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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
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PLR-108554-22
Date:
July 25, 2022

In Re:

Taxpayer =
Cash Balance Plan =
Pension Plan =
Plan 1 =
Plan 2 =
Date 1 =
Date 2 =

Dear :

This is in response to a request dated April 13, 2022, as supplemented by correspondence dated June 18, 2022, in which your authorized representatives request a private letter ruling on your behalf concerning the proper treatment under section 4980 of the Internal Revenue Code of a transfer of excess assets from a terminated cash balance plan to two ongoing defined contribution plans.

The following facts and representations have been submitted under penalties of perjury.

Facts

Taxpayer sponsored Cash Balance Plan, which was intended to be qualified under section 401(a). Cash Balance Plan terminated on Date 1. All benefits accrued under the plan that are due to participants, surviving spouses, other beneficiaries, and alternative payees are scheduled to be paid by Date 2. Cash Balance Plan will have excess assets remaining in its trust after it satisfies all of these liabilities. It was amended in conjunction with its termination to permit Taxpayer, in its discretion, to use all or part of any surplus funds to fund a direct transfer from Cash Balance Plan to a qualified

replacement plan established or maintained by Taxpayer in accordance with section 4980(d)(2).

Taxpayer also sponsors Plan 1, which is a qualified defined contribution profit sharing plan which was intended to be qualified under section 401(a). Plan 1 covers eligible hourly paid employees and bargaining unit employees of Taxpayer and its affiliates. The population of employees covered by Plan 1 significantly overlaps with the population of employees eligible to participate in Cash Balance Plan. Plan 1 includes a qualified cash of deferred arrangement (CODA) under section 401(k) and an employer contribution feature pursuant to which Taxpayer makes certain matching contributions. Coincident with the termination of Cash Balance Plan, Taxpayer significantly enhanced benefits under Plan 1 and added a nonelective employer contribution of behalf of eligible employees.

Taxpayer also sponsors Plan 2, which is a defined contribution profit sharing plan also intended to be qualified under section 401(a). Plan 2 covers salaried employees of Taxpayer and its affiliates. In addition, Taxpayer sponsors Pension Plan, which is intended to be qualified under section 401(a). The population of employees covered by Plan 2 significantly overlaps with the population of employees who are eligible to participate in Pension Plan. However, employees who participate in Cash Balance Plan may also participate in Plan 2 because they have changed position from hourly paid or bargaining unit employment to salaried non-bargaining unit employment. Plan 2 includes a qualified CODA under section 401(k), as well as an employer safe harbor contribution feature to which Taxpayer makes certain matching contributions in accordance with section 401(k)(13) and (m)(12), and an employer nonelective contribution feature to which Taxpayer makes certain supplemental contributions for each plan year on behalf of certain salaried employees.

After all liabilities of Cash Balance Plan have been satisfied and before the reversion of any surplus funds to Taxpayer, Taxpayer will instruct the trustees of Cash Balance Plan to transfer an aggregate amount equal to the total amount of Cash Balance Plan's remaining surplus to Plan 1 and Plan 2 (collectively, the receiving plans). Taxpayer also will direct that this aggregate amount be allocated between the receiving plans in proportion to the number of Cash Balance Plan participants who, as of the last day of the month immediately preceding the month in which the direct transfer of assets from Cash Balance Plan occurs, are active participants in the receiving plans. On the termination date, all employees who were active participants in Cash Balance Plan were active participants in either Plan 1 or Plan 2 .

Under a proposed amendment to Plan 1, the amount transferred to Plan 1 will be credited to a suspense account in that plan and amounts from that account will be allocated to fund all or a portion of nonelective contributions due in accordance with the terms of Plan 1. The allocation from the suspense account will occur ratably on a periodic basis over an allocation period beginning on the date of the transfer and ending no later than the last day of the sixth plan year after the plan year of transfer. The

minimum ratable drawdown of the suspense account over this allocation period will be measured on periodic intervals, which will be at least annually. Any income earned by the suspense account will be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the allocation period under the same procedure. In addition, under the proposed amendment, to the extent any amount credited to the suspense account under Plan 1 may not be allocated to a participant before the end of the allocation period due to any limitation under section 415, then that amount will be allocated to the accounts of other participants under Plan 1, and if any portion of the amount may not be so allocated because of the limitation, it shall be allocated to the participant in accordance with section 415.

