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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 3 1 2005

This is in response to the request dated May 22, 2003, for a ruling under section 412(c)(10) of the Internal Revenue Code (the "Code").

Facts

The Fund is a collectively bargained multiemployer defined benefit pension plan. The plan year of the Fund ends January 31. The Fund's most recent favorable determination letter was issued by the Internal Revenue Service on Date 1.

Each participating employer contributes amounts to the Fund in accordance with the terms of the collective bargaining agreement it has negotiated with its Union local or in accordance with the terms of another written agreement, which has been deemed acceptable by the trustees of the Fund. Contributions are made on behalf of employees, and are due for each hour for which an employee is entitled to compensation from a participating employer.

Projections by the Fund's actuary show that the Fund is likely to incur a minimum funding deficiency by the plan year beginning Date 2. Because amounts contributed to the Fund by participating employers are determined by collective bargaining agreements with Union locals, the trustees of the Fund have no direct control over amounts contributed to the Fund. Furthermore, because, under the terms of the Fund, a participant's monthly benefit entitlement is determined, in part, by the amount of contributions made to the Fund on behalf of the participant, increases in employer contribution rates would, in any event, only partially ameliorate the Fund's projected funding deficiencies.

In light of the above you have requested a ruling that amounts paid to the Fund by participating employers in the six-month period from [redacted] through [redacted], may be treated as contributions received for the plan year ending January [redacted], in accordance with section 412(c)(10) of the Code.

Law

Section 404(a)(6) of the Code provides that for purposes of paragraph (1), (2), and (3) of that section, a taxpayer shall be deemed to have made a payment on the last day of such taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for that taxable year (including extensions thereof).

Section 412(c)(10) of the Code provides that for purposes of that section ---

(A) Defined Benefit Plans other than multiemployer plans. In the case of a defined benefit plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period ----

(i) beginning on the day after the last day of such plan year, and

(ii) ending on the day which is 8 ½ months after the close of the plan year,

shall be deemed to have been made on such last day.

(B) Other plans. In the case of a plan not described in subparagraph (A), any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of that paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

Section 11.412(c)-12(b)(1) of the regulations provides that for purposes of section 412 a contribution for a plan year to which section 412 applies that is made not more than eight and one-half months after the end of such plan year shall be deemed to have been made on the last day of such year.

Section 11.412(c)-12(b)(2) of the regulations provides that the rules of that section relating to the time a contribution to a plan is deemed made for purposes of the minimum funding standard under section 412 are independent from the rules contained in section 404(a)(6) relating to the time a contribution to a plan is deemed made for purposes of claiming a deduction for such contribution under section 404.

Analysis

Section 412(c)(10)(B) of the Code and section 11.412(c)-12(b)(1) of the regulations provide that, for purposes of section 412, contributions for a plan year made within an eight and one-half month "grace period" after the end of such plan year shall be deemed to have been made on the last day of such year. This request concerns the meaning of the phrase "for a plan year" in the context of a multiemployer pension plan. Specific guidance has not been issued interpreting the meaning of the phrase "for a plan year" in the context of a multiemployer pension plan and whether this language limits a plan to receipt of contributions within this post-plan year period only if those contributions are due for work performed during the plan year.

Section 412(c)(10)(B) provides, in relevant part, "any contributions for a plan year made by an employer after the last day of such plan year, but not later than [eight] and one-half months after such last day, shall be deemed to have been made on such last day". The most natural reading of the phrase "for a plan year" is that it means for the plan year that has just ended. The phrases "such plan year" and "such last day" support this view, and would seem to refer back to the plan year just ended and not "any" plan year that the taxpayer might want to designate. Thus, contributions received during the section 412 grace period must be due for work performed during the plan year that has just ended in order to be credited to that year[1].

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[1] As support for its position, the Fund cites the legislative history of section 412(c)(10)(B) of the Code and specifically references the Joint Explanatory Statement of the Committee of Conference Report ("Report"). The Report provides as follows:

> The conference substitute clarifies the intent of both the House bill and the Senate amendment, that contributions made after the close of a plan year may relate back to *that plan year* for the purposes of the minimum funding standards. Under the conference substitute, the contributions may relate back to the plan year if it is made within 2 ½ months after the close of *that plan year*, plus any extension granted by the Internal Revenue Service up to an additional 6 months (for a maximum of 8 ½ months after the end of the year).

H. R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess., 1974-3 C.B. at 451 (*emphasis added*).

Contrary to the assertion by the Fund, the Report does not specifically indicate that a plan can use the grace period as the Fund seeks in its request. In our view, the Report indicates that the important factor is when the work is performed which gives rise to the contribution obligation and not solely when the plan receives the contributions.

While it is evident from regulation Section 11.412(c)-12(b)(2) that the 8 ½ month grace period is independent of the tax deduction rules for post year-end contributions, the word independent does not mean inconsistent. Cases involving multiemployer plans and the phrase "on account of" in section 404(a)(6) of the Code make clear that contributions made after the end of the plan year for services performed after the end of the plan year cannot be deducted in the prior taxable year. See *Lucky Stores, Inc. v. Commissioner*, 107 T.C. 1 (1996), *aff'd*, 153 F.3d 964, 966 (9th Cir. 1998), *cert denied*, 523 U.S. 1111 (1999) (employer contributions to multiemployer collectively bargained plans that were paid after the end of the taxable year and were based on employee hours worked after the end of the taxable year could not be considered as paid "on account of" that taxable year) and *American Stores Company, v. Commissioner*, 108 T.C. 178 (1997), *aff'd*, 170 F.3d 1267 (10th Cir. 1999), *cert denied*, 528 U.S. 875 (1999).

In addition, the court in *American Stores* further reasoned that under section 413(b)(7), the calculation of the maximum deduction limits for a multiemployer plan employed an approach which required use of an estimate based on the manner in which actual employer contributions for such plan year are determined. *Id.* at 1274-75. If contributions attributable to more than 12 months of service could be assigned to any year the employer chose, the court found, it would be impossible for plan administrators to make a meaningful determination of anticipated contributions, thereby making section 412(b)(7) unworkable. As such, the court held that American Stores' "argument flies in the face of the entire purpose for [the] grace period," that is, to facilitate the calculation of deductible contributions. *Id.* at 1277.

Finally, the plain meaning of the phrase "for a plan year" is that a contribution is paid "for a plan year" only if there is a causal connection between an event occurring in that year and the payment of the contribution. In a collectively bargained multiemployer plan, the causal connection is the performance of services under a collective bargaining agreement requiring a specific contribution for each hour or other unit of service worked under the contract. In such a plan, contributions are generally due on a monthly basis in the month immediately following the month when the work is performed. This process is generally performed on a contribution remittance report which the employers complete and lists the names of and hours worked by each employee and is sent to the plan along with the payment of the total required contribution. The plan monitors the dates of receipt of the monthly contributions and can assess interest on delinquent accounts. Because a plan year cannot be longer than 12 months, contributions made for work performed after the end of a plan year cannot be "for a plan year". If however, 12 full months of contributions are not made by the end of a plan year, then any shortfall can be paid within the 8 ½ month period following the end of the plan year. Thus, a collectively bargained multiemployer plan can use contributions made in the grace period following the end of its plan year for funding purposes, but only to the extent those contributions are for work performed in the plan year.

In the instant case, the Fund is requesting that contributions received during the period from [redacted] through [redacted] be treated as contributions for the plan year ended [redacted]. However, for the reasons stated above, contributions received during the period from [redacted], through [redacted], can not be for the plan year ended [redacted], unless there is a causal connection between an event occurring in the plan year ended [redacted], and the contribution. Accordingly, it is ruled that amounts paid to the Fund by participating employers in the period from [redacted], through [redacted], may not be treated as contributions received for the plan year ended [redacted], except to the extent that such contributions were for work performed in the plan year ended [redacted].

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.

A copy of this letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file.

If you have any questions on this ruling letter, please contact

Sincerely,

Frances V. Sloan

for James E. Holland, Jr., Manager
Employee Plans Technical