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

200148081

Uniform Issue List: 415.01-00

SEP - 5 2001

T:EP:RA:T1

Legend:

Plan A.....

Plan B.....

Dear :

This is in response to a letter ruling request dated December 28, 2000, as supplemented by correspondence dated August 20, 2001, submitted on your behalf by your authorized representative. In your letter, you request a ruling regarding the effect of the establishment of Plan B on the qualified status of Plan A. You provided the following facts and representations in connection with your request.

Plan A is a multiemployer defined benefit plan established in 1963 for the benefit of employees represented by various local union chapters. On March 18, 1999, Plan A received a determination letter from the Service that Plan A is qualified under section 401(a) of the Internal Revenue Code (the "Code") and its trust exempt from tax under section 501(a). The formula for funding Plan A is set by the applicable collective bargaining agreement which currently requires that $2.60 for each hour worked by a union member-employee be contributed to Plan A. Based on this formula, annual employer contributions to Plan A exceed $17,500,000. As of August 31, 2000, Plan A had net assets exceeding $535,000,000. Recently, Plan A's actuary advised that in the near future the maximum annual benefit limitations under section 415 will limit the benefit for some retirees.

As the local union chapters and employers desire that retirees and beneficiaries receive their entire benefit calculated under the retirement formula set forth in Plan A, they created Plan B to provide the benefits that a plan participant would have received under Plan A but for the limitation on annual benefits under Code section 415. The plan sponsors intend that Plan B will be an "excess benefit plan" under section 3(36) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406 ("ERISA").

Plan B will become effective and operative on receipt of a favorable ruling from the Service. Plan B will provide a retiree or beneficiary, on a non-qualified basis, with payments equal to the amount by which the monthly benefits under Plan A have been reduced by reason of Code section 415, plus an amount equal to FICA, FUTA and any other similar taxes due thereon. Plan B will be an unfunded plan. Employers participating in Plan A make monthly contributions to cover several fringe benefits for employees, which are deposited in a bank holding account and

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allocated among the several funds (health care, pension, training, etc.) by a third-party administrator. Each month, the administrator will determine how much is required that month to pay affected retirees an amount equal to the amount by which their benefits were reduced to comply with section 415, and add the necessary amount for FICA, FUTA and any similar taxes. This amount will be withdrawn from contributions currently being received from employers and will be immediately paid out to the individual through Plan B. The remaining pension contributions will then be allocated to Plan A. There will be no build-up of unexpended funds in Plan B. All amounts received by Plan B will be paid out to beneficiaries of Plan B each month and certainly before the end of each tax year. No principal amounts or interest income will be allowed to accumulate in Plan B.

Funds cannot be shifted to Plan B from Plan A. Likewise, funds cannot be shifted from Plan B to Plan A. The allocation to Plan B will always be done before amounts are contributed to Plan A. Article I, Section 6 of Plan B's trust document will be amended to provide that the only source of benefits under Plan B will be current contributions being made in accordance with the collective bargaining agreement. An amendment to the collective bargaining agreement was approved to create and fund Plan B. The Plan A's actuary believes that this adjustment to contributions under Plan A will not cause Plan A to fail to meet minimum funding standards under Code section 412.

Based on the above facts and representations, you request a ruling that the use of Plan B and the method of funding Plan B will not cause Plan A to become disqualified.

Section 3(36) of ERISA defines an excess benefit plan as one maintained solely for the purpose of providing benefits for certain plan participants in excess of the limitations imposed by Code section 415, without regard to whether the plan is funded.

Code section 415(b) sets forth limitations on benefits payable from a qualified defined benefit plan.

Section 1.414(l)-1(b)(1) of the Income Tax Regulations (the "regulations") states that a plan is a single plan if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to plan participants.

In this case, all assets contributed to Plan A will be used to fund benefits for participants in Plan A and all assets contributed to Plan B will only be used to fund benefits for participants in Plan B. Although part of the employers' contributions will be allocated to Plan B, this allocation will be done before the remaining employer contributions are deposited into and become part of the assets of Plan A. Thus, the assets of Plan A will not be transferred to Plan B. Under the definition of a single plan in the regulations, Plan A and Plan B do not constitute a single plan since there is no possibility of a transfer of assets from either one to pay benefits provided by the other. Since Plan B is a non-qualified, unfunded plan operating separately from Plan A and merely supplements benefits that are payable from Plan A, the existence of Plan B

does not adversely affect the qualified status of Plan A.

As to the manner of funding of Plan B and the impact, if any, that it has on the funding of Plan A, it is noted first that the level of contributions being made overall is set by the collective bargaining agreement and thus is determined only indirectly by actuarial calculations. In any case, the minimum funding requirements of Code section 412 must be satisfied independently of the contribution required under the collective bargaining agreement. Thus, minimum funding requirements for Plan A are unaffected by amounts contributed to Plan B.

We note also that any impact on the actual contributions that are made to Plan A and that might be attributable to the operation of Plan B would not affect the qualified status of Plan A. A plan is or is not "qualified" according to whether it complies with Code sections 401 through 411, whereas funding issues are addressed in Code section 412. Accordingly, we rule that the use of Plan B and the method of funding Plan B do not cause Plan A to become disqualified.

This ruling is conditioned on Article I, Section 6 of Plan B's trust document being amended in the manner represented above.

This letter does not consider whether Plan A complies with all of the qualification requirements under Code section 401(a). The determination of whether Plan A is qualified under section 401(a) is within the jurisdiction of the Great Lakes Area Office. Also, this ruling does not address the effects, if any, of the proposed action under Title I of ERISA.

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

Pursuant to a power of attorney on file with this office, a copy of this letter has been sent to your authorized representative. Should you have any concerns regarding this letter ruling, please contact Roz Ferber, ID# 50-02277, at (202) 283-9592.

Sincerely yours,

(signed) John Swieca

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

Enclosures:
Deleted copy of letter
Notice 437

cc:

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