Significant Index No. 411.00-00

200337015

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 17 2003

T:EP:RA:T:A1

In Re:

Plan A =

Plan B =

This letter revokes our letter of January 15, 2003, in which it was ruled that a contemplated merger of Plan A and Plan B would not have required vesting service credit under the merged plan with regard to service before the effective date of Plan A for any Plan A participant who was never a participant in Plan B. Your authorized representative has informed us that the contemplated merger has not taken place and that you may reconsider the merger in light of this revised ruling.

Facts

The Company intended to merge Plan A and Plan B effective as of December 31, 2002. Hereinafter the plan that was to be created by the merger of Plan A and Plan B will be known as the Merged Plan.

Plan A was established effective January 1, 2002. The accrued benefit, as of any given date, is defined in Plan A, as the monthly amount of retirement income that would be payable in the form of a single life annuity that is the actuarial equivalent of the participant's cash balance account.

Plan A generally provides for 100 percent cliff vesting after five years of vesting service. Vesting service is generally defined in Plan A as years, months, and days of active employment with the Company after December 31, 2001. However, Plan A also provides that vesting service includes, for participants who were covered under Plan B, employment with the Company during which such participants were covered under Plan B.

Plan B was established effective January 1, 1989, through the merger of two frozen defined benefit pension plans. Subsequently, four additional frozen pension plans were merged into Plan B. All participants in Plan B are 100 percent vested in their accrued benefits. Plan B is substantially overfunded.

Participants in the Merged Plan who were formerly participants in Plan A would have continued to accrue cash balance plan benefits under the Merged Plan. Frozen accrued benefits for participants in the Merged Plan who were formerly participants in Plan B would have continued to be frozen. Participants who were formerly participants in both Plans A and B would have continued to accrue cash balance plan benefits under the Merged Plan and the accrued benefits under Plan B for such participants would have continued to remain frozen.

In accordance with the foregoing you requested a ruling that:

> The merger of Plan A and Plan B would not require vesting service credit under the Merged Plan with regard to service before the effective date of Plan A for any Plan A participant who was never a participant in Plan B.

Three other ruling requests were withdrawn, two of which pertained to the application of section 412 of the Code to the merger of Plan A and Plan B.

Law and Analysis

In effect, you requested a ruling that the Merged Plan was not maintained by the Company before December 31, 2002, and thus the exception provided for in subsection (C) of section 411(a)(4) of the Code is applicable for Plan A participants who were never participants in Plan B.

Section 411(a)(4) of the Code provides that, in the determination of the periods of service under a plan for the purpose of determining the nonforfeitable percentage under that section, all of an employee's years of service with the employer maintaining the plan shall be taken into account with certain exceptions. Subsection (C) of that section provides an exception for years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary).

Section 1.411(a)-5(b)(3)(ii) of the Income Tax Regulations provides that in the case of a transfer of assets or liabilities (including a merger or consolidation) involving two plans maintained by a single employer, the successor (or transferee) plan is treated as if it was established at the same time as the date of establishment of the earliest component plan.

Revenue Ruling 2003-65, 2003-25 IRB 1035, provides that if accruals are earned under a new plan that is merged with a frozen plan, each of which is maintained by the same employer, then service after the frozen plan was established must be taken into account for purposes of vesting in any benefit accruals under the new plan.

In the instant case, if the contemplated merger takes place, the Merged Plan would be formed by a merger of Plan A and Plan B, each of which is maintained by the Company. Thus, the Merged Plan would be treated as if it was established at the same time as the date of establishment of the earlier of the establishment dates of Plan A and Plan B, or in this case, January 1, 1989.

Thus, because the Merged Plan would be treated as if it was established January 1, 1989, years of service with the Company after January 1, 1989, by participants in Plan A who were never participants in Plan B would not fall within the exception provided for in section 411(a)(4)(C) of the Code. Therefore, it is ruled that, if the merger of Plan A and Plan B takes place, years of service with the Company after January 1, 1989, by Plan A participants who were never participants in Plan B must be taken into account for the purpose of determining the nonforfeitable percentage (unless such years fall within one or more of the other exceptions provided for in section 411(a)(4)).

This ruling does not consider the more general issue of the Merged Plan's qualified status, specifically, whether the Merged Plan would comply with all the Code requirements for qualification. This ruling assumes that at all relevant times, Plan A and Plan B are qualified plans.

This letter 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 of this letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file.

If you have any questions on this letter, please contact

Sincerely,

James E. Holland, Jr., Manager
Employee Plans Technical