Significant Index No. 412.00-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

OCT 28 2010

201208042

SE:T:EP:RA:A2

Re:

Dear

This letter is in response to a ruling request, dated January 2, 2009, which was submitted on your behalf by your authorized representative, regarding the proper treatment and effect of the prospective, but expected, failure to make certain contributions to the Trust, which are otherwise required, for plan years beginning on and after January 1, 2009, to satisfy the minimum funding standards under sections 412 and 430 of the Internal Revenue Code (the "Code")

The following facts and representations have been submitted:

Taxpayer =

Plan =

Trust =

Employer 1 =

Employer 2 =

Employer 3 =

The Trust is a jointly-administered, single-employer "Taft-Hartley" fund created under a series of collective bargaining agreements ("CBAs") and a separate 1967 Memorandum of Understanding Re: Pensions ("MOU") incorporated into the CBAs, all of which were entered into pursuant to good-faith bargaining between the Taxpayer, d/b/a Employer 1, and eight unions (the "Unions") representing covered bargaining unit employees. The Taxpayer is the sponsoring employer for the Trust.

The ruling request provides that: "Although the "contributions" have been "defined" in the MOU incorporated into the CBAs, the Trustees (as Plan Administrator) apparently have, at all times since its inception, treated the Trust, and the Plan established thereunder, as a defined benefit pension plan for purposes of reporting and disclosure"

The ruling request also provides that the Taxpayer never formally objected to the manner in which the annual returns/reports have been prepared for filing, but has always maintained that it was required to contribute only those amounts for which it had bargained to be obligated.

When the Plan was initially adopted a funding standard account was established under the auspices of Code section 412 for purposes of funding the benefits provided under the Plan. For many years, the minimum funding requirements were satisfied by the contributions specified in the bargaining agreements. After the Trustees adopted multiple increases to benefit levels under the Plan, the contributions called for by those agreements eventually became inadequate.

Due to significant funding problems, in 20 the Taxpayer and the unions agreed to open negotiations during mid-term of the then current CBAs and bargained expressly with respect to contributions required to the subject trust. These negotiations resulted in an Addendum to the then current CBAs which provided for reductions in the Plan's benefit accrual levels in exchange for the Taxpayer's agreement to temporarily increase its contributions detailed in the collective bargaining agreements beginning in 20 . These extra contributions provided under the Addendum were required to be made by the Taxpayer only through the plan year ended December 31, 20 .

This ruling request provides that contributions required by sections 412 and 430 of the Code will, for multiple plan years beginning on and after January 1, 20 , exceed the aggregate amounts specified in the respective CBAs.

The Taxpayer represents that payment of any amounts in excess of those specified by the CBAs is "illegal" under Section 302 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 186, violation of which is a felony.

The Taxpayer further represents that it is prohibited from making, and the Trustees of the Trust are prohibited from accepting, contributions not specified in the detailed written basis provided by the CBAs.

Based on the foregoing facts and representations, the following rulings have been requested:

1. That Code Sections 412 and 430 are not applicable to the Trust and to the Taxpayer to the extent that contributions required to meet the minimum funding standards, as determined in the Plan's actuarial valuations, exceed the amounts

specified in the CBA, the MOU, the Addendum, and the Trust Agreement, because the Taxpayer's payment of such excess is prohibited by, and illegal under, Section 302 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. Section 186.

2. That the excise tax provisions in Code Section 4971 are not applicable to the Taxpayer's failure to make such excess payments, because Code Section 412's and Code Section 430's minimum funding standards do not apply to the extent amounts required to meet those standards would exceed the contributions specified in the CBA, the MOU, the Addendum, and the Trust Agreement, and because the Taxpayer's payment of such excess would violate Section 302 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. Section 186

3. That the amounts of contributions that must be made by the Taxpayer to the Trust established pursuant to collective bargaining must be limited to the amounts specified in collective bargaining agreements (the CBAs, MOU, Addendum, and Trust Agreement, in this case), above which amounts contributions would be illegal under section 302 of the LMRA, 29 U.S.C. Section 186.

4. That the Internal Revenue Service, Department of Treasury, may re-characterize any pension plan, previously administered as a defined benefit plan, as a defined contribution plan, and/or freeze further contributions to the defined benefit plan, when those contributions are not specified in the applicable collective bargaining agreements and, if made as required by the minimum funding standards of Code sections 412 and 430, would violate Section 302 of LMRA by failing to comply with the detailed written basis requirements under that statute.

5. That the Plan established pursuant to the CBAs and the MOU, and under the terms of the Trust Agreement adopted thereunder, is a "defined contribution" plan in the nature of a money purchase pension plan, because the terms of the documents under which the Plan was established expressly "define" the contributions to be made to the Trust and nowhere give the Trustees the express authority to establish a "defined benefit" pension.

6. That, if deemed by the IRS to be a defined benefit pension plan, the subject Plan and Trust is eligible for use of the "shortfall" funding method under Treasury Reg. § 1.412(c)(1)-2, because it is (1) a collectively bargained plan described in Code Section 413(a), and (2) contributions to the plan are made at a rate specified under the terms of a legally binding agreement(s) applicable to the Plan and Trust.

7. That, if applicable, the shortfall funding method under Treasury Reg. § 1.412(c)(1)-2 would permit the Taxpayer, which negotiated its annual contributions in terms of a specified amount per shift of work performed, to make contributions for funding purposes on the basis of those bargained-for and agreed-upon amounts.

8. That the Trust's adoption and use of the shortfall funding method under Treasury Reg. § 1.412(c)(1)-2 is warranted under, and justified by, the facts and circumstances described in this ruling request, if and to the extent the Plan is deemed by the IRS to be a defined benefit pension plan;

9. That any additional amounts that must be contributed, in order to satisfy the minimum funding standards of Code Sections 412 and 430, are proportionately the liabilities of the Taxpayer and the other two sponsoring employers, Employer 2 and Employer 3, in accordance with the proportionate allocation of liability for funding tax under Code §§ 413(b)(6) and/or (c)(5).

Plan Provisions

The introduction to the plan document indicates that the Plan was adopted effective January 1, . Subsequent to adoption, the Plan has been amended several times, each in accordance with provisions applicable to a defined benefit plan.

Section 1.1 defines the Accrued Benefit as a lifetime monthly pension benefit which a Participant or Former Participant has earned at any particular time (expressed in terms of a lifetime monthly benefit for five years certain), based on the provisions thereof.

Section 1.5, in pertinent part, defines the Annual Base Earnings as the Participant's weekly base rate of earnings in effect on December 31 of a Plan Year, multiplied by the number of weekly pay period which end during the Plan Year.

Section 1.6 defines the Annual Past Service Credit as a Participant's or Former Participant's Accrued Benefit through December 31, 1995, as set forth in Exhibit C.

Section 1.17 defines the Employer as Employer 1 or any other entity which makes contributions pursuant to a written agreement.

Section 4.1 defines the Normal Retirement Benefit as a lifetime monthly benefit, payable as a life annuity for five years certain equal to one-twelfth of the sum of:

1. The Participant's Annual Past Service Credit (if any).
2. The percentage of Annual Base Earnings attributable to membership in a collective bargaining unit after 1959, as set forth in the Exhibits attached hereto.
3. Any supplemental benefits resulting from the Participant's membership in one of the bargaining units for which the Board of Trustees has established a supplemental benefits.

Memorandum of Understanding Re: Pensions dated March 22, 1967 Provisions

Section 1(b) provides in pertinent part: "A New Non-Contributory Plan, which shall be know as the Plan (hereinafter called the New Non-Contributory Plan), shall be established..."

Section 1(c) provides in pertinent part: "Benefits under the New Non-Contributory Plan shall be payable under a new pension trust (hereinafter called the New Pension Trust)..."

Section 2 provides in pertinent part: "Under the New Non-Contributory Plan there shall be six Trustees, three of whom shall be appointed buy the Company and three of whom shall be appointed by the Unions..."

Section 5(a) provides in pertinent part: "The Company shall make monthly contributions to the Trustees under the New Non-Contributory Plan at the rate of $1.10 per employee per compensated shift for each Employee covered by any Collective Bargaining Agreement..." The copy of the Memorandum of Understanding Re: Pensions supplied with the ruling request indicates that this section has subsequently been amended.

Form 5500 Filings

Part I, Box A(2) of the Plan's 20 and 20 Form 5500 filings were checked which indicate that the Plan is a single-employer plan (other than a multiple-employer plan).

Part II, item 8a of the Plan's 20 and 20 Form 5500 filings indicate that the plan provides pension benefits and codes 1A, 1G, and 3H are shown. The instructions to both the 20 and 20 Forms 5500 provide:

List of Plan Characteristics Codes for Lines 8a and 8b

Code	Defined Benefit Pension Features
1A	Benefits are primarily related
1G	The plan is covered by the PBGC insurance program

Code	Other Pension Benefit Features
3H	Plan sponsor(s) is (are) member(s) of a controlled group.

