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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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Telephone Number:

Refer Reply To:
CC:EEE:EB:HW
PLR-122901-23

Date:
May 20, 2024

Legend

Taxpayer =

Dear :

This letter responds to your letter dated October 26, 2023, supplemented by your correspondence dated April 3, 2024, requesting a private letter ruling regarding a proposed amendment to Taxpayer's 401(k) Plan ("401(k) Plan"), a proposed amendment to Taxpayer's retiree health reimbursement arrangement ("Retiree HRA"), a proposed amendment to Taxpayer's educational assistance program ("Educational Assistance Program"), and the proposed allocation by Taxpayer of employer contributions to an employee's Health Savings Accounts ("Employee's HSA"). Taxpayer proposes to amend these programs to allow eligible employees the choice to allocate an employer contribution of percent of compensation among these programs.

FACTS

401(k) and Profit-Sharing Plan

The 401(k) Plan, a profit-sharing plan with a cash or deferred arrangement, provides for employee deferrals (as either pre-tax or post-tax (Roth) contributions) and two kinds of employer contributions.

One employer contribution is a safe harbor non-elective contribution to the 401(k) Plan equal to percent of eligible compensation per pay period. The second employer contribution is a discretionary employer contribution to the 401(k) Plan ("Discretionary Contribution") of to percent of annual eligible compensation.

Employees are eligible for the Discretionary Contribution after the completion of a one-year period of service. To be eligible to receive the Discretionary Contribution for a plan year, the employee must be employed on the last day of the plan year subject to certain exceptions for death, disability, or retirement after a specified age. The Discretionary Contribution is contributed to the 401(k) Plan on or about March 15 of the year following the year to which it relates. Employees generally do not have the ability to direct the investment of their Discretionary Contribution and these contributions are subject to a six-year graded vesting schedule.

Retiree HRA

Taxpayer provides a Retiree HRA. To be eligible to participate in the Retiree HRA, an employee must retire at age 55 or older and must have at least 10 years of service. During employment, Taxpayer makes a notional contribution to employees' Retiree HRA accounts each December 31 in the amount of $ a year for full-time employees and $ a year for part-time employees working over 24 hours per week. Each December 31, Taxpayer also credits each employee's HRA account balance with interest based on the 10-year Treasury rate plus percent.

At retirement, the employee's balance is increased by percent if the employee is married. If a participant terminates employment before reaching at least age 55 with 10 years of service, the Retiree HRA account balance is forfeited. The amounts in the Retiree HRA may only be used to provide benefits that reimburse medical expenses under section 213(d) of the Internal Revenue Code ("Code") and employees may not receive the value of the HRA account in cash. Any unused portion of the maximum dollar amount available during the coverage period is carried forward to subsequent periods even after the employee retires (except for any amount forfeited under the Retiree HRA upon termination of employment as described above).

Upon death after retirement, any remaining available HRA account balance will be transferred to a surviving spouse or other eligible dependents or if there is no surviving spouse or other eligible dependent, then the HRA account balance will be forfeited.

Health Savings Account

Taxpayer offers a high deductible health plan (HDHP) within the meaning of section 223(c)(2). Employees who elect the HDHP and who are otherwise eligible individuals under section 223(c)(1) are eligible to contribute to the Employee's HSA on a pre-tax basis through salary reduction to Taxpayer's section 125 cafeteria plan. Taxpayer also makes matching employer contributions up to $ for employees with self-only HDHP coverage and $ for employees with family HDHP coverage. Taxpayer ensures that the total employee and employer contributions will not exceed the annual contribution limits under section 223(b).

Educational Assistance Program

Taxpayer sponsors an Educational Assistance Program under section 127 that reimburses full-time employees certain education expenses taken for academic credit. The maximum annual assistance under the program is $ for undergraduate level courses and $ for graduate level courses or a combination of undergraduate and graduate level courses. The Educational Assistance Program also pays the full cost of certain online undergraduate and graduate degrees and certifications at . For each employee that receives amounts from the Educational Assistance Program, Taxpayer excludes up to $5,250 each calendar year under section 127. Benefit payments received by employees from the Educational Assistance Program that exceed $5,250 are taxed as wages subject to withholding.

Proposed Amendments

Taxpayer currently provides for a Discretionary Contribution to the 401(k) Plan of to percent of annual eligible compensation. Taxpayer proposes to reduce its Discretionary Contribution to the 401(k) Plan to to percent of annual eligible compensation. Taxpayer proposes to provide eligible employees with a choice to make an annual irrevocable election to allocate an additional employer contribution equal to percent of compensation ("Employer Contribution") (limited to $) among the 401(k) Plan, the Retiree HRA (provided the employee is age 55 or older and has 10 years of service at the time of the employee's election), the Educational Assistance Program (solely for the purpose of student loan payments under section 127(c)(1)(B)), or an Employee's HSA. Employees would not be permitted to receive the Employer Contribution in the form of cash or as a taxable benefit.

Any amount of the Employer Contribution equal to percent of compensation that exceeds $ will not be allocated by an employee but instead will be contributed to the 401(k) Plan on behalf of the employee and will vest immediately. If an eligible employee does not make an election, then the Employer Contribution would be allocated to the 401(k) Plan and would vest immediately.

Under the proposed amendments, eligible employees would make the annual irrevocable election during open enrollment. Taxpayer would make the Employer Contribution in accordance with the employee's election (or if no election has been made, the Employer Contribution would be made to the 401(k) Plan) by March 15 of the following year. The Employer Contribution would be treated as a contribution or benefit payment in the following year for purposes of the 401(k) Plan, an Employee's HSA, and the Educational Assistance Program. Contributions made to the Retiree HRA would be treated as a notional contribution made on December 31 in the same year as the employee's election because Taxpayer uses that date to credit interest to the Retiree HRA.

In addition, Taxpayer proposes to amend the Educational Assistance Program under section 127 to provide student loan payments if an employee allocates the Employer Contribution to the Educational Assistance Program. This amendment would allow for student loan payments (through December 31, 2025, unless the provision under section 127(c)(1)(B) that excludes from the gross income of an employee, payment by an employer of principal or interest on any qualified education loan as defined under section 221(d)(1) is extended) from the Educational Assistance Program. The Educational Assistance Program would make the student loan payments directly to the lender.

The proposed plan amendments would also provide that employees who elect to have the Employer Contribution allocated either to the Educational Assistance Program or as an Employee's HSA contribution would not be eligible to receive other benefits from the Educational Assistance Program or to make pre-tax payroll contributions to the Employee's HSA until after March 15 of the following year to prevent contributions greater than the applicable limit under section 127(a)(2) or 223(b).

Taxpayer represents that the plan amendments would only change the Discretionary Contributions to the 401(k) Plan, and that no changes would be made to the percent safe harbor non elective contribution to the 401(k) Plan.

RULINGS REQUESTED

Taxpayer requests the following rulings:

(1) The proposed amendment to the 401(k) Plan will not cause the 401(k) Plan to offer an additional cash or deferred arrangement pursuant to section 401(k), such that the Employer Contribution is considered an employee pre-tax contribution subject to the annual limitation under section 402(g);

(2) The proposed amendment to the Retiree HRA will not affect the treatment of contributions to and payments made from the Retiree HRA that are used to pay and reimburse section 213(d) medical expenses of employees, retirees, and their spouses and dependents as amounts excludable from the gross income of the employees, retirees, and their spouse and dependents under sections 105(b) and 106;

(3) The proposed allocation of any of the Employer Contribution to an Employee's HSA is excludable from employees' gross income under section 106(d);

(4) The proposed amendment to the Educational Assistance Program will not affect the treatment of payments made under the Educational Assistance Program as amounts excludable from an employee's gross income under section 127(a)(1), up to the limit provided for in section 127(a)(2); and

(5) The employees' ability to allocate the contribution between different programs will not prevent the Educational Assistance Program from qualifying as an educational assistance program under section 127.

LAW

401(k)

Section 401(k)(2)(A) provides that a qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing plan or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan, which meets the requirements of section 401(a), and under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash.

Treas. Reg. § 1.401(k)-1(a)(3)(i) provides that a cash or deferred election is any election by an employee to have the employer either: (A) provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available, or (B) contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation.

Treas. Reg. § 1.401(k)-6 defines non-elective contributions as employer contributions (other than matching contributions) with respect to which the employee may not elect to have the contributions paid to the employee in cash or other benefits instead of being contributed to the plan.

Treas. Reg. § 1.401(k)-6 defines elective contributions as employer contributions made pursuant to a cash or deferred election under a cash or deferred arrangement.

Treas. Reg. § 1.402(a)-1(a)(1)(i) provides that employer contributions to a profit-sharing plan under section 401(a) are generally excludable from an employee's gross income except for the year(s) in which the contribution is distributed to the employee.

Retiree HRA

Section 106 provides that gross income of an employee does not include employer-provided coverage under an accident or health plan. Treas. Reg. § 1.106-1 provides that the gross income of an employee does not include contributions which the employee's employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by the employee or the employee's spouse or dependents (as defined in section 152). The employer may contribute to an accident or health plan either by paying the premium on a policy of accident or health insurance covering one or more of the employees, or by contributing to a separate trust or fund which provides accident or health benefits

directly or through insurance to one or more of the employees. However, if the insurance policy, trust or fund provides other benefits in addition to accident or health, section 106 applies only to the portion of the contributions allocable to accident or health benefits.

Section 105(b) states that except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical expenses) for any prior taxable year, gross income does not include amounts attributable to employer-provided coverage if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care (as defined in section 213(d)) of the taxpayer, spouse, or dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) and any child (as defined in section 152(f)(1)) who has not attained age 27 as of the end of the taxable year.

Treas. Reg § 1.105-2 provides that only amounts that are paid specifically to reimburse the taxpayer for expenses incurred by the taxpayer, spouse, or dependents (as defined in section 152) for the prescribed medical care are excludable from the taxpayer's gross income. Thus, section 105(b) does not apply to amounts that the taxpayer would be entitled to receive irrespective of whether or not the taxpayer incurs expenses for medical care.

In Rev. Rul. 2002-41, 2002-2 CB 75, an employer sponsored a health reimbursement arrangement that was paid for solely by the employer and not through salary reduction contributions. The HRA reimbursed substantiated medical care expenses (as defined in section 213(d)) of participating employees and their spouses and dependents (as defined in section 152) up to a maximum annual reimbursement amount. Unused amounts from one coverage period were carried forward to subsequent coverage periods. Participating employees had no right to receive cash or any other benefit in lieu of medical expense reimbursements. In Situation 2 of Rev. Rul. 2002-41, the maximum reimbursement amount under the HRA that was not applied to reimburse medical care expenses before an employee retires or otherwise terminates employment continues to be available after retirement or termination for any medical care expense under section 213(d) incurred by the former employee or the former employee's spouse and dependents. The ruling concludes that coverage and reimbursements made under the HRA are excludable from the gross income of participating employees under sections 106 and 105(b).

Notice 2002-45, 2002-2 CB 93, provides that an HRA is an arrangement that: (1) is paid for solely by the employer and not pursuant to salary reduction; (2) reimburses the employee for medical care expenses (as defined in section 213(d)) incurred by the employee and the employee's spouse and dependents (as defined in section 152); and (3) provides that any unused portion of the maximum dollar amount available during the coverage period is carried forward to subsequent periods. Notice 2002-45 also provides that benefits under an HRA must be limited to reimbursements of section 213(d)

medical expenses and that all such expense reimbursements must be substantiated to be excludable under section 105. Notice 2002-45 further provides that medical care expense reimbursements under an HRA are excludable under section 105(b) if the reimbursements are provided to the following individuals: current and former employees (including retired employees), their spouses and dependents (as defined in section 152 as modified by the last sentence of section 105(b)), and the spouses and dependents of deceased employees.

Health Savings Account

Section 106(d) provides that, in the case of an employee who is an eligible individual under section 223(c)(1), amounts contributed by the employee's employer to the employee's HSA (as defined in section 223(d)) are treated as employer-provided coverage for medical expenses under an accident or health plan and are excludable from the employee's gross income to the extent that the amounts do not exceed the limit set forth in section 223(b).

Educational Assistance Program

Section 127(a)(1) provides that the gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to an educational assistance program described in section 127(b). Section 127(a)(2) provides that the maximum amount excludable from an employee's gross income under section 127 is $5,250 per calendar year.

Section 127(b)(1) requires a qualified educational assistance program to be a separate written plan for the exclusive benefit of the employer's employees.

Section 127(b)(4) provides that a qualified educational assistance program must not provide employees with a choice between educational assistance and other remuneration includible in the employee's gross income.

Section 127(c)(1)(B) provides that qualified educational assistance includes, in the case of payments made before January 1, 2026, the payment by an employer, whether paid to the employee or to a lender, of principal or interest on any qualified education loan (as defined in section 221(d)(1)) incurred by the employee for the education of the employee.

Treas. Reg. § 1.127-2(b) provides that, while an educational assistance plan must be a separate written plan, "[t]he requirement for a separate plan does not, however, preclude an educational assistance program from being a part of a more comprehensive employer plan that provides a choice of nontaxable benefits to employees." Treas. Reg. § 1.127-2(c)(1) provides that the benefits provided under a qualified educational assistance program must consist solely of educational assistance.

Treas. Reg. § 1.127-2(c)(2) provides that benefits will not be considered to consist solely of educational assistance if the program, in form or in actual operation, provides employees with a choice between educational assistance and other remuneration includible in the employee's gross income.

ANALYSIS AND CONCLUSION

401(k)

Taxpayer's proposed amendments to provide eligible employees with a choice to allocate the additional Employer Contribution (limited to $) to the 401(k) Plan, to the Retiree HRA, to the Employee's HSA, or to the Educational Assistance Program, are made pursuant to an irrevocable annual election. The proposed amendments do not permit employees to elect between having the Employer Contribution paid in cash (or some other taxable benefit) or contributing it to a plan deferring the receipt of compensation. Accordingly, the proposed amendment to the 401(k) Plan will not cause the 401(k) Plan to offer an additional cash or deferred arrangement pursuant to section 401(k). Further, the Employer Contribution is not considered an employee pre-tax contribution subject to the annual limitation under Code section 402(g).

Retiree HRA

Taxpayer's proposed amendments to provide eligible employees with a choice to allocate the Employer Contribution to the 401(k) Plan, to the Retiree HRA, to the Employee's HSA, or to the Educational Assistance Program, are made pursuant to an irrevocable annual election. Employees are not permitted to elect to have the Employer Contribution paid in cash (or some other taxable benefit), and the Employer Contribution is not made pursuant to a salary reduction election. In addition, such amounts only may be used to provide benefits that reimburse medical expenses under section 213(d) and may not be used to provide other taxable or nontaxable benefits and any unused portion of the maximum dollar amount available during the coverage period is carried forward to subsequent periods after the employee retires. Thus, the proposed amendment to the Retiree HRA meets the requirements of Rev. Rul. 2002-41 and Notice 2002-45, and will not affect the treatment of contributions to and payments made from the Retiree HRA that are used to pay and reimburse section 213(d) medical expenses of employees, retirees, and their spouses and dependents as amounts excludable from the gross income of the employees, retirees, and their spouse and dependents under sections 105(b) and 106.

Health Savings Account

Taxpayer's proposed amendments to provide eligible employees with a choice to allocate the Employer Contribution to the 401(k) Plan, to the Retiree HRA, to the Employee's HSA, or to the Educational Assistance Program, are made pursuant to an

irrevocable annual election. The Employer Contribution, which is limited to $, may not exceed the limit set forth in section 223(b), ($4,150 for 2024). (See Rev. Proc. 2023-23, 2023-22 IRB 883). Provided only employees who are eligible individuals under section 223(c)(1) may elect to allocate the Employer Contribution to the Employee's HSA and the maximum amount that can be elected may not exceed the limit set forth in section 223(b), an employee's allocation to the Employee's HSA of any of the Employer Contribution to the Employee's HSA is excludable from the gross income of the employee under section 106(d).

Educational Assistance Program

Taxpayer's proposed amendments to provide eligible employees with a choice to allocate the Employer Contribution to the 401(k) Plan, to the Retiree HRA, to the Employee's HSA, or to the Educational Assistance Program, are made pursuant to an irrevocable annual election. Employees do not have a choice between educational assistance and other remuneration includible in the employee's gross income.

Under the proposed plan amendments, the Employer Contribution to the Educational Assistance Program may be used to pay the principal or interest on any qualified education loan pursuant to section 127(c)(1)(B) and may not be used to provide other benefits allowed under section 127 or other taxable or nontaxable benefits. The amount available, which is limited to $, may not exceed the limit of $5,250 set forth in section 127(a)(2).

The proposed amendment to the Educational Assistance Program will not affect the treatment of payments made under the Educational Assistance Program as amounts excludable from an employee's gross income under section 127(a)(1), up to the limit set forth in section 127(a)(2). In addition, the employee's ability to allocate the Employer Contribution among different programs will not prevent the Educational Assistance Program from qualifying as an educational assistance program under section 127.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2024-1, 2024-1 IRB 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for a ruling, and such material is subject to verification upon examination. The Associate Office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See section 11.05 of Rev. Proc. 2024-1.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is based upon the assumption that the 401(k) Plan satisfies the qualification requirements set forth in section 401(a) and expresses no opinion as to whether the 401(k) Plan is qualified under section 401(a), including, but not limited to, the eligibility, vesting, and distribution rules, contribution limits, and coverage and nondiscrimination testing.

This ruling expresses no opinion whether Taxpayer's programs addressed herein satisfy the nondiscrimination requirements, either in form or in operation, under section 105(h) and Treas. Reg. § 1.105-11(c), under section 4980G and Treas. Reg. § 54.4980G-5(b), or under section 127(b)(2) and Treas. Reg. § 1.127-2(e).

No opinion is expressed concerning the Federal tax consequences under any other provision of the Code other than those specifically stated herein.

This ruling is directed only to the party requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Denise Trujillo
Branch Chief, Health & Welfare
Office of Associate Chief Counsel
Employee Benefits, Exempt
Organizations, and Employment Taxes

cc: