contribution is accumulated in accordance with the requirements of § 411(c)(2)(C)(iii). If the participant lives longer than the life expectancy under the mortality table used to calculate the annuity and there are no offsetting actuarial gains, or the plan earns less than the interest rate used to calculate the annuity, Pension Fund A will be required to provide the additional benefits;

The rollover amount will augment the monthly benefit form that the participant previously selected for the original benefit to be provided by Pension Fund A, and the participant will not be entitled to a different benefit form based on the rolled-over amount;

The amounts rolled over from Annuity Fund B will be nonforfeitable, and the rolled-over contributions will be required as a condition precedent of receiving any additional monthly benefits from Pension Fund A;

The amounts rolled over from Annuity Fund B will be treated as mandatory contributions for purposes of § 411(c), and the accrued benefit derived from such amounts will be determined in accordance with § 411(c);

Pension Fund A will exclude the amounts rolled over from Annuity Fund B from the participant's annual benefit for purposes of § 415(b); and

The Funds also represent that Pension Fund A will not accept rollovers from Annuity Fund B if Pension Fund A's actuary has certified that the plan is in critical status (as defined in § 432(b)(2)). Furthermore, in the event Pension Fund A is certified to be in "endangered status" under § 432(b)(1), rollovers from Annuity Fund B will only be accepted to the extent that Pension Fund A's actuary certifies that the benefits payable on account of amounts rolled over will be consistent with the required funding improvement plan and paid for out of contributions not required by the funding improvement plan to meet the applicable benchmark, in accordance with the schedule contemplated in the funding improvement plan.

The Funds have requested a ruling that the proposed amendment to Plan C, under which Pension Fund A would accept a direct rollover of an eligible rollover distribution from Annuity Fund B satisfies §§ 411 and 415, when Pension Fund A provides an annuity resulting from the direct rollover that is determined by converting the amount directly rolled over into an annuity that is the actuarial equivalent of the amount rolled over, using the applicable interest rate and mortality table under § 417(e).

Section 401(a)(7) requires that a qualified plan satisfy the requirements of § 411.

Section 401(a)(16) requires that a qualified plan not provide for benefits or contributions that exceed the limitations of § 415.

Section 401(a)(31) requires that a participant in a qualified plan be permitted to elect to have a distribution made in the form of a direct rollover to another eligible retirement plan if the distribution qualifies as an eligible rollover distribution.

Section 401(a)(31)(D) defines the term "eligible rollover distribution," for purposes of § 401(a)(31), as having the meaning set forth in § 402(f)(2)(A). Section 402(f)(2)(A), referring to § 402(c)(4), defines the term "eligible rollover distribution," for purposes of a § 401(a) qualified plan, as any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust, except that such term shall not include: (A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or for a specified period of 10 years or more; (B)

any distribution to the extent such distribution is required under § 401(a)(9); or (C) any distribution which is made upon hardship of the employee.

Section 401(a)(31)(E) defines the term "eligible retirement plan," for purposes of § 401(a)(31), as having the same meaning given such term by § 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit acceptance of rollover distributions. Section 402(c)(8)(B) otherwise defines the term "eligible retirement plan" to include a qualified trust.

Section 411(a)(1) requires that the accrued benefit derived from an employee's contributions be nonforfeitable.

Section 411(c)(2) prescribes rules for the determination of the accrued benefit derived from employee contributions.

Section 411(c)(2)(B) provides that, in the case of a qualified defined benefit plan, the accrued benefit derived from the contributions made by an employee is equal to the accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under § 417(e)(3) (as of the determination date).

Section 411(c)(2)(C) defines accumulated contributions as the mandatory contributions made by the employee, increased by interest. With respect to periods during plan years beginning on or after January 1, 1988, the interest is determined using the rate of 120 percent of the Federal mid-term rate under § 1274 for the first month of each plan year for the period ending on the date the determination is being made, and using the interest rate under § 417(e)(3) for the period between the determination date and the normal retirement age. Under § 411(c)(2)(C) and § 1.411(c)-1(c)(4) of the Income Tax Regulations, mandatory contributions are defined as amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits (or additional benefits) under the plan attributable to employer contributions.