A Schedule B, Actuarial Information, was attached to both the 20 and 20 Form 5500 filings. The instructions to both the 20 and 20 Forms 5500 provide that a Schedule B must be included with the filing if the plan is a defined benefit pension plan and is subject to the minimum funding standards. The instructions also indicate that certain money purchase defined contribution plans are required to complete the schedule B, lines 3, 9, and 10 in accordance with the instructions for Schedule R, line 5.

The instructions for Schedule R, line 5 indicate that if the plan is a money purchase defined contribution plan (including a target benefit plan) and has received a waiver of the minimum funding standard, lines 3, 9, and 10 of the Schedule B must be completed.

As the Schedules B filed on behalf of the 20 and 20 plan years are fully completed, there are no attachments indicating a waived funding deficiency for a money purchase plan, and were each signed by an enrolled actuary, and the plan characteristics codes indicated on the 20 and 20 Forms 5500 indicate that the Plan is a defined benefit plan, one may surmise that these Schedules B were completed on behalf of a defined benefit pension plan subject to the minimum funding standards.

Law

Code section 412(a)(1) provides that in general a plan to which this section applies shall satisfy the minimum funding standard applicable to the plan for any plan year. Section 302(a) of the Employee Retirement Income Security Act of 1974 (ERISA), contains provisions regarding the requirement to meet minimum funding standards similar to those found in Code section 412(a)(1).

Code section 412(a)(2)(A) provides that for purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if in the case of a defined benefit plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year.

Code section 413(b)(6) provides that for a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary —

> (A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and
>
> (B) then on the basis of their respective liabilities for contributions under the plan.

For purposes of this subsection and the last sentence of section 4971(a), an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall not be treated as a liability for contributions under the plan.

Code section 413(c)(5) provides that for a plan year the liability under section 4971 of each employer who maintains the plan shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

Code section 414(i) provides that the term "defined contribution plan" means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

Code section 414(j) provides that the term "defined benefit plan" means any plan which is not a defined contribution plan.

Code section 430 defines the minimum funding standards for single-employer defined benefit pension plans. Section 303 of ERISA, contains provisions regarding the minimum funding standards for single-employer defined benefit pension plans that are similar to those found in Code section 430.

Code section 430(a) provides that for purposes of this section and section 412(a)(2)(A), except as provided in subsection (f), the term "minimum required contribution" means, with respect to any plan year of a defined benefit plan which is not a multiemployer plan —

(1) in any case in which the value of plan assets of the plan as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of —

(A) the target normal cost of the plan for the plan year,

(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by such excess.

Code section 430(f) provides that under certain circumstances the minimum required contribution may be reduced by the prefunding balance and funding standard carryover balance, should such items exist.

Code section 430(i) provides additional funding rules for plans that are in "at-risk" status.

Code section 430(i)(3) provides that in no event shall —

> (A) the at-risk funding target be less than the funding target, as determined without regard to this subsection, or
>
> (B) the at-risk target normal cost be less than the target normal cost, as determined without regard to this subsection.

Code section 430(j)(1) provides that the due date for any payment of any minimum required contribution for any plan year shall be 8 ½ months after the close of the plan year.

Code section 4971(a) provides that if at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to —

> (1) in the case of a single-employer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year, and
>
> (2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year.

Prior to amendment by the Pension Protection Act of 2006, P.L. 109-280, section 4971(a) of the Code imposed a tax on the amount of the accumulated funding deficiency under the plan.

Code section 4971(b) provides for tax in addition to that imposed under Code section 4971(a), specifically: If—

> (1) a tax is imposed under subsection (a)(1) on any unpaid minimum required contribution and such amount remains unpaid as of the close of the taxable period, or

(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution or accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.

Prior to amendment by the Pension Protection Act of 2006, P.L. 109-280 section 4971(b) of the Code imposed an additional tax on the amount of the accumulated funding deficiency under the plan in the case in which an initial tax was imposed under Code section 4971(a).

Code section 4971(c)(3), as amended by section 101(d)(2)(F)(ii) of The Worker, Retiree, and Employer Recovery Act of 2008, P.L. 110-458, provides that the term "taxable period" means, with respect to an accumulated funding deficiency or unpaid minimum required contribution, whichever is applicable, the period beginning with the end of the plan year in which there is an accumulated funding deficiency or unpaid minimum required contribution, whichever is applicable and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a), or

(B) the date on which the tax imposed by subsection (a) is assessed.

Code section 4971(c)(4) provides that the term "unpaid minimum required contribution" means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430 (j)(1)) for the plan year.

Section 201(b)(1) of The Pension Protection Act of 2006, P.L. 109-280 provides that in general a multiemployer plan meeting the criteria of paragraph (2) may adopt, use, or cease using, the shortfall funding method and such adoption, use, or cessation of use of such method, shall be deemed approved by the Secretary of the Treasury under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 and section 412(d)(1) of the Internal Revenue Code of 1986.

Section 201(b)(2) of the Pension Protection Act of 2006, P.L. 109-208 provides that a multiemployer pension plan meets the criteria of this clause if —

(A) the plan has not used has not adopted, or ceased using, the shortfall funding method during the 5-year period ending on the day before the date the plan is to use the method under paragraph (1); and

(B) the plan is not operating under an amortization period extension under section 304(d) of such Act and did not operate under such an extension during such 5-year period.

Section 201(b)(3) of the Pension Protection Act of 2006, P.L. 109-208 provides that for purposes of this subsection, the term "shortfall funding method" means the shortfall funding method described in Treasury Regulations section 1.412(c)(1)-2 (26 CFR 1.412(c)(1)-2).

Revenue Ruling 2003-81 provides that although the determination of whether there is an accumulated funding deficiency is made at the end of the plan year, the tax on the accumulated funding deficiency (under Code section 4971) is imposed for the taxable year (of the employer who maintains the plan) in which the plan year ends.

Revenue Ruling 2003-81 in pertinent part holds that the filing of Form 5330 starts the running of the statute of limitations for purposes of the excise taxes imposed by Code section 4971 on failure to satisfy the minimum funding standards of Code section 412. If an accumulated funding deficiency is disclosed on Form 5330 or in an attached statement, the three-year statute of limitations of Code section 6501(a) applies. However, if the deficiency is not disclosed on Form 5330 or in an attached statement, the six-year statue of limitations of Code section 6501(e)(3) applies. If Form 5330 is not filed for that year, Code section 6501(c)(3) permits the tax to be assessed at any time after the date prescribed for filing Form 5330. If Form 5330 is not filed to disclose an accumulated funding deficiency, the tax under Code section 4971 may be assessed, or a proceeding in court for the collection of the tax may be begun with out assessment, at any time.

With respect to ruling request number one, nothing in Code sections 412 or 430 indicate that contributions are limited to the amounts stipulated by any funding policy entered into by the plan sponsor. In this case, contributions required under sections 412 and 430 are not limited to the amounts specified in the CBA, the MOU, the Addendum, or the Trust Agreement. In addition, the provisions of the CBA, the MOU, the Addendum, and the Trust Agreement do not take precedent over Federal Law. Specifically in this case, the provisions of the CBA, the MOU, the Addendum, and the Trust Agreement do not preempt sections 302(a) and 303 of the Employee Retirement Income Security Act of 1974.

With respect to ruling request number two, because contributions required under Code sections 412 or 430 are not limited to the amounts specified in the CBA, the MOU, the Addendum, or the Trust Agreement, the excise tax provisions of Code section 4971 are applicable to any funding deficiencies that may arise as a result of the amounts contributed as specified in the CBA, the MOU, the Addendum, and the Trust Agreement, that are less than the minimum required contribution determined under section 430 for the Plan for any given plan year.

In accordance with Code sections 4971(b) and 4971(c)(3), if a tax is imposed under Code section 4971(a)(1), and the unpaid minimum required contribution remains unpaid as of the close of the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by Code section 4971(a), or the date on which the tax imposed by Code section 4971(a) is assessed, an additional tax equal to 100 percent of the unpaid minimum required contribution is imposed.

The excise tax provisions of Code sections 4971(a) and 4971(b) are applicable to any unpaid minimum required contributions that may arise as a result of the amounts contributed as specified in the CBA, the MOU, the Addendum, or the Trust Agreement, being less than the minimum required contribution determined under section 430 for the plan for the plan year.

And finally, if Form 5330 is not filed in a timely manner to disclose each failure to satisfy the minimum funding standards of Code section 412, in accordance with Revenue Ruling 2003-88, the tax under Code section 4971 may be assessed, or a proceeding in court for the collection of these taxes may be begun without assessment, at any time.

With respect to ruling request number three, as section 302 of the LMRA, 20 U.S.C. Section 186 is not within the purview of the Internal Revenue Service, we will not rule on this issue.

With respect to ruling request number four, the Internal Revenue Service will not recharacterize a defined benefit plan as a defined contribution plan and/or freeze contributions to a defined benefit plan simply because contributions specified in the applicable collective bargaining agreements are not sufficient to satisfy the minimum funding standards of Code sections 412 and 430.

