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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Significant Index No. 0412.06-00

Third Party Contact: Participants

Person to Contact:

Telephone Number:

Refer Reply to: T:EP:RA:T:A1

Date: SEP 14 2000

In re:

This letter constitutes notice that with respect to the above-named defined benefit pension plan we have granted a conditional waiver of the minimum funding standard for the plan year ending December 31, 1999. You previously withdrew your request for an application for approval of a plan amendment that would have retroactively reduced benefits for the 1999 plan year.

This conditional waiver for the plan year ended December 31, 1999, has been granted in accordance with § 412(d) of the Internal Revenue Code and § 303 of the Employee Retirement Income Security Act of 1974 (ERISA). The waived amount is the contribution which would otherwise be required to reduce the balance in the funding standard account to zero as of the end of the plan year for which this conditional waiver has been granted.

The sponsor has an October 1-September 30 fiscal year. For the three fiscal years ended September 30, 1997-1999, the sponsor had negative working capital. For its fiscal years ended September 30, 1998 and 1999, the sponsor had net operating losses. Net worth has remained positive but has been steadily decreasing since the fiscal year ended September 30, 1997. The sponsor's cash flow was not sufficient both to meet routine operating expenses such as payroll and to contribute the minimum funding requirement.

The sponsor has embarked on an ambitious cost-cutting program. A decrease in employee costs and the sharp decrease in the size of non-employee costs evidence results of this program in the six-month period ended March 31, 2000. In addition, the employer had a 90 percent decrease in net loss compared to the six-month period ended March 31, 1999. For the months of February and March 2000, the sponsor had a net profit. The sponsor anticipates that its working capital position will improve as these measures take full effect. Also, the plan has been amended to cease further contribution allocations beginning with the 2000 calendar plan year. However, there is still some uncertainty as to the likelihood of these expectations.

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Because of the recovery prospects of the sponsor are uncertain, the waiver is granted subject to the following conditions:

1. The contributions required to satisfy the minimum funding standard (taking into account this waiver) for the plan years ended December 31, 2000 and 2001, are to be timely made as defined in Code § 412(c)(10).

2. The plan sponsor adopts an amendment to reflect the waiver as described below.

If these conditions are not satisfied, the waiver is retroactively null and void. You agreed to these conditions in a letter dated August 24, 2000 sent by your authorized representative.

When a defined contribution plan receives a waiver of the minimum funding requirements, the plan, in accordance with Rev. Rul. 78-223, must be amended to reflect the waiver if the plan does not otherwise provide for such waiver.

Section 3.02 of Rev. Proc. 83-41 provides that the applicant requesting a waiver need not submit an amendment designed to satisfy Rev. Rul. 78-223. If no amendment is submitted, the IRS may issue a ruling letter granting a conditional funding waiver requiring the adoption of an amendment supplied by the IRS. Because no amendment accompanied your request, we are granting the waiver subject to your adoption of the enclosed proposed amendment. If that amendment is not adopted within a reasonable time, this waiver is null and void. However, if you disagree with our amendment or would like to modify it in any way, we will consider any such request if such request is submitted in writing to us no later than 60 days from the date of this letter. Such request would require a user fee in accordance with Rev. Proc. 2000-8, I.R.B. 2000-1 230. Your letter should clearly state the exact changes you propose.

Your attention is called to Code § 412(f) which describes the consequences which would result in the event the plan is amended to increase benefits, change the rate in the accrual of benefits or to change the rate of vesting, while any portion of the waived funding deficiency remains unamortized.

This ruling is directed only to the taxpayer that requested it. Code § 6110(k)(3) provides that it may not be used or cited by others as precedent.

Because we have granted a waiver of the minimum funding standard, when filing Form 5500 for the plan year ending December 31, 1999, Schedule B (Actuarial Information) must be filed. See the instructions for Line 15 of Form 5500. A copy of this letter should be attached to the Schedule B (Actuarial Information). A copy of this letter should also be furnished to whoever will complete the Schedule B. We have sent a copy of this letter to the Employee Plans Area Manager for the
Area in

Sincerely,

James E. Holland, Jr.

James E. Holland, Jr., Manager
Employee Plans Actuarial Group 1
Tax Exempt and Government Entities
Division

Attachment I

The employer, if unable to satisfy the minimum funding standard for a given plan year, may apply to the Internal Revenue Service for a waiver of the minimum funding standard. If the waiver is granted, the following provisions apply.

1. The valuation date for a given plan year is the last day of each plan year.

2. An adjusted account balance shall be maintained for each plan participant whose actual account balance is less than or equal to his or her adjusted account balance.

