



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

APR 16 2008

Re:

Dear

This letter constitutes notice that your requests for (a) a modification of our ruling letter dated October 31, 2005, granting a conditional waiver of the minimum funding standard for the Plan for the Plan year ending December 31, , to remove condition (2) and (b) a waiver of the minimum funding standard for the Plan for the plan year ending December 31, , have been granted subject to the following conditions:

- (1) collateral acceptable to the PBGC will be provided to the Plan by the later of (a) 120 days from the date of the ruling letter or (b) the earlier of (i) the date the PBGC notifies the Service in writing that this condition has not been met or (ii) 360 days from the date of the ruling letter;
- (2) for each plan year ending December 31, , through December 31, that the Plan is subject to a funding waiver, the Company will contribute \$ each month from January through September (\$ annually). The Company must provide proof of these contributions to this office, using the fax number or address below:
- (3) the actuarial cost method for the Plan is changed to projected unit credit as of January 1, 2006;

- (4) for each plan year ending December 31, , through December 31, the Company submits a copy of the Schedule B of Form 5500 to this office at the address or fax number listed in condition (2) above by October 31 of the calendar year following the end of the plan year;
- (5) the 10% excise taxes due under 4971(a) of the Code on the funding deficiency for the plan year ending December 31, are satisfied in a timely manner and the 10% excise taxes due under 4971(a) of the Code on any funding deficiencies that may occur for the plan years ending December 31, , through are satisfied in a timely manner. The Company will provide proof to this office at the address listed under (2) above that this condition has been met.

You agreed to these conditions in a letter dated January 8, 2008. If any one of these conditions is not satisfied, the waivers are retroactively null and void.

These conditional waivers of the minimum funding standard have been granted in accordance with section 412(d) of the Code and section 303 of the Employee Retirement Income Security Act of 1974 ("ERISA"). The amounts for which these conditional waivers have been granted are the contributions that would otherwise be required to reduce the balance in the funding standard account to zero as of December 31, 2004, and December 31, 2005 (after the payment of at least the amount required under section 412(b)(2)(C) of the Code).

The Company has been a health care provider since . Today the Company is comprised of 7 separate section 501(c)(3) not for profit corporations serving various health care needs ranging from independent living, assisted living, and residential long-term care in nursing home services. Additionally, the Company provides services to individuals with developmental disabilities and mental health disorders.

The primary cause for the Company's hardship is due to the downturn in the stock market. The Plan experienced two straight years of significant losses in the market value of its assets in 2001 and 2002. The market conditions that led to the large losses in Plan assets in 2001 and 2002 have improved significantly. These asset losses along with an increase in the liabilities due to a decrease in the RPA rate, and an increase in the number of participants in the Plan, resulted in an additional funding charge applying for the first time in 2003 and in subsequent years. As a result, the minimum required contribution has increased significantly from \$ in to \$ in and \$ in . The , , and amounts include additional funding charges of \$ , \$ and , respectively. The Company has had net losses in income in three of the last five years which has exacerbated the Company's ability to satisfy the significantly increased minimum required contributions.

Approximately 1% of the Company's income is derived from Medicaid and Medicare reimbursement. The Company's rates or prices are set by governmental bodies and the Company has no real ability to generate more revenue. An increase in the reimbursement rates from these programs to the extent needed to fund the additional pension contribution is not possible. The majority of the Company's operating budget represents labor and fringe benefits; hence, significantly cutting salaries or benefits to try to make up the shortfall would have a disastrous effect on staffing through staff attrition. Some items being pursued by the Company to recover from its hardship are the merger of two existing nursing homes, rebuilding and relocating the third nursing home, and an expansion into non-medical home health services or companion care.

The Company has demonstrated a substantial commitment to funding the Plan. In \_\_\_\_\_, the Company made \$ \_\_\_\_\_ in total contributions each month of January through August and an additional \$ \_\_\_\_\_ in total contributions in September. In \_\_\_\_\_ the Company made \$ \_\_\_\_\_ in total contributions each month of January through August and an additional \$ \_\_\_\_\_ in total contributions in September (satisfying condition (1) of waiver approval letter dated October 31, 2005). In \_\_\_\_\_, the Company had made \$ \_\_\_\_\_ total contributions for each month of January through September. As of January 1, \_\_\_\_\_, the Plan was \_\_\_\_\_ % funded on a current liability basis, and benefit accruals to the Plan ceased as of December 31, \_\_\_\_\_.

While it is clear that the Company has experienced a substantial business hardship, the prospects for the Company's recovery are uncertain. However, it is clear that the Company's hardship would be exacerbated by the denial of the funding waivers for the plan years ending in December 31, \_\_\_\_\_, and \_\_\_\_\_. Additionally, denying the requests may place the Company's financial recovery in jeopardy and put the continuation of the Plan at risk. Hence, because it is in the best interests of Plan participants in the aggregate, (a) the conditional waiver granted for the Plan for the plan year ending December 31, \_\_\_\_\_, in our ruling letter dated October 31, 2005, has been modified to remove condition (2), and (b) a conditional waiver of the minimum funding standard has been granted for the Plan for the plan year ending December 31, \_\_\_\_\_, subject to the conditions stated above.

Your attention is called to section 412(f) of the Code and section 304(b) of ERISA which describe the consequences that 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. Please note that any amendment to a profit sharing plan or any other retirement plans (covering employees covered by this plan) maintained by the Company, to increase the liabilities of those plans would be considered an amendment for purposes of section 412(f) of the Code and section 304(b) of ERISA. Similarly, the establishment of a new profit sharing plan or any other retirement plan by the Company (covering employees covered by this plan) would be considered an amendment for purposes of section 412(f) of the Code and section 304(b) of ERISA. This ruling letter does not

address the effect of any potential amendments to this Plan or any other retirement plan maintained by the Company, nor the establishment of a new retirement plan, for purposes of section 412(f) of the Code and section 304(b) of ERISA. The Company must make a separate ruling request to the Service in order to have reliance that any amendment to this Plan or to any other retirement plan maintained by the Company, that increases liabilities to such plans, or the establishment of a new retirement plan, while the waiver is in effect is not a violation of section 412(f) of the Code and section 304(b) of ERISA.

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.

When re-filing Form 5500 for the plan year ending December 31, \_\_\_\_\_, the date of this letter should be entered on Schedule B (Actuarial Information). We have sent a copy of this letter to the Manager, EP Classification in \_\_\_\_\_ and, to the Manager, EP Compliance Unit in \_\_\_\_\_, and to your authorized representatives pursuant to a power of attorney on file in this office.

If you have any questions concerning this matter, please contact

Sincerely,



Andrew E. Zuckerman, Director,  
Employee Plans Rulings & Agreements