With respect to ruling request number five, it is the plan document that defines the type of the plan and not as in this case, the CBA, the MOU, the Addendum, nor the Trust Agreement.

Code section 414(i) provides that a defined contribution plan provides for an individual account for each participant and benefits are based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account. The plan document contains no such provisions. Rather section 4.1 of the plan document defines the Normal Retirement Benefit as a lifetime monthly benefit payable as a life annuity for five years certain equal based on a participant's service and earnings.

The Plan was effective January 1, , and as represented by the Taxpayer it has always been administered as a defined benefit plan, and it has filed Forms 5500 indicating this is a defined benefit plan, including Schedules B.

However the Taxpayer also argues that Trust Agreement should be interpreted as only authorizing the Trustees to establish a defined contribution pension plan. The Taxpayer also argues that the pension plan authorized by the Trust Agreement entered into and between the bargaining parties was, and is, a defined contribution pension and that this is the case notwithstanding any action by the Trustees to the contrary. Additionally, the Taxpayer argues that the Trustees[1] acted outside the scope of their authority under the Trust Agreement in purporting to adopt a defined benefit pension plan in conflict with the express limitations defining the Taxpayer's contributions obligations. Finally the Taxpayer argues that the Plan should be treated as a defined contribution plan for purposes of the minimum funding standards under Code sections 412 and 430 and action should be taken to reconcile the Trust's accounting accordingly.

The above position taken by the Taxpayer makes one ask: if the Taxpayer has and continues to object to the actions taken by the Trustees, specifically their action to establish a defined benefit plan effective January 1, , why has the Taxpayer not taken action (either through its participation in the Trust as members of the Board of Trustees or other means) in the past years to dissolve the existing defined benefit plan and adopt in its stead a defined contribution plan including a plan document that properly reflects the standing of the Plan as a defined contribution plan? It is important to keep in mind that the Trust is a Taft-Hartley trust with representation on the board of directors from the Taxpayer as well as the unions. The Memorandum of Understanding Re: Pensions, dated March 22, 1967, provides that there are six trustees, three of whom shall be appointed by the Company and three of whom shall be appointed by the Unions.

Accordingly we conclude that since January 1, , the Plan has been and continues to be a defined benefit plan within the meaning of Code section 414(j). However, the Internal Revenue Service will leave it to a court of competent jurisdiction to decide if the Trustees exceeded their express authority in establishing a defined benefit pension plan should the Taxpayer decide to pursue legal action against the Trustees and accordingly will not rule on this particular issue.

Regarding ruling request number six, section 201(b) of the Pension Protection Act of 2006, P.L. 109-208 (PPA '06) provides that under certain circumstances a multiemployer plan may use the shortfall funding method[2]. The Taxpayer represents that this is a single-employer plan and indeed the 20 and 20 Forms 5500 indicate that this is a single-employer defined benefit plan (other than a multiple-employer plan.)

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[1] Apparently since 1967

[2] Note that the provisions of section 201(b) of PPA '06 are not incorporated into the Internal Revenue Code.

Code section 412(a)(2)(A) provides that contributions must be made on account of a single-employer plan that are not less than that required under section 430 of the Code. Accordingly, the plan may not use the shortfall funding method described in section 201(b) of PPA '06.

Regarding ruling request number seven, this is not applicable since the Plan is a single-employer plan and may not use the shortfall funding method described in section 201(b) of PPA '06.

Regarding ruling request number eight, this is not applicable since the Plan is a single-employer plan and may not use the shortfall funding method described in section 201(b) of PPA '06.

With respect to ruling request number nine, sections 413(b)(6) and 413(c)(5) of the Code describe how the liability under section 4971 of the Code is to be apportioned between contributing employers in a plan with multiple participating employers. Accordingly Code sections 413(B)(6) and 413(c)(5) do not apply to the apportionment of contributions determined in accordance with Code sections 412 and 430. Also as represented by the Taxpayer and indicated on the 20 and 20 Forms 5500, the Plan is a single-employer defined benefit plan (other than a multiple-employer plan) and accordingly there is only one contributing employer that makes contributions to the Plan.

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 to your authorized representative pursuant to a power of attorney on file in this office.

This ruling finalizes the provisions of the tentative ruling regarding these issues dated August 9, 2010. If you have any questions regarding this matter, please contact

Sincerely yours,

David M. Ziegler, Manager
Employee Plans Actuarial Group 2