Significant Index No. 0412.06-00

200351028

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 26 2003

T:EP:RA:T:A2

In re:

Company =
Division S =
Division T =

This letter constitutes notice that: (1) a conditional waiver of the minimum funding standard has been granted for the above-named pension plan for the plan year ending December 31, 2002; and (2) waivers of the 100 percent tax under section 4971(b) of the Internal Revenue Code (Code) have been granted for the above-named pension plan for the tax years associated with the plan years ending December 31, 1998 through 2001.

The conditional waiver of the minimum funding standard for the plan year ending December 31, 2002, has been granted in accordance with section 412(d) of the Internal Revenue Code (Code) and section 303 of the Employee Retirement Income Security Act of 1974 (ERISA). The amount for which the conditional funding waiver has been granted is the contribution that would otherwise be required to reduce the balance in the funding standard account of the plan to zero as of the end of the plan year for which the waiver has been granted.

The waivers of the tax that might be imposed under section 4971(b) of the Code for the plan years ending December 31, 1998 through 2001, are granted in accordance with section 3002(b) of ERISA. The amount waived is the tax equal to 100 percent of the accumulated funding deficiency to the extent not corrected.

The Company is a privately held corporation that provides services and products through its initial core business, Division S, that include

Division T, acquired by the Company in 1995, manufactures a variety of used in both applications by a variety of customers.

The Company has experienced temporary substantial business hardship as evidenced by negative working capital and negative net worth for the last five fiscal years, and net losses in three of the same five years. Following the acquisition of Division T, the Company acquired an additional product line in an effort to grow its business, exercising its entire credit line for the purchase. Because the equipment for the new product line arrived without adequate documentation and training materials, the Company was required to shift resources away from its profitable product line in an attempt to salvage the new product line. The expense of the acquisition, and the training and relocation of employees resulted in poor yields on the new product line, and losses for the Company. The Company's financial problems were further compounded when its new controller incorrectly designated funds withheld from certain employees' wages, and the funds were improperly used as available cash, with the result that monies that should have been paid to various governmental agencies were not paid. By the time the Company became aware of the mistake, the Company owed in excess of $1 million to the various agencies.

The Company has taken steps to effect recovery that include:

- A new, aggressive cost cutting strategy, which is expected to result in a positive cash flow from operations for Division T for 2003;
- Consideration of inquiries from current customers and competitors about merging or acquiring Division T;
- A return to profitability by Division S as a result of new contract awards, and increased profitability due to positive pricing strategies; and
- Repayment of the inappropriately used designated funds from employees' wages by selling a parcel of real estate and a refinancing.

According to the facts as stated, the Plan has experienced funding deficiencies since the 1998 plan year. Hence, there is an accumulated funding deficiency on which a tax is imposed by section 4971(a) of the Code as of December 31 for each of the years 1998 through 2001, as summarized below.

Plan Year (Calendar Year)	Funding Deficiency	§ 4971(a) Tax
1998	$140,235	$14,023.50
1999	$472,384	$47,238.40
2000	$702,483	$70,248.30
2001	$658,658	$65,865.80

The Company contributed an amount equal to the minimum funding standard for the 2001 plan year ($658,658) in 2002, after September 15, 2002. Because this payment was not timely for purposes of the 2001 plan year, a funding deficiency resulted for the 2001 plan year and a tax under section 4971(a) was applicable to the 2001 funding deficiency, as shown above. For purposes of determining the amount of the accumulated funding deficiencies for the 1998-2001 plan years subject to the tax under section 4971(b) of the Code, the contribution of $658,658 in 2002 would be applied to prior year funding deficiencies before it would be applied to the 2002 minimum funding standard. Because the contribution was in the amount of the 2001 minimum funding standard (which includes any carried over and unpaid accumulated funding deficiencies for prior plan years), the accumulated funding deficiency was corrected and no 100% tax under section 4971(b) of the Code would apply to the tax years associated with the 1998-2001 plan years. Furthermore, if any accumulated funding deficiency amounts were determined for the 1998-2001 plan years in excess of $658,658, any taxes assessed under Code section 4971(b) on such amounts are hereby waived. On January 1, 2002, the ratio of the market value of the Plan's assets to the Plan's actuarial accrued liability was equal to 77%.

This waiver has been granted subject to the following conditions:

1. The Company will make sufficient contributions to the Plan by September 15, 2004, to timely satisfy the minimum funding standard for the Plan for the plan year beginning January 1, 2003 (including the amortization payment for the 2002 waiver).

2. Within 90 days from the date of this letter, the Company will execute an agreement with the Mid-Atlantic Area Office scheduling the payment of all taxes due under section 4971(a) of the Code for the 1998-2001 plan years. The Company will provide documentation of such payment schedule agreement to the Washington, D. C. office within 120 days from the date of this letter, and will provide documentation of subsequent payments of the section 4971(a) taxes, as they are paid, to the Washington, D.C. office in a timely manner.

The Company has agreed to these conditions. If the Company fails to meet either of the above conditions, this waiver is retroactively null and void.

Your attention is called to section 412(f) of the Code and section 304 of ERISA which 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 amount remains unamortized.

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

When filing Form 5500 for the plan year ending December 31, 2002, the date of this letter should be entered on Schedule B (Actuarial Information). We have sent a copy of this letter to the Manager, EP Classification, in , and to your authorized representatives (Form 2848) on file with this office.

If you have any questions concerning this letter, please contact . In any correspondence relating to this letter, please refer to SE:T:EP:RA:T:A2 as well.

Sincerely,

Martin L Pippins

Martin L. Pippins, Manager
Employee Plans Actuarial Group 2