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Internal Revenue Service

National Office Technical Advice Memorandum

District Director
District Office (EP/EO)
Information Copy: Chief, EP/EO Division

Taxpayer =
Taxpayer's Address =

Taxpayer's Identification Number =
Year Involved = 8406

Plan F =

No Conference Held

Issue

Are the contributions made to Plan F by Taxpayer after the end of the taxable year ending June 30, 1984, and deducted on its income tax return for that year made on account of such taxable year within the meaning of § 404(a)(6) of the Internal Revenue Code ("the Code")?

Facts

Taxpayer maintains Plan F, which is a single-employer defined benefit pension plan covering certain of its employees. The plan year of the plan is the fiscal year beginning July 1 and ending June 30. Taxpayer files its income tax return based on a fiscal year ending June 30. Taxpayer contributes to the Plan on a monthly basis.

The actuarial report for Plan F for the plan year ending June 30, 1984, dated February 21, 1984, indicates that the minimum funding contribution required under section 412 for that year was $71,492,000, (which reflects an existing credit balance in the funding standard account of $3,284,000) and the maximum contribution that would be deductible in accordance with § 404 for that year was $117,291,000. The report also suggests that Taxpayer make a "recommended contribution" of $75,443,000. All of these amounts were calculated by the plan's actuary based on the assumption that

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Taxpayer's contributions to Plan F would be made in monthly installments.

Taxpayer contributed to Plan F during the course of the fiscal year ending June 30, 1984, in twelve monthly installments totalling the recommended contribution amount ($75,443,000), as follows:

July 1983	$ 5,625,000
August 1983	$ 5,625,000
September 1983	$ 5,625,000
October 1983	$ 5,625,000
November 1983	$ 5,625,000
December 1983	$ 4,525,000
January 1984	$ 5,625,000
February 1984	$11,997,000
March 1984	$ 6,293,000
April 1984	$ 6,293,000
May 1984	$ 6,293,000
June 1984	$ 6,292,000
Total	$75,443,000

Each of the monthly contributions was made by wire transfer and each contribution was designated for the particular month and year in a concurrent letter sent to the plan trustee.

Also, in July through December of 1984, Taxpayer made the following contributions to Plan F, designating them each as a contribution for the respective month in which it was made, as follows:

July 1984	$ 7,450,000
August 1984	$ 7,450,000
September 1984	$ 6,900,000
October 1984	$ 7,267,000
November 1984	$ 7,267,000
December 1984	$ 5,514,000
Total	$41,848,000

Taxpayer claimed a total deduction of $117,291,000 for its contributions to Plan F ($75,443,000 contributed during its fiscal year ending June 30, 1984, plus $41,848,000 contributed July through December 1984) on its income tax return for its fiscal year ending June 30, 1984. The $41,848,000 has been reported as contributions for the plan year ended June 30, 1984, on an amended Form 5500 and amended Schedule B.

Upon examination of Taxpayer's income tax return for its fiscal year ending June 30, 1984, the Service made a number of adjustments. Among other items, the Service determined that Taxpayer had overstated its pension expense for that year by $41,848,000, the total amount contributed to Plan F in July through December of 1984, and assessed a deficiency in income tax based on that determination. Taxpayer paid the deficiency, and filed an amended return for its fiscal year ending June 30, 1984, seeking a refund. This amended return places in issue the determination that the $41,848,000 contributed to Plan F in July through December 1984 was not deductible by Taxpayer in its fiscal year ending June 30, 1984.

Applicable law

Section 404(a) of the Code provides in relevant part that if an employer pays contributions to a deferred compensation plan, and such contributions are otherwise deductible under chapter 1 of the Code, those contributions are deductible under section 404 (subject to certain limitations) in the taxable year of the employer when paid, and are not deductible under any other section of chapter 1 of the Code. In the case of a contribution that is otherwise deductible under section 162 or 212,[1] §1.404(a)-1(b) of the Income Tax Regulations provides that in order to be deductible under § 404(a), the contribution must be an ordinary and necessary expense during the taxable year in carrying on a trade or business or for the production of income and must be compensation for services actually rendered.

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[1] The regulations refer to deductibility under sections 162 and 212 (rather than "otherwise deductibility") because they were published before technical corrections of section 404 were enacted in 1986. The technical corrections apply retroactively to amounts paid or incurred after July 18, 1984, in taxable years ending after that date.

Section 404(a)(1)(A) limits the amount of a taxpayer's deduction for contributions to a qualified pension plan and further provides that, in determining the amount deductible, the funding method and the actuarial assumptions used for a taxable year are those used for the year under section 412. Under § 404(a)(1)(A), the maximum amount deductible for contributions to a defined benefit plan is the greater of the amount necessary to satisfy the minimum funding standard under section 412 and the amount determined with reference to § 404(a)(1)(A)(ii) or (iii), whichever is applicable to the plan.

Section 404(a)(6) provides in relevant part that, for purposes of § 404(a)(1), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

Rev. Rul. 76-28, 1976-1 C.B. 107, provides guidance for applying section 404(a)(6), and states that the guidance provided by the revenue ruling applies "[w]hether a taxpayer is on the cash or accrual method of accounting, and whether or not the conditions for accrual otherwise generally required of accrual basis taxpayers have been met." Under Rev. Rul. 76-28, an employer's contribution to a qualified retirement plan made after the close of an employer's taxable year, to which section 404(a)(6) applies shall be considered to be on account of the preceding taxable year if (a) the plan treats the payment as it would treat a payment actually received on the last day of the employer's preceding taxable year and (b) either of the following conditions is satisfied:

(1) The employer designates the payment in writing to the plan administrator or trustee as payment on account of the employer's preceding taxable year, or

(2) The employer claims such payment as a deduction on its tax return for such preceding taxable year, including extensions thereof.

Rev. Rul. 76-28 provides that for purposes of the above requirements, a payment may be designated as a payment on account of the preceding taxable year in the manner provided above at any time on or before the due date of the employer's tax return for such year (including extensions thereof). In addition, Rev. Rul. 76-28 provides that once a payment has been designated or claimed on a return in the

manner provided as being on account of a preceding taxable year, the choice made shall be irrevocable and an employer may not retract or change such designation or claim.

Analysis

Section 404(a)(6) of the Code is solely concerned with the timing of contributions to a plan and allows certain contributions made after the end of the taxable year to be treated as if made on the last day of the taxable year. Furthermore, in order for contributions made after the end of the taxable year, but not later than the time prescribed by law for filing the tax return for such taxable year (including extensions thereof), to be considered to be made on the last day of the preceding taxable year, such contributions must be on account of the preceding taxable year. The issue presented here is a narrow one of whether the contributions in question were made on account of the preceding taxable year withing the meaning of section 404(a)(6). The mere fact that contributions are made within the period described in § 404(a)(6) does not make them deductible during the prior taxable year, nor does such fact automatically render them on account of the preceding year.

Under Rev. Rul. 76-28, a contribution made after the end of the taxable year shall be considered to be on account of the preceding taxable year if (a) the payment is treated by the plan in the same manner that the plan would treat a payment actually received on the last day of such preceding taxable year of the employer, and (b) either (1) the employer designates the payment in writing to the plan administrator or trustee as a payment on account of the employer's preceding taxable year, or (2) the employer claims such payment as a deduction on the tax return for such preceding taxable year. Here it is clear that Taxpayer claimed the amounts as a deduction for the taxable year ended June 30, 1984, thereby satisfying the second requirement of Rev. Rul. 76-28. The real issue relates to the first requirement of Rev. Rul. 76-28.

In the context of § 404(a)(6), the first requirement of Rev. Rul. 76-28 is satisfied if the plan treats the contribution made after the end of the taxable year in the same manner that the plan would treat a contribution made for such preceding taxable year that was actually received on the last day of the such preceding taxable year. Then, such a contribution for a taxable year that was made after the end of the taxable year would be considered on account of the preceding taxable year. This requirement was satisfied by Taxpayer for the contributions made after June 30, 1984, through December 1984 as discussed below.

The contributions in question have been treated as contributions made to the plan on June 30, 1984. They have been recorded as contributions on an amended Form 5500 and Schedule B for the plan year ended June 30, 1984 (as permitted by § 412(c)(10) of the Code). The credit balance in the funding standard account as of June 30, 1984, includes such amounts. The calculations of experience gains and losses for purposes of section 412 treated such contributions as made on June 30, 1984. (Therefore, the contributions will give rise to an experience loss to the extent interest was expected to be earned from June 30, 1984, but no interest was earned because the contributions were actually made later.) Thus, the amended returns treat the contributions as being made on June 30, 1984, for accounting and funding purposes. That treatment is sufficient to establish that the plan treated the contributions in question in the same manner as it treats contributions actually received on the last day of the employer's taxable year.

Conclusion

Under the facts of this case, the contributions made by Taxpayer to Plan F after June 30, 1984, through December 1984, that were deducted on Taxpayer's income tax return for the taxable year ended June 30, 1984, were on account of such preceding taxable year within the meaning of § 404(a)(6) of the Code.