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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

NOV 3 0 2004

SE: T: EP: RA: T: AI

In re:

Taxpayer =

Plan or Pension Fund =

Union =

Special Contributions =

Date 1 =

Dear

This is in response to the request dated July 7, 2004, for rulings regarding the effect of Special Contributions on the Plan's qualified status and the deductibility of Special Contributions to the Plan.

## Facts

The Plan is a multiemployer defined benefit pension plan that is qualified under section 401(a) of the Code. A participant's accrued benefit under the Plan is based on a schedule of benefits that takes into account an employer's hourly contribution rate.

On Date 1, the Taxpayer, by resolution, authorized certain amendments to the Plan (the "Proposed Amendments") to take effect upon certain determinations from the IRS, the Pension Benefit Guaranty Corporation (PBGC), and the Department of Labor (DOL). In pertinent part, the Proposed Amendments provide for Special Contributions to the Plan, subject to collective bargaining, that:

"shall become assets of the Plan in the same manner as any other Employer Payments and shall thereupon be held by the Trustees in the Trust Fund for the exclusive purposes of providing benefits to participants and beneficiaries of the Plan and defraying the reasonable expenses of administering the Plan. Special Contributions shall not be segregated, earmarked or set aside for any more limited purpose."

Special Contributions would not affect participants' accrued benefits, but would be accounted for separately on a notional basis, for the purpose of adjusting an employer's otherwise determined withdrawal liability. In particular, an employer's otherwise determined withdrawal liability would be decreased by a credit balance in the employer's Special Contribution Account (as described below) or increased by a debit balance in such account.

Under the Proposed Amendments, Special Contribution Accounts would be established (on a notional basis) which would be credited each year with an employer's Special Contributions and "credited with actual earnings or debited with actual losses during the Plan Year as reasonably determined by the Trustees, which may be based on the actual earnings or losses of the Plan as a whole".

Employers who did not agree to make Special Contributions would be designated as Non-Consenting Employers. Special Contribution Accounts would also be established for these employers and would be debited each year by proportionate (among all Non-Consenting Employers) fractions of the total amount of Special Contributions contributed for the plan year.

In accordance with the foregoing, you have requested the following rulings:

- (1) That the Plan will not lose its tax-qualified status under section 401(a) of the Code and the trust associated with the Plan will not lose its tax-exempt status under section 501(a) of the Code merely because of the payment of the Special Contributions or because of the plan amendments authorizing such contributions.
- (2) That, assuming the requirements for deductibility under section 404 of the Code are otherwise satisfied, employers' contributions to the Pension Fund will not fail to be fully deductible under section 404(a)(1) at the time such contributions are forwarded to the Pension Fund merely because such contributions are in the form of Special Contributions.

#### Law

Section 401(a)(2) of the Internal Revenue Code (the "Code") provides that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under that section if it is impossible, at any time prior to the satisfaction of all liabilities with respect to beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than the exclusive benefit of his employees or their beneficiaries.

Section 404(a)(1) provides (in the flush language) that in determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 412, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 412.

Section 412(b)(7)(A) of the Code provides that any amount received by a multiemployer plan in payment of all or a part of an employer's withdrawal liability under part 1 of subtitle E of title IV of ERISA shall be considered an amount contributed by the employer to or under the plan.

Section 1.412(c)(1)-1(b) of the regulations provides that the funding method of a plan includes not only the overall funding method used by the plan but each specific method of computation used in applying the overall method.

Section 1.414(l)-1(b)(1) of the regulations provides 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 employees who are covered by the plan and their beneficiaries. Furthermore, that section provides that more than one plan will exist if a portion of the plan assets is not available to pay some of the benefits. This will be so even if each plan has the same benefit structure or plan document, or if all or part of the assets are invested with separate accounting with respect to each plan.

### Analysis

In the instant case, the Taxpayer proposes to amend the Plan to permit the acceptance of contributions to be accounted for separately on a notional basis (i.e. Special Contributions to be accounted for in Special Contribution Accounts).

Employers who make Special Contributions will have a smaller amount of potential withdrawal liability than they would otherwise have. Employers who do not make such contributions will have a greater amount of potential withdrawal liability than they would otherwise have. However, all of the assets arising from Special Contributions will be available to pay benefits to all of the employees who are covered by the plan and their beneficiaries.

Because the assets of the Special Contribution Accounts are available to pay benefits under the Plan, the existence of such accounts does not affect the status of the Plan as a single plan. Thus, the existence of the Special Contribution Accounts does not affect the tax-qualified status of the Plan or the tax-exempt status of its associated trust.

Section 412(b)(7)(A) of the Code provides that any amount received by a multiemployer plan in payment of all or a part of an employer's withdrawal liability shall be considered an amount contributed by the employer to or under the plan. In the instant case, although Special Contributions may have an effect on withdrawal liability payments at some future time, such contributions are not payments received by a multiemployer plan in payment of an employer's withdrawal liability. Accordingly, under section 412, Special Contributions will be treated no differently than other contributions to the Plan.

Section 404(a)(1) of the Code provides that, in determining the amount deductible in a year, the funding method and the actuarial assumptions used shall be those used for such year under section 412. Section 1.412(c)(1)-1(b) of the regulations provides that the funding method of a plan includes each specific method of computation used in applying the overall method.

Accordingly, because under section 412 Special Contributions will be treated no differently than other contributions to the Plan, Special Contributions will similarly be treated no differently than other contributions to the Plan under section 404(a)(1). Therefore, assuming the requirements for deductibility are otherwise met, employers' contributions forwarded to the Pension Fund in the form of Special Contributions will not fail to be deductible under section 404(a)(1) of the Code merely because such contributions are in the form of Special Contributions.

#### Conclusions

- (1) The Plan will not lose its tax-qualified status under section 401(a) of the Code and the trust associated with the Plan will not lose its tax-exempt status under section 501(a) of the Code merely because of the payment of the Special Contributions or because of the plan amendments authorizing such contributions.
- (2) Assuming that the requirements for deductibility under section 404 of the Code are otherwise met, employers' contributions to the Pension Fund will not fail to be fully deductible under section 404(a)(1) at the time such contributions are forwarded to the Pension Fund merely because such contributions are in the form of Special Contributions.

This ruling is directed only to the taxpayer that requested it. This ruling does not opine on section 4211 of ERISA or any other provision of ERISA. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling may not be used or cited by others as precedent.

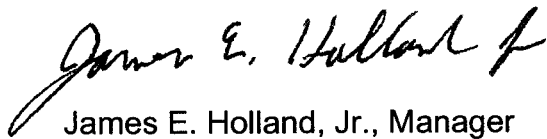
A copy of this letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file.

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

Sincerely,

A handwritten signature in black ink, reading "James E. Holland, Jr." with a stylized flourish at the end.

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