



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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SEP 03 2019

T:EP:RA:A2

Re: _____ ("Plan")
EIN: - / PN:

Dear

This letter is in response to your request for a ruling which was submitted by your authorized representative on July 27, 2018. Specifically, you asked for a ruling on whether the two proposed amendments described in your submission are "reasonable and provide for only de minimis increases Plan liabilities" in accordance with section 412(c)(7)(B)(i) of the Internal Revenue Code (the "Code") and section 302(c)(7)(B)(i) of the Employee Retirement Income Security Act of 1974 ("ERISA") and thus do not violate the restrictions under section 412(c)(7)(A) of the Code and section 302(c)(7)(A) of ERISA on plan amendments that increase a plan's liabilities while an amortization extension under section 431(d) of the Code is in place.

This letter constitutes notice that we have declined to rule on proposed Amendment One. Therefore, it cannot go into effect at this time without violating the restrictions under section 412(c)(7)(A) of the Code and 302(c)(7)(A) of ERISA. However, approval has been granted to adopt proposed Amendment Two included with your request. Your authorized representative was notified of this decision via telephone on September 3, 2019.

As a result of this ruling, the 5-year extension of time to amortize certain unfunded accrued liabilities of the Plan that was previously approved for plan years beginning on or after January 1, 2009 will not be adversely affected by the adoption of Amendment Two.

Section 412(c)(7)(A) of the Code provides that no amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any changes in the rate at which benefits become nonforfeitable under the plan shall be adopted if an extension of time under section 431(d) of the Code is in effect with respect to the plan. If a plan is amended in violation of the preceding sentence, any such extension of time shall not apply to any plan year ending on or after the date on which such amendment is adopted. Section 412(c)(7)(B)(i) of the Code provides that the restriction in section 412(c)(7)(A) of the Code shall not apply to any plan amendment which the Secretary determines to be reasonable and which provides only de minimis increases in the liabilities of the plan. Section 304(c)(7)(B)(i) of ERISA contains parallel provisions.

The Plan is a multiemployer defined benefit plan. The taxpayer submitted two proposed plan amendments for ruling.

Proposed Amendment One

Proposed Amendment One would provide, retroactive to January 1, 2000, benefit accruals for certain periods of non-contributory employment for Salted Organizers and Youth-to-Youth apprentices. Under provisions in effect prior to January 1, 2000, benefit accruals were based on a participant's service and the contribution rate applicable to the participant. Effective January 1, 2000, the plan was amended to base benefit accruals on the percentage of contributions owed on behalf of the participant, which, according to the information provided, inadvertently eliminated benefit accruals for non-contributory employment even though affected participants continued to earn service for that period. It was discovered during the ruling process that until July 2015, the taxpayer had continued to grant benefit accruals for this non-contributory employment despite the change in plan provisions. Because of this fact, we have declined to rule on this proposed amendment since this is not the appropriate avenue for this amendment to be considered. It is appropriate for this amendment to be addressed through a closing agreement which can also address the operational failure that was discovered.

Proposed Amendment Two

Proposed Amendment Two would change the period considered under the Plan for determining whether a participant has earned the required number of hours in order for a Participant to be eligible for disability benefits under the Plan. The amendment would change the period from the 24 months prior to the date of disability as determined by the Social Security Administration, to the 24 months prior to the date of disability as reported on the participant's application to the Social Security Administration for disability benefits. The amendment would not otherwise change the eligibility for disability benefits. Participants would still have to be approved for disability benefits by the Social Security Administration and would have to work the requisite number of hours within the new time period established by the amendment.

According to the submission, the Board of Trustees believe that the date of disability as determined by the Social Security Administration is often well beyond the date that the participant is unable to work in employment covered by the Plan, particularly for those participants who are younger than 50 since they are often required to wait until they are 50 to be declared "disabled" by Social Security. Relying on the date of disability as reported in the Social Security disability benefits application will enable the Plan to pay disability benefits to participants who are unable to work but must wait for an extended period before being awarded Social Security disability benefits. Although the number of Plan participants who are eligible for disability benefits is small relative to the universe of Plan retirees, the Board of Trustees considers these participants to be the most vulnerable and in need of financial support by the Plan. Accordingly, we conclude this amendment is reasonable.

According to information submitted by the Plan's authorized representative, the Plan's actuary represents that proposed Amendment Two would increase the Plan's actuarial accrued liability by % and normal cost by % as of January 1, . Additionally, proposed Amendment Two is only projected to decrease the Plan's projected funded status as of December 31, by %. Further, the Plan's actuary has certified that proposed Amendment Two is not projected to cause the Plan to fail to meet its funded percentage benchmark under its Funding Improvement Plan. Accordingly, we conclude this amendment is de minimis.

Consequently, your request for proposed Amendment Two has been approved because it has been determined that it meets the requirements for the exception in section 412(c)(7)(B)(i) of the Code and section 304(c)(7)(B)(i) of ERISA, and therefore, does not interfere with the 5-year amortization extension approval issued November 20, 2009.

In granting this ruling, it is expected that the Plan's assumptions and methods will be reviewed and updated as appropriate so that each assumption is reasonable (taking into account the experience of the plan and reasonable expectations) and such assumptions, in combination, offer the best estimate of anticipated experience under the plan. Furthermore, we are not expressing any opinion outside the meaning of section 412(c)(7) of the Code and section 304(c)(7) of ERISA, or as to the accuracy of any material submitted with your request.

This ruling does not address whether any past amendments violated the anti-cutback rules of section 411(d)(6) of the Code or whether the proposed amendments comply with the rules for operation while a plan is in endangered status under section 432(d)(1)(B) of the Code.

We have sent a copy of this letter to your authorized representatives pursuant to a Power of Attorney and Declaration of Representative ("Form 2848") on file with this

office; the Manager, EP Classification in Columbus, Ohio, the Manager, EP Compliance Unit in Chicago, Illinois, and the Manager, Voluntary Compliance in Dallas, Texas.

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.

If you require any further assistance in this matter, please contact Gregory K. Davis (ID# 3626584) at (443) 853-5590. An agent will be contacting you regarding a closing agreement for proposed Amendment One.

Sincerely yours,

David M. Ziegler
Manager, EP Actuarial Group 2

cc: