Significant Index No. 414.06-00

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAY 2 9 2007

T:EP:RA:T:A2

In re:

Former Subsidiary =

Former Parent =

Unions =

Proposed Spinoff Date =

Dear

The letter is in response to your authorized representative's request of December 12, 2006 (as modified by your authorized representative's e-mail of March 1, 2007), for the following rulings with regard to the above Plans:

(1) That the proposed transfer to and assumption by the Transferee Plan of benefit liabilities accrued under the Transferor Plan will not cause the Transferee Plan to become a multiple employer plan within the meaning of section 413(c) of the Internal Revenue Code ("Code") or a multiemployer plan within the meaning of section 414(f) of the Code; and

(2) That the proposed funding methods under the Transferor Plan in connection with the proposed transfer of liabilities and assets from the Transferor Plan to the Transferee Plan (as outlined in your representative's request) are reasonable approaches that are consistent with sections 412 and 414(l) of the Code.

Specifically, your representative requested rulings on the following aspects of the proposed funding methods:

(a) In determining the market value of the Transferor Plan assets on the spinoff date that would be allocated between the Transferor Plan and the "Spinoff Plan" (a plan temporarily created by the spinoff from Transferor Plan prior to merger with the Transferee Plan), such assets would not include any unpaid contributions for the plan year which includes the spinoff date.

(b) The proposed construction of the funding standard account (as described later in this letter) would appropriately reflect the allocation of charges and credits between the period before and after the date of the spinoff.

(c) The actuarial value of assets would be allocated to the Spinoff Plan in proportion to the market value of assets that would be allocated to the Spinoff Plan.

(d) A portion of each funding standard account amortization base as of the spinoff date and the associated annual amortization amounts (including both charge and credit amortization bases and any amortization bases due to funding waivers) would be allocated to the Spinoff Plan as described later in this letter. In addition, a portion of the additional funding charge required under section 412(l) of the Code, any anticipated funding deficiency in the funding standard account and the accumulated reconciliation account balance as of the spinoff date would be allocated to the Spinoff Plan under the proposed method.

(e) The funding standard account charges and credits for the remaining portion of the Transferor Plan relating to the period between the Spinoff Date and the end of the Transferor Plan's plan year, would be based on the amounts determined as of the valuation date but reflecting reductions for the portion of such charges that are allocated to the Spinoff Plan. A gain or loss amortization base would not be

established for the Transferor Plan until the valuation date for the plan year following the year in which the proposed spinoff occurs.

(f) The proposed allocation of assets between the Transferor Plan and the Spinoff Plan would be based on the relevant Pension Benefit Guaranty Corporation ("PBGC") interest rate and other actuarial assumptions, locked in as far as 90 days in advance of the expected spinoff date.

Previously, the Former Parent and Former Subsidiary were members of the same controlled group. Employees and former employees of the Former Subsidiary participated in the Transferee Plan, a single-employer defined benefit pension plan sponsored and maintained by the Former Parent. According to the Transferee Plan's authorized representative, the Transferee Plan is maintained pursuant to an agreement that the Secretary of Labor would find to be a collective-bargaining agreement between employee representatives and the Former Parent, within the meaning of section 413(a)(1) of the Code. The Former Subsidiary was subsequently spun off from the corporation, and the portion of the Transferee Plan related to benefits accrued by employees of the Former Subsidiary was spun off to form the Transferor Plan.

At the time of the corporate and pension plan spinoffs, the Former Parent entered into agreements with the Unions, to protect certain pension benefits payable to certain employees ("Covered Participants") who transferred to the Former Subsidiary as part of the business transaction. Under these arrangements, the Former Parent agreed, subject to certain conditions and timeframes, to make up any shortfall between the benefits provided to these Covered Participants under the then-existing agreements between the Unions and the Former Subsidiary and combined benefits provided under pension plans sponsored by the Former Parent, the Former Subsidiary, and (if applicable) the PBGC. In addition, the Former Parent agreed that if, by a specified date, the Former Subsidiary ceased doing business, terminated its pension plan covering the Former Subsidiary's employees, or ceased to provide ongoing credited service for pension purposes due to financial distress, the Former Parent would provide up to seven years of credited service to Covered Participants employed by the Former Subsidiary.

According to the information submitted, the Former Subsidiary has continued to be the primary supplier of materials used in the Former Parent's business. Approximately one-half of the Former Subsidiary's sales are to the Former Parent.

The Former Subsidiary has experienced financial difficulty, and has filed for financial relief under Chapter 11 of the United States Bankruptcy Code. An important part of the emergence plan is to reduce the Former Subsidiary's obligations to the Transferor Plan, which, according to information submitted by the authorized

representative, was approximately % funded as of the beginning of the plan year.

The authorized representative states that the Former Subsidiary has not fully satisfied the minimum funding obligation for the Transferor Plan for the plan year, and has not paid the full quarterly contributions to the Transferor Plan for the plan year. The minimum required contribution for the Transferor Plan for the plan year is due before the date the Former Subsidiary expects to emerge from bankruptcy; therefore, the Former Subsidiary does not expect to fully satisfy the minimum funding obligation by that date, consistent with their interpretation of bankruptcy law. The Former Subsidiary has therefore applied for waivers of its minimum funding obligations with respect to the Transferor Plan for the plan year, in a separate ruling request.

In contrast to the underfunded status of the Transferor Plan, the Transferee Plan is fully funded, and in fact maintains a market value of assets greater than its current liability. According to information submitted by the authorized representative, the Transferee Plan showed a current liability funding ratio of approximately , % as of the beginning of the plan year.

Because of the Former Parent's continuing reliance on materials supplied by the Former Subsidiary, the Former Parent has an interest in the Former Subsidiary's ability to emerge from bankruptcy. The Former Parent has an interest in the Former Subsidiary's ability to support its benefit obligations under the Transferor Plan, not only due to the Former Parent's agreements with the Union to provide certain pension guarantees to Covered Participants, but also because the reduction of unfunded benefit liabilities under the Transferor Plan is a key component of the Former Subsidiary's plan to emerge from bankruptcy. Consequently, the Former Parent and Former Subsidiary have been working together to develop strategies to bring the Transferor Plan to fully funded status as quickly as possible after the Former Subsidiary emerges from bankruptcy.

Accordingly, the Former Parent and Former Subsidiary propose a transfer of assets and liabilities from the Transferor Plan to the Transferee Plan. It is anticipated that the liabilities transferred to the Transferee Plan would exceed the value of assets transferred. However, it is expected that the Transferee Plan would continue to be overfunded on a current liability basis after the proposed transfer occurs.

The proposed transfer would involve a spinoff of a portion of the Transferor Plan to temporarily create the Spinoff Plan, which would then immediately be merged with the Transferee Plan. All of the accrued benefits of each participant in the Transferor Plan would either be spun off to the Spinoff Plan or retained in the Transferor Plan – no participant would have his or her benefits split between the two plans.

According to information provided by the authorized representative, at the time of the proposed spinoff, the assets in the Transferor Plan are projected to be less than the Transferor Plan's benefit liabilities on that date (calculated using PBGC assumptions). However, the authorized representative states that assets would be allocated in accordance with plan termination priority categories under section 4044 of ERISA and in accordance with section 1.414(l)-1(n)(1)(ii) of the Income Tax Regulations ("regulations"). Accordingly, the value of assets allocated to the Spinoff Plan would be determined so that each participant in the Spinoff Plan and the remaining portion of the Transferor Plan would receive a benefit, if both the Plans terminated immediately after the spinoff, which is equal to or greater than the benefit that he or she would have received if the Transferor Plan had terminated immediately before the spinoff.

The Former Parent, Former Subsidiary, and the Unions will negotiate the precise benefit liabilities that will be transferred from the Transferor Plan to the Transfer Plan. To enable the parties to make the calculations necessary to specifically identify the liabilities and associated assets that would produce the desired net transfer amounts, the parties propose to use assumptions (including the interest rate) specified by the PBGC for use in plan terminations, but to set these assumptions as long as 90 days prior to the date of the spinoff. Those assumptions would also be used for purposes of demonstrating compliance with section 414(l) of the Code with respect to the actual spinoff and merger.

According to information submitted by the authorized representative, after the proposed transaction the Former Parent would remain the sole sponsor of the Transferee Plan (including the transferred assets and liabilities from the Transferor Plan) and would continue to be the only employer that would be obligated to make funding contributions to the Transferee Plan.

The authorized representative provided pro forma schedules illustrating the proposed change in funding method that would result from the proposed spinoff from the Transferor Plan and subsequent merger with the Transferee Plan. The representative states that the schedules are intended to comply with guidelines under applicable revenue rulings issued by the Internal Revenue Service, and are based on the following:

- The Transferor Plan determines minimum funding requirements based on the projected unit credit funding method and a valuation date which is the first day of the plan year.
- The Proposed Spinoff Date is not the first or last day of the plan year for either the Transferor Plan or the Transferee Plan.
- The Spinoff Plan would immediately be merged with the Transferee Plan as of the date of the spinoff from the Transferor Plan.

- The Transferor Plan is not fully funded on a plan termination basis. Assets would be allocated to the Spinoff Plan based on PBGC plan termination priority category rules described in the regulations under section 40444 of ERISA.
- As of the spinoff date, it is assumed that there are no minimum required contributions that are due and unpaid for the Transferor Plan, for the plan year ending immediately prior to the valuation date that is first prior to the spinoff date.
- The Transferor Plan funding standard account for the plan year which includes the spinoff date would be determined by first bringing forward the funding standard account balance from the valuation date at the beginning of such plan year up to the spinoff date ("Period 1"), and then bringing forward the funding standard account balance from the spinoff date up to the end of such plan year ("Period 2"). The funding standard account charges and credits for Period 1 would be pro rata portions of each charge and credit determined at the valuation date, including appropriate interest for Period 1, and would include any contributions for the plan year in which the spinoff date occurs which are made prior to the spinoff date. The resulting funding standard account balance as of the spinoff date, including appropriate pro rata interest for Period 1, is expected to be a deficiency, according to information submitted by the authorized representative. A portion of this anticipated deficiency and the accumulated reconciliation account as of the spinoff date would be allocated to the Spinoff Plan.
- The Actuarial Value of Assets ("AVA") would be allocated to the Spinoff Plan and the remaining portion of the Transferor Plan in proportion to the market value of assets allocated to each of those plans. The portion of the accrued past service liability (calculated using the projected unit credit cost method) allocated to the Spinoff Plan is expected to exceed the AVA allocated to the Spinoff Plan, according to information submitted by the authorized representative.
- A portion of each funding standard account amortization base as of the spinoff date (including charge and credit amortization bases and any funding waiver amortization bases that may exist), after reflecting amortization for Period 1, would be allocated to the Spinoff Plan by multiplying each such base by the same percentage to arrive at the portion of each base that would be allocated to the Spinoff Plan. Such percentage would be determined so that the sum of the resulting bases allocated to the Spinoff Plan would equal the difference between the accrued past service liability and the AVA allocated to the Spinoff Plan, adjusted for the anticipated accumulated funding deficiency and the accumulated reconciliation account on the spinoff date. A portion of the additional funding charge required under section 412(l) of the Code would also be allocated to the Spinoff Plan.

- For the remaining portion of the Transferor Plan, the funding standard account charges and credits for Period 2 would reflect pro rata portions of each amortization charge and credit and of the additional funding charge required under section 412(l) of the Code, after reduction for the portion of such charges that are allocated to the Spinoff Plan. It would also include all contributions made by the Former Subsidiary for the plan year in which the spinoff date occurs which are made after the spinoff date, and appropriate pro rata interest. After the allocation, the sum of the net charges and credits for Period 1 and Period 2, combined with the net charges and credits allocated to the Spinoff Plan, would be equal to the net charges for the funding standard account for the Transferor Plan prior to the allocation.
- A gain or loss amortization base for Period 1 experience would not be established for the Transferor Plan until the valuation date following the spinoff date. At that time, a gain or loss amortization base would be established that would implicitly include experience for Period 1 as well as Period 2.

The pro forma funding standard account projections also reflect the following assumptions:

- The requested funding waiver would be granted for the plan year.
- No receivable contributions attributable to any funding deficiency, including unpaid quarterly contributions outstanding as of the Proposed Spinoff Date, would be included in assets allocated between the Transferor Plan and the Spinoff Plan, and all funding contributions made by the Former Subsidiary after the proposed transaction would be credited solely to the funding standard account for the portion of the Transferor Plan remaining after the spinoff.
- All amortization bases under the Transferor Plan, including the amortization bases for any funding waivers granted, would be redetermined as of the beginning of the plan year and included in the shortfall amortization base established pursuant to the Pension Protection Act of 2006.

Based on the information submitted by the authorized representative, it is expected that the proposed Spinoff Plan would involve assets and/or liabilities of more than % of the assets and/or liabilities of the Transferor Plan, and the Spinoff Plan would include assets and/or liabilities of more than % of the assets and/or liabilities in the Transferee Plan.

Issue 1

Section 413(c) of the Code outlines the requirements for plans maintained by more than one employer. However, section 1.413-2(a)(3) of the regulations states that the rules of section 413(c) of the Code and section 1.413-2(a) of the regulations do not apply to a plan that is a collectively bargained plan under 1.413-1(a) of the regulations.

Section 1.413-1(a)(2) of the regulations states that section 413(b) of the Code applies to a plan if the plan is a single plan which is maintained pursuant to one or more agreements which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers. Section 1.413-1(a)(2) of the regulations also states that a plan which provides benefits for employees of more than one employer is considered a single plan subject to the requirements of section 410(b) of the Code and section 1.413-1(a)(1) of the regulations if the plan is considered a single plan for purposes of applying section 414(l) of the Code.

According to the Transferee Plan's authorized representative, the Transferee Plan is maintained pursuant to an agreement that the Secretary of Labor would find to be a collective-bargaining agreement between employee representatives and the Former Parent, within the meaning of section 413(a)(1) of the Code. Accordingly, the Transferee Plan is governed by the provisions of section 413(b) of the Code. Therefore, section 413(c) of the Code is not applicable to the Transferee Plan and the proposed transfer will not cause the Transferee Plan to become a multiple employer plan within the meaning of section 413(c) of the Code.

Section 414(f) defines a multiemployer plan as a plan (1) to which more than one employer is required to contribute, (2) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and (3) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

Section 1.414(f)-1(a) of the regulations provides that a plan is a multiemployer plan for a plan year if all of the following requirements are satisfied:

- More than one employer is required by the plan instrument or other agreement to contribute (or to have contributions made on its behalf) to the plan for the plan year.
- The plan is maintained for the plan year pursuant to one or more collective bargaining agreements between employee representatives and more than one employer.

- Except as provided by section 1.414(f)-1(c) of the regulations, the amount of contributions made under the plan for the plan year by or on behalf of each employer is less than 50% of the total amount of contributions made under the plan for such plan year by or on behalf of all employers. (Section 1.414(f)-1(c) of the regulations modifies the 50% threshold in the above rule to 75% under certain circumstances, for plans that have already qualified as a multiemployer plan.)
- The plan generally provides that the amount of benefits payable with respect to each employee participating in the plan is determined without regard to whether or not the employee's employer continues as a member of the plan.
- Any other requirements prescribed under Department of Labor regulations.

Based on information provided by the authorized representative, the Former Parent would have full responsibility for the administration, funding and other aspects associated with maintaining the Transferee Plan; furthermore, the Former Subsidiary would not have responsibility for maintaining the Transferee Plan and would not be required to contribute to the Transferee Plan. Therefore, the Transferee Plan is not a plan maintained by more than one employer and the proposed transfer does not cause the Transferee Plan to become a multiemployer plan under section 414(f) of the Code.

Issue 2

Section 414(l) of the Code outlines the requirements associated with the merger and consolidation of plans or transfer of assets between qualified single-employer pension plans.

Section 414(l)(1) of the Code states that a trust will not constitute a qualified trust under section 401 of the Code, unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets of such plan to any other plan, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated).

Section 1.414(l)-1(b)(3) of the regulations clarifies that a transfer of assets and liabilities occurs when there is a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan, including an agreement between two plans in which one plan assumes liabilities of another plan.

Section 1.414(l)-1(b)(4) of the regulations defines a spinoff as the splitting of a single plan into two or more plans.
Under section 1.414(l)-1(b)(5) of the regulations, the term, "benefits on a termination basis" means the benefits that would be provided exclusively by the plan assets pursuant to section 4044 of ERISA and the regulations thereunder if the plan terminated. This section also clarifies that the term does not include benefits that are guaranteed by the PBGC but not provided by the plan assets.

Section 1.414(l)-1(b)(5)(ii) of the regulations states that the allocation of assets to various priority categories under section 4044 of ERISA must be made on the basis of reasonable actuarial assumptions. The assumptions used by the PBGC as of the date of the merger or spinoff are deemed reasonable for this purpose.

Similarly, under section 1.414(l)-1(b)(9) of the regulations, the present value of an accrued benefit must be determined on the basis of reasonable actuarial assumptions. For this purpose, the assumptions used by the PBGC as of the date of the merger or spinoff are deemed reasonable.

Section 1.414(l)-1(b)(10) of the regulations states that in determining the value of a plan's assets, the standards set forth in the regulations (29 CFR Part 2611) prescribed by the PBGC shall be applied.

Section 1.414(l)-1(n) of the regulations outlines the rules for a spinoff of a defined benefit plan. Section 1.414(l)-1(n)(1) of the regulations states that in the case of a spinoff of a defined benefit plan, the requirements of section 414(l) of the Code will be satisfied if (1) all of the accrued benefits of each participant are allocated to only one of the spun off plans, and (2) the value of the assets allocated to each of the spun off plans is not less than the sum of the present value of the benefits on a termination basis in the plan before the spinoff for all participants in that spun off plan.

Section 1.414(l)-1(n)(2) of the regulations provides an alternate set of rules for plans in which the spinoff is de minimis; that is, where the value of the assets spun off is less than 3 percent of the assets as of at least one day in the plan year.

Section 1.414(l)-1(o) of the regulations states that for purposes of section 414(l) of the Code, any transfer of assets or liabilities will be considered as a combination of separate mergers and spinoffs. Thus, for example, if a block of assets and liabilities are transferred from defined benefit Plan A to defined benefit Plan B, the transaction will be considered a spinoff from Plan A and a merger of one of the spinoff plans with Plan B. Such spinoff and merger would each be subject to the requirements for plan mergers and spinoffs under section 414(l) of the Code and the regulations thereunder.

Section 4044 of ERISA outlines the rules for allocating a plan's assets upon the termination of the plan, in order to determine how much of each participant's accrued benefit is covered by the plan's assets. This is done by assigning the participants' benefits to various priority categories and allocating assets, beginning with the highest priority category, until the assets are fully allocated.

The PBGC regulations have undergone two separate reorganizations. Part 2611 (referenced by section 1.414(l)-1(b)(10) of the regulations) was renumbered as Part 2620 in a 1981 reorganization, and was subsequently moved to Subpart B of section 4044 of the PBGC regulations in a 1996 reorganization. Section 4044.41(b) of the PBGC regulations (included in Subpart B) states that plan assets shall be valued at their fair market value, based on the method of valuation that most accurately reflects such fair market value. Section 4044 (Subpart B) of the PBGC regulations does not provide details as to the types of assets included in the fair market value for this purpose.

Section 412 of the Code provides minimum funding standards for certain defined benefit pension plans.

Section 412(b) of the Code contains rules with respect to the maintenance of a funding standard account in order to determine whether the minimum funding standards are satisfied. Each year the funding standard account is charged with certain amounts (including any accumulated funding deficiency from the prior plan year, normal costs, amortization charges for increases in unfunded past service liabilities and additional funding charges required under section 412(l) of the Code). The funding standard account is also credited each year with certain amounts (including employer contributions and annual amortization credits for decreases in unfunded past service liabilities). The amortization periods for increases or decreases in unfunded liabilities are specified in section 412(b) of the Code.

Section 412(m) of the Code outlines provisions for the payment of the minimum required contribution in quarterly installments, applicable to certain defined benefit plans. Section 412(m)(1) of the Code states that if an affected plan fails to pay the full amount of a required installment for the plan year, then interest is charged on the amount of the underpayment for the period of the underpayment.

Employer contributions made during a given plan year can be credited to the funding standard account for that plan year. In addition, under section 412(c)(10) of the Code, contributions made up to 8½ months after the end of a given plan year (including required quarterly installments that were not paid by the applicable due dates) may be credited to the funding standard account for that plan year, and are treated as if they were made on the last day of that plan year.

If the total credits to the funding standard account exceed the total charges, the funding standard account shows a credit balance that can be used to offset minimum required contributions in future years. Conversely, if the total charges in the funding standard account exceed the total credits, the funding standard account shows an accumulated funding deficiency, which is subject to an initial 10% excise tax under section 4971(a) of the Code.

Under general accounting principles, contributions credited to the funding standard account for a given plan year but which are made after the end of the plan year, are included in the plan's assets for the following plan year as contributions receivable.

Based on the information provided by the authorized representative, the spinoff involving the Transferor Plan is not expected to be considered de minimis under section 1.414(l)-1(n)(2) of the regulations. Therefore, the full allocation of assets and other rules associated with plan spinoffs under section 1.414(l)-1 of the regulations are expected to apply to the transaction.

Any employer contributions for a given plan year that are made after the end of that plan year are deemed to be made on the last day of that plan year, and therefore would be counted as contributions receivable as of the last day of that plan year under general accounting principles. However, the proposed spinoff involving the Transferor Plan would occur before the end of the Transferor Plan's plan year, and thus before the due date for payment of employer contributions for the plan year (disregarding the 8½ month extension in section 412(c)(10) of the Code). Any employer contributions made for the plan year after the Proposed Spinoff Date would be credited to the funding standard account based on the actual date the contribution was made (or as of the end of the plan year, if made within 8½ months after the end of the plan year), and thus would not be counted as contributions receivable as of the Proposed Spinoff Date.

Therefore, the market value of plan assets allocated between the Transferor Plan and the Spinoff Plan would not be required to include unpaid contributions for the plan year that includes the date of the proposed spinoff, as long as the spinoff occurs before the end of the plan year.

Rev. Proc. 2000-40, 2000-2 C.B. 357, provides approval for certain changes in funding method in connection with the merger of two plans. This Rev. Proc. includes a method for adjusting the funding standard account charges and credits in the case of certain mergers that occur during a plan year (section 4.07).

