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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 22 2011

T: EP:RA: A2

Company =

Predecessor =

Plan =

Trust =

Bankruptcy Court =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

A =

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G =

201141023

Year 1 = 1997

Dear Mr. Gebben:

This letter is in response to your request for rulings regarding the application of sections 419 and 419A to the Trust. Specifically, you have requested rulings that:

- (1) The Trust constitutes a separate welfare benefit fund maintained under a collective bargaining agreement within the meaning of section 419A(f)(5) of the Code and section 1.419A-2T, Q & A-2 of the Treasury Regulations ("Regulations").
- (2) The Company's contributions to the Trust to fund post-retirement welfare benefits as described in the Plan and Settlement Agreement are deductible without regard to the limitations of sections 419 and 419A of the Code.

The Plan is represented to be an employee welfare benefit plan, within the meaning of section 3(1) of ERISA, which provides health and life insurance to eligible retirees and certain disabled employees of the Company and its affiliates and predecessors. The Plan is sponsored and administered by the Company.

The Trust is the funding vehicle for benefits provided under the Plan. The Trust received a determination, by letter dated Date 4, stating that it is exempt from Federal income tax under section 501(c)(9) of the Code.

On Date 1, the Company and its United States subsidiaries filed voluntary petitions for bankruptcy for reorganization under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code"). The bankruptcy filing allowed the Company to obtain relief from the financial impact of liabilities related to litigation, environmental remediation, and certain welfare benefit obligations assumed by the Company in Year 1 at the time of the spin-off of the Company from the Predecessor.

As part of the reorganization, the Company modified and reduced retiree welfare benefits pursuant to the process described in section 1114 of the Bankruptcy Code. In connection with that process, a committee (the "Retiree Committee") was appointed by the Bankruptcy Court to represent the affected retirees (and spouses and dependents thereof). The Company represents that no member of the Retiree Committee was an officer or executive of the

Company or would have owned more than de minimus number of shares of Company stock.

On Date 2, the Company, the Retiree Committee, the Company's official committee of unsecured creditors, and certain other interested parties reached a global settlement (the "Settlement Agreement") that included resolution of the Company's liabilities for welfare benefit liabilities. The Company represents that the Settlement Agreement was negotiated through an arm's length process in accordance with section 1114 of the Bankruptcy Code. The Company has represented that it believes that the Secretary of Labor would conclude that the Settlement Agreement constitutes a collective bargaining agreement.

The Settlement Agreement covers (i) employees who worked for the Predecessor and who retired or became disabled prior to the Company's spin-off from the Predecessor and whose post-employment benefit or disability liabilities were transferred to the Company as a result of the spin-off ("Pre-Spin Retirees"), (ii) employees who worked for the Company and who retired before Date 5 or who, while they were still employees, became disabled at any time subsequent to the Company's spin-off from the Predecessor ("Post-Spin Retirees"), and (iii) any other person having a claim against the Company for retiree benefits ("Retiree Claimants", collectively with Pre-Spin Retirees and Post-Spin Retirees, "Retirees").

The Retirees consist of both individuals who were originally represented by labor unions that had negotiated the terms of retiree welfare benefit with the Company or the Predecessor, and those individuals who were never represented by a labor union while employed by the Company or the Predecessor. The Company represents that all of the individuals eligible to receive benefits under the Plan are covered by the Settlement Agreement and that there have been no (and there are not anticipated to be any) amendments to the Settlement Agreement, Trust, or Plan, that would increase the number of participants in the Plan who are not covered by the Settlement Agreement.

Pursuant to the terms of the Settlement Agreement, the Retirees agreed to certain welfare benefit reductions that could not have been unilaterally imposed by the Company in exchange for the Company's commitment to pre-fund the Trust with cash and Company stock.

On Date 3, the Company emerged from bankruptcy protection and shortly thereafter contributed to the Trust the amounts agreed to under the Settlement Agreement. Pursuant to the Terms of the Settlement Agreement, the Trust is composed of two sub accounts: Sub Account 1 which was funded with a \$A million cash contribution and is used to reimburse the Company for costs associated with providing benefits to Pre-Spin Retirees, and Sub Account 2 which was funded with Company stock and is used to reimburse the Company

for costs associated with providing benefits to Pre-Spin Retirees and Post-Spin Retirees. The Settlement Agreement provides that the Company can not be reimbursed for the same cost from both Sub Account 1 and Sub Account 2. The Settlement Agreement further provides that the funds in Sub Account 2 are reserved in the following proportion: (a) B% of all amounts deposited for Pre-Spin Retirees; and (b) C% of all amounts deposited for Post-Spin Retirees.

The Settlement Agreement provides that the Trust shall reimburse the Company every two weeks from Sub Account 1 for its Net Costs for providing retiree medical, retiree life insurance, and disability benefits to Pre-Spin Retirees. The Settlement Agreement provides that reimbursement shall be D% of Net Costs for the first E months following Date 3, and F% of Net Costs thereafter until the funds in Sub Account 1 are exhausted. The Settlement Agreement defines Net Costs as "actual out-of-pocket costs, including all administrative costs, net of, among other things, Medicare reimbursements and Pre-Spin Retirees' medical expense contributions".

The Settlement Agreement provides that the Trust shall reimburse the Company every two weeks beginning Date 3, from Sub Account 2, an amount equal to G% of the Net Costs of providing benefits under the Plan to Pre-Spin and Post-Spin Retirees until the funds in Sub Account 2 are exhausted (i.e., in contrast to amounts received from Sub Account 1, the reimbursement rate is not reduced to F% of Net Costs after E months). However, as stated above the Company can not be reimbursed for the same cost from both Sub Account 1 and Sub Account 2.

Law

Section 162(a) of the Code provides for a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. Section 1.162-10(a) of the Regulations provides in part that amounts paid or accrued within the taxable year for a sickness, accident, hospitalization, medical expense, welfare, or similar benefit plan, are deductible under section 162(a) of the Code if they are ordinary and necessary expenses of the trade or business. However, section 1.162-10T, Q&A-2 of the Regulations provides that section 419 of the Code governs the deduction of contributions paid or accrued by an employer with respect to a "welfare benefit fund" within the meaning of section 419(e) of the Code.

Section 419(a) of the Code provides that contributions paid or accrued by an employer to a welfare benefit fund are not deductible under Chapter 1 of the Code, but if they would otherwise be deductible shall (subject to the limitation in section 419(b) of the Code) be deductible under section 419 of the Code for the taxable year when paid.

Section 419(b) of the Code provides that the amount of any deduction under section 419(a)(2) of the Code for any taxable year shall not exceed the welfare benefit fund's qualified cost for the taxable year, which is generally defined in section 419(c)(1) of the Code to be the sum of the "qualified direct cost" for the taxable year as well as any additions to a "qualified asset account" for the taxable year.

Section 419(c)(3)(A) of the Code provides that the term "qualified direct cost" means, with respect to any taxable year, the aggregate amount (including administrative expenses) that would have been allowable as a deduction by the employer with respect to benefits provided during the taxable year if such benefits were provided directly by the employer, and the employer used the cash receipts and disbursements method of accounting.

Section 419(e)(1) of the Code provides that, for purposes of section 419 of the Code, the term "welfare benefit fund" means any fund which is part of a plan of an employer, and through which the employer provides welfare benefits to employees or their beneficiaries.

Section 419(e)(2) of the Code provides that, for purposes of section 419 of the Code, the term "welfare benefit" means any benefit other than a benefit with respect to which section 83(h) of the Code applies, section 404 of the Code applies (determined without regard to section 404(b)(2)), or section 404A of the Code applies.

Section 419(e)(3) of the Code provides that for purposes of section 419 of the Code, the term "fund" includes any organization described in paragraph (7), (9), (17), or (20) of section 501(c) of the Code.

Section 419A(a) of the Code provides that the term "qualified asset account" means, for purposes of sections 419, 419A, and 512 of the Code, any account consisting of assets set aside to provide for the payment of disability benefits, medical benefits, supplemental unemployment benefits (SUB) or severance benefits, or life insurance benefits.

Section 419A(b) of the Code provides that no addition to any qualified asset account may be taken into account under section 419(c)(1)(B) of the Code to the extent such addition results in an amount exceeding the account limit. Under section 419A(c)(1) of the Code, except as otherwise provided in section 419A(c) of the Code, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund the claims incurred but unpaid (as of the close of such taxable year) for disability benefits, medical benefits, SUB or severance benefits, or life insurance benefits, and administrative costs with respect to such claims. Under section 419A(c)(2)(A) of the Code, the account limit for a taxable year may include a reserve funded over the working lives of the covered employees and

actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary for post-retirement medical benefits to be provided to covered employees (determined on the basis of current medical costs).

Section 419A(f)(5)(A) of the Code provides that no account limits shall apply in the case of a qualified asset account under a separate welfare benefit fund under a collective bargaining agreement.

Section 7701(a)(46) of the Code provides that in determining whether there is a collective bargaining agreement between employee representatives and one or more employers, the term "employee representatives" shall not include any organization more than one-half of which are employees who are owners, officers, or executives of the employer. An agreement will not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and one or more employers.

Section 1.419-1T, Q&A-10(a) of the Regulations states in part that contributions paid or accrued with respect to a welfare benefit fund are deductible only to the extent that the contributions satisfy the requirements of section 162 or 212 of the Code.¹

Section 1.419A-2T, Q&A-1 of the Regulations provides that neither contributions to nor reserves of a collectively bargained welfare benefit fund shall be treated as exceeding the otherwise applicable limits of sections 419(b), 419A(b) or 512(a)(3)(E) of the Code until the earlier of: (i) the date on which the last of the collective bargaining agreements relating to the fund in effect on, or ratified on or before, the date of issuance of final regulations concerning such limits for collectively bargained welfare benefit funds terminates (determined without regard to any extension thereof agreed to after the date of issuance of such final regulations); or (ii) the date 3 years after the issuance of such final regulations.

Section 1.419A-2T, Q&A-2 of the Regulations defines a welfare benefit fund maintained pursuant to a collective bargaining agreement and states:

- (1) For purposes of Q&A-1, a collectively bargained welfare fund is a welfare benefit fund that is maintained pursuant to an agreement which the Secretary of Labor determines to be a collective bargaining agreement and which meets the requirements of the Secretary of the Treasury set forth in paragraph (2) below.

¹ The Regulations refer to deductibility under sections 162 and 212 of the Code (rather than "otherwise" deductibility) because they were published before technical corrections of section 419(e) of the Code were enacted.

- (2) Notwithstanding a determination by the Secretary of Labor that an agreement is a collective bargaining agreement, a welfare benefit fund is considered to be maintained pursuant to a collective bargaining agreement only if the benefits provided through the fund were the subject of arms-length negotiations between employee representatives and one or more employers, and if such agreement between employee representatives and one or more employers satisfies section 7701(a)(46) of the Code. Moreover, the circumstances surrounding a collective bargaining agreement must evidence good faith bargaining between adverse parties over the welfare benefits to be provided through the fund. Finally, a welfare benefit fund is not considered to be maintained pursuant to a collective bargaining agreement unless at least 50 percent of the employees eligible to receive benefits under the fund are covered by the collective bargaining agreement.
- (3) In the case of a collectively bargained welfare benefit fund, only the portion of the fund (as determined under allocation rules to be provided by the Commissioner) attributable to employees covered by a collective bargaining agreement, and from which benefits for such employees are provided, is considered to be maintained pursuant to a collective bargaining agreement.
- (4) Notwithstanding the preceding paragraphs and pending the issuance of regulations setting account limits for collectively bargained welfare benefit funds, a welfare benefit fund will not be treated as a collectively bargained welfare benefit fund for purposes of Q&A-1 if and when, after July 1, 1985, the number of employees who are not covered by a collective bargaining agreement and are eligible to receive benefits under the fund increases by reason of an amendment, merger, or other action of the employer or the fund. In addition, pending the issuance of such regulations, for purposes of applying the 50 percent test of paragraph (2) to a welfare benefit fund that is not in existence on July 1, 1985, "90 percent" shall be substituted for "50 percent".

