Internal Revenue Service

Significant Index No. 0412.06-00

Third Party Contact: April 1997 – Employee of the Company

Department of the Treasury 200123067

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to.

T:EP:RA:T:A2

Date:

MAR 1 4 2001

Re:

This letter concerns the request of November 27, 1996 made to our office, and resubmitted to our office on January 5, 1999, for waivers of the minimum funding standard for the above-named money purchase plan for the plan years ending December 31, 1995 and 1996. Furthermore, this letter constitutes notice that (1) the request for a waiver of the minimum funding standard for the plan year ending December 31, 1995 will not be considered because it was made after the statutory deadline for such a request, and (2) the request for a waiver of the minimum funding standard for the plan year ending December 31, 1996 has been granted subject to the following conditions:

(1) The plan is amended to include the provisions in Attachment I to this letter.

(2) If the plan terminates prior to January 1, 2002, sufficient contributions will be made and allocated so that at the time of termination each participant's "actual account balance" will be equal to his or her "adjusted account balance", as such terms are defined in Attachment I.

(3) A contribution equal to $55,000 is made to the plan trust by March 31 , 2001.

(4) An additional contribution equal to $55,000 is made to the plan trust by September 15, 2001.

(5) Additional $13,000 contributions are made to the plan trust by December 31, 2001, March 31, 2002, and June 30, 2002, respectively.

(6) A contribution equal to the outstanding unamortized portion of the waiver is made by September 152002.

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(7) An agreement is reached with the Service concerning the payment of outstanding excise taxes under § 4971 of the Internal Revenue Code (Code), including interest and penalties thereon, within 60 days of the date of this ruling.

You have agreed to these conditions. If they are not satisfied, this waiver is retroactively null and void.

This conditional waiver has been granted in accordance with § 412(d) of the Code and § 303 of the Employee Retirement Income Security Act of 1974 (ERISA). The amount for which this waiver has been granted is the contribution that would otherwise be required to reduce the balance in the funding standard account to zero as of December 31, 1996.

The plan sponsor is a government contractor, primarily as a subcontractor on government jobs in Due to the disruption in its federal contract arrangements in 1995, the plan sponsor suffered severe cash-flow problems. This situation was exacerbated because the plan sponsor did not lay off its employees while waiting for payment from the prime contractors for which it was subcontracting. Faced with this financial hardship, the plan sponsor was unable to meet its funding obligations for the plan years ending on December 31, 1995 and 1996.

As a result of this business hardship, the plan sponsor made a number of changes to improve its financial situation. Specifically, it has cut staff, designated new officers, and instituted operational improvements. Furthermore, the plan was amended to reduce the contribution rate from 10% of eligible compensation to 0.1% of eligible compensation effective as of October 1, 1996. The plan sponsor has also represented that it intends to keep the plan in effect until the funding deficiency is corrected. Hence, we have granted a waiver of the minimum funding standard for the plan for the plan year ending December 31, 1996, subject to the conditions specified above.

When a defined contribution plan receives a waiver of the minimum funding requirements, the plan, in accordance with Rev. Rul. 78-223, 1978-1 C.B. 125, must be amended to reflect the waiver if the plan does not otherwise provide for such waiver.

Section 3.02 of Rev. Proc. 94-41, 1994-l C.B. 711, provides that the applicant requesting a waiver need not submit an amendment designed to satisfy Rev. Rul. 78-223. If no amendment is submitted, the IRS may issue a ruling letter granting a conditional funding waiver requiring the adoption of an amendment supplied by the IRS. Because no plan amendment accompanied your request, we are granting the waiver subject to your adoption of the enclosed proposed amendment. If that amendment is not adopted within a reasonable time, this waiver is retroactively null and void.

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However, if you disagree with our amendment or would like to modify it in any way, we will consider any such request if such request is submitted in writing no later than 60 days from the date of this letter. Your letter should clearly state the exact changes you propose.

This letter is not a ruling as to the effect that the plan amendment may have on the qualified status of the plan.

Your attention is called to the following:

(1) Section 412(f)(l) of the Code describes the consequences which result in the event the plan is amended to increase benefits, to change the rate in the accrual of benefits, or to change the rate of vesting while any portion of the waived funding deficiency remains unamortized.

(2) Section 412(d) of the Code provides that the amortization charge described in § 412(b)(2)(C) must be computed by using an interest rate as described in § 412(d)(l):

(3) Section 412(b)(2)(C) of the Code, as amended by § 9307(a)(l) of the Omnibus Budget Reconciliation Act of 1987, requires that, for plan years beginning after December 31, 1987, each waived funding deficiency must be amortized by equal annual installments over a period of 5 years. This provision is applicable to an amortization base established in a plan year beginning after December 31, 1987, as in this case for the waiver granted for the plan year ending December 31, 1996.

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

In accordance with the instructions to Form 5500, a Schedule B (Actuarial Information) of Form 5500 must be filed for each plan year for which a waiver is in effect. Schedule B should be filed for this plan; accordingly, when filing Form 5500 for the plan year ending December 31, 1996, the date of this letter should be entered on Schedule B (Actuarial Information). For this reason, we suggest that you furnish a copy of this letter to the individual who is responsible for the completion of the Schedule B, who does not have to be an enrolled actuary in this case.

