200134031

Internal Revenue Service

Department of the Treasury

Significant Index No. 0401.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:
T:EP:RA:T:A1

Date:
MAY 30 2001

In re:

Employer =

This letter constitutes notice that, with respect to the above-named defined benefit pension plan, the three plan amendments described below are reasonable and provide only for de minimis increases in the liabilities of the Plan.

Section 401(a)(33)(A) of the Internal Revenue Code provides that a plan is not a qualified plan if there is an amendment that increases the liabilities of the plan in the case where the plan is maintained by an employer that is a debtor in a case under title 11 of the United States Code. However, § 401(a)(33)(B) provides exceptions to § 401(a)(33)(A) if the plan, were such amendment to take effect, would have a funded current liability percentage (as defined in § 412(l)(8)) of at least 100 percent or if the Secretary determines that such amendment is reasonable and provides only for de minimis increases in plan liabilities.

Section 204(i)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) prohibits a plan amendment that increases the liabilities of a plan maintained by an employer that is a debtor in a case under title 11 of the United States Code. Section 204(i)(2) provides exceptions to § 204(i)(1) if the Secretary of Treasury determines that such amendment is reasonable and provides only for de minimis increases in plan liabilities. Section 204(i)(3) provides that § 204(i)(1) applies only to plans for which the funded current liability percentage (as defined in § 302(d)(8)) is less than 100 percent after taking into account the effect of the amendment.

On October 5, 2000, the Employer filed for protection under Chapter 11 of the U.S. Bankruptcy Code. The Employer has not yet been reorganized. The Employer proposes three amendments to the Plan subject to the restrictions of Code § 401(a)(33). The amendments are described below.

The Plan was established on January 1, 1996 by the merger of three existing pension plans. The Plan document has a separate portion (or "Attachment") for each formerly separate plan. Currently, as a result of subsequent corporate acquisitions, the Plan has 11 Attachments.

181

Amendment 1

Early retirement benefits under Attachment #2 for retirement eligible employees (i.e., those who have attained at least age 55 with at least 10 years of service) at the Employer's plant who retire between July 1, 2001 and December 31, 2001 will be increased. Specifically, benefits for these collectively bargained employees will be increased by adding two (2) years of benefit accrual service and four (4) years of age for purposes of calculating the subsidized early retirement benefit to which the employee is otherwise entitled.

The Employer has stated that the purpose of this amendment is to facilitate a reduction in force at the