



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201744022

AUG 01 2017

T: EP: RA: A2

Re: _____ ("Plan")
EIN: - / PN:

- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =

Dear _____ :

This letter is in response to your request for a ruling which was submitted by your authorized representative on August 4, 2016 and amended July 14, 2017. Specifically, you asked us to rule on the following issues:

1. That the proposed amendment of the Plan to add the Preferred Plus schedule (as described in your representative's letter of August 4, 2016) is not an increase in benefits within the meaning of section 412(c)(7) of the Internal Revenue Code (Code) because the benefits after the amendment are less than the benefits in place for the plan year for which the extension under section 431(d) of the Code was granted.

This ruling request has been denied.

2. If the Service believes the benefits should be measured for purposes of section 412(c)(7) using the benefit structure in place at the time of application under the Plan's rehabilitation plan, then the amendment of the Plan to add the Preferred Plus schedule is reasonable and provides for only a de minimis increase in the liabilities of the plan under section

412(c)(7)(B)(i) of the Code and section 302(c)(7)(B)(i) of the Employee Retirement Income Security Act (ERISA).

This ruling request has been granted.

3. That the amendment to the Plan as part of the funding improvement plan to provide that required increases in contributions are included in the calculation of a participant's benefits is reasonable and provides for only a de minimis increase in the liabilities of the Plan under section 412(c)(7)(B)(i) of the Code and section 302(c)(7)(B)(i) of ERISA.

This ruling request has been granted.

As a result of these rulings, the 5-year extension of time to amortize certain unfunded accrued liabilities of the Plan that was previously approved for plan years beginning on or after Date 1 is not adversely affected by these amendments.

The Plan is a multiemployer defined benefit plan. Prior to adoption of a rehabilitation plan, the Plan offered benefits based on the number of weeks of employment. This formula provided benefit accruals of at least % of employer contributions plus certain fringe benefits.

The Plan's actuary certified that the Plan was in critical status under section 432 of the Code, and a rehabilitation plan was adopted to be effective beginning on Date 2. Under the rehabilitation plan, the Plan offered two alternative schedules:

- The "Default" schedule, with benefit accruals of of benefit-bearing contributions but without certain "preferred" fringe benefits, and
- The "Preferred" schedule, with benefit accruals of % of benefit-bearing contributions and with certain preferred fringe benefits.

The rehabilitation plan required annual contribution increases of % of the base contribution level (that is, the contribution level excluding the required increases under the rehabilitation plan). These increases were not benefit-bearing, meaning that they were not included when calculating participants' benefit accruals.

On Date 3, after the rehabilitation plan was adopted, the Taxpayer requested automatic approval for a 5-year extension of the time to amortize unfunded liabilities under section 431(d)(1) of the Code, effective with the plan year beginning on Date 1. Approval for this extension was granted in a letter dated Date 4. The Plan's authorized representatives confirmed that the information submitted in support of the request for the 5-year amortization extension was based on the benefits under the rehabilitation plan.

Subsequently, the Plan was certified to be in endangered status under section 432 of the Code, and the Plan's trustees adopted a funding improvement plan effective on Date 5. The funding improvement plan includes schedules equivalent to the Default and Preferred schedules under the rehabilitation plan. These schedules require annual increases as a percentage of the total contributions, but the funding improvement plan provides that these contribution increases are fully benefit-bearing. In addition, the funding improvement plan includes a new "default" schedule that provides smaller benefit accruals, no preferred fringe benefits, and no required increases in employer contributions.

The funding improvement plan also includes a proposed "Preferred Plus" schedule, contingent on IRS approval, which provides benefit accruals of % percent of contributions plus certain fringe benefits. This schedule requires higher annual increases in contributions, which are fully benefit-bearing.

Section 412(c)(7) of the Code provides that no amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any changes in the rate at which benefits become nonforfeitable under the plan shall be adopted if an extension of time under section 431(d) of the code is in effect with respect to the plan. If a plan is amended in violation of the preceding sentence, any such extension of time shall not apply to any plan year ending on or after the date on which such amendment is adopted. Section 412(c)(7)(B)(i) of the Code provides that the restriction in section 412(c)(7) of the Code shall not apply to any plan amendment which the Secretary determines to be reasonable and which provides only de minimis increases in the liabilities of the plan. Section 302(c)(7)(B)(i) of ERISA contains parallel provisions.

The Plan's representatives asked that the proposed amendment adding the Preferred Plus schedule be compared with the cost of the Plan as it existed as of January 1, 2010, the effective date of the amortization extension and prior to the implementation of benefit reductions under the rehabilitation plan. If the benefits were compared on this basis, the representatives assert that the Preferred Plus schedule would merely restore some of the benefits that were removed as part of the rehabilitation plan, and would not constitute an amendment increasing liabilities.

However, the information submitted to the IRS in connection with the request for the 5-year amortization extension reflected the benefit structure under the rehabilitation plan. Therefore, the addition of the Preferred Plus schedule would mean an increase in the benefits that were used as a basis for justifying the 5-year alternative amortization extension, and would thus be subject to the restriction in section 412(c)(7) of the Code. Consequently, your first ruling

request has been denied because benefits after the amendment are not less than the benefits reflected in your request for the extension under section 431(d)(1) of the Code that was granted on Date 4.

According to information submitted by the Plan's authorized representatives, contributing employers requested enhanced benefits to help reduce employer turnover and attract new employees. The authorized representatives also believe that (because of the increases in contributions) the proposed amendment to add the Preferred Plus schedule and the amendment to reflect increases in contributions required under the funding improvement plan when calculating participants' benefits will improve the financial health of the Plan. Accordingly, these amendments are determined to be reasonable.

The Plan's authorized representatives presented projections showing that the increase in liability due to the proposed addition of the Preferred Plus schedule and the amendment to reflect increases in contributions required under the funding improvement plan when calculating participants' benefits is expected to be fully offset by the increases in employer contributions to the Plan. This increase is determined to be de minimis.

Consequently, your second and third requests have been approved because it has been determined that the proposed amendment adding the Preferred Plus schedule and the amendment providing that required increases in contributions are included in the calculation of a participant's benefits meet the requirements for the exception in section 412(c)(7)(B)(i) of the Code and section 302(c)(7)(B)(i) of ERISA, and do not interfere with the 5-year amortization extension approved on Date 4.

In granting these rulings, it is expected that the Plan's assumptions and methods will be reviewed and updated as appropriate so that each assumption is reasonable (taking into account the experience of the plan and reasonable expectations) and such assumptions, in combination, offer the best estimate of anticipated experience under the plan. Furthermore, we are not expressing any opinion of these amendments outside the meaning of section 412(c)(7) of the Code and section 302(c)(7) of ERISA, or as to the accuracy of any material submitted with your request.

We have sent a copy of this letter to your representatives; the Manager, EP Classification in Baltimore, Maryland; and to the Manager, EP Compliance Unit in Chicago, Illinois.

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.

If you require further assistance in this matter, please contact
(ID#) at () - .

Sincerely yours,

David M. Ziegler
Manager, EP Actuarial Group 2

cc:

Manager, EP Classification
Baltimore, Maryland

Manager, EP Compliance Unit
Chicago, Illinois