Section 411(c)(3) requires that, if the accrued benefit derived from employee contributions is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by the employee must be the actuarial equivalent of the amount determined under § 411(c)(2).

Section 415(a)(1)(A) provides that, in the case of a qualified defined benefit plan, the associated trust will not be a qualified trust if the plan provides benefits with respect to a participant in excess of the limitations under § 415(b).

Section 415(b)(1) prescribes limitations that are based on the annual benefit determined under § 415(b)(2).

Section 415(b)(2)(B) provides for adjustments, in accordance with regulations, to the benefit determined under the plan if employees contribute or make rollover contributions to the plan.

Section 412 contains minimum funding rules that generally apply to pension plans. Section 431 sets forth the funding rules that apply specifically to multiemployer defined benefit plans. Section 432 provides additional funding rules for multiemployer plans that are in endangered status, critical status or critical and declining status. Section 432(a)(1) provides that in the case of a multiemployer plan in effect on July 16, 2006, if the plan is in endangered status, the plan sponsor shall adopt and implement a funding improvement plan in accordance with § 432(c). Section 432(a)(2) provides that in the case of a multiemployer plan in effect on July 16, 2006, if the plan is in critical status, the plan sponsor shall adopt and implement a rehabilitation plan in accordance with § 432(e).

Section 432(b)(1) describes how to determine if a multiemployer plan is in endangered status for a plan year. Section 432(b)(2) describes how to determine if a multiemployer plan is in critical status for a plan year.

Section 1.401(a)(31)-1, A-2 explains that, although § 401(a)(31)(D) limits the types of qualified trusts that are treated as eligible retirement plans to defined contribution plans that accept eligible rollover distributions, a plan is permitted, at a participant's election, to make a direct rollover to any type of eligible retirement plan (as defined in section 402(c)(8)(B)), including a defined benefit plan.

Section 1.401(a)(31)-1, A-13, provides that a qualified plan is not required to accept rollovers or it can provide that it will accept rollovers under limited circumstances.

Section 1.401(a)(31)-1, A-15 provides that, for purposes of applying the plan qualification requirements of § 401(a), a direct rollover is a distribution and rollover of the eligible rollover distribution (rather than a transfer of assets and liabilities).

Section 1.411(a)-4T provides that adjustments in benefits, such as adjustments in excess of reasonable actuarial assumptions, can result in an impermissible forfeiture of participants' rights.

Section 1.411(a)-4(b)(1)(ii) provides that the benefit derived from employee contributions is not treated as forfeitable merely because, after commencement of annuity payments, the participant dies without receiving payments equal in amount to the nonforfeitable accrued benefit derived from mandatory contributions determined at the time of commencement.

Section 1.415(b)-1(b)(1) prescribes rules for the determination of the annual benefit for purposes of § 415(b). Under § 1.415(b)-1(b)(1)(ii), the annual benefit does not include the annual benefit attributable to rollover contributions as described in § 401(a)(31).

Section 1.415(b)-1(b)(2) provides rules for the determination of the annual benefit attributable to rollover contributions. Under § 1.415(b)-1(b)(2)(iii), the annual benefit

attributable to rollover contributions is determined by applying the factors applicable to mandatory employee contributions as described in §§ 411(c)(2)(B) and (C) and the regulations thereunder.

Revenue Ruling 2012-4, 2012-8 I.R.B. 386, provides that a qualified defined benefit plan that accepts a direct rollover of an employee's or former employee's benefit from a qualified defined contribution plan maintained by the same employer does not violate §§ 411 or 415 if the defined benefit plan provides an annuity resulting from the direct rollover that is determined by converting the amount directly rolled over into an actuarially equivalent immediate annuity using the applicable interest rate and applicable mortality table under § 417(e).

