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By Electronic Mail

www.regulations.gov (2024-28)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: 2024-2025 Priority Guidance Plan Recommendation

Dear Sir/Madam:

We again write to recommend that Treasury and IRS publish official guidance confirming that the 100% excise tax on reversions under section 4976 of the Internal Revenue Code of 1986 ("Code") does not apply when an employer "repurposes" surplus retiree benefit assets in a welfare benefit fund to provide other health and welfare benefits, including to active employees. We have advocated for such guidance for several years and again renew our request for the benefit of millions of employees and their beneficiaries who receive health and welfare benefits through the employer-sponsored system. (For additional background, please see our letters on this subject dated July 22, 2020; May 28, 2021; June 3, 2022; and June 8, 2023).

Over the years, we have been told informally that favorable guidance has been the subject of internal review at IRS and Treasury, but we are increasingly concerned with the lack of any progress. In this regard, we understand that legislation and other developments may cause priorities to change, but continued uncertainty has made it difficult, if not impossible, for responsible employers to manage their employee welfare benefit and capital needs.

The lack of guidance in this area, now approaching five years, has been detrimental to stakeholders (including employees and their families) – and the US economy – in critical ways:

- Volatility in investment markets makes it difficult for employers to manage large pools of assets to preserve their value over extended periods.

- Meanwhile, employers have continued to dedicate substantial amounts of their funds (on a currently deductible basis) to meet active employee health benefit expectations rather than making efficient use of surplus welfare benefit assets (which have already been deducted) to cover these major costs.

- While some employee benefit priorities may have changed during the pandemic, employees' needs for comprehensive medical benefits for their families have not diminished and, in many circumstances, have grown due to the pandemic and other family pressures. Meanwhile, the ability of employers to plan for these obligations has been hampered by uncertainty as to the permissible uses of these locked-in financial resources.

We respectfully submit that there are compelling policy reasons to issue guidance to allow the repurposing of such assets – and no apparent policy or legal reasons to continue to place billions of dollars of tax-deferred welfare benefit fund assets in "tax limbo." As early as 2015, the IRS began to issue private letter rulings confirming that, consistent with its legislative history, the draconian 100% excise tax would not apply when an employer repurposes retiree medical assets to pay active medical benefits, i.e., such an appropriate use of plan assets for employees should not be treated as a "reversion." Indeed, such use of surplus assets provides additional funding for benefits consistent with sound public policy – and can also help reduce employees' direct costs through lower premiums and out-of-pocket costs.

Accordingly, we again reiterate our request for guidance confirming that the 100% excise tax on reversions does not apply to repurposing transactions involving the use of surplus welfare benefit fund assets for other health and welfare benefits, including to pay active employees' medical and other welfare benefits. Such guidance would encourage employers to continue providing meaningful benefits to their employees and beneficiaries through the efficient use of assets and would meet the relevant criteria listed in Notice 2024-28, including that the recommended guidance:

- resolves significant issues relevant to a broad class of taxpayers;
- reduces controversy and lessens the burden on taxpayers or the IRS; and
- promotes sound tax administration.

In the alternative, if Treasury and IRS do not anticipate being able to issue guidance permitting the issuance of rulings in the excise and income tax areas cited in Revenue Procedure 2024-3 (clauses 3.01 (13) and (137)), they should announce that future guidance will not apply retroactively to any transaction involving the use of the assets of a welfare benefit fund to provide permissible benefits to current or former employees that do not involve an actual return of assets to an employer.

We appreciate your prompt consideration of these recommendations and would be pleased to discuss them with you at your convenience should you have any questions.

Sincerely,

Louis T. Mazawey

Kathryn Bjornstad Amin