Significant Index Nos. 0402.00-00 & 4980.00-00

200637037

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUN 22 2006

T: EP: RA: T: A2

In re:

Company =
Parent =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Amount 1 =
Amount 2 =
Amount 3 =
Amount 4 =

This letter is in response to your request for a ruling concerning the Plan which was submitted by your authorized representative on March 27, 2006, and modified by a letter from your authorized representative dated April 17, 2006.

The Company is a wholly-owned subsidiary of the Parent. The Parent and the Company are part of a controlled group of companies that historically provided products and services related to to wholesale and retail customers.

On Date 3, the Parent and the Company filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. Since this date, the Parent and all the members of its controlled group have engaged in sales and other disposition of a significant portion of their assets. The remaining operations, and the interests therein, will be distributed to creditors in the manner described in the bankruptcy plan.

The Plan is a single-employer, defined benefit pension plan established effective Date 1. The Company assumed sponsorship of the Plan effective Date 2. Several related companies have adopted the Plan. The latest determination letter received by the Plan is dated Date 4. On Date 8, the Company filed an application for a determination letter on the tax-qualified status of the Plan upon its termination.

Section 5.4 of the Plan provides that "...[c]ontributions made to the Trust Fund are expressly contingent upon their deductibility under [Internal Revenue] Code Section 404 for Federal income tax purposes..." Section 5.5(b) of the Plan provides "...to the extent that a deduction is disallowed with respect to a contribution, the contribution (to the extent disallowed) may be returned to the Participating Employer within one (1) year after the disallowance of the deduction."

In a motion dated Date 5, the Company sought the authorization of the Bankruptcy Court to pursue the standard termination of the Plan. On Date 7, the motion was approved. The Company, in coordination with the Pension Benefit Guaranty Corporation ("PBGC"), has been proceeding with the standard termination of the Plan and expects to complete the process within the next few months.

The Plan was terminated effective Date 6. The Plan's assets have been allocated among all participants. On Date 9, the Company purchased annuity contracts that will fully fund the remaining pension liabilities for the Plan on a termination basis. The estimate to fully fund the pension liabilities in the Plan is Amount 1. However, the assets in the Plan are only estimated at Amount 2. Hence, the Company will contribute Amount 3 to the Plan to effect the standard termination.

The annuity contracts will provide retirement benefits at the time and in the form of payments prescribed by the Plan. However, participants who have not reached retirement age, and for whom the present value of the pension benefit is equal to or less than $1,000, will receive an immediate single sum distribution. Participants who have not reached retirement age, and for whom the present value of the pension benefit is greater than $1,000 but less than $5,000, will given the opportunity to elect an

immediate single sum distribution or defer the distribution to a later date and have the pension benefits provided under an annuity contract.

Actuaries servicing the Plan considered numerous factors in calculating the pension liabilities in the Plan. In order to be sure that there were sufficient assets in the Plan to effect a standard termination, the actuaries used reasonable but conservative actuarial assumptions to estimate the amount necessary to fully fund the Plan on a termination basis. Consequently, the conservative estimate of the amount necessary to satisfy all plan liabilities is expected to be greater than the actual benefit liabilities of the Plan once all benefits are paid. Hence, the Company expects that the Plan will be overfunded at that time. The amount of the overfunding will be returned to the Company.

Accordingly, you have asked us to rule that (1) the return to the Company of Amount 4 will not violate section 401(a)(2) of the Internal Revenue Code ("Code"), and (2) the return to the Company of Amount 4 does not constitute an employer reversion under section 4980 of the Code.

Section 401(a)(2) of the Code generally prohibits, prior to the satisfaction of all liabilities with respect to employees and beneficiaries under the trust, the diversion of trust assets for purposes other than for the exclusive benefit of the employees or beneficiaries for whom an employer maintains a qualified pension plan.

Section 1.401(a)-2 of the Income Tax regulations ("regulations") provides that section 1.401-2, a regulation promulgated prior to the Employee Retirement Income Security Act of 1974 ("ERISA"), provides rules under section 401(a)(2) of the Code and that regulation is applicable unless otherwise provided.

Section 1.401-2 of the regulations provides rules under section 401(a)(2) of the Code for the impossibility of diversion under the trust instrument. Section 1.401-2(b)(1) provides that the intent and purpose in section 401(a)(2) of the Code of the phrase "prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust" is to permit the employer to reserve the right to recover at the termination of the trust, and only at such termination, any balance remaining in the trust which is due to erroneous actuarial computations during the previous life of the trust. A balance due to an "erroneous actuarial computation" is the surplus arising because actual requirements differ from the expected requirements even thought the latter were based upon previous actuarial valuations of liabilities or determinations of costs of providing pension benefits under the plan and were made by a person competent to make such determinations in accordance with reasonable assumptions and correct procedures related to the method of funding.

Section 404 of the Code provides for the deduction for contributions of an employer to a qualified plan. Section 404(a)(1)(D)(i) provides that in the case of any defined benefit plan, except as provided in regulations, the maximum amount deductible under section

404(a) shall not be less than the unfunded current liability determined under section 412(l). Section 404(a)(1)(D)(iv) provides that for certain terminating plans, the limitation on the amount deductible under section 404(a)(1)(D)(i) is the amount required to make the plan sufficient for benefit liabilities.

Rev. Rul. 91-4, 1991-1 C.B. 57, provides that language providing for a return of contributions in the circumstances specified in section 403(c)(2) of ERISA may be included in a plan intended to qualify under section 401 of the Code. Thus, plans that are amended to include language that allows the return of a contribution made by an employer to a plan if the contribution is conditioned on its deductibility under section 404 of the Code and the deduction is subsequently disallowed, will not fail to satisfy section 401(a)(2) of the Code solely as the result of such an amendment.

Rev. Proc. 90-49, 1990-2 C.B. 620, sets forth the procedure whereby, under certain circumstances, a disallowance of the deduction of employer contributions to a qualified defined benefit pension plan may be obtained; thereby, fulfilling a condition under which such contributions could revert to the employer.

Section 4980(a) of the Code provides for a tax of 20 percent on the amount of any reversion of plan assets to the employer from a qualified plan. Section 4980(b) provides that the tax imposed by section 4980(a) shall be paid by the employer maintaining the plan.

Section 4980(c)(1)(A) of the Code provides, in part, that the term "qualified plan" means any plan meeting the requirements of section 401(a) or section 403(a) of the Code other than a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A. Such term shall include any plan which, at any time, has been determined by the Secretary of the Treasury to be a qualified plan.

Section 4980(c)(2)(A) of the Code defines the term "employer reversion" to mean the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

Section 4980(c)(2)(B) of the Code provides in pertinent part that the term "employer reversion" shall not include (i) except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating section 401, or (ii) any distribution to the employer allowable under section 401(a)(2) in the case of a plan other than a multiemployer plan, by reason of mistake of fact, or in the case of any plan, by reason of the failure of the plan to initially qualify or the failure of the contributions to be deductible.

Because the Plan has received favorable determination letters, the Plan has been determined to be a qualified plan under section 401(a) of the Code.

The Company has made a contribution of Amount 3 to the Plan in order to effect the standard termination of the Plan. This Amount 3 amount was determined by the actuaries servicing the Plan using conservative assumptions so that annuity contracts could be purchased for participants under the Plan.

Because reasonable but conservative assumptions were used in making the determination, the Company expects that Amount 4 will remain in the Plan after all the Plan's benefit liabilities are satisfied. Amount 4 would be considered the result of erroneous actuarial computations within the meaning of section 1.401-2(b)(1) of the regulations. The return of this portion of the contribution to the Company will not occur until after the satisfaction of all liabilities with respect to employees and beneficiaries of the trust of the plan. Accordingly, the return to the Company of Amount 4 will not violate section 401(a)(2) of the Code.

Amount 4 is not deductible under section 404 of the Code. Because any amount contributed to the Plan by the Company is conditioned on deductibility, one of the requirements of Rev. Rul. 91-4 is satisfied. By this ruling letter, under the authority of Rev. Proc. 90-49, we hereby disallow Amount 4. Accordingly, Amount 4 may be returned to the Company under section 401(a)(2) of the Code by reason of its failure to be deductible. Moreover, Amount 4 is described in section 4980(c)(2)(B)(ii) of the Code, and thus the return to the Company of Amount 4 does not constitute an employer reversion under section 4980 of the Code.

This ruling only addresses the two issues that we have ruled upon. In particular, we are not expressing any opinion as to deductibility of any particular contribution to the Plan under section 404(a) of the Code.

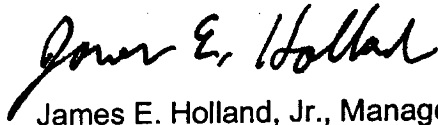
This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

We have sent a copy of this letter to the Manager, EP Classification in , to the Manager, EP Compliance Unit in and to your authorized representative pursuant to a power of attorney on file in this office.

200637037

If you require further assistance in this matter, please contact

Sincerely yours,



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