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Internal Revenue Service

Significant Index Nos. 401.28-00 & 415.01-00

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T:A1

Date:

MAY 2 2 2001

Re: Request for rulings on behalf of behalf of the

Taxpayer =

Pension Plan =

Excess Benefit Plan =

Dear

This is in reply to a ruling request, made on your behalf by your authorized representative. with respect to the creation of the Excess Benefit Plan and its effect on the Pension Plan. You have requested the following rulings:

(1) That the use of the Excess Benefit Plan will not cause the Pension Plan to lose its qualified status under section 401(a) of the Internal Revenue Code of 1986 (the "Code").

(2) That the allocation of contributions to the Excess Benefit Plan will not cause the Pension Plan to lose its qualified status under section 401(a) of the Code.

(3) That any employer contributions allocated to the Excess Benefit Plan pursuant to collective bargaining agreements will be deductible by the employers under section 404 of the Code in the year in which such contributions are used to pay benefits to participants of the Pension Plan,

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The Pension Plan is a qualified collectively bargained multiemployer defined benefit pension plan. The date of its most recent determination letter is July 9, 1996.

The Excess Benefit Plan is a non-qualified employee benefit plan, established January 1, 2000, pursuant to section 3(36) of the Employment Retirement Income Security Act of 1974 ("ERISA"), which provides participants with a supplemental benefit intended to offset any restriction caused by section 415 of the Code. Separate accounts will be maintained for all participants who are entitled to receive benefits from the Excess Benefit Plan. The Excess Benefit Plan will not accept contributions or pay benefits unless the Taxpayer receives a favorable ruling from the Internal Revenue Service on this private letter ruling request.

The benefits payable under the Excess Benefit Plan are restricted to participants who are receiving benefits under the Pension Plan. A participants benefit under the Excess Benefit Plan is equal to the amount of such participants otherwise calculated monthly benefit from the Pension Plan less the participants benefit under the Pension Plan as restricted under the plan to satisfy the requirements of section 415 of the Code.

Contributions paid to the Excess Benefit Plan will be made pursuant to collective bargaining agreements. The collective bargaining agreements will be amended to provide that on a monthly basis, the Pension Plan administrator (who will also act as the Excess Benefit Plan administrator) will determine the amounts to be paid to the Excess Benefit Plan beneficiaries in the following month and remits such amounts, grossed up to include the Excess Benefit Plan's share of F.I.C.A. taxes as well as the F.U.T.A. taxes due thereon, to the Excess Benefit Plan. Such remittance will be made prior to the payment of employer contributions to the Pension Plan.

Under the provisions of the Pension Plan, the assets of the Pension Plan cannot be used to provide the benefits of the Excess Benefit Plan. Similarly, under the provisions of the Excess Benefit Plan, the assets of the Excess Benefit Plan cannot be used to provide the benefits of the Pension Plan.

Section 3(36) of ERISA defines an "excess benefit plan" as one maintained solely for the purpose of providing benefits for certain plan participants in excess of the limitations imposed by section 415 of the Code, without regard to whether the plan' is funded.

Section 401(a) of the Code provides the requirements for qualification of a trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries.

Section 401 (a)(1 6) of the Code provides that a trust shall not constitute a qualified trust if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415 of the Code.

Section 404(a) of the Code provides if contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued by an employer on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation is not deductible under Chapter 1 of the Code, but, if it would otherwise be deductible, is deductible under section 404, subject to that limitations of that section.

Section 404(a)(5) of the Code provides that contributions or compensation paid under a nonqualified plan or arrangement deferring the receipt of compensation, if otherwise deductible are deductible in the taxable year in which an amount attributable to the contribution are includible in the gross income of the employees participating in the plan, but, in the case of a plan in which more than one employee participates, only if separate accounts are maintained for each employee.

Section 412 of the Code provides minimum funding requirements that must be satisfied in pension plans.

Section 415 of the Code provides limitations on benefits and contributions that may be provided under a qualified trust.

Section 501(a) of the Code provides that an organization described in section 401 (a) is exempt from taxation.

Section 1.404(a)-12(b)(l) of the Income Tax Regulations (the “regulations”) provides that a deduction is allowable for a contribution under section 404(a)(5) only in the taxable year of the employer in which or with which ends the taxable year of an employee in which an amount attributable to such contribution in includible in his gross income as compensation, and then only to the extent allowable under section 404(a).

Section 1.414(l)-1 (b)(l) of the regulations provides that a plan is a "single plan" if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries.

Section 1.404(b)-IT Q&A-2 of the (temporary) regulations provides that a plan, or method or arrangement, defers the receipt of compensation to the extent it is one under which an employee receives compensation or benefits more than a brief period of time after the end of the employer's taxable year in which the services creating the right to such compensation or benefits is performed.

Because the assets of the Excess Benefit Plan are not available to pay benefits under the Pension Plan and the assets of the Pension Plan are not available to pay benefits under the Excess Benefit Plan, the Pension Plan and the Excess Benefit Plan do not constitute a single plan. Furthermore, the benefits and provisions of the Excess Benefit Plan do not affect the Pension Plan or the amounts of benefits payable from the Pension Plan. Thus, the existence of the Excess Benefit Plan does not affect thetax-qualified status of the Pension Plan.

If the establishment, adoption, and operation of the Excess Benefit Plan is not accompanied by an increase in the contribution rate under the collective bargaining agreement, the method of funding of the Excess Benefit Plan may cause the Pension Plan to fail to meet the funding requirements of section 412 of the Code. However, a plan does not lose its tax-qualified status merely because it fails to meet the minimum funding requirements of section 412. Thus the method of funding of the Excess Benefit Plan does not affect the tax-qualified status of the Pension Plan.

Because the Excess Benefit Plan is a plan deferring the receipt of compensation under 1.404(b)-IT Q&A-2 of the (temporary) regulations, contributions to the Excess Benefit Plan are deductible only under the rules of section 404 of the Code. Because the Excess Benefit Plan is a nonqualified plan, the provisions of section 404(a)(5) of the Code are applicable. Because the Excess Benefit Plan provides for the maintenance of separate accounts for each employee, contributions to the Excess Benefit Plan made by contributing employers for the benefit of employees are deductible for the contributing employer's taxable year in which or with which ends the employee's taxable year in which an amount attributable to the contributions is includible in such employee's gross income.

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Therefore we hold that:

(1) The establishment, adoption, and operation of the Excess Benefit Plan does not cause the Pension Plan to lose its qualified status under section 401 (a) of the Code.

(2) The method of funding of the Excess Benefit Plan does not cause the Pension Plan to lose its qualified status under section 401(a) of the Code.

(3) Assuming the requirements for deductibility are met, employer contributions to the Excess Benefit Plan are fully deductible by the contributing employers in the taxable year in which or with which ends the employee's taxable year in which an amount attributable to the contributions is includible in such employee's gross income.

This ruling is conditional on the adoption of language revising the collective bargaining agreements that govern the employers' contributions such that the employers' contributions will be made to the Excess Benefit Plan in amounts equal to the amounts to be paid from the Excess Benefit Plan and that the remainder of the contributions, if any, will be made to the Pension Plan.

This ruling does not consider the more general issue of the Pension Plan's qualified status, specifically, whether the Pension Plan complies with all the Code requirements for qualification. This letter addresses only the impact (if any) of the adoption and funding of the Excess Benefit Plan on the purportedly otherwise qualified status of the Pension Plan.

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.

Sincerely,

James E. Holland, Jr.

James E. Holland, Jr., Manager
Employee Plans Actuarial Group 1
Tax Exempt and Government
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