Internal Revenue Service

Department of the Treasury

Significant Index No. 4980.00-00

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply to:
T:EP:RA:T:A1
Date: OCT 0 2 2001

In re: Employer =

Parent =
Plan =
401(k) Plan =

This letter is in response to your letter dated August 2, 2000 requesting rulings with respect to the applicable income and excise tax on a reversion of surplus assets to the Employer on account of the termination of the Plan and a transfer of assets from the Plan to the 401(k) Plan.

The Employer is incorporated under the laws of The Parent is incorporated under the laws of The Parent owns the Employer. Both the Employer and the Parent are corporations exclusively engaged in the

In , the Parent merged two of its acquisitions to form the Employer. The Employer and the Parent have represented that each has at all times been exempt from U.S. income tax, either by international treaty or by Code § 883. The Employer has further represented that each of the two companies that were merged to form the Employer has at all times been exempt from U.S. income tax, either by international treaty or by § 883.

Neither the Employer nor either of the two companies merged to form the Employer has taken a deduction for any contribution to the Plan because none of the entities pays United States corporate income tax. The Employer has taken no other tax benefit for these contributions. The Employer is the only employer that has maintained the Plan.

The Plan, a defined benefit plan, was originally established effective
Your authorized representative has stated that all plan participants are either citizens or residents of the United States. Effective , the Plan was amended and restated by one of the two companies that was to become the Employer. The Employer filed a determination letter request for the tax-qualified status of the Plan upon its termination and the Plan was terminated effective . The Employer has made lump sum distributions to those participants that elected to receive their benefit in that form. For those who did not receive a lump sum distribution, the Employer used Plan assets to purchase annuity contracts.

Upon termination and the satisfaction of all the Plan's liabilities, an amount of residual assets remains. Section of the Plan provides that any residual assets, upon termination of the Plan, shall be distributed to the Employer if all liabilities under the Plan to Plan participants have been satisfied.

Based on the foregoing, the following rulings are requested:

(1) If the Employer determines to recover all or a portion of the excess assets, in accordance with § 4980(c)(1), the excise tax imposed by § 4980 will not apply to the reversion because the Employer is a foreign corporation not subject to corporate income taxes imposed by subtitle A of the Code and has not taken a deduction for any contribution to the Plan.

(2) If the Employer determines to recover all or a portion of the excess assets, such amount will not be includible in the gross income of the Employer or any affiliate of the Employer.

Code § 883(a)(1) provides that gross income derived by a corporation organized in a foreign country from the international operation of a shall not be included in that corporation's gross income and shall be exempt from taxation under this subtitle. However, to be eligible for this exemption, the foreign corporation must also satisfy certain ownership requirements found in § 883(c).

Code § 4980(a) provides for a 20% excise tax on the amount of any employer reversion from a qualified plan. Section 4980(d), as added by the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, (the Act), provides, in general, that the excise tax under § 4980(a) shall be increased to 50% with respect to any employer reversion from a qualified plan unless the employer either establishes or maintains a qualified replacement plan, or the plan provides for benefit increases which take effect immediately on the termination date. Code § 4980(c)(2)(A) provides that the term "employer reversion" means the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

Code § 4980(c)(1) provides, in pertinent part, that the term "qualified plan" does not include a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A of the Code. Accordingly, § 4980 does not apply to a reversion by such an employer from such a plan.

The Employer (along with each of the two companies that were merged to form the Employer) is and has been at all times exempt from taxation pursuant to Code § 883(a)(1) and has not taken a deduction for any contribution to the Plan. Accordingly, with respect to the first ruling request, pursuant to § 4980(c)(1), the excise tax under § 4980 does not apply to the amount of excess assets the Employer recovers after the termination of the Plan.

As stated above, the Employer (along with the two companies that were merged to form the Employer) is and has been exempt from taxation pursuant to Code § 883(a)(1). Also, the Employer has not taken a deduction for any contribution to the Plan. Accordingly, with respect to the second ruling request, any excess assets recovered by the Employer in connection with the termination of the Plan will not be includible in the gross income of the Employer. Because we ruled favorably with respect to the first ruling request, the remaining ruling requests are moot.

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

This ruling letter is conditioned on the Employer's representations described above regarding the tax-exempt status of the Employer, the Parent and the two companies that were merged to form the Employer. These rulings are based on the assumptions that the Plan is qualified under § 401(a) and that its related trust is tax-exempt under § 501(a) at all times relevant to this ruling.

We have sent a copy of this letter to your authorized representative pursuant to Form 2848 (Power of Attorney) on file with our office. We have also sent a copy of this letter to the Employee Plans Area Manager for the

Sincerely,

James E. Holland, Jr.

James E. Holland, Jr., Manager
Employee Plans Actuarial Group 1
Tax Exempt and Government Entities
Division