Similarly, under a proposed amendment to Plan 2, the amount transferred to Plan 2 will be credited to a suspense account in that plan and amounts from that account will fund all or a portion of the employer nonelective contributions due in accordance with the terms of Plan 2. The allocation from the suspense account will be at least as rapidly as ratably on a periodic basis over an allocation period beginning on the date of transfer and ending on the last day of the sixth plan year after the plan year of transfer. The minimum ratable drawdown of the suspense account over this allocation period will be measured on periodic intervals, which will be at least annually. Any income earned by the suspense account will be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the allocation period under the same procedure. In addition, under the proposed amendment, to the extent any amount credited to a suspense account under Plan 2 may not be allocated to a participant before the end of the allocation period due to any limitation under section 415, then that amount will be allocated to the accounts of other participants under Plan 2, and if any portion of the amount may not be allocated because of the limitation, it shall be allocated to the participant in accordance with section 415.

Rulings Requested

1. The receiving plans may be treated as a single plan for purposes of section 4980 pursuant to section 4980(d)(5)(D) and together constitute a single “qualified replacement plan” for purposes of section 4980(d)(2).

2. The direct transfer from Cash Balance Plan to the receiving plans of an aggregate amount equal to 100 percent of the maximum amount that Taxpayer could receive as an employer reversion from Cash Balance Plan will be treated as follows:

- a. The aggregate amount transferred will not be included in the gross income of Taxpayer;
- b. No deduction will be allowable with respect to the aggregate amount transferred; and
- c. The aggregate amount transferred will not be treated as an employer reversion for purposes of section 4980, and Taxpayer will not be subject to excise tax under section 4980 with respect to the amount transferred.

3. The allocation of the aggregate amount of the direct transfer from the Cash Balance Plan between the receiving plans in proportion to the number of participants in Cash Balance Plan as of the termination date who remain as current employees of the Taxpayer (including any member of its controlled group) and are active participants in the receiving plans as of the last day of the month immediately preceding the month in which the direct transfer of assets from the Cash Balance Plan occurs is consistent with the treatment of the receiving plans as a single qualified replacement plan for the purposes of section 4980(d)(2) and the requirements of that provision.

4. The crediting of the amounts transferred from Cash Balance Plan to a suspense account in each of the receiving plans and the allocation of each receiving plan's suspense account to fund all or a portion of the nonelective contributions due in accordance with the terms of each of the receiving plans at least as rapidly as ratably on a periodic basis over an allocation period beginning on the date of transfer and ending on the last day of the sixth plan year after the plan year of transfer, with the minimum ratable drawdown of the suspense account measured by Taxpayer on periodic intervals designated by Taxpayer over the allocation period, and the allocation of any income earned an amounts in the suspense accounts at least as rapidly as ratably on the same periodic basis over the remainder of the allocation period under the same procedure, will satisfy the allocation requirement of section 4980(d)(2)(C).

Applicable Law

Section 4980(a) provides for a 20 percent excise tax on the amount of any reversion from a qualified plan.

Section 4980(c)(2) generally defines the term "employer reversion" as the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

Section 4980(d)(1) provides, in pertinent part, that the excise tax under section 4980(a) shall be increased to 50 percent with respect to any employer reversion from a qualified plan unless the employer either establishes or maintains a qualified replacement plan, or the plan provides for certain benefit increases which take effect immediately on the termination date.

Section 4980(d)(2) provides that a qualified replacement plan is a qualified plan established or maintained by the employer in connection with a qualified plan termination, which satisfies the participation, asset transfer, and allocation requirements of section 4980(d)(2)(A), (B), and (C).

Section 4980(d)(2)(A) requires that at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination be active participants in the replacement plan.

Section 4980(d)(2)(B) requires that a direct transfer from the terminated plan to the replacement plan be made before any employer reversion, and that the transfer be an amount equal to the excess (if any) of (i) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to section 4980(d), over (ii) the amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment adopted during the 60-day period ending on the date of termination of the qualified plan, and which takes effect immediately on the termination date.

Section 4980(d)(2)(B)(iii) provides that in the case of the transfer of any amount under section 4980(d)(2)(B)(i) from a terminated plan, that amount is not includible in the gross income of the employer, no deduction is allowable with respect to the transfer, and the transfer is not treated as an employer reversion for purposes of section 4980.

Section 4980(d)(2)(C)(i) provides that, if the replacement plan is a defined contribution plan, the amount transferred to the replacement plan must be (I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or (II) credited to a suspense account and allocated from the suspense account to accounts of participants no less rapidly than ratably over the seven-plan-year period beginning with the year of the transfer.

Section 4980(d)(2)(C)(ii) provides that if, by reason of any limitation under section 415, any amount credited to a suspense account under clause (i)(II) may not be allocated to a participant before the close of the seven-plan-year period, that amount shall be allocated to the accounts of other participants, and if any portion of the amount may not be allocated to other participants by reason of the limitation, it shall be allocated to the participant as provided in section 415.

