



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NOV 09 2023

Release Number: 202406017

Release Date: 2/9/2024

Re: Request for automatic extension of amortization periods

Taxpayer =

(EIN: - )

Plan =

(EIN: - ; Plan No: )

Dear :

This letter constitutes notice that approval has been granted for your request for an automatic extension for amortizing the *eligible* unfunded liabilities as of October 1, 2014, for the above-named Plan. This approval applies to such unfunded liabilities which are described in sections 431(b)(2)(B) and 431(b)(4) of the Internal Revenue Code ("Code"), and sections 304(b)(2)(B) and 304(b)(4) of the Employee Retirement Income Security Act of 1974. This letter further stipulates the methodology to follow when modifying the amortization periods of two bases that are ineligible for extension as their unfunded liabilities are not described in sections 431(b)(2)(B) and 431(b)(4) of the Code.

The taxpayer represents that on October 21, 2015, they applied of an automatic amortization extension of certain bases under Section 431(d)(1) of the Code. The request was sent to an obsolete address specified in Revenue Procedure 2010-52 and was consequently returned to the Taxpayer. On November 2, 2015, the Taxpayer resubmitted their original ruling request<sup>1</sup>, via registered mail, to the address specified in Revenue Ruling 2015-4. This request was not returned to the Taxpayer, and bank records supplied by the Taxpayer<sup>2</sup> indicate the user fee was processed by the Internal Revenue Service ("Service") and cleared on November 9, 2015.

On October 15, 2016, Form 5500 for the plan year October 1, 2015 to September 30, 2016 was filed with the Schedule MB attached. The Schedule MB was signed June 2017 by the co-actuaries for the Plan and indicated in line 8(d)(1) that an extension

<sup>1</sup> Dated October 21, 2015.

<sup>2</sup> The Taxpayer supplied images of the front and back of the cancelled check.

was given automatic approval under Section 431(d)(1) of the Code (essentially assuming the approval was automatic or would be forthcoming eventually).

During 2017 – 2019, an actuary, one of the multiple parties for the Plan (co-actuaries, plan administrative firm, etc.) asked the parties for a copy of the approval letter. The parties reviewed their files and found that no one had an approval letter from the Service.

In 2020, an actuary<sup>3</sup> for the Plan contacted Employee Plans Rulings and Agreements and asked for a copy of the approval letter. Employee Plans Rulings and Agreements investigated and confirmed that Employee Plans Rulings and Agreements did not have any record of receiving the November 2, 2015 submission<sup>4</sup>. Thus, a letter ruling granting approval to extend the amortization period of certain eligible bases under Section 431(d)(1) of the Code was in fact not issued for the plan year beginning October 1, 2014.

Aware of the facts, the Taxpayer's authorized representatives again approached Employee Plans Rulings and Agreements to discuss possible solutions. The complexities associated with unwinding the amortization bases for the plan years beginning October 1, 2014 through the most recent plan year were considered. This would require amending at least 8 years of actuarial valuation reports, Form 5500 schedules and other documentation of the Plan's funding results. Excise taxes under section 4971(a) of the Code<sup>5</sup> were also considered. Employee Plans Rulings and Agreements also considered which area of the Service should address the issues, and concluded, based on the facts of the case, that the Taxpayer should re-submit their original ruling request pursuant to Revenue Procedures 2023-4.

The Taxpayer, by letter dated June 2, 2023, re-submitted their original ruling request, via Hand Delivery. The submission included a chronology showing the timeline of events and supporting documentation, in addition to the material required by Revenue Procedure 2010-52.

The submission included sufficient evidence that the original submission was filed timely, the Service had received the original submission and deposited the user fee, and the Taxpayer had proactively approached the Service upon realizing the problem (verses remaining silent and the issue being discovered upon examination).

Upon review of the submission, it was discovered that two of the amortization bases that the Taxpayer requested be extended<sup>6</sup>, were not eligible to be extended. These bases included a "Combined Bases" established on July 1, 1995, and an "AVA

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<sup>3</sup> Also an authorized representative pursuant to a Form 2848.

<sup>4</sup> While there is evidence that the Service received the submission, there is no evidence that the submission was received by Employee Plans Rulings and Agreements. Employee Plans Rulings and Agreements has authority to issue letter rulings in this circumstance pursuant to Section 24.01(9) of Revenue Procedure 2023-4.

<sup>5</sup> Pursuant to section 4971(g)(1), the excise tax under section 4971(a) would not have applied to the Plan if the Plan had an accumulated funding deficiency in any years from October 1, 2014 through October 1, 2020 since the Plan was certified to be in critical status for those plan years.

