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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Significant Index Nos. 0401.28-00 & 0415.01-00

Contact Person:

Telephone Number:

In Reference to:

OP:E:EP:A:2

Date:

SEP 20 1999

In re:

LEGEND:

Plan Sponsor X...

Plan Q...

Plan E...

On behalf of Plan Sponsor X, for whom you are the authorized representative, you have asked us to rule on the following two issues:

(1) whether the establishment, adoption and operation of Plan E causes Plan Q and/or the Fund (in the caption) to lose tax-qualification or tax-exemption, and

(2) whether the method of funding of Plan E jeopardizes the tax-qualified and tax-exempt status of Plan Q and/or the Fund.

FACTS

Plan Q, which currently covers approximately 2,800 employees at 31 companies, is a qualified multiemployer defined benefit pension plan that has been in existence since September 1, 1957 and has been amended on a number of occasions since then. In addition to providing benefits beginning at normal retirement age (65), Plan Q also offers certain "early retirement" pensions for those with specified periods of service. Desired liberalizations in

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these latter provisions have, however, been restricted by the requirements of section 415 of the Internal Revenue Code (hereinafter, the "Code") that imposes limitations on the amounts of benefits that can be provided by a qualified plan.

To deal with this situation, Plan Sponsor X proposes to establish Plan E, which will essentially provide the excess of (1) the full amount that Plan Q would provide were it not for the "415" limitations, over (2) the amount that Plan Q will actually provide (taking into account the "415" restrictions), so that the two plans (i.e., Plan Q and Plan E) together will end up providing what is intended. Plan E, clearly a non-qualified plan, is meant to be in all respects consistent with the definition of an "excess benefit plan" that is given in section 3(36) of the Employee Retirement Income Security Act of 1974.

It is expected that, for all practical purposes, Plan E will be an unfunded plan. When a participant in Plan Q retires with a monthly benefit that was initially calculated in accordance with the main benefit formula of Plan Q but was then reduced to comply with those provisions in Plan Q that are required by Code section 415, the amount of this reduction will thereupon become payable from Plan E. To enable this, the Plan Administrator will, for the first month and each month thereafter, withdraw from contributions currently being received by Plan Q (i.e., paid in by the various employers in accordance with the collective bargaining agreement(s)) the amount of the aforementioned reduction and transmit only the balance to Plan Q. This amount will go first to Plan E and then immediately be paid by Plan E to the participant.

Thus, there will be no build-up of unexpended funds in Plan E. Furthermore, there is no possibility of a transfer of funds from Plan Q to Plan E to meet obligations of Plan E, since the only source from which Plan E benefits can be paid is funds that are simply withdrawn from the stream of current contributions being made in accordance with the collective bargaining agreement(s). Also, it is impossible for any funds in Plan E to be transferred to Plan Q, since the only funds ever paid to Plan E in the first place are immediately designated for the payment of benefits from Plan E and cannot be diverted for any other purpose.

LAW

Section 3(36) of the Employee Retirement Income Security Act of 1974 defines an "excess benefit plan" as one maintained solely for the purpose of providing benefits for certain plan participants in excess of the limitations imposed by section 415 of the Internal Revenue Code, without regard to whether the plan is

funded. There is no corresponding section in the Code itself with respect to excess benefit plans.

Code section 412 provides minimum funding requirements that must be satisfied in pension plans.

Code section 415, in particular subsection (b) thereof, sets out limitations on benefits payable from a qualified defined benefit plan.

Code section 401(a)(16) provides that a trust shall not constitute a qualified trust if the plan of which the trust is a part provides for benefits or contributions which exceed the limitations of Code section 415.

Section 1.414(l)-1(b)(1) of the Income Tax Regulations states that a plan is a "single plan" if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to plan participants.

ARGUMENT

Under the definition of a "single plan" in the regulations, Plan Q and Plan E considered together do not constitute a single plan, since there is no possibility of transfer of assets from either one (i.e., Plan Q or Plan E) to pay benefits provided by the other.

Since Plan E is a non-qualified, unfunded plan operating separately from Plan Q and merely provides for certain supplementation to benefits that are payable from Plan Q, the existence of Plan E does not affect the qualified status of Plan Q.

As to the funding of Plan E and the impact, if any, that it has on the funding of Plan Q, it is noted first that the level of contributions being made overall is set by the collective bargaining agreement(s) and thus is determined only indirectly (if at all) by actuarial calculations. In any case, the minimum funding requirements of Code section 412 must be satisfied independently of the contribution required under the collective bargaining agreement(s). Thus, minimum funding requirements for Plan Q are unaffected by amounts paid to Plan E.

It is also the case that any impact on the actual contributions which are made to Plan Q but which might seem to be attributable to Plan E would not affect the qualified status of Plan Q. A plan is or is not qualified according to whether it complies with sections 401 through 411 (and other sections, not including section 412) of the Code, whereas funding issues are addressed in Code section 412.

CONCLUSIONS

(1) The establishment and adoption of Plan E does not cause Plan Q and/or the Fund associated therewith to lose tax-qualification or tax-exemption.

(2) The method of funding of Plan E does not jeopardize the tax-qualified and tax-exempt status of Plan Q or of the Fund associated therewith.

NOTES

(1) This ruling does not consider the more general issue of Plan Q's qualified status,--specifically, whether Plan Q complies with all the relevant requirements of the Internal Revenue Code for qualification. This letter addresses only the impact (if any) of the adoption of Plan E, along with its funding method, on the purportedly otherwise qualified status of Plan Q.

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

Sincerely yours,

Martin L. Pippins

Martin L. Pippins
Acting Chief, Actuarial Branch 2

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