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A copy of this letter is being sent to the Coast Area Office in
If you have any questions concerning this ruling, please contact the individual referenced above.

Sincerely yours,

Martin L. Pippins

Martin L. Pippins, Manager
Employee Plans Actuarial Group 2
Tax Exempt & Government Entities Division

Enclosure

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Attachment I

The employer, if unable to satisfy the minimum funding standard for a given plan year, may apply to the Internal Revenue Service for a waiver of the minimum funding standard. If the waiver is granted, the following provisions apply.

1. The valuation date for a given plan year is the last day of each plan year.

2. An adjusted account balance shall be maintained for each plan participant whose actual account balance is less than or equal to his or her adjusted account balance.

   (a) For the plan year for which the first waiver is granted, the adjusted account balance as of the valuation date for each affected plan participant equals:

      (1) the participants actual account balance, plus

      (2) the amount that such participant would have received if the amount waived had been contributed.

   (b) For each plan year following the plan year for which a waiver is granted, the adjusted account balance of each participant affected by such waiver (calculated as of the valuation date for that year) equals:

      (1) the adjusted account balance as of the valuation date in the prior plan year, plus

      (2) the amount equal to the actual investment return credited or charged to the participants actual account balance, plus

      (3) the amount equal to 5% of the excess of the amount in (1) over the participants actual account balance calculated as of the same date, plus

      (4) the amount equal to such participant's allocated share of the employers required contribution (whether or not waived) for the plan year (determined without regard to adjusted waiver payments and discretionary contributions), minus

      (5) the amount of the participants adjusted account balance forfeited during the plan year under the plan's provisions.

3. For a given plan year, the employer is required to contribute a certain amount in order to satisfy the minimum funding standard for such plan

year. For each plan year that follows a plan year for which a waiver of the minimum funding standard was granted, the amount equals:

(1) the amount due in accordance with the plan's contribution formula (without regard to this section), plus

(2) the adjusted waiver amount.

The adjusted waiver amount for a given plan year equals:

(1) the sum of the amounts necessary to amortize each waived funding deficiency over a period of 5 plan years (15 plan years for waivers granted for plan years beginning prior to January 1, 1987) measured from the valuation date of the plan year for which the corresponding waiver was granted at t%[1] interest, compounded annually, minus

(2) the sum of the amounts necessary to amortize the total of each years forfeitures (which have arisen since the first waiver was granted) over a period of 5 plan years (15 plan years for forfeitures occurring in plan years beginning prior to January 1, 1988) measured from the valuation date of the plan year in which the corresponding forfeitures arose at 5% interest, compounded annually.

An amount equal to the adjusted waiver amount must be contributed only until each actual account balance equals the adjusted account balance. Any plan provision which provides that employer contributions shall be reduced immediately by forfeitures is revoked until each participant's actual account balance equals that participants adjusted account balance.

Discretionary employer contributions, which are in addition to the amounts contributed to satisfy the minimum funding standard, can be made in any given plan year. However, the total employer contribution for the plan year cannot exceed the then remaining underfunded amount (the sum of the adjusted account balances minus the total plan assets).

4. The adjusted waiver payments, discretionary contributions, and forfeitures of actual account balances for the current plan year shall be allocated as of that year's valuation date to the actual account balance of each affected plan participant.

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[1] t is the interest rate determined, on the first day of the plan year, in accordance with § 412(d)(l) of the Internal Revenue Code (as in effect at the time the waiver was requested).

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Each time a waiver is granted, an **Original Waiver Amount** (OWA) will be determined for each affected plan participant. The OWA equals the participants portion of the amount that was waived.

Commencing with the valuation date of the plan year for which a waiver is granted, a **Remaining Original Waiver Amount** (ROWA) must be calculated for each affected plan participant. As of such valuation date, the OWA equals the ROWA. On the valuation date of a succeeding plan year, the ROWA equals the prior plan year's ROWA multiplied by (1 + t/100), minus the forfeiture of amounts in the prior years ROWA incurred in the current plan year, minus the allocation with respect to the OWA for the current plan year. For each waiver that is granted, one OWA and a corresponding ROWA will be established for each affected plan participant.

The sum of the adjusted waiver payments, discretionary contributions, and forfeitures of the actual account balances for a given plan year are allocated to those participants who have ROWA's by multiplying the sum of these three amounts by the fraction:

(i) the numerator of which equals the sum of OWA's for a particular participant, and

(ii) the denominator of which equals the sum of the OWA's for all participants.

To determine the portion of this allocation which is to be assigned to a given ROWA, multiply the allocation by the corresponding OWA, then divide by the sum of the OWA's for the particular participant.

If the calculation of a ROWA results in a value which is less than zero, then

(1) the ROWA is set equal to zero,

(2) the corresponding OWA is set equal to zero, and

(3) the excess payments will be reallocated to the remaining ROWA's.

5. A distribution is determined by multiplying a participant's vested percentage by his or her adjusted account balance. However, distributions from the plan may not exceed a participant's actual account balance. If so limited, plan participants shall receive subsequent distributions derived from future adjusted waiver payments.

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