Internal Revenue Service

Significant Index No. 4980.00-00

Department of the Treasury

Washington, DC 20224

200107038

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T:A1

Date:

NOV 20 2000

In re: Ruling Request on behalf of

Company A =

Company B =

Plan X =

Plan Y =

Life Insurance Company =

State C =

Chapter D =

This is in response to your request for a ruling with respect to the reversion of plan assets from Plan Y to Company A. You have asked us for a ruling that:

(1) under section 4980 of the Internal Revenue Code, Plan X will constitute a "qualified replacement plan" in connection with the termination of Plan Y.

(2) under section 4980 of the Code, the excise tax applicable to the reversion to Company A will be 20% instead of 50%.

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Company A is a State C cooperative, organized under Chapter D of the State C Code, engaged in the business of providing agricultural products and services to its members. Company B was a State C cooperative engaged in similar business practices.

Effective September 1, 1997, Company A, the sponsor of Plan X, purchased Company B, the sponsor of Plan Y. Plan X is a 401(k) profit sharing plan that received its most recent determination letter on December 19, 1990. Plan Y is a defined benefit plan that received its most recent determination letter on September 29, 1995.

Pursuant to a board resolution on August 25, 1998, the Plan Y benefit accruals were frozen as of August 31, 1997. All accumulated benefits were distributed to the participants of Plan Y either in cash or through the purchase of deferred annuities from the Life Insurance Company. Cash single sums were paid between April 15, and May 3, 1999. Deferred annuities were purchased from the Life Insurance Company in September of 1999.

After the distributions and annuity purchases, excess assets remained in Plan Y. If a favorable ruling is received, Company A will transfer 25% of the value, at the time of transfer, of the excess assets. These funds will be set aside as a segregated over funding account (the "Over Funding Account") within Plan X. The remaining 75% of the excess assets will be distributed to Company A.

The funds in the Over Funding Account, and the future earnings on them, will be set aside for use as the employer match for future 401(k) elective deferrals by the former participants in Plan Y. Pending formal approval from the IRS, Plan X will be amended to allow the following course of action:

If the amount used from the Over Funding Account in the year of transfer of assets from Plan Y to Plan X, is less than one-seventh of the amount transferred from Plan Y, the difference will be allocated to the former employees of Company B in proportion to their compensation during the plan year. This process will be repeated for each subsequent year except that the minimum amount of transfer of the beginning amount of each year will be increased to one-sixth in the second year, one-fifth in the third year, one-fourth in the fourth year, one-third in the fifth year, one half in the sixth year, and 100 percent in the seventh year.

There were 21 participants in Plan Y. Company A offered 12 of the 14 active employees of Company B continued employment with Company A (two of the positions were eliminated) at the time of the purchase. All 12 of the former employees of Company B who were offered jobs now work for Company A and are now covered by Plan X.

Section 4980 of the Code provides rules for the tax applicable on the reversion of qualified plan assets to an employer. Section 4980(a) provides for the imposition of a tax of 20 percent of the amount of any employer reversion from a qualified plan. Section 4980(b) provides that the tax under section 4980(a) is to be paid by the employer maintaining the plan. Section 4980(d) provides, in general, that section 4980(a) is applied by substituting "50 percent" for "20 percent" with respect to any employer reversion from a qualified plan unless (A) the employer established or maintains a qualified replacement plan, or (B) the plan provides benefit increases meeting the requirements of section 4980(d)(3). Section 4980(d)(3) provides that the requirements of that paragraph are met if a plan amendment to the terminated plan is adopted in connection with the termination of the plan which provides pro rata increases in the accrued benefits of all qualified participants which (i) have an aggregate present value not less than 20 per cent of the maximum amount which the employer could receive as an employer reversion without regard to that subsection, and (ii) take effect immediately on the termination date.

Section 4980(d)(2) of the Code provides that, for purposes of that subsection, the tem "qualified replacement plan" is a qualified plan established or maintained by the employer in connection with a qualified plan termination with respect to which the participation, asset transfer, and allocation requirements of sections 4980(d)(A), (B), and (C), are met.

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

Section 4980(d)(2)(B) of the Code 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 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to section 4980(d), over the amount equal to the present value of the aggregated 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), such amount is not includible in the gross income of the employer, no deduction is allowable with respect to such transfer, and the transfer is not treated as an employer reversion for purposes of section 4980.

Section 4980(d)(2)(C)(i) of the Code provides that, in general, in the case of any defined contribution plan, the portion of the amount transferred to the replacement plan be allocated under the plan to (I) the accounts of the participants in which the transfer occurs, or (II) be credited to a suspense account and allocated no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer. Section 4980(d)(2)(ii) provides that if, by reason of any limitation under section 415, any amount credited to a suspense account under section 4980(d)(2)(C)(i)(II) may not be allocated to a participant before the close of the 7-year period, such amount shall be allocated to the accounts of other participants, and if any portion of such amount may not be allocated to other participants by reason of any such limitation, it shall be allocated to the participant as provided in section 415.

Section 4980(d)(2) of the Code provides that a qualified replacement plan is a qualified plan established or maintained by the employer in connection with a termination, which satisfies the requirements of sections 4980(d)(2)(A), (B), and (C). Section 4980(d)(2)(A), requires that at least 95 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. All 12 active participants of Plan Y who became employees of Company A became participants in Plan X. Therefore, because Plan X will cover 100 percent of the participants of Plan Y who remain employees of the employer, the requirements of Section 4980(d)(2)(A) are met.

Section 4980(d)(2)(B) of the Code, in relevant part, requires a direct transfer from the terminated plan to the replacement plan, before any employer reversion, in an amount equal to 25% of the maximum amount the employer could receive as an employer reversion without regard to this section. Because Company A will transfer 25% of Plan Y's remaining assets upon a favorable ruling for this request, the requirements of Section 4980(d)(2)(B) are met. Section 4980(d)(2)(C) requires, generally, that in the case of any defined contribution plan, the portion of the amount transferred to the replacement plan be allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or credited to a suspense account and allocated to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer. Amounts transferred from Plan Y to Plan X will be credited to a suspense account and allocated to the accounts of participants as an employer match for future 401(k) deferrals of the former participants in Plan Y. Pending approval from the IRS of amendments to Plan X, allocations to the participants will be at minimum, done ratably over a seven year period. Therefore, since the requirements of Section 4980(d)(2)(A), (B), and (C), are met, Plan X is a qualified replacement plan within the meaning of Code Section 4980(d)(2).

Section 4980(a) of the Code provides for the imposition of a tax of 20 percent of the amount of any employer reversion from a qualified plan. Section 4980(d)(1) provides that "50 percent" is substituted for "20 percent" in section 4980(a) with respect to any employer reversion from a qualified plan unless the employer establishes or maintains a qualified replacement plan, or the plan provides benefit increases meeting the requirements of section 4980(d)(3). Because Company A maintains a qualified replacement plan, the rate of tax imposed upon any amounts treated as an employer reversion from Plan Y will be 20 percent.

Conclusions

(1) Assuming that Plan X is at all relevant times a qualified plan under section 401, and that Plan X is amended to provide for ratable, at minimum, over a seven year period, distributions from the Overfunding Account, Plan X constitutes a "qualified replacement plan" within the meaning of section 4980(2) of the Code.

(2) The rate of excise tax imposed on Company A with respect to any employer reversion subject to section 4980 of the Code from Plan Y will be 20 percent.

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

A copy is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file.

Sincerely,

James E. Holland Jr.

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Manager, Actuarial Group 1
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