Significant Index No. 401.00-00

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

200614029

JAN 1 1 2006

SE:T:EP:RA:A2

In re: request for ruling on behalf of

Company =
EIN:

Plan A =
Plan B =
Plan C =
Plan D =

Bankruptcy Court =

Dear

This letter constitutes notice that, with respect to the above-named Plan A, your request for rulings that the plan amendments described below are reasonable and provide for de minimis increases in plan liabilities of Plan A within the meaning of section 401(a)(33)(B) of the Internal Revenue Code (Code) and section 204(i)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), has been approved. This letter is conditioned on performance of certain actions by that are reflected in Section 3.3 of the PBGC Settlement Agreement approved by the Bankruptcy and District Court's on September 12, 2005, including the requirement that provide notices to participants of projected distributions, purchase annuities with respect thereto, and file a post-distribution certification for Plan A with the PBGC no later than May 1, 2006.[1]

BACKGROUND

According to the facts as stated, Plan A was the continuing plan when a plan maintained by a subsidiary of the Company was merged into a plan maintained by the Company in 1986, and the continuing plan was renamed as Plan A.

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obligations under the PBGC Settlement Agreement are further described in the letter of October 17, 2005, attached hereto.

Benefit accruals and participation under Plan A were frozen on
As of there were approximately 15,239 participants with accrued benefits under Plan A.

The Company filed a voluntary petition for relief under chapter 11 of title 11 of the Code (Bankruptcy Code) in the Bankruptcy Court in

In a motion (Motion) filed in the Company petitioned the Bankruptcy Court for authorization to: contribute a stated amount to the four above-named plans of the Company (Pension Plans) on the terms and conditions and subject to the limitations set forth in the Motion; purchase commercial annuities to provide for the future payment of benefits under the Pension Plans; amend the Pension Plans as necessary or desirable to facilitate the funding and standard termination of the Pension Plans and to comply with applicable law; seek supplemental relief from the Court in the event of an adverse determination as to the tax-qualified status of Plan A; and, in their discretion, to amend the Pension Plans to accelerate the vesting of benefits.

In an order (Order) dated the Bankruptcy Court granted the Company's Motion, with certain requirements. The Order authorized the Debtors to make contributions to the Pension Plans in an aggregate amount not more than a stated amount, provided that the Debtors would not be obligated to contribute all of any portion of such amount to the Pension Plans prior to receipt of a favorable determination by the Internal Revenue Service (Service) that the Pension Plans are tax-qualified as of the date of their termination. The Debtors were authorized to amend the Pension Plans as necessary or desirable to facilitate the termination of the Pension Plans and to comply with applicable law, provided that such amendment did not increase liabilities above stated amounts without the Creditors' Committee's consent. The Court authorized the Debtors, in their discretion and upon consultation with the Creditors' Committee, to amend the Pension Plans to provide for the full vesting of accrued benefits under the Pension Plans, provided that the adoption of any such amendment would not become effective until the Debtors have received a favorable determination from the Secretary of the Treasury that the amendment complies with section 401(a)(33) of the Code. Additionally, the Court authorized the Debtors to execute, deliver, implement, and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to complete the standard termination of the Pension Plans, in accordance with the Order.

The Company's Board of Directors adopted a resolution establishing as the termination date for Plan A. Plan A provides that participants vest in their accrued benefits on the date that is five years following the commencement

of participation in the Plan. The Company executed the Fourth Amendment to Plan A on which provided that effective Section 8.6 of Plan A is amended to provide that, subject to a favorable determination by the Secretary of the Treasury following the termination of Plan A, all participants who were active employees as of shall be fully vested in their interests under Plan A.

The Company has stated that, "Because of the continuing decline in the Debtor's workforce, and future planned reductions in force, the Debtors believe it is reasonable and appropriate to amend" Plan A "to provide immediate vesting of benefits for plan participants so that such reductions do not create the perverse incentive of reducing the Debtors' Plan funding costs solely at the expense of its remaining workforce." The Company's "Board of Directors has voted to establish a Plan termination date of . As of such date, all Plan participants who are actively employed ....will be fully vested in their Plan benefits. The Proposed Amendment merely ensures that those Plan participants who are discharged during the period beginning on the date the Motion was filed and ending on the date of Plan termination are similarly vested in their Plan benefits."

Accordingly, the Company requests that the Service rule that:

1. The Proposed Amendment is reasonable; and
2. The Proposed Amendment provides for only a de minimis increase in benefit liabilities under Plan A in accordance with Code § 401(a)(33)(B)(ii) and ERISA § 204(i)(2)(4).

APPLICABLE LAW AND ANALYSIS

Section 401(a)(33)(A) of the Code provides that a plan is not a qualified plan if an amendment is adopted while the employer is a debtor in a case under title 11, Code, or similar Federal or State law, and such amendment increases liabilities of the plan by reason of (i) any increase in benefits, (ii) any change in the accrual of benefits, or (iii) any change in the rate at which benefits become nonforfeitable under the plan, with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.

Section 401(a)(33)(B) of the Code provides that section 401(a)(33) will not apply to any plan amendment if (i) the plan, were such amendment to take effect, would have a funded current liability percentage of 100 percent or more, or (ii) the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor.

Section 204(i)(1) of ERISA prohibits a plan amendment that increases the liabilities of a plan maintained by an employer that is a debtor under title 11 of the Code. Section 204(i)(2) of ERISA provides an exception to section 204(i)(1) if the Secretary of the Treasury determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor.

Because of the full funding of the plan upon plan termination, all then active employees will become fully vested in their accrued benefits. The amendment ensures that the approximately fifty-five (55) Plan A participants who were discharged during the period between the filing of the Motion) and the date of termination ( ) will be fully vested as well (although they would be fully vested if their benefits were funded upon plan termination under existing law and plan terms). The Company estimates that the cost associated with the acceleration of vesting for the foregoing participants will increase the total accrued liabilities of Plan A by 0.11%, and the unfunded liabilities by 0.21%. There is no increase in the minimum funding requirement as a result of the acceleration of vesting. Thus, the Proposed Amendment provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor.

RULING

If Plan A is funded in the manner proposed in the Motion and approved in the Order described above, so that all accrued benefits are fully funded upon plan termination, including the cost of implementing the Proposed Amendment,

1. The Proposed Amendment is reasonable; and

2. The Proposed Amendment provides for only a de minimis increase in benefit liabilities under Plan A in accordance with Code § 401(a)(33)(B)(ii) and ERISA § 204(i)(2)(4).

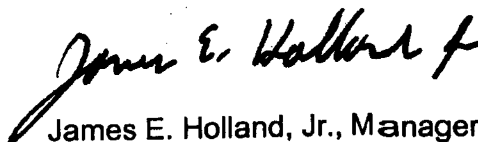
This ruling considers only the application of Code section 401(a)(33) and ERISA section 204(i) to the amendment described in your ruling request, and does not consider any other issues that may arise in connection with Plan A or the Proposed Amendment.

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 representatives pursuant to a power of attorney (Form 2848) on file. Copies of this letter are also being sent to the Manager, Employee Plans Classification in , and the Manager Employee Plans Compliance Unit in

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

Sincerely,



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