Under section 4.08(8) of Rev. Proc. 2000-40, the charges and credits to the funding standard account are determined without regard to the merger for the period from the beginning of the plan year to the date of the merger. For this period, the charges and credits to the funding standard account for that plan are ratably adjusted using

the principles of Rev. Rul. 79-237 in the same manner as if the date of the merger was the date of plan termination of that plan. Rev. Rul. 79-237 states that in constructing the funding standard account in the year of a plan termination, charges and credits (other than specified credits such as employer contributions or a full-funding credit), are ratably adjusted to reflect the portion of the plan year before the plan terminated.

Section 4.07(9) of Rev. Proc. 2000-40 addresses the adjustment of funding standard account charges and credits for the period between the merger date and the end of the plan year for the plan that is not the ongoing plan. It states that such charges and credits are determined without regard to the merger; based on the funding method, actuarial assumptions and valuation results used for purposes of paragraph 4.07(8) above, and are ratably adjusted to reflect the length of the applicable period. Such charges and credits should include interest to reflect the period from the valuation date (of the plan that is not the ongoing plan) to the date of the merger, as well as interest for the period between the date of the merger and the end of the plan year.

Note that under this approach, the sum of the net charges and credits in the funding standard account for each partial period will equal the net charges and credits in the funding standard account for the plan prior to the allocation between periods.

Although Rev. Proc. 2000-40 addresses the adjustments to funding standard account charges and credits in the case of a merger between two plans, the principles apply equally well to adjusting the funding standard account charges and credits in the case of a spinoff that occurs during the plan year.

The proposed allocation of funding standard account charges for the Transferor Plan for the period between the period before and after the Proposed Spinoff Date is reasonable, because it ratably allocates charges and credits between the two periods, and adjusts the interest charges for each period in accordance with the method outlined for plan mergers in Section 4.07 of Rev. Proc. 2000-40. The proposed allocation also appears to satisfy the basic requirement that the sum of the funding standard account charges and credits for the periods before and after the Proposed Spinoff Date equal the funding standard account charges and credits for the full plan year prior to allocation.

Rev. Rul. 81-212, 1981-36 I.R.B. 10, 1981-2 CB 99 outlines one satisfactory method for allocating costs when a single plan spins off assets and liabilities to another plan.

As part of that method, the actuarial value of the assets is allocated between the spun-off plans in proportion to the fair market value of assets allocated to those plans. Therefore, the proposed allocation of the actuarial value of assets is consistent with the principles of Rev. Rul. 81-212.

Rev. Rul. 81-212 states that when a defined benefit plan subject to the minimum funding requirements of section 412 of the Code experiences a spinoff, each of the plans resulting from the spinoff must begin maintaining a separate funding standard account.

Rev. Rul. 81-212 includes a requirement (for plans that do not satisfy the de minimis rule) that, "...Credit or debit balances and all of the amortization bases, must be allocated to the funding standard accounts of the spunoff plans..." It further states that, "...if the de minimis rule is not satisfied, the credit balance or funding deficiencies and the other charges and credits to the funding standard account of the original plan must be allocated to the resulting plans, taking into account the facts of the original plan and each of the spunoff plans..."

Rev. Rul 81-212 outlines certain basic principles that must be followed when allocating funding standard account charges and credits to spun-off plans, when the spinoff does not satisfy the de minimis rule in section 1.414(l)-1(n)(2) of the regulations:

- The sum of the credit balances for the spun-off plans must equal the credit balance for the original plan.
- The allocation of the credit balance must be reasonable, taking into account the assets allocated between the plans in accordance with section 1.414(l) of the regulations.
- The sum of the outstanding amortization bases with a particular amortization period in the original funding standard account must equal the sum of the outstanding amortization bases with the same amortization period in the funding standard accounts of the spun-off plans.
- The allocation of the outstanding amortization bases between the spun-off plans must reasonably reflect the assets and liabilities of the two plans.
- The funding methods, unfunded liabilities and actuarial assumptions of the spun-off plans as of the date of the spinoff and immediately after the spinoff must be consistent with outstanding amortization bases in the funding standard account.

Rev. Rul. 81-212 outlines one acceptable approach for allocating the funding standard account charges and credits under the basic principles described above. The funding standard account used for the example reflected a credit balance, normal cost, and net amortization charges. The methodology addressed in Rev. Rul. 81-212 includes the following:

- Allocation of the market value of assets in accordance with section 1.414(l)-1 of the regulations and section 4044 of the PBGC regulations.
- Allocation of the credit balance based on the difference between the above allocation, and the allocation of assets reduced by the credit balance. The allocation of the reduced asset value was also done in accordance with section 1.414(l)-1 of the regulations and section 4044 of the PBGC regulations.
- Allocation of the actuarial value of assets in proportion to the allocated market value of assets
- Allocation of the accrued liability and future normal costs attributable to participants in each of the spun-off plans, in a manner consistent with the plan's funding method.
- Allocation of the outstanding balance of each amortization base in proportion to the unfunded liability for each of the spun-off plans, calculated using the liability minus assets (reduced by the credit balance) allocated to each spun-off plan as outlined above.
- Allocation of the annual amortization amount for each amortization base, in proportion to the outstanding balance allocated to each of the spun-off plans.

Rev. Rul. 86-47, 1986-14 I.R.B. 14, 1986-1 CB 215 expands on the guidance issued in Rev. Rul. 81-212, to address the situation in which a plan involved in a spinoff has assets greater in value than the present value of plan liabilities.

Rev. Rul. 86-47 reflects the basic principles included in Rev. Rul. 81-212, including a statement that "...The credit or debit balance of the single plan prior to the spinoff must be allocated to the funding standard accounts of the spunoff plans on a reasonable basis, taking into account the assets and liabilities allocated between the plans in accordance with section 1.414(l)-1 of the regulations..."

The Former Subsidiary proposes to allocate funding standard account charges and credits for the period between the Proposed Spinoff Date and the end of the plan year between the Transferor Plan and the Spinoff Plan. Under the proposed method, each charge and credit in the funding standard account (including the additional funding charge required under section 412(l) of the Code) would be allocated between the plans, as well as the amount of the accumulated funding deficiency and accumulated reconciliation account.

Although the examples in Rev. Rul. 81-212 and Rev. Rul. 86-47 do not specifically address the allocation of amortization credit bases or any additional funding charges required under section 412(l) of the Code, the proposal to allocate all funding standard account entries between the Transferor Plan and the Spinoff Plan is

consistent with the requirements of both Rev. Rul. 81-212 and Rev. Rul 86-47; namely, that the allocation of all funding standard account entries must be allocated to the funding standard account's of the spunoff plans on a reasonable basis, taking into account the assets and liabilities allocated between the plans in accordance with section 1.414(l)-1 of the regulations.

Therefore, the allocation of the funding standard account for the period between the Proposed Spinoff Date and the end of the Transferor Plan's plan year would not be reasonable unless all funding standard account charges and credits are allocated between the Transferor Plan and the Spinoff Plan. Such funding standard account charges and credits include the accumulated funding deficiency, amortization charges and credits, and the additional funding charge, with all such amounts adjusted to the Proposed Spinoff Date.

One reasonable way to allocate the additional funding charge would be to allocate the deficit reduction contribution in proportion to the unfunded current liability attributable to each plan. For this purpose, the unfunded current liability is determined as the difference between the current liability calculated for each plan and the adjusted actuarial value of assets (that is, the actuarial value reduced by any credit balance that exists but not increased by any accumulated funding deficiency). The additional funding charge can then be developed by deducting the portion of the applicable funding standard account charges and credits that are allocated to each of the plans from the allocated deficit reduction and adjusting for interest, in the same manner as the additional funding charge was calculated for the plan prior to the spinoff.

The accumulated reconciliation account must be similarly allocated, in a manner that reasonably reflects the assets and liabilities allocated between the plans and the resulting unfunded liability for each plan involved in the proposed spinoff. One reasonable way to allocate the accumulated reconciliation account would be to follow the principles of Rev. Rul. 81-212, treating the accumulated reconciliation account in the same way as a credit balance in the funding standard account.

Section 4.07 of Rev. Proc. 2000-40 describes an automatically approved method for adjusting the funding standard account in the event of a plan merger that occurs during the plan year. Under the automatically approved method, charges and credits for the period from the date of the merger to the end of the plan year are determined without regard to the merger. Accordingly, the charges and credits are determined based upon the funding method, actuarial assumptions and valuation results for the plan year, ratably adjusted to reflect the length of the period. The allocated funding standard account items for the period after the date of the merger are combined with the funding standard account for the other plan involved in the merger, without establishing a gain or loss amortization base for the later portion of the plan year.

Although Rev. Proc. 2000-40 does not directly address the adjustment of the funding standard account for a plan involved in a spinoff, many of the concepts applicable to mid-year plan mergers are similar to those involved in mid-year spinoffs.

Based on the method prescribed for plan mergers under section 4.07(9) of Rev. Proc. 2000-40, it is reasonable to base the funding standard account charges and credits for the remaining portion of the Transferee Plan relating to the period between the Proposed Spinoff Date and the end of the Transferor Plan's plan year, on the amounts determined as of the valuation date, without establishing a gain or loss amortization base for that period relating to the experience between the valuation date and the expected spinoff date.

Based on the same principles, it is also reasonable to base the additional funding charge required under section 412(l) of the Code on the valuation results for the plan year, without redetermining the amount as of the date of the spinoff.