<sup>6</sup> The Taxpayer had, in practice, extended these bases assuming the approval was automatic or would be forthcoming eventually.



The extension of the amortization periods of the above unfunded liabilities of the Plan was granted in accordance with section 431(d)(1) of the Code. Section 431(d)(1)(A) of the Code requires the Secretary to extend the period of time required to amortize any unfunded liability of a plan for a period of time (not in excess of 5 years) if the plan submits an application meeting the criteria stated in section 431(d)(1)(B) of the Code. The Plan has submitted the required information to meet the criteria in section 431(d)(1)(B) of the Code, including a certification from the plan's actuary that:

- (i) absent the extension under section 431(a)(1)(A) of the Code, the Plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,
- (ii) the Plan Sponsor has adopted a plan to improve the Plan's funding status,
- (iii) the Plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and
- (iv) the notice required under section 431(d)(3)(A) has been provided, in accordance with section 3.05 of Rev. Proc. 2010-52.

As discussed earlier, there are two amortization bases that the Taxpayer requested be extended<sup>7</sup> that are not eligible to be extended. The extension of these two bases has not been granted, and the following methodology must be followed when restoring the amortization periods of these two ineligible bases.

We expect the Taxpayer to take following steps in determining the funding standard account as of the beginning of the October 1, 2023 plan year in which the amortization extensions for the two ineligible bases will become prospectively eliminated (the "Revocation Date").

1. Effective with the Revocation Date, the balance of each ineligible extended amortization base shall be redetermined as an amount equal to the balance that each extended base would have had if the extension had not been granted (hereinafter, the "Redetermined Prospective Revocation Balance"). For this purpose, if as of the Revocation Date, the base would have been fully amortized had the extension not been granted, the Redetermined Prospective Revocation Balance on account of such base of the Revocation Date shall equal \$0.
2. There is a one-time charge to the funding standard account at the Revocation Date on account of each extended amortization base equal to the excess of (A) over (B), where:
  - A. Is the actual balance of the extended amortization bases determined as if the amortization extension was not null and void on the Revocation Date.
  - B. Is the Redetermined Prospective Revocation Balance.
3. The annual amortization charge at the Revocation Date for each amortization base that was previously extended shall be redetermined by amortizing each Redetermined Prospective Revocation Balance over the remaining amortization

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<sup>7</sup> The Taxpayer had, in practice, extended these bases assuming the approval was automatic or would be forthcoming eventually.

period, determined without regard to the extension previously granted under section 412(e) of the Code. The resulting amortization charges shall be determined using the applicable valuation interest rate at the Revocation Date. (Note that if the Redetermined Prospective Revocation Balance of an extended base is \$0, there is no amortization charge with respect to such base at the Revocation Date).

4. At the Revocation Date, the reconciliation account shall be redetermined as if the amortization extension had never been approved.

In granting this ruling, it is expected that:

- (i) the Plan's assumptions and methods will be reviewed and updated as appropriate so that each prescribed assumption is applied in accordance with applicable law and regulations,
- (ii) each other assumption is reasonable (taking into account the experience of the Plan and reasonable expectations) and such other assumptions, in combination, offer the best estimate of anticipated experience under the Plan, and
- (iii) the plan sponsor obtained the appropriate approvals for any changes in assumptions or funding methods (whether through an individual private letter ruling or by qualifying for automatic approvals available in the Code, Treasury Regulations or other generally applicable guidance).

Furthermore, we are not expressing any opinion as to the accuracy of any material submitted with your request.

Your attention is called to section 412(c)(7) of the Code and section 302(c)(7) of ERISA which describe the consequences that would result in the event the Plan is amended to increase benefits, change the rate in the accrual of benefits, or to change the rate of vesting while the amortization extension remains in place. Please note that any amendment that increases liabilities for a profit sharing plan or any other retirement plans (whether qualified or unqualified) maintained by the Trustees of the Plan and covering participants of the Plan to which this ruling applies, would be considered an amendment for purposes of section 412(c)(7) of the Code and section 302(c)(7) of ERISA.

This letter ruling may be revoked or modified retroactively if there was 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 letter ruling was based, or the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction.

Pursuant to a power of attorney on file in this office, a copy of this ruling has been sent to your authorized representatives. We have also sent a copy of this letter to the Manager, Classification Group 4 in Houston, Texas.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you require further assistance concerning this matter, please contact Mr.  
(ID# ) at ( ) - .

Sincerely yours,

David M. Ziegler, Manager  
Employee Plans Actuarial Group 2

Enclosures

Notice 437 – Notice of Intention to Disclose (Ruling)

Deleted copy of the ruling

cc: