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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 18 2002

T:EP:RA:T:A1

In re:

Company =
Trustee =
Contribution =

This is in response to the request dated August 29, 2002, for a ruling under section 404(a)(6) of the Internal Revenue Code (the "Code").

Facts

The Company is a calendar year taxpayer that maintains its books and records under the accrual method of accounting. The Plan is a defined benefit calendar year plan which was established as of December 1, 1945. The date of its most recent determination letter was July 25, 1995. The Trust is the vehicle used to fund benefits under the Plan. Deductions for contributions to the Trust are subject to the provisions of section 404 of the Code.

By letter dated May 30, 2002, the Company's Vice President & Treasurer instructed the Trustee to transfer the Contribution on that date from a Company account to a Trust account. This letter also stated that the Contribution was to represent a 2002 plan year contribution to the Plan. In fact, the Contribution was processed on May 30, 2002, that is the amount was transferred to the Trust on May 30, 2002.

Subsequently, the Company was advised by the actuaries for the Plan that if the Contribution was instead designated for the 2001 plan year, the Contribution would be less than the maximum funding amount for the 2001 plan year and could be treated as being on account of the 2001 tax year. Accordingly, the Company's Vice President & Treasurer, by letter dated June 27, 2002, instructed the Trustee to change the description on the deposit for the Contribution to read "This represents a 2001 Plan Year company contribution for" the Plan.

On September 16, 2002, the Company filed its Form 1120 for 2001. On that return, the Company claimed a deduction for the May 30, 2002, contribution to the Plan.

On September 20, 2002, the Company filed the 2001 Form 5500 for the Plan. On Schedule B of that Form 5500 the Company reported the Contribution as a contribution dated May 30, 2002, for the 2001 plan year.

In accordance with the foregoing, you have requested a ruling that, for purposes of section 404(a)(6) of the Code, the Contribution is on account of the 2001 tax year, and accordingly, because the Contribution was made not later than the time prescribed by law for filing the 2001 return (including extensions thereof), the Company is deemed under section 404(a)(6) to have made a payment on the last day of 2001 and is entitled to take a deduction on its 2001 Form 1120 in the amount of the Contribution.

Law

Section 404 (a)(6) of the Code provides that for purposes of paragraphs (1), (2), and (3) of section 404(a), 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 (or extensions thereof)

Rev. Rul. 76-28, 1976-1 CB 106, provides that a payment 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 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 of the following conditions are satisfied

(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 his tax return for such preceding taxable year

Rev. Rul. 76-28 further provides that for purposes of the above requirements, a payment may be designated 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 above 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

In the instant case, the preceding taxable year is the taxable year beginning January 1, 2001, and ending December 31, 2001. Thus, the last day of the preceding taxable year was December 31, 2001. The Contribution was made May 30, 2002, a date after the close of the 2001 taxable year and not later than the time prescribed by law for filing the return for such taxable year (or extensions thereof)

Rev. Rul. 76-28 provides two conditions that must be satisfied in order for a payment made after the close of an employer's taxable year to which section 404(a)(6) applies to be considered to be on account of such preceding taxable year. The first condition is that 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.

In the instant case the Taxpayer recorded, on the Schedule B of Form 5500, the Contribution as a contribution to the Plan for the 2001 plan year. The credit balance in the funding standard account as of December 31, 2001, included the Contribution. In addition, no amount was recorded on line 9k of the Schedule B of Form 5500 for the 2001 plan year for interest earned on the Contribution. Thus, the Contribution was treated in the same manner as if it had been actually received on December 31, 2001. Therefore the first condition of Rev. Rul. 76-28 is satisfied.

The second condition of Rev. Rul. 76-28 is satisfied if either 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 the employer claims such payment as a deduction on his tax return for such preceding taxable year. In the instant case, the Taxpayer both claimed the Contribution as a deduction on its tax return for the taxable year December 31, 2001, and designated the Contribution as a payment on account of such year (because the final designation of being on account of 2001 was made before the Contribution was claimed on a return, the initial designation may be disregarded). Therefore, the second condition of Rev. Rul. 76-28 is satisfied also.

Thus, the two conditions that must be satisfied under Rev. Rul. 76-28, in order for a payment that is made after the close of an employer's taxable year to which section 404(a)(6) applies to be considered to be on account of the preceding taxable year, have been satisfied. Accordingly, it is ruled that for purposes of section 404(a)(6) of the Code, the Contribution is on account of the 2001 tax year, and thus, because the Contribution was made not later than the time prescribed by law for filing the 2001 return (including extensions thereof), the Company is deemed under section 404(a)(6) to have made a payment on the last day of 2001 and is entitled to take a deduction on its 2001 Form 1120 in the amount of the Contribution.

This ruling 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 ruling letter, please contact

Sincerely,

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