



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

APR 19 2018

T. EP. RA. AZ

Re: ("Plan")

EIN: - / PN:

Taxpayer:

Acquiring Company =

Dear :

This letter is in response to your request of March 3, 2017 for an excise tax waiver for the Plan for the quarterly liquidity shortfall due for the and plan years, including associated penalties and interest.

Under section 430(j)(4) of the Internal Revenue Code ("Code"), a defined benefit plan is required to maintain liquid assets sufficient to pay three years of pension benefits. Section 430(j)(4)(A) of the Code provides an exemption to the accelerated quarterly installment payment requirement for plans with less than 100 participants, including all participants in qualified defined benefit plans sponsored by the controlled group.

Under section 4971(f)(1) of the Code, if a plan's liquid assets fall short of this three-year threshold, a 10 percent excise tax is imposed on the shortfall. If a plan has a liquidity shortfall for any quarter and each of the following 4 quarters, section 4971(f)(2) of the Code imposes an additional 100 percent excise tax on the liquidity shortfall for the first quarter.

Section 4971(f)(4) of the Code provides that a taxpayer may request a waiver of the excise taxes under section 4971(f) of the Code. To obtain a waiver, the Taxpayer must demonstrate to the satisfaction of the IRS that the shortfall was (1) due to reasonable cause and not willful neglect, and (2) the Taxpayer has taken steps to remedy the shortfall. The IRS may waive all or part of the tax imposed by this section.

According to the information submitted to the Internal Revenue Service, the Plan was exempt from the liquidity shortfall requirement until the Taxpayer was acquired by the

Acquiring Company, since the Plan had fewer than 100 participants. A Q-sub election was made after the Taxpayer was acquired, making it a disregarded entity for tax purposes.

During the plan year ended June 30, , the Taxpayer's plant closed and all active employees were terminated. Many participants took the lump sum option, significantly reducing the funded status of the Plan and triggering a liquidity shortfall.

Initially, an incorrect interpretation of the Q-sub election was made that the Taxpayer was not a member of the Acquiring Company's controlled group for purposes of determining whether the Plan was subject to the liquidity shortfall requirements. Since the Plan had fewer than 100 participants, the Taxpayer believed it was exempt from the quarterly liquidity shortfall requirements of section 430(j)(4) of the Code.

However, early in 2017, the Plan's Enrolled Actuary was provided with the correct interpretation of the Q-sub election that the Taxpayer is part of the Acquiring Company's controlled group for purposes of determining whether the Plan is subject to the liquidity shortfall requirements. Because the participant count of all participants in defined benefit plans maintained within the controlled group was greater than 100, the Plan was subject to the liquidity shortfall requirements of section 430(j)(4) of the Code effective with the plan year beginning July 1, . Based on information submitted by the Taxpayer's authorized representative, the Plan had unpaid liquidity shortfall contributions for 7 quarters in the plan years beginning July 1, and July 1, (the "Impacted Quarters") as summarized in the table below:

Impacted Quarter ending	Unpaid liquidity shortfall contribution
September 30,	
December 31,	
June 30,	
September 30, ,	
December 31, ,	
March 31, .	
June 30 .	

The Taxpayer was notified in February 2017 by the Plan's Enrolled Actuary that the Plan was subject to the liquidity shortfall requirements of section 430(j)(4) of the Code. Three days after the Taxpayer was notified of the unpaid liquidity shortfall contributions, the Taxpayer made a substantial contribution to the Plan, in an amount sufficient to eliminate the liquidity shortfall for the plan year beginning July 1, .

The 10% excise tax under section 4971(f)(1) of the Code applies for each of the Impacted Quarters. The 100% excise tax under 4971(f)(2) of the Code applies only for the quarter ended June 30, because this was the only quarter with a shortfall in that quarter and in each of the following four (4) quarters.

Form 5330 was filed for the Plan promptly, within 3 weeks of the Taxpayer being notified of the liquidity shortfall, for each of the two years affected.

Based on the information provided with your request, the liquidity shortfalls were due to reasonable cause and not willful neglect. Based on the original interpretation of the Q-sub election, the Taxpayer believed that the Plan's controlled group had less than 100 participants and was exempt from the liquidity requirements. The Taxpayer took immediate steps to remedy the liquidity shortfall, and made a corrective contribution within three days of being notified of the unpaid liquidity shortfall contributions.

Accordingly, your request to waive the excise tax under sections 4971(f)(1) and 4971(f)(2) of the Code for the and plan years is granted because the liquidity shortfalls were due to reasonable cause and not willful neglect. Because the excise tax is waived, any interest or penalties associated with the excise tax are eliminated.

This ruling does not affect the adjustments for interest on late or unpaid liquidity installments under section 1.430(j)-1(b)(4)(iii) of the Income Tax Regulations ("Regulations") and the increase to minimum required contributions for additional interest in section 1.430(j)-1(d)(iv)(B) of the Regulations. An amended Schedule SB of Form 5500 must be filed to reflect any changes to the amounts reported on Schedule SB as a result of this ruling.

Your attention is drawn to section 206(e) of the Employee Retirement Income Security Act, prohibiting the payment of certain benefits (including lump sum payments) while a plan has a liquidity shortfall.

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 not sent a copy of this letter to your authorized representative, pursuant to the power of attorney (Form 2848) on file in this office.

If you have any questions regarding this matter, please contact David Ziegler
(ID#) at () - .

Sincerely yours,

Catherine L. Jones
Acting Director, Employee Plans