Section 4980(d)(2)(C)(iii) provides that any income on any amount credited to a suspense account under clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under that clause (after application of clause (ii)).

Section 4980(d)(2)(C)(iv) provides that if any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan, (I) that amount shall be allocated to the accounts of the participants as of that date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and (II) if any portion of the amount may not be allocated to other participants under subclause (I) by reason of the limitation, it shall be treated as an employer reversion to which section 4980 applies.

Section 4980(d)(5)(D)(i) authorizes the Secretary of the Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan.

Revenue Ruling 2003-85, 2003-32 IRB 291 (Rev. Rul. 2003-85), provides that in accordance with section 4980(d)(2)(B)(iii), the direct transfer of an amount that is at least 25 percent of the maximum amount that the employer could receive as an employer reversion from a terminated plan and that was transferred to a qualified replacement plan is not includible in the employer's gross income. In addition, the Internal Revenue Service held that no deduction was allowable with respect to the amount transferred, and the amount transferred was not treated as an employer reversion. Further, the Internal Revenue Service concluded that the amount that the employer received was subject to the 20 percent excise tax under section 4980(a) and was includible in income under section 61.

Under section 501(a), an organization described in section 401(a) (that is, a trust which is part of a qualified pension, profit-sharing or stock bonus plan) is generally exempt from taxation.

Analysis

With regard to the first request, section 4980(d)(5)(D)(i) authorizes the Secretary of the Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan. In this case, Taxpayer proposes to contribute all of the excess Cash Balance Plan assets to the receiving plans, both of which are ongoing defined contribution plans that included all of the active Cash Balance Plan participants at the time of its termination. Plan 1 and Plan 2 may be treated as one single qualified replacement plan for purposes of section 4980(d)(2).

With regard to the second request, section 4980(d)(2)(B)(iii) provides that in the case of the transfer of any amount under section 4980(d)(2)(B)(i) from a terminated plan, that amount is not includible in the gross income of the employer, no deduction is allowable with respect to the transfer, and the transfer is not treated as an employer reversion for purposes of section 4980. In this case, Cash Balance Plan will transfer all of the excess Cash Balance Plan assets that would otherwise be a reversion to Taxpayer to Plan 1 and Plan 2, considered collectively to be a qualified replacement plan. Therefore, the direct transfers from Cash Balance Plan to the receiving plans of a selected transfer amount that is the entire amount that Taxpayer could receive as an employer reversion from Cash Balance Plan will not be included in the gross income of Taxpayer, no deduction will be allowable with respect to the aggregate amount transferred, and the aggregate amount transferred will not be treated as an employer reversion for purposes of section 4980. As a result, Taxpayer will not be subject to an excise tax under section 4980 with respect to the amount transferred.

With regard to the third request, Taxpayer states that it will direct that the aggregate amount of the direct transfer from the Cash Balance Plan be allocated between the receiving plans in proportion to the number of Cash Balance Plan participants who, as of the last day of the month immediately preceding the month in which the direct

transfer of assets from Cash Balance Plan occurs, are active participants in the receiving plans. This method of allocation of the excess Cash Balance Plan assets is consistent with the treatment of the receiving plans as a single qualified replacement plan for the purposes of section 4980(d)(2) and the requirements of that provision.

With regard to the fourth request, Taxpayer states the amount transferred to each of the receiving plans will be credited to a suspense account in the receiving plan and amounts from that account will be allocated to fund all or a portion of nonelective contributions due in accordance with the terms of each receiving plan. The allocation from the suspense account will occur ratably on a periodic basis over an allocation period beginning on the date of the transfer and ending no later than the last day of the sixth plan year after the plan year of transfer. The minimum ratable drawdown of the suspense account over this allocation period will be measured on periodic intervals, which will be at least annually. Any income earned on amounts in the suspense account will be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the allocation period under the same procedure. This method of allocation complies with the requirements of section 4980(d)(2)(C)(i). Therefore, in this case, this method of crediting of the amounts transferred from Cash Balance Plan to suspense accounts in each of the receiving plans, and this method of allocation of the assets in the suspense accounts to fund all or a portion of the nonelective contributions due in accordance with the terms of each of the receiving plans, will satisfy the allocation requirement of section 4980(d)(2)(C).

The rulings contained in this letter are based upon information and representations submitted by your authorized representatives and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2022-1, 2022-1 IRB 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and that material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2022-1, section 11.05.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to each of your authorized representatives.

Sincerely,

Ronald J. Rutherford-Triche
Chief, Qualified Plans Branch 2
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: