

Employer plans to adopt resolutions to terminate the Plan and pay out all participants and beneficiaries. Employer also plans to complete a standard termination of the Plan by filing with the Pension Benefit Guaranty Corporation. The Plan provides that upon termination of the Plan, if all liabilities with respect to participants and beneficiaries have been satisfied and there remains a balance in the trust due to erroneous actuarial

computation, such balance shall be returned to the Employer. This provision has been in the Plan document for more than five years.

Based on the valuation, the Plan's total liabilities are Amount 1 and the Plan's assets are Amount 2. After the Plan is terminated and all liabilities of the Plan are satisfied, approximately Amount 3 will remain in the Plan and trust ("Excess Amount"). Employer believes the Excess Amount results from errors made by the Plan's actuary when calculating the amount to be contributed to the Plan.

Based on the above facts and representations, you request the following rulings:

- (1) The return of the Excess Amount to Employer will not violate section 401(a)(2); and
- (2) The return of the Excess Amount to Employer will not constitute an employer reversion under section 4980.

Section 401(a)(2) generally prohibits, prior to the satisfaction of all liabilities with respect to employees and beneficiaries under the trust, the diversion of trust assets for purposes other than for the exclusive benefit of the employees or beneficiaries for whom an employer maintains a qualified pension plan.

Section 1.401(a)-2 of the Income Tax Regulations provides that section 1.401-2, a regulation promulgated prior to the Employee Retirement Income Security Act of 1974 ("ERISA"), provides rules under section 401(a)(2) which remain applicable unless otherwise provided.

Section 1.401-2 provides rules under section 401(a)(2) for the impossibility of diversion under the trust instrument. Section 1.401-2(b)(1) provides that the intent and purpose in section 401(a)(2) of the phrase "prior to the satisfaction of all liabilities with respect to employees and beneficiaries under the trust" is to permit the employer to reserve the right to recover at the termination of the trust, and only at such termination, any balance remaining in the trust which is due to erroneous actuarial computations during the previous life of the trust. A balance due to an "erroneous actuarial computation" is the surplus arising because actual requirements differ from expected requirements even though the latter were based upon previous actuarial valuations of liabilities or determinations of costs of providing pension benefits under the plan and were made by a person competent to make such determinations in accordance with reasonable assumptions and correct procedures related to the method of funding.

Section 4980(a) provides for an excise tax on the amount of any reversion of plan assets to the employer from a qualified plan. Section 4980(b) provides that the tax imposed by section 4980(a) shall be paid by the employer maintaining the plan.

Section 4980(c)(1)(A) provides, in part, that the term “qualified plan” means any plan meeting the requirements of section 401(a) or section 403(a) other than a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A.

Section 4980(c)(2)(A) defines the term “employer reversion” to mean the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from a qualified plan.

With respect to your first ruling request, the Plan’s total liabilities are Amount 1 and the total plan assets are Amount 2. As a result the Excess Amount, approximately Amount 3, will remain in the Plan until all of the Plan’s benefit liabilities are satisfied. Based on the facts and representations, the Excess Amount is the result of erroneous actuarial computations within the meaning of section 1.401-2(b)(1). The Plan document permits the return of excess trust assets due to erroneous actuarial computation if all liabilities with respect to participants and beneficiaries have been satisfied. In the present case, the return of the Excess Amount to Employer will not occur until after the satisfaction of all liabilities with respect to employees and beneficiaries of the trust of the Plan. Accordingly, the return of the Excess Amount to Employer will not violate section 401(a)(2).

With respect to your second ruling request, Employer represents that it has, at all times been exempt from tax under subtitle A. Therefore the Plan is not a qualified plan within the meaning of section 4980(c)(1)(A), and the return to Employer of Amount 3 will not constitute an employer reversion under section 4980.

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2018-1, 2018-1 I.R.B. 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such 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. 2018-1, section 11.05.

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

Sincerely,

Keith R. Kost
Senior Technician Reviewer
Qualified Plans Branch 2
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)

cc: