

Significant Index No. 0412.06-00



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201220039

OCT 13 2009

T:EP:RA:UK

Re:

Region =

Hotel A =

Hotel B =

Dear

This letter constitutes notice that your request for a waiver of the minimum funding standard for the Plan for the plan year ending May 31, 2005, has been denied. In a letter dated December 2, 2008, you were informed that your application for a waiver of the minimum funding standard had been tentatively denied and were offered a conference of right. Your conference of right was held on March 4, 2009. Our primary reason for the tentative denial was that the standards for a substantial business hardship had not been met. In particular, it was our position that the contributing employers could satisfy the minimum funding standard for the plan year in question without experiencing substantial business hardship.

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Section 412(c)(1)(A) of the Code (as in effect prior to the Pension Protection Act of 2006) provides that, in the case of a multiemployer plan, if at least 10% of the contributing employers are unable to satisfy the minimum funding standard without experiencing substantial business hardship and application of the standard would be adverse to the interests of plan participants in the aggregate, then the minimum funding standard for the plan year in question may be waived. According to the information received for this case, in order to show that at least 10% of the contributing employers have experienced substantial business hardship for the plan year in question, the Taxpayer must show that at least two of the contributing employers were unable to satisfy the minimum funding standard without experiencing substantial business hardship. For this purpose, the Trustees submitted financial information for Hotel A and Hotel B in order to show that a substantial business hardship had occurred.

The financial information submitted for Hotel A shows approximately \$ _____ in total net income for the period January, 20____, through March, 20____. Hotel A made contributions totaling \$ _____ to the Plan during this period. Hotel A's portion of the funding shortfall is only \$ _____. Based on this information, it does not appear that Hotel A would experience a substantial business hardship in order to satisfy its portion of the minimum funding standard for the plan year ending May, 20____.

While the financial information submitted for Hotel B shows losses for the fiscal years ending December, 20____, 20____, 20____ and 20____, your authorized representative indicated at the conference of right that Hotel B was able to pay its share of the minimum funding standard for the plan year ending May, 20____. Hence, Hotel B did not experience a substantial business hardship in order to satisfy its portion of the minimum funding standard for the plan year ending May, 20____.

It's clear that the Plan has experienced financial difficulties. However, the Trustees have failed to provide sufficient information that at least ____% of the Plan's contributing employers were unable to satisfy the minimum funding standard for the Plan for the plan year ending May, 20____, without experiencing substantial business hardship as required by section 412(c)(1)(A) of the Code. Accordingly, your request for a waiver of the minimum funding standard for the Plan for the plan year ending May, 20____, has been denied.

You should note that excise taxes under section 4971(a) of the Internal Revenue Code are currently due on the accumulated funding deficiency in the Plan for the plan year ending May, 20____. You should file a Form 5330 as soon as possible to report and pay the taxes.

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.

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We have sent a copy of this letter to the Manager, EP Classification in
to the Manager, EP Compliance Unit in and to your
authorized representative pursuant to a power of attorney (Form 2848) on file with this
office. If you require further assistance concerning this matter, please contact

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. M. Ziegler". The signature is fluid and cursive, with a long horizontal stroke at the end.

David M. Ziegler, Manager
Employee Plans Actuarial Group 2