Internal Revenue Service

Department of the Treasury

199937056

Washington, DC 20224

Significant Index No. 0412.06-00

Third Party Contacts: Participants

Contact Person:

Telephone Number:

In Reference to:
OP:E:EP:A:1

Date: JUN 25 1999

In re:

This letter constitutes notice that with respect to the above-named defined benefit pension plan, (1) we will not consider your request for waivers of the minimum funding standard for the plan year ended August 31, 1996 and (2) your request for a waiver of the minimum funding standard for the plan year ended August 31, 1997 has been denied. In addition, with respect to the above-named pension plan, waivers of the 100 percent excise tax under section 4971(b) of the Internal Revenue Code have been granted for the tax that would otherwise apply for the tax years ended December 31, 1996 and 1997, with respect to the accumulated funding deficiencies for the plan years ended August 31, 1996 and 1997, respectively.

Section 412(d)(4) of the Code and section 303(d) of the Employee Retirement Income Security Act of 1974 (ERISA) state that an application for a waiver must be submitted to the Service no later than the 15th day of the third month following the close of the plan year for which the waiver is being requested. In addition, Rev. Proc. 94-41, 1994-1 C.B. 711, requires that a request for a waiver of the minimum funding standard under section 412(d) of the Code for plan years beginning on or after January 1, 1989, be made no later than the 15th day of the third month following the close of the plan year for which the waiver is requested (see section 4). The applicable deadline for the plan year ended August 31, 1996, was November 15, 1996. The request was dated October 15, 1997, which is later than the deadline for the plan. Accordingly, your request for a waiver of the minimum funding standard under section 412(d) of the Code for the plan year ending August 31, 1996 will not be considered.

The information furnished indicates that the company had a net operating loss for its fiscal year ended December 31, 1997. The company also had negative working capital for its fiscal year ended December 31, 1997, and the company had insufficient cash to make the required contributions. In addition, the plan is in the process of being terminated. However, the value of the assets of the plan is equal to 124% of the plan's current liability.

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The company was informed of our tentative denial and was offered a conference of right. The conference was held in the National Office on April 20, 1999. At the conference we reiterated our position that a terminated plan will not receive amortization payments contemplated by a waiver. The company offered no addition information regarding this plan. Accordingly, our tentative denial is now final.

Thus, the minimum funding standard under section 412 of the Code and section 302 of the Employee Retirement Income Security Act of 1974 (ERISA) will apply to the plan for the plan years ended August 31, 1996 and 1997. Based on the information submitted, there will be accumulated funding deficiencies, as of August 31, 1996 and 1997 for the plan on which a 10% tax is imposed, under section 4971(a) of the Code. The enclosed Forms 5330 (Return of the Excise Taxes Related to Employee Benefit Plans) with instructions should be used to file the required returns when paying the taxes.

The waivers of the 100 percent excise tax have been granted in accordance with section 3002(b) of the Employee Retirement Income Security Act of 1974 (ERISA). The amount for which these excise tax waivers have been granted is equal to 100 percent of the contribution which would otherwise be required to reduce the balance in the funding standard account to zero as of the end of the plan years ending October 31, 1996 and 1997. Of course, because we have waived the 100% excise tax for these two years, the penalties and interest associated solely with respect to the excise taxes under section 4971(b) of the Code will be zero.

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 by others as precedent.

A copy of this letter should be sent to the enrolled actuary for the plan. We have sent a copy to the Key District Director in

Sincerely yours,

James E. Holland, Jr.
Chief, Actuarial Branch

Enclosures

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