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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 25 2002

T:EP:RA:T:A2

In re: Request to extend amortization periods under 412(e) for

This letter constitutes notice that the request to extend the amortization periods for amortizing the unfunded liabilities (described in section 412(b)(2)(B) of the Internal Revenue Code (the "Code") and section 304(a) of the Employee Retirement Income Security Act of 1974 (ERISA)) of the Plan has been granted. The extension is granted for a period of four plan years and is effective for amortization periods for unfunded liabilities of the Plan for the plan year beginning 1999.

The extension has been granted in accordance with section 412(e) of the Code and section 304(a) of ERISA. Section 412(e) of the Code and section 304(a) of ERISA authorize the Secretary to extend the period required to amortize any unfunded liability (described in section 412(b)(2)(B) of the Code) of a plan for a period of time (not in excess of 10 years) if the Secretary determines that such extension would carry out the purposes of ERISA and would provide adequate protection for participants under the plan and their beneficiaries and if the Secretary determines that the failure to permit such extension would (1) result in (A) a substantial risk to the voluntary continuation of the plan, or (B) a substantial curtailment of pension benefit levels or employee compensation, and (2) be adverse to the interests of plan participants in the aggregate. Section 101 of Reorganization Plan No. 4 of 1978, 1979-1 C.B. 480, transferred the authority for issuing rulings under section 304(a) of ERISA from the Secretary of Labor to the Secretary of the Treasury. Accordingly, the amortization periods for the unfunded liabilities of the Plan are extended for a period of four plan years under section 412(e) of the Code and section 304(a) of ERISA.

The Plan is a defined benefit plan that is also a multiemployer plan as defined under section 414(f) of the Code. Section 412(e) of the Code and section 304(a) ERISA provide that, in the case of a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with a granted extension is the rate determined under Code section 6621(b). Section 6621(b) of the Code provides that the applicable rate is the Federal short-term rate, as determined under Code section 1274(d). Any such rate shall be rounded to the nearest whole percent. Section 1274(d) of the Code provides that the Federal short-term rate shall be the rate determined by the Secretary based on the average market yield on outstanding marketable obligations of the United States with remaining periods of maturity of three years or less.

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Effective 1993, the Board of Trustees adopted an amendment (the "1993 Amendment"), which, in part, improved plan benefits from $ per year of future service credit to $ per year of future service credit. This improvement applied to all years worked by active participants, both prior and future years. Effective 1995, the Board of Trustees adopted an amendment (the "1995 Amendment"), which, in part, provided a thirteenth check each year to retirees . The 1993 and 1995 Amendments were made based on the advice of the actuarial firm that provided services to the Plan from 1992 to 1999. Subsequently, the Board of Trustees of the Plan instituted legal action against the actuarial firm alleging that the actuarial firm's advice was based on inappropriate actuarial assumptions and calculations and that the 1993 and 1995 Amendments should have been deemed unaffordable.

On 2001, an agreement was reached between the Plan and the actuarial firm that provided services to the Plan, whereby both parties agreed to convert the then ongoing mediation effort into an arbitration proceeding to settle the dispute. By decision dated 2001, the Arbitrator found for the Trustees of the Plan, and on 2001, the Plan received a net arbitration award in the amount of $ Prior to the arbitration award, the market value of plan assets, as of , 2000, was $. Taking the arbitration award into account, and discounting that amount back to 2000, assuming the valuation interest rate of 8%, the market value of plan assets, as of , 2000, was approximately $ The actuarial accrued liability of the Plan as of , 2000, was $. The Plan thus received a significant infusion of cash that helped to alleviate the Plan's underfunding and to increase the Plan's "funded ratio" to approximately 63%.

The most recent collective bargaining agreement, under which contributions are required to be made to the Plan. is effective through , 2003, and provides for an hourly contribution rate of $4 This agreement originally did not provide for an increase in the hourly contribution rate. According to the information received, the hourly contribution rate needed to cover the net charges to the funding standard account for the 2000-2001 plan year was approximately $10 In August 2001, the contributing employers and the Plan's trustees reached the following agreements in an effort to help alleviate the funding problem. The employers agreed to increase their contribution rate by $0.50 per hour above the previously negotiated rate, effective 2002. It was agreed that active employees would direct $1 per hour originally designated for a defined contribution plan into the Plan effective 2001. The active employees also agreed to allocate an extra $0.50 per hour to the Plan out of their 2002 wage increase. Additionally, a change was approved effective 2002, with respect to the accrual of future benefits, which reduced the maximum annual credit from 1.5 years to 1.0 years, and provided that a full year of service would accrue by the completion of 1,200 hours of service rather than 1,000 hours.

The number of employers contributing to the Plan fluctuates on a monthly basis, but has remained fairly stable at approximately employers during the period from 1995 to 2001. Similarly, the number of active employees has remained relatively stable during the period from 1995 to 2001 fluctuating between a low of employees in the 1997-1998 plan year and a high of employees in the 1994-1995 plan year. As of 2000, there were a total of active participants and inactive participants in the Plan.

Upon our request, numerous funding projections for the Plan were submitted to the Service based on various possible extension periods of ten years or less under section 412(e) of the Code. These projections demonstrated that, without any extension granted under section 412(e) of the Code and section 304(a) of ERISA, the Plan is projected to have an accumulated funding deficiency by 2003, with the accumulated funding deficiency projected to increase each year thereafter. Extensions of five years or longer provided rapidly increasing projected credit balances and significantly lower annual required charges to the funding standard account. However, extensions of two or three years provided limited relief that did not significantly affect the longer-term funding requirements of the Plan. Based on the information submitted, a four-year extension is projected to provide moderate increases in the credit balance each year beyond 2001.

The first statutory factor that was considered in whether or not to grant an extension of amortization periods under Code section 412(e) and section 304(a) of ERISA was whether or not the failure to grant an extension would result in a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or employee compensation. Based on the information submitted, the Plan is projected to have large accumulated funding deficiencies in 2003 and in subsequent years unless an extension is granted. Accumulated funding deficiencies in a multiemployer plan may serve to discourage new employers from participating in the Plan, and may serve to encourage current employers to withdraw from the Plan rather than incur increasing costs due to the excise taxes that may be imposed on the amounts of any funding deficiencies. Accordingly, the failure to permit an extension under Code section 412(e) and section 304(a) of ERISA could result in a substantial risk to the voluntary continuation of the plan.

In analyzing whether or not the failure to grant an extension would result in a substantial curtailment of pension benefit levels or employee compensation, the current hourly contribution rates were considered along with the hourly contribution rate needed to cover the net charges to the funding standard account. The current hourly contribution rate of $6 , including the increases mentioned above over the current negotiated collectively bargained rate, falls well short of the hourly contribution rate needed to cover the net charges for the 2000-2001 plan year ($10 . Further increases of this magnitude would result in a substantial curtailment of employee compensation. Additionally, increases of this magnitude could encourage employees to look elsewhere for employment that would further complicate the Plan's funding problems and could possibly lead to the failure of the Plan. Plan failure would result in a substantial curtailment of pension benefit levels for Plan participants.

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The second statutory factor that was considered in whether or not to grant an extension of amortization periods under Code section 412(e) and section 304(a) of ERISA was whether or not the failure to permit an extension would be adverse to the interests of plan participants in the aggregate. The failure to permit an extension could encourage employer withdrawal, for reasons mentioned above, as well as encouraging employees to look for other employment, for reasons mentioned in the preceding paragraph. Either scenario could lead to decreased year-to-year contributions eventually causing the Plan to fail, which would be adverse to the interests of plan participants in the aggregate.

Based on the projections provided, including projections of the funding standard account credit balance and asset and accrued liability calculations, an extension of the amortization period for the unfunded liabilities of the Plan for a period of four years encourages the voluntary continuation of the Plan and is not adverse to the interests of plan participants in the aggregate.

Your attention is called to section 412(f) of the Code and section 304(b) 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 an extension under section 412(e) is in effect.

A copy of this letter should be attached when filing an amended Schedule B (Actuarial Information) of Form 5500 for the plan year beginning 1999. We have sent a copy of this letter to the Area Manager in

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 questions concerning this matter, please contact

Sincerely yours,

Paul T. Shultz

Paul T. Shultz, Director
Employee Plans, Rulings & Agreements