No guidance has yet been issued on the effect of the Pension Protection Act of 2006 on amortization bases established due to funding waivers granted prior to the effective date of new funding rules under the Pension Protection Act. Therefore, we cannot comment at this time as to whether an appropriate approach was used to develop the pro forma minimum funding projections submitted by the authorized representative.

Section 1.414(l)-1(b)(5)(ii) of the regulations states that the allocation of assets to various priority categories under section 4044 of ERISA must be made on the basis of reasonable actuarial assumptions. The assumptions used by the PBGC as of the date of the merger of spinoff are deemed reasonable for this purpose.

Similarly, under section 1.414(l)-1(b)(9) of the regulations, the present value of an accrued benefit must be determined on the basis of reasonable actuarial assumptions. For this purpose, the assumptions used by the PBGC as of the date of the merger or spinoff are deemed reasonable.

Sections 4044.52 through 4044.75 of the PBGC regulations outline the assumptions and methods required for valuing participant benefits, for the purpose of allocating plan assets upon the termination of a defined benefit pension plan. These assumptions include the mortality assumptions prescribed in section 4044.53, expected retirement age assumptions outlined in sections 4044.55 through 4044.57, interest assumptions prescribed in Appendix B, and increases for administrative expenses outlined in Appendix C (all references are to Part 4044 of the PBGC regulations). The interest assumptions in such Appendix B are updated monthly by the PBGC, for use in valuing benefits for plans that terminate during the following month. Tables of benefit amounts used for determining expected retirement age are

found in Appendix D of Part 4044 of the PBGG regulations and are updated annually for use in valuating plan that terminate during a particular calendar year.

Although sections 1.414(l)-1(b)(5)(ii) and 1.414(l)-1(b)(9) of the regulations state that PBGG assumptions as of the spinoff date are deemed reasonable, the regulations do not dictate the use of these assumptions. It is reasonable to base the proposed allocation of assets between the Transferor Plan and the Spinoff Plan on relevant PBGC actuarial assumptions as of a date as long as 90 days in advance of the spinoff.

Conclusions

(1) The proposed transfer of accrued benefits and liabilities from the Transferor Plan to the Transferee Plan does not cause the Transferee Plan to become a multiple employer plan under section 413(c) of the Code or a multiemployer plan under section 414(f) of the Code.

(2) The funding methods proposed under the Transferor Plan in connection with the proposed transfer of liabilities and assets from the Transferor Plan to the Transferee Plan are reasonable, as outlined below:

(a) It is reasonable to determine the amount of the market value of assets to be allocated between the Transferor Plan and the Spinoff Plan on the Proposed Spinoff Date without including any unpaid contributions for the plan year which includes the spinoff date, as long as such Proposed Spinoff date is prior to the end of the plan year of the Transferor Plan.

(b) The proposed construction of the funding standard account for the plan year including the spinoff appropriately reflects the allocation of charges and credits between the period before and after the proposed spinoff.

(c) It is reasonable to allocate the actuarial value of assets to the Spinoff Plan in proportion to the market value of assets allocated to the Spinoff plan in accordance with section 1.414(l)-1 of the regulations.

(d) It would be unreasonable to allocate only certain entries in the funding standard account to the Spinoff Plan while retaining the full amount of other entries (such as any accumulated funding deficiency, amortization credits, and the additional funding charge required under section 412(l) of the Code) in the remaining portion of the Transferor Plan. Therefore, the proposed allocation of a portion of all entries in the funding standard account to the Spinoff Plan is appropriate. In addition, it is appropriate to allocate a portion of the accumulated reconciliation account to the Spinoff Plan.

(e) It is reasonable to base the funding standard account charges and credits for the remaining portion of the Transferor Plan for the period between the Proposed Spinoff Date and the end of the Transferor Plan's plan year on the amounts determined on the valuation date, but reflecting reductions for the portion of such amounts that are allocated to the Spinoff Plan. Further, it is reasonable to defer the establishment of a gain or loss amortization base (relating to experience for the portion of the plan year preceding the Proposed Spinoff Date) and the recalculation of the additional funding charge required under section 412(l) of the Code, until the valuation for the plan year following the year in which the proposed spinoff occurs.

(f) It is reasonable to base the proposed allocation of assets between the Transferor Plan and the Spinoff Plan on relevant PBGC actuarial assumptions as of a date as long as 90 days in advance of the spinoff.

This ruling addresses only the issues outlined above and does not address any other issues that may arise under the Internal Revenue Code. 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.

A copy of this letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file.

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

Sincerely,

James E. Holland, Jr., Manager
Employee Plans Technical