

Significant Index No. 0431.00-00



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

APR 27 2023

Release Number: 202329011

Release Date: 7/21/2023

Re: Request for approval of IRC §412(c)(7) Exception

Taxpayer =

EIN: -

Plan =

EIN: - (Plan No: )

Dear :

This letter is in response to your request for a ruling which was submitted by your authorized representative on June 8, 2022. Specifically, you asked for a ruling on whether the proposed amendment described in your submission is "reasonable and provides for only de minimis increases plan liabilities" in accordance with section 412(c)(7)(B)(i) of the Internal Revenue Code (the "Code") and section 302(c)(7)(B)(i) of the Employee Retirement Income Security Act of 1974 ("ERISA") and thus does not violate the restrictions under section 412(c)(7)(A) of the Code and section 302(c)(7)(A) of ERISA pertaining to plan amendments that increase a plan's liabilities while an amortization extension under section 431(d) of the Code is in place.

This letter is to inform you that your request has been denied.

The decision to tentatively deny your request was conveyed to your authorized representative via telephone on March 9, 2023, and a formal letter tentatively denying your request was mailed on March 15, 2023.

In the tentative denial letter we informed you that, in accordance with Section 28 of Rev. Proc. 2023-4, you were entitled to request a conference of right to review this decision and present additional information that you believed should be taken into consideration before finalizing our ruling.

We also noted in the letter that the conference should be held no later than March 30, 2023, which was 21 calendar days from the date your authorized representative was notified of this tentative denial. Your authorized representative informed us that you did not wish to hold a conference of right and would like to proceed to the final adverse ruling, based on the existing information that had been provided.

The Plan is a multiemployer plan and has a July 1 to June 30 plan year.

The Plan consists of both active and inactive participants. The Plan solely consists of bargained participants and remains open to new entrants with ongoing benefit accruals. The Plan has a flat dollar benefit formula, where the participants' benefit formula is based on a flat dollar amount multiplied by the number of pension credits earned. Pension credits are earned for each \_\_\_\_\_ hours of covered employment. The Plan has not been amended to improve benefits since \_\_\_\_\_

The Plan received approval, on \_\_\_\_\_ for an automatic \_\_\_\_\_-year extension of eligible amortization charge bases under section 431(d)(1) of the Code. The extension was effective with the plan year beginning \_\_\_\_\_. The last base that was extended is scheduled to expire in \_\_\_\_\_.

Section 412(c)(7)(A) of the Code states, in relevant part, 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 change in the rate at which benefits become nonforfeitable under the plan shall be adopted if an extension of time under section 431(d) or section 433(d) is in effect with respect to the plan. If a plan is amended in violation of the preceding sentence, any 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) of the Code provides an exception to the restriction on plan amendments, stating that Section 412(c)(7)(A) shall not apply to any plan amendment which the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan.

Section 431(b)(2) of the Code states, in relevant part, the charges to the Funding Standard Account. For a plan year, the funding standard account shall be charged with the sum of—

- a) the normal cost of the plan for the plan year,
- b) the amounts necessary to amortize in equal annual installments (until fully amortized) —
  - (i) in the case of a plan which comes into existence on or after January 1, 2008, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,
  - (ii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

- (iii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and
- (iv) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

Section 431(d)(1) of the Code states, in relevant part, the automatic extension of amortization periods upon application by certain plans. If the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the amortization period for any unfunded liability described in sections 431(b)(2)(B) or 431(b)(4) of the Code, and includes the certification by the Plan's actuary described in section 431(d)(1)(B) of the Code, the Secretary shall extend the amortization period for the period (not in excess of five years) requested in the application.

Section 431(d)(2)(B) of the Code states, in relevant part, that an alternative extension of amortization bases may be approved if the Secretary determines that--

- i. such extension would carry out the purposes of the Pension Protection Act of 2006 and would provide adequate protection for participants under the plan and their beneficiaries, and
- ii. the failure to permit such extension would—
  - I. result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and
  - II. be adverse to the interests of plan participants in the aggregate.

Taxpayer is requesting to amend the Plan to provide a one-time 13<sup>th</sup> check to participants in payment status at the time the checks are issued. Taxpayer has stated that the 13<sup>th</sup> check would be an extra check and would not be an acceleration of a future plan year's check. Taxpayer intends to provide the 13<sup>th</sup> check as soon as administratively feasible once the request is approved by the IRS.

Taxpayer asserts that amending the Plan to provide a one-time 13<sup>th</sup> check to participants in payment status represents a de minimis increase in the liabilities of the Plan. Providing the 13<sup>th</sup> check would cost approximately \$            in payments to retirees which represents approximately        % of total Plan liabilities. Taxpayer proposes that this increase in liability would be paid for with a \$        hourly contribution rate increase (from \$        per hour to \$        per hour).

As stated above, the request for approval of an exception to the restrictions on plan amendments that increase a plan's liabilities while an amortization extension under section 431(d) of the Code is in place has been denied. The primary reason for this denial was that the Taxpayer failed to demonstrate that the proposed plan amendment was reasonable under section 412(c)(7)(B) of the Code. The permanency and adequacy of the proposed contribution increase was uncertain. Further, it was unclear how the proposed plan amendment would be in the interests of plan participants in the

aggregate, and how the proposed plan amendment would help to retain or attract new members to the Plan.

In denying this ruling request, we have considered only whether the proposed amendment could be adopted as an exception to the restrictions of plan amendments under section 412(c)(7)(A) of the Code. Accordingly, we are not expressing any opinion as to the accuracy or acceptability of any calculations or other material submitted with your request. 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 ruling to the Manager, Classification Group 4, and to your authorized representatives, pursuant to the Power of Attorney and Declaration of Representative (Form 2848) on file with the Internal Revenue Service.

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

Sincerely yours,

David M. Ziegler, Manager  
Employee Plans Actuarial Group 2

cc: