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Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:
OP:E:EP:A:2
Date:

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In re:

This letter is in response to your request dated February 23, 1999, for a ruling on behalf of the (Fund). Specifically, you are requesting a ruling that the (IU), by lending $60,000 a month (or an approximate amount thereof) to the Fund's contributing employers for the purpose of making additional contributions to the Fund, will not cause the Fund to lose its qualified status under § 401(a) of the Internal Revenue Code (Code).

The Fund constitutes a qualified multiple-employer, defined benefit pension plan trust under §§401(a) and 501(a) of the Code, and has been determined to be qualified under § 401(a), most recently in a determination letter dated September 21, 1995. The Fund was established in 1974 as the trust for the defined benefit plan (Plan) for employees of the affiliated organizations of the IU, and has been funded solely by contributions from the participating local unions (Locals). The Fund's contributing employers are Locals that are tax-exempt labor organizations under § 501(c)(5) of the Code. Under the Plan document and Trust Agreement, these Locals have the sole responsibility for making the contributions necessary to provide the benefits under the Plan. Furthermore, the Plan Document specifically prohibits any participant contributions from being made. The Fund presently receives contributions from 44 Locals in 16 states, and has approximately 1,000 participants.

The IU is a tax-exempt labor organization under § 501(c)(5) of the Code and has a membership of approximately 240,000 workers in the who are represented by 125 Locals in 39 states and territories. The IU started the Fund in order to provide retirement benefits to the officers and employees of its affiliated Locals.

The General President of the IU appoints the Fund's trustees, with the approval of the General Executive Board of the IU. The trustees have the fiduciary responsibility for the Fund's

administration. However, the IU is responsible for establishing the Fund's funding method and investment policy, and the trustees may amend or terminate the Fund only with the consent of the General Executive Board of the IU. Contributions by Locals are determined pursuant to the funding method established by the IU.

The IU also charters all Locals. Although it does not exercise direct control over the activities of any Local, pursuant to the terms of the IU's constitution, it has the power to revoke the charter of, or put into trusteeship, any Local. The IU also receives a capitated portion of all Local union dues.

Based on information submitted with the request, the Fund is presently faced with an unfunded vested actuarial liability (UVL) of approximately $4,000,000. While the IU has no legal responsibility to address this problem, it has determined that it is appropriate to assist its members and Locals with this issue. As a consequence, and to avoid the possibility of a reduction in future benefit accruals, the IU has resolved to provide additional funding for the Fund.

In order to accomplish this task, the IU intends to make monthly loans of $60,000 to the participating Locals, to be allocated among them in proportion to the share of the UVL for which each Local is liable. The loan proceeds are to be used by the Locals solely for the purpose of reducing the UVL of the Fund, and the loans will continue until the full amount of the UVL is retired. The IU intends to forgive each loan as long as the affiliated Local continues to participate in the Fund. Because the monies to be used to retire the UVL will be transferred from the IU to the Locals as loans, and then from the Locals to the Fund as additional employer contributions, there will be no direct payments to the Fund by the IU.

Section 401(a) of the Code states, in part, that "[a] trust...forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B)..."

Rev. Rul. 63-46, 1963-1 C.B. 85, provides that a pension plan established for the benefit of employees, but funded by the transfer to the plan of the corpus of a trust fund established by a third party rather than by the employer or employees, or both, may constitute a qualified plan under § 401(a) if it satisfies all other requirements of that section.

Rev. Rul 68-223, 1968-1 C.B. 154, provides that the transfer of funds from a non-exempt employees' welfare fund to a trust forming part of a pension plan will not, of itself, disqualify the plan and trust under the provisions of § 401(a), nor affect the exempt status of the trust under § 501(a).

The revenue rulings cited above indicate that § 401(a) does not require that contributions be made only by employers and employees, and that in instances where outside sources do make contributions, a trust's qualified status will continue as long as all other requirements are met. Although the revenue rulings cited above refer to § 401(a) of the Code of 1954, subsequent amendments to this section have not touched on the issue of the source of contributions to a qualified trust. Moreover, all contributions to the Fund under the loan arrangement described above will be made solely by the contributing employers of the Fund. In conclusion, the loan arrangement described above, in and of itself, will not affect the Fund's status as a qualified trust under § 401(a).

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.

If you have any additional questions concerning this ruling, please contact at the number listed above.

Sincerely yours,

Martin L. Pippins

Martin L. Pippins
Chief, Actuarial Branch 2