   (a) For the plan year for which the first waiver is granted, the adjusted account balance as of the valuation date for each affected plan participant equals:

      (1) the participant's actual account balance, plus

      (2) the amount that such participant would have received if the amount waived had been contributed.

   (b) For each plan year following the plan year for which a waiver is granted, the adjusted account balance of each participant affected by such waiver (calculated as of the valuation date for that year) equals:

      (1) the adjusted account balance as of the valuation date in the prior plan year, plus

      (2) the amount equal to the actual investment return credited or charged to the participant's actual account balance, plus

      (3) the amount equal to 5% of the excess of the amount in (1) over the participant's actual account balance calculated as of the same date, plus

      (4) the amount equal to such participant's allocated share of the employer's required contribution (whether or not waived) for the plan year (determined without regard to adjusted waiver payments and discretionary contributions), minus

      (5) the amount of the participant's adjusted account balance forfeited during the plan year under the plan's provisions.

3. For a given plan year, the employer is required to contribute a certain amount in order to satisfy the minimum funding standard for such plan year. For each plan year which follows a plan year for which a waiver of the minimum funding standard was granted, the amount equals:

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(1) the amount due in accordance with the plan's contribution formula (without regard to this section), plus

(2) the adjusted waiver amount.

The adjusted waiver amount for a given plan year equals:

(1) the sum of the amounts necessary to amortize each waived funding deficiency over a period of 5 plan years (15 plan years for waivers granted for plan years beginning prior to January 1, 1987) measured from the valuation date of the plan year for which the corresponding waiver was granted at t%* interest, compounded annually, minus

(2) the sum of the amounts necessary to amortize the total of each year's forfeitures (which have arisen since the first waiver was granted) over a period of 5 plan years (15 plan years for forfeitures occurring in plan years beginning prior to January 1, 1988) measured from the valuation date of the plan year in which the corresponding forfeitures arose at 5% interest, compounded annually.

An amount equal to the adjusted waiver amount must be contributed only until each actual account balance equals the adjusted account balance. Any plan provision which provides that employer contributions shall be reduced immediately by forfeitures is revoked until each participant's actual account balance equals that participant's adjusted account balance.

Discretionary employer contributions, which are in addition to the amounts contributed to satisfy the minimum funding standard, can be made in any given plan year. However, the total employer contribution for the plan year cannot exceed the then remaining underfunded amount (the sum of the adjusted account balances minus the total plan assets).

4. The adjusted waiver payments, discretionary contributions, and forfeitures of actual account balances for the current plan year shall be allocated as of that year's valuation date to the actual account balance of each affected plan participant.

Each time a waiver is granted, an Original Waiver Amount (OWA) will be determined for each affected plan participant. The OWA equals the participant's portion of the amount which was waived.

Commencing with the valuation date of the plan year for which a waiver is granted, a Remaining Original Waiver Amount (ROWA) must be calculated for each affected plan participant. As of such valuation date, the OWA equals the ROWA. On the valuation date of a succeeding plan year, the ROWA equals the prior plan year's ROWA multiplied by (1 + t), minus the forfeiture of amounts in the prior year's ROWA incurred in the current plan year, minus the allocation with respect to the OWA for the current plan year. For each waiver that is granted, one OWA and a corresponding ROWA will be established for each affected plan participant.

The sum of the adjusted waiver payments, discretionary contributions, and forfeitures of the actual account balances for a given plan year are allocated to those participants who have ROWA's by multiplying the sum of these three amounts by the fraction:

(i) the numerator of which equals the sum of OWA's for a particular participant, and

(ii) the denominator of which equals the sum of the OWA's for all participants.

To determine the portion of this allocation which is to be assigned to a given ROWA, multiply the allocation by the corresponding OWA, then divide by the sum of the OWA's for the particular participant.

If the calculation of a ROWA results in a value which is less than zero, then

(1) the ROWA is set equal to zero,

(2) the corresponding OWA is set equal to zero, and

(3) the excess payments will be reallocated to the remaining ROWA's.

5. A distribution is determined by multiplying a participant's vested percentage by his or her adjusted account balance. However, distributions from the plan may not exceed a participant's actual account balance. If so limited, plan participants shall receive subsequent distributions derived from future adjusted waiver payments.

6. All the amounts described in paragraph (3) of this section shall first be applied to the actual account balance of the affected rank and file participants until the actual account balance for each participant is equal to his or her adjusted account balance as determined in paragraph (2).

* t is the interest rate determined, on the first day of the plan year, in accordance with section 412(d)(1) of the Internal Revenue Code (as in effect at the time the waiver was requested).