Section 1114 of the U.S. Bankruptcy Code provides for an arms-length process through which a court-appointed employee representative may collectively bargain with respect to a Chapter 11 debtor's obligations to provide benefits to all of its retired employees.

Analysis - Ruling (1)

The Trust is a welfare benefit fund under section 419(e) because it is an organization described in section 501(c)(9) of the Code that provides welfare benefits and is part of a plan of an employer through which the employer provides welfare benefits to employees or their beneficiaries. The benefits are provided through the Trust, even though the Trust reimburses the Company

for the Net Cost of providing the benefits because the Settlement Agreement requires the Company to make contributions to fund the benefits.

The Company represents that it believes that the Secretary of Labor would conclude that the Trust is maintained pursuant to a collective bargaining agreement. Section 1.419T-2T, Q&A-2 of the Treasury regulations provide that notwithstanding a determination by the Secretary of Labor, a welfare benefit fund is considered to be maintained pursuant to a collective bargaining agreement only if the benefits provided by the fund were the subject of arm's length negotiations by the employee representatives and one or more employers. Additionally, the circumstances surrounding the collective bargaining agreement must evidence good faith bargaining between adverse parties over the welfare benefits to be provided through the fund, and at least 90 percent of the employees eligible to receive benefits under the fund must be covered by the collective bargaining agreement. The agreement must also satisfy section 7701(a)(46). Section 7701(a)(46) provides that a collective bargaining agreement is a bona fide agreement between employee representatives and employees, and the term "employee representatives" shall not include any organization more than one-half of the members of which are owners, officers, or executives of the employer.

The information furnished indicates that the Retiree Committee qualifies as an authorized employee representative under section 1114(c)(1) of the U.S. Bankruptcy Code of those persons receiving retiree benefits, as defined in section 1114(a) of the U.S. Bankruptcy Code because the Retiree Committee was appointed by the Bankruptcy Court to represent interests of the retirees and their spouses and beneficiaries in connection with the Company's Chapter 11 proceeding. The 1.419A-2T requirements are satisfied because the negotiations and compromises reached between the Company and the Retiree Committee were carried out in an arm's length fashion under the supervision of the Bankruptcy Court. Moreover, the information furnished indicates that there was good faith bargaining between adverse parties over the welfare benefits. The Company has represented that no member of the Retiree Committee was an officer or executive of the Company or would have owned more than a de minimus number of shares of Company stock. Therefore, the Retiree Committee has served as an employee representative within the meaning of section 7701(a)(46). Additionally, the 90 percent requirement of 1.419A-2T, Q&A-2 is satisfied because the Company has represented that all of the individuals eligible to receive benefits under the Plan are covered by the Settlement Agreement and there have been no (and there are not anticipated to be any) amendments to the Settlement Agreement, Trust, or Plan that would increase the number of participants in the Plan who are not covered by the Settlement Agreement. Accordingly, the Trust is maintained pursuant to a collective bargaining agreement within the meaning of section 419A(f)(5)(A).

Analysis - Ruling (2)

Contributions paid or accrued by an employer to a welfare benefit fund are deductible under section 419. Section 419A(b) limits this deduction by applying the account limit of section 419A(c). However, section 419A(f)(5) states that no account limits shall apply in the case of any qualified asset account under a separate welfare benefit fund under a collective bargaining agreement. As discussed above, the Trust is a welfare benefit fund maintained pursuant to a collective bargaining agreement. Therefore, the limitations of sections 419 and 419A do not apply.

Conclusions

- (1) The Trust constitutes a separate welfare benefit fund maintained under a collective bargaining agreement within the meaning of section 419A(f)(5) of the Code and section 1.419A-2T, Q & A-2 of the Treasury Regulations.
- (2) The Company's contributions to the Trust to fund post-retirement welfare benefits as described in the Plan and Settlement Agreement are deductible without regard to the limitations of sections 419 and 419A of the Code.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Internal Revenue Code or Title I of ERISA. Specifically, no opinion is expressed regarding whether part or all of the contributions to the Trust must be capitalized under section 263A of the Code.

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

Sincerely,



David Ziegler, Manager
Employee Plans Actuarial Group 2