



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

2005-0049

SE: T: EP: RA: T: A2

AUG 24 2005

In re:

Company =

Union =

This letter is in response to your request for a ruling concerning the Plan which was submitted by your authorized representative on February 3, 2005. Specifically, you asked us to rule on the following issues:

- (1) that a proposed amendment to the Plan adopted and effective for the plan year ending December 31, [REDACTED] is reasonable and provides for only de minimis increases in plan liabilities in accordance with section 412(f)(2)(A) of the Internal Revenue Code ("Code") and section 304(b)(2)(A) of the Employee Retirement Income Security Act of 1974 ("ERISA"), and
- (2) that the proposed amendment is not a restricted amendment for purposes of section 412(l)(12) of the Code and section 302(d)(12) of ERISA for the plan year ending December 31, [REDACTED]

Your request for a ruling for issue (1) was withdrawn in a letter sent via fax on August 2, 2005, by your authorized representative. Accordingly, we will not rule on issue (1). However, we will rule on issue (2).

According to facts stated in your ruling request, the Plan is a qualified defined benefit pension plan. The Plan provides collectively-bargained pension benefits for its participants.

On November 22, 2004, the Company and the Union, which represents the Plan participants for collective bargaining purposes, agreed to amend the Plan contingent on receiving a favorable ruling letter from the Service. The proposed amendment eliminates an offset to a normal, early or vested pension benefit for those participants with disability retirement dates prior to September 16, 1998, who either have returned or may subsequently return to active employment and obtain a normal, early or vested pension benefit under the Plan. There are 11 participants who would immediately benefit from the amendment and 51 other participants who conceivably could benefit from the change (out of 8,330 total participants in the Plan as of January 1, 2004). This amendment was negotiated as part of a concessionary labor agreement that provided the Company with substantial savings through December 31, 2006.

While the Company did not make an election for the plan year ending December 31, [REDACTED] the Company did make an alternative deficit reduction contribution election for the Plan for the plan year ending December 31, [REDACTED] pursuant to section 412(l)(12) of the Code and section 302(d)(12) of ERISA. However, section 412(l)(12)(B) and section 302(d)(12)(B) of ERISA prohibit the adoption of any amendment that increases plan liabilities during the plan year for which the election is made.

The Company believes the amendment should not affect its DRC election for 2005 because it was bargained for and signed in 2004, and will become retroactively effective as of November 22, 2004, upon issuance of a favorable ruling by the Service. Also, the Company will elect to treat the proposed amendment as made on the first day of the plan year ending December 31, 2004, under section 412(c)(8) of the Code and section 302(c)(8) of ERISA.

Section 412(l)(12) of the Code and section 302(d)(12) of ERISA permit certain applicable employers to make an alternative deficit reduction contributions election ("DRC election") in certain applicable plan years. Section 412(l)(12)(B) of the Code and section 302(d)(12) of ERISA prohibit the adoption of any amendment that increases plan liabilities by reason of any increase in benefits, change in accrual of benefits, or change at which benefits become nonforfeitable during a plan year for which a DRC election is made, unless the plan's enrolled actuary certifies that the amendment provides for an increase in annual contributions that will exceed the increase in annual charges to the funding standard account attributable to such amendment. If a plan is amended in violation of this restriction, the DC election will not apply to any plan year ending on or after the date on which the amendment is adopted.

Notice 2004-59, 2004-36 I.R.B. 447, Q&A-1, provides that a plan amendment is considered adopted at the later time it is adopted or made effective. A plan amendment adopted during a plan year for which the employer did not make a DRC election is not a restricted amendment for the plan year adopted or for the subsequent plan year, even if the employer makes a DRC election for the subsequent plan year, but only if an election

is made under section 412(c)(8) of the Code and section 302(c)(8) of ERISA to treat the plan amendment as made on the first day of the plan year in which adopted and the amendment is treated as effective as of the beginning of the plan year.

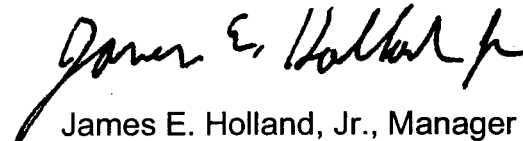
The Company represents that it is an applicable employer and that the plan year ending December 31, [REDACTED] is an applicable year for purposes of the DRC election. The plan amendment was bargained and signed in 2004, and is effective as of November 22, 2004, subject to receiving a favorable ruling. Furthermore, the Company will elect to treat the proposed amendment as made on the first day of the plan year ending December 31, [REDACTED] under section 412(c)(8) of the Code and section 302(c)(8) of ERISA. Accordingly, the amendment is not a restricted amendment under section 412(l)(12) of the Code or section 302(d)(12) of ERISA (provided the plan administrator elects to treat the proposed amendment as made on the first day of the plan year ending December 31, [REDACTED] under section 412(c)(8) of the Code and section 302(c)(8) of ERISA on line 4 of the Schedule R of Form 5500 for the plan year ending December 31, [REDACTED]).

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

We have sent a copy of this letter to the Manager, EP Classification in Maryland, to the Manager, EP Compliance Unit in [REDACTED] and to your authorized representative pursuant to a power of attorney on file in this office.

If you require further assistance in this matter, please contact [REDACTED] at [REDACTED]

Sincerely yours,


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