Revenue Ruling 2012-4 further provides that if the qualified defined benefit plan receiving a direct rollover were to use a more favorable actuarial basis (such as a higher interest rate than the § 417(e)(3)(C) applicable interest rate or a mortality table with shorter life expectancies than the applicable § 417(e)(3)(B) mortality table) for purposes of calculating the annuity resulting from the rollover amount, or otherwise provided for a larger annuity than the annuity derived from employee contributions as determined under § 411(c), then the portion of the benefit under the qualified defined benefit plan resulting from the amount directly rolled over that exceeds the benefit derived from that rolled over amount under the rules of § 411(c)(2)(B) is not treated as the benefit derived from the employee's own contributions, and the excess portion would be included in the annual benefit, for purposes of § 415(b).

In this case, the Funds propose permitting participants in Annuity Fund B to elect to have amounts transferred from Annuity Fund B directly to Pension Fund A. Pension Fund A and Annuity Fund B are each eligible retirement plans, within the meaning of § 401(a)(31)(E). Amounts that are proposed to be transferred constitute eligible rollover distributions, as defined in § 401(a)(31)(D). Therefore, each employee's elective

transfer of amounts from Annuity Fund B to Pension Fund A constitutes a direct rollover within the meaning of § 401(a)(31).

Under § 1.401(a)(31)-1, A-15, an amount directly rolled over from Annuity Fund B to Pension Fund A is treated as if it were distributed to a participant from Annuity Fund B and then rolled over into Pension Fund A. Accordingly, this amount is treated as contributed by the participant to Pension Fund A. Furthermore the contribution is required as a condition of receiving additional benefits under Plan C attributable to employer contributions. For example, if the employee lives longer than the life expectancy under the mortality table used to calculate the annuity and there are no offsetting actuarial gains or Pension Fund A earns less than the interest rate used to calculate the annuity, the contributing employers would be required to make contributions to provide the additional benefits. Thus, under § 1.411(c)-1(c)(4), the amounts directly rolled over are treated as mandatory contributions for purposes of § 411(c) and the accrued benefit derived from those amounts, determined under the rules of § 411(c), must be nonforfeitable.

The benefit resulting from amounts rolled over to Pension Fund A is provided as an immediate annuity and is determined as the actuarial equivalent of the amount rolled over from Annuity Fund B, where actuarial equivalence is determined using the applicable interest rate and mortality table under § 417(e). Furthermore, in the event of a delay between the rollover and the annuity starting date, interest on the rollover contribution is accumulated in accordance with the requirements of § 411(c)(2)(C)(iii). Thus, Pension Fund A satisfies the requirements of § 411(c)(2) with respect to the rollover.

Accordingly, Pension Fund A's provisions relating to the benefit resulting from the amount directly rolled over satisfy the requirement of § 411(a)(1) that the benefit derived from an employee's own contributions be nonforfeitable. In addition, a participant's Pension Fund A benefit resulting from the amount directly rolled over is excluded from the participant's annual benefit for purposes of § 415(b). This is consistent with § 1.415(b)-1(b) in that the annual benefit for purposes of § 415(b) excludes the benefit attributable to rollover contributions, determined using the rules of §§ 411(c)(2)(B) and (C), and the Pension Fund A benefit resulting from the amount directly rolled over is determined using the rules of §§ 411(c)(2)(B) and (C).

Because Pension Fund A proposes to limit its ability to accept rollovers from Annuity Fund B if Pension Fund A is in endangered status, as defined in § 432, and to prohibit rollovers from Annuity Fund B if Pension Fund A is in critical status, as defined in § 432, the adverse impact on Pension Fund A resulting from such rollovers and payment of additional benefits is limited.

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Under the facts presented, Pension Fund A will not violate §§ 411 or 415 on account of accepting a direct transfer or rollover of a participant's or a former participant's benefit from Annuity Fund B, on the condition that Pension Fund A provides an annuity resulting from the rollover that is determined by converting the amount directly rolled over into an actuarially equivalent immediate annuity using the applicable interest rate and applicable mortality table under § 417(e).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. The ruling contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of the letter ruling, it is subject to verification on examination. A copy of this letter ruling has been submitted to your authorized representative under the provisions of a power of attorney and declaration of representative, or other proper authorization, currently on file with the Internal Revenue Service.

Sincerely,

William B. Hulteng  
Acting Branch Chief  
Qualified Plans Branch 1  
(Tax Exempt and Government Entities)