Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP1
PLR-112542-16

Date:
October 04, 2016

In re:

Company =
Plan =
Amount =

Dear :

This letter responds to your letter dated March 11, 2016, as supplemented by correspondence dated June 21, 2016, in which you request a waiver for the remaining unpaid minimum required contribution (Amount) for the Plan for plan year ending December 31, 2015.

Facts

The Company is a privately owned manufacturer of products that are used to fabricate circuit boards. The Company represents that it has recently suffered a temporary substantial business hardship due to its inability to qualify new products, issues involving product development, and the impact of competition in high margin product segments. The business hardship is shown by a significant decline in revenue in 2015 with a corresponding increase in operating expenses. In addition, the Company has lost a significant amount of market share in its industry to foreign competition. Its incoming cash flows for the year of the requested waiver are only minimally sufficient to satisfy obligations to its employees, vendors, and lenders.

The Company has implemented a series of actions to facilitate its long term improvement. This includes hiring new leadership, increasing prices, reducing operating expenses and material costs, and reducing product complexity. In particular, the Company is taking these measures in order to better compete with its foreign competitors, which have been taking market share from the Company due to lower operating costs. The financial projections submitted with its funding waiver application support the Company's assertions that the measures that it is taking can be reasonably expected to generate improved cash flows adequate to satisfy the Plan's funding obligation in the near future.

Law and Analysis

Section 412(c)(1) of the Code provides generally that if an employer is unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship and application of the standard would be adverse to the interests of plan participants in the aggregate, the minimum funding standard requirements may be waived for the year with respect to all or any portion of the minimum funding standard.

Section 412(c)(2) of the Code provides that the factors taken into account in determining a temporary substantial business hardship include whether or not the employer is operating at an economic loss, there is substantial unemployment or underemployment in the trade or business and in the industry concerned, the sales and profits of the industry concerned are depressed or declining, and it is reasonable to expect that the plan will be continued only if the waiver is granted.

In this case, the Company has established that it is experiencing a substantial business hardship that satisfies the requirements for a waiver. Specifically, it has experienced significant declines in revenue and positive cash flows in a short period of time, caused, in part, by pressure from competitors. In addition, as described above, the Company has also taken steps to mitigate the hardship so that is reasonable to conclude that the hardship is temporary and that granting the requested waiver is in the interests of plan participants.

Accordingly, a waiver of Amount for the 2015 plan year has been granted subject to the following conditions:

1. The Company makes contributions equal to the required quarterly contributions to the Plan while the Plan is subject to a waiver of the minimum funding standard. For this purpose, the total amount of each quarterly contribution will be determined in accordance with section 430(j)(3)(D) and section 430(j)(3)(E) of the Code;

2. Under section 412(c)(7), the Company is restricted from amending the Plan to increase benefits and/or Plan liabilities while a waiver under section 412(c) is in effect with respect to the Plan, except to any extent otherwise permitted under Code Section 412(c)(7)(B), in which case the Company must copy PBGC on any correspondence with the IRS regarding notification of or application for such an exception;

3. The Company makes timely contributions to the Plan in an amount sufficient to meet the minimum funding requirements for the Plan for the plan years ending December 31, 2016, through December 31, 2020;

4. Any contribution which is allocated to the 2015 plan year as stated in the Company's 2015 minimum funding waiver application must remain allocated to the 2015 plan year;

5. No contributions made to the Plan for the 2015 plan year are added to the prefunding balance of the Plan;

6. In a timely manner, the Company provides proof of payment of all contributions described above to the Service and PBGC using the fax number or address below.

   IRS - EP Classification: TEGE:EP:7693

   Box 74, 400 North 8th Street, Room 998
   Richmond, VA 23219
   Fax: 877-801-3614

7. The failure to satisfy any of these conditions renders this waiver null and void.

Section 412(c)(7) of the Code and section 302(c)(7) of ERISA describe the consequences that result in the event either of the Plans is amended to increase benefits, change the rate in the accrual of benefits or change the rate of vesting, while any portion of the waived funding deficiency remains unamortized. Any amendment to a profit sharing plan or any other retirement plan (covering employees covered by the Plans) maintained by the Company, to increase, or any action by the Company or its authorized agents or designees (such as a Board of Directors or Board of Trustees) that has the effect of increasing the liabilities of those plans is considered an amendment for purposes of section 412(c) of the Code and section 302(c)(7) of ERISA. Similarly, the establishment of a new profit sharing plan or any other retirement plan by the Company (covering employees covered by the Plans) is considered an amendment for purposes of section 412(c)(7) of the Code and section 302(c)(7) of ERISA.

This ruling applies solely to the minimum funding standard for the 2015 plan year and no inference from this ruling should be taken with regard to any future request for a waiver of the minimum funding standard.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William Hulteng
Acting Branch Chief
Qualified Plans Branch 1
Office of the Associate Chief Counsel
(Tax Exempt & Government Entities)

cc: