

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:EEE:EB:QP1
PLR-103682-19

Date:
August 27, 2019

In Re:

Taxpayer =
Plan =

Dear :

This letter constitutes notice that the waiver of the minimum funding standard for the Plan for the plan year ending December 31, 2018 ("Plan Year") is approved subject to the conditions listed below. This waiver is for the remaining unpaid minimum required contribution for the Plan Year; all waiver amortization payments representing this waiver and all outstanding waivers must be paid as stated in section 412(c)(1)(C) of the Internal Revenue Code (the Code). This waiver is conditioned on the Taxpayer's satisfaction of all of the following conditions, and the failure to satisfy any of these conditions renders this waiver retroactively null and void. In addition, this waiver is eligible for reconsideration or revision if Taxpayer submits an application for a waiver of the minimum funding standard for the Plan for the plan year ending December 31, 2019.

1. Collateral acceptable to the Pension Benefit Guaranty Corporation (PBGC) is provided to the Plan for the full amount of the minimum funding waiver for the Plan Year within 120 days from the date of the IRS ruling letter granting the waiver;
2. Starting with the quarterly contribution due April 15, 2020, Taxpayer makes timely contributions equal to the required quarterly contributions to the Plan while a waiver under section 412(c) of the Code is in effect with respect to the Plan. For this purpose, the total amount of each quarterly contribution will be

determined in accordance with section 430(j)(3)(D) and whenever applicable, sections 430(j)(3)(E) and 430(j)(4);

3. Under section 412(c)(7), Taxpayer 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 section 412(c)(7)(B), in which case the Taxpayer must copy the PBGC on any correspondence with the IRS regarding notification of or application for such an exception;
4. Taxpayer 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, 2019 through December 31, 2023, by September 15, 2020 through September 15, 2024, respectively;
5. Any contributions which are allocated to the Plan Year as stated in Taxpayer's 2018 minimum funding waiver application must remain allocated to the Plan Year and are not considered waived;
6. No contributions made to the Plan for the Plan Year are added to the prefunding balance of the Plan;
7. In a timely manner, Taxpayer provides proof of payment of all contributions described above to the IRS and the PBGC using the following fax numbers or addresses:

IRS – Classification Group: SE:T:GESS:CP&C:C&CA:C

Box 74, 400 North 8th Street, Room 998
Richmond, VA 23219
Fax: 877-751-6769

Pension Benefit Guaranty Corporation
Corporate Finance & Restructuring
1200 K Street, N.W.
Washington, DC 20005
Fax: 202-842-2643
Email: SACompliance@PBGC.GOV

This waiver is granted in accordance with section 412(c) of the Code and section 303 of the Employee Retirement Income Security Act of 1974 (“ERISA”).

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) provides that the factors taken into account in determining a temporary substantial business hardship include whether the employer is operating at an economic loss, whether there is substantial unemployment or underemployment in the trade or business and in the industry concerned, whether the sales and profits of the industry concerned are depressed or declining, and whether it is reasonable to expect that the plan will be continued only if the waiver is granted.

Taxpayer has recently suffered a temporary substantial business hardship due to issues arising from certain projects it was involved in that significantly affected its liquidity and profitability. Taxpayer has implemented a series of actions to facilitate its long term improvement, and its financial projections illustrate that its cash flows will improve adequately to satisfy the Plan's funding obligation in the near future.

Based on the facts as represented by Taxpayer, the legal standard for a "temporary substantial business hardship" pursuant to section 412(c) has been met.

Section 412(c)(7) of the Code and section 302(c)(7) of ERISA describe the consequences that result in the event the Plan is amended to increase benefits, change 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 Plan) maintained by Taxpayer, to increase (or any action by Taxpayer 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 the plan 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 Taxpayer (covering employees covered by the Plan) is considered an amendment for purposes of section 412(c)(7) of the Code and section 302(c)(7) of ERISA.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2019-1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2019-1, § 11.05.

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.

Sincerely,

Janet Laufer
Senior Technician Reviewer
Office of the Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and
Employment Taxes)