



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

OCT 24 2003

*T:EP:RA:T:AI*

In re:

Employer = :

Dear :

This letter constitutes notice that, with respect to the above-named defined benefit pension plan, the plan amendment described below is reasonable and provides for de minimis increases in plan liabilities of the Plan within the meaning of section 401(a)(33)(A) of the Internal Revenue Code (Code) and section 204(i)(1) of the Employment Retirement Income Security Act of 1974 (ERISA).

Section 401(a)(33)(A) of the Code provides that a plan is not a qualified plan if there is an amendment that increases the liabilities of a plan where the plan is maintained by a debtor in a case under title 11 of the United States Code. However, section 401(a)(33)(B)(ii) provides exceptions to section 401(a)(33)(A) if the plan would have, were such amendment to take effect, a funded current liability percentage (as defined in section 412(l)(8)) of at least 100 percent or if the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor.

Section 204(i)(1) of the ERISA prohibits a plan amendment that increases the liabilities of a plan maintained by an employer that is a debtor under title 11 of the United States Code. Section 204(i)(2) of ERISA provides an exception to section 204(i)(1) of ERISA if the Secretary of the Treasury determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor.

On May 15, 1995, the Employer filed for protection under Chapter 11 of the United States Bankruptcy Code. The Employer has not yet been reorganized. The Employer proposes one amendment to the Plan, subject to the restrictions of Code section 401(a)(33). This amendment (the "Proposed Amendment") is described below.

**PROPOSED AMENDMENT**

For participants whose employment was terminated between October 31, 2001, and December 31, 2002, pursuant to the Employer's severance benefit plan, three additional years will be added to the participant's credited service and three additional years of age will be added to the participant's actual age at termination.

The Employer has stated that the purpose of this amendment is to provide benefits promised to employees in 2001 and 2002 under two early retirement windows, windows offered in order to maintain employee morale during a period of staff reduction. Furthermore, the two early retirement windows were the last of a series of windows, each of which occurred when the Plan had a funded current liability percentage greater than 100 percent.

After the amendment described above, the Plan will have a funded current liability percentage that is less than 100 percent and the Employer is a debtor in possession in a case under title 11 of the United States Code. However, the Employer believes that, in order to remain competitive, significant workforce reductions are necessary and that adoption of the Proposed Amendment (as opposed to involuntarily terminations and/or providing equivalent additional retirement benefits outside the Plan) is the most economically efficient method of achieving such reductions. Accordingly, the Proposed Amendment is considered reasonable.

The actuarial information furnished indicates that the increase in current liability resulting from the Proposed Amendment is less than one percent (1%). Although the increase in the sum of the normal cost and the net amortization charges resulting from the Proposed Amendment is slightly greater than three percent (3.7%), the Plan has a credit balance in an amount that is more than sixty times the amount of the sum of the normal cost and the net amortization charges. Based upon the above, the increase in Plan liabilities is de minimis.

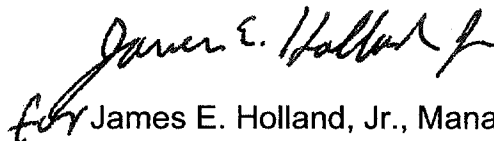
This ruling considers only the application of Code section 401(a)(33) and ERISA section 204(i) to the amendment described in your March 14, 2003, ruling request, as modified by facsimile of October 7, 2003, and does not consider any other issues that may arise in connection with the Plan or this amendment.

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. A copy of this letter is also being sent to the Manager, Employee Plans Classification in :

If you have any questions on this ruling letter, please contact :

Sincerely,

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