Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Significant Index Nos. 4980.00-00 and 4980.01-00

Person to Contact:

Telephone Number:

Refer Reply to:
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Date:
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Legend:

Company A:

Plan X: --

Plan Y:

This is in response to your letter of November 2, 1999, as modified by your letter of March 14, 2000, in which you seek a ruling on behalf of Company A, for which you are the authorized representative, concerning the excise tax imposed by section 4980 of the Internal Revenue Code (hereinafter, the "Code").

FACTS

Company A sponsors Plan X and Plan Y for its eligible employees. Plan X, a noncontributory defined benefit plan, was established effective June 1, 1961, to provide retirement benefits for its employees. It has been amended and restated a number of times, and there was a restatement as of April 30, 1989. It has been accorded qualified status under section 401(a) of the Code.

Plan Y, a defined contribution plan of the "401(k) profit-sharing" type, was established effective June 1, 1961, and provides for (1) employer discretionary profit-sharing contributions, (2) employee 401(k) salary deferrals, (3) employee matching contributions, and (4) qualified non-elective discretionary employer contributions. Eligibility requirements for participation are the attainment of age 21 and the completion of one year of service. Plan Y was amended and restated as of April 28, 1996. It has been accorded qualified status under section 401(a) of the Code.

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It is proposed to terminate Plan X and transfer some of the excess assets of Plan X to Plan Y upon the termination of Plan X. In order to accomplish this, Plan X was amended on March 3, 2000, to provide that 25 percent of the excess assets remaining in Plan X after the satisfaction of all benefit liabilities of Plan X will be transferred to Plan Y, and to provide that the remaining 75 percent of such excess assets will revert to Company A.

Prior to the proposed transfer of assets from Plan X to Plan Y, Plan Y was amended (1) to provide for a suspense account to hold the amounts to be transferred, and (2) to provide for the allocation of amounts in such suspense account, including interest income thereon, to be used to fund the matching and employer discretionary profit sharing contributions for participants in Plan Y, with this allocation from the suspense account taking place no less rapidly than ratably over the seven-plan-year period beginning in the year of transfer. The minimum amount to be allocated each plan year is to be determined by multiplying the amount in the suspense account as of the first day of the plan year by a fraction, the numerator of which is one and the denominator of which is the number of years remaining in the seven-plan-year period.

One hundred percent of the active participants in Plan X who remain in the employ of Company A are to be active participants in Plan Y as of the date the excess assets are transferred. Twenty-five percent of the excess assets in Plan X will be transferred to Plan Y, and the remaining 75 percent will revert to Company A..

RULINGS REQUESTED

1. The transfer of 25 percent of the excess assets from Plan X to a suspense account in Plan Y will not affect the tax-qualified status of Plan X under section 401(a) of the Code.

2. Plan Y will constitute a "replacement plan" within the meaning of section 4980(d)(2) of the Code, and the transfer of 25 percent of the excess assets of Plan X to Plan Y will not affect the qualified status of Plan Y under section 401(a) of the Code.

3. Twenty-five percent of the excess assets of Plan X transferred from Plan X to Plan Y will not be included in the gross income of Company A in the year of transfer.

4. No deduction will be allowable with respect to the transfer of 25 percent of the excess assets of Plan X.

5. The transfer of 25 percent of the excess assets of Plan X to Plan Y will not be treated as an employer reversion under section 4980 of the Code; there will be no excise tax imposed on the assets so transferred; and the excise tax on the remaining excess assets of Plan X reverting to Company A will be 20 percent.

LAW

Section 4980(a) of the Code provides for the imposition of a 20% tax on the amount of any employer reversion from a qualified plan.

Section 4980(d) of the Code provides for the 20 percent (in section 4980(a) of the Code) to be increased to 50 percent unless the employer establishes or maintains a qualified replacement plan which meets the following conditions generally described as:

(1) At least 95 percent of those who were active participants in the terminated plan and who remain as employees of the employer after the plan termination become active participants in the replacement plan.

(2) A direct transfer from the terminated plan to the replacement plan is made before any employer reversion, and the amount of such transfer is generally 25 percent of the maximum amount which the employer could receive as an employer reversion. On this basis, the amount of such transfer is not includible in the gross income of the employer, and no deduction is allowable with respect to such transfer.

(3) The amount transferred is allocated to the accounts of the participants in the replacement plan in the plan year of the transfer or is credited to a suspense account and allocated from such account no less rapidly than ratably over the seven-plan-year period beginning with the year of the transfer.

ANALYSIS AND CONCLUSIONS

First, we consider whether Plan Y is a "qualified replacement plan" within the meaning of section 4980(d)(2) of the Code. There are three (3) requirements, set forth in subparagraphs (A), (B), and (C) of the aforementioned section of the Code, that need to be satisfied.

As to (A), the "participation requirement", it is noted that 100% of the active participants in Plan X who remain in the employ of Company A will continue to be active participants in Plan Y. Therefore, this requirement is satisfied.

As to (B), the "asset transfer requirement", since a direct transfer of 25% of the excess assets in Plan X is to be made to Plan Y, before the reversion of the remaining 75% to Company A takes place, this requirement is satisfied.

As to (C), the "allocation requirement", the stipulation that the funds once transferred to the suspense account in Plan Y will be allocated to participants' accounts no less rapidly than ratably over a seven-plan-year period satisfies these requirements.

Accordingly, we conclude that Plan Y is a "qualified replacement plan" within the meaning of section 4980(d)(2) of the Code.

With respect to the specific rulings requested, we conclude the following:

(1) The transfer of 25 percent of the excess assets from Plan X to a suspense account in Plan Y, with the remaining excess assets of Plan X reverting to Company A, will not by itself affect the tax-qualified status of Plan X under section 401(a) of the Code.

(2) Plan Y will constitute a qualified replacement plan with the meaning of section 4980(d)(2) of the Code, and the transfer of 25 percent of the excess assets in Plan X, to a suspense account in Plan Y will not affect the tax-qualified status of Plan Y under section 401(a) of the Code.

(3) The 25 percent of the excess assets in Plan X that are to be transferred to a suspense account in Plan Y will not be included in the gross income of Company A in the year of transfer.

(4) No deduction will be allowable with respect to the transfer of 25 percent of the excess assets of Plan X.

(5) The transfer of 25 percent of the excess assets of Plan X will not be treated as an employer reversion under section 4980 of the Code; there will be no excise tax imposed on the assets so transferred; and the excise tax on the excess assets of Plan X that revert to Company A will be 20 percent.

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

Sincerely yours,

Martin L. Pippins

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Employee Plans Actuarial Group 2
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