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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 15 2003

T:EP:RA:T:AT

In Re:

Plan A =

Plan B =

This is in response to your request for a ruling on the proper treatment of vesting service credit under Plan A upon its merger with Plan B under sections 401(a)(7) and 411 of the Internal Revenue Code (the "Code").

Facts

The Company intends to merge Plan A and Plan B effective as of December 31, 2002. Hereinafter the plan 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 will continue 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 will continue to be frozen. Participants who were formerly participants in both Plans A and B will also continue to accrue cash balance plan benefits under the Merged Plan and the accrued benefits under Plan B for such participants will continue to remain frozen.

In accordance with the foregoing you have requested a ruling that:

> The merger of Plan A and Plan B will 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

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)(v)(A) of the Income Tax Regulations (the "regulations") provides the general rule that, in the case of an employee who was covered by a predecessor plan, the time the successor of such plan is maintained for such employee includes the time the predecessor plan was maintained if, as of the later of the time the predecessor plan is terminated or the successor plan is established, the employee's year of service under the predecessor plan are not equaled or exceeded by the aggregate number of consecutive 1-year breaks in service occurring after such years of service.

Section 1.411(a)-5(b)(3)(v)(C) of the regulations provides an illustration of the general rule of subdivision (v)(A) of that subparagraph. As made clear in the example, with respect to an employee who was not covered by the predecessor plan, a predecessor plan is not maintained until the establishment of the successor of that plan.

In the instant case, Plan B is the predecessor plan, and Plan A is the successor of Plan B. Thus, section 1.411(a)-5(b)(3)(v)(A) of the regulations provides, with respect to employees who were not covered under Plan B, that Plan B was not maintained until the establishment of Plan A. Accordingly, years of service with the Company before the establishment of Plan A may be disregarded for the purpose of determining the nonforfeitable percentage under the Merged Plan for employees who were not covered under Plan B. Therefore, it is ruled that the merger of Plan A and Plan B will 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.

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