

Number: 201532035
Release Date: 8/7/2015

In Re: 4980F Excise Tax Waiver

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP1
PLR-T-103102-15

Date:
May 06, 2015

Company =
Plan X =
Plan Y =
Administrator =

Dear _____ :

This is in response to your request dated September 15, 2014, as amended on March 31, 2015, in which you request a private letter ruling to waive the excise tax under 4980F of the Internal Revenue Code ("Code") as it applies to Plan X and Plan Y.

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

Company is in the business of manufacturing. It sponsors Plan X and Plan Y, both of which are money purchase pension plans intended to be qualified under section 401(a) of the Code.

On November 30, 2010, Company amended Plan X and Plan Y to modify the employer contribution rate for each plan effective January 1, 2011. Each amendment resulted in a reduction in the rate of future employer contributions for most active participants in Plan X and all active participants in Plan Y. Company worked with Administrator, the Plans' asset custodian and plan administrator, to assist with compliance with all notice requirements and communication of the amendments to the Plans to the affected participants, including the drafting of a Notice of Modification to Benefit Accruals (a "204(h) notice"). Administrator offers specialized retirement plan services, asset management and banking services, and customized plan administration to retirement plan sponsors.

On December 3, 2010, Company finalized a package of participant communications, which included 204(h) notices to be distributed at meetings to affected participants.

Company held face-to-face meetings on three different days with the affected participants to discuss the amendments to Plan X and Plan Y and to distribute the 204(h) notices. Company's CEO participated in all three meetings. On December 10, 2010, the participant communications package and 204(h) notice were sent via first class mail to the nine participants who were not able to attend either of the meetings.

On June 20, 2014, as part of a potential purchase of Company, Company's counsel requested copies of any communications and 204(h) notices sent to participants from the Company.

On August 12, 2014, Company's CEO was advised by its benefits counsel and counsel for the prospective buyer of Company that the 204(h) notices previously submitted to the affected participants were insufficient as they did not satisfy the content requirements for such notices. The notices did not compare the amounts to be allocated in the future to participant accounts under the terms of the plan as amended with the amounts to be allocated in the future to participant accounts under the terms of the plan prior to the amendment. Company's counsel advised that a new notice be sent to those who received the previous notice as soon as administratively feasible. New 204(h) notices were prepared for Plan X and Plan Y and delivered to Company on August 15, 2014, and the new notices were hand delivered to 77 of the participants who received the original 204(h) notices on August 20 and 21, 2014. The Company sent the new notices to the remaining 45 participants via registered mail on August 20, 2014. On August 27, 2014, Company sent notices to the last known addresses of two deceased participants who received the original 204(h) notices.

Based on the facts and representations stated above, Company requests a ruling that the tax imposed under section 4980F of the Code be waived under the provisions of section 4980F(c)(4) with respect to Company's failure to provide a complete section 204(h) notice to participants with respect to the amendments reducing employer contributions under the Plan X and Plan Y.

Section 4980F of the Code applies to plan amendments taking effect on or after June 7, 2001.

Section 4980F(a) of the Code imposes a tax on the failure of any applicable pension plan to meet the requirements of section 4980F(e) with respect to any applicable individual.

Section 4980F(b)(1) of the Code states that the amount of the tax imposed by subsection (a) shall be \$100 for each day of noncompliance.

Section 4980F(c)(4) of the Code provides that in the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the

tax imposed by Section 4980F(a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

Section 4980F(e)(1) of the Code provides that if an "applicable pension plan" is amended to provide for a significant reduction in the rate of future accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual.

Section 4980F(e)(2) of the Code provides that the notice required by Code section 4980F(e)(1) must be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment.

Section 4980F(f)(2) of the Code defines an "applicable pension plan" as any defined benefit plan described in section 401(a) of the Code which includes a trust exempt from tax under section 501(a), or an individual account plan which is subject to the funding standards of section 412 of the Code.

Based on the facts provided, Plan X and Plan Y are applicable pension plans for the purposes of section 4980F(e)(1) of the Code. Further, the facts indicate that Company acted reasonably when it provided 204(h) notices to affected employees, and the cause of the failure was due to reasonable cause and not to willful neglect. In this case, Company took reasonable actions by consulting with its plan administrator, a financial institution that provided financial and retirement plan administration services as part of its business. The Company relied on the plan administrator's advice and its drafting of the original notices prior to the amendments of Plan X and Plan Y taking effect. Company then hand delivered the notice to most of the affected employees at three meetings where Company's CEO gave a presentation that notified the participants of the amendments to the Plans. At the meetings, the participants were able to ask questions, and they had an opportunity to discuss the amendments to the Plans. Company also mailed the notices to those participants that were not able to attend any of the three meetings.

When Company's CEO was advised by its counsel that the notices originally provided to affected participants were insufficient and did not provide clear guidance to participants as to how to determine a participant's benefit accrual prior to and after the effective date of the amendment, new 204(h) notices were drafted and delivered to the participants who received the original notice as soon as administratively feasible. All revised 204(h) notices were sent within three weeks after the CEO learned of the deficiency. Company was not aware of any deficiencies in the original notices until its counsel made the CEO aware of them.

Thus, with respect to your ruling request, the excise tax under section 4980F of the Code as it applies to Plan X and Plan Y is waived pursuant to section 4980F(c)(4).

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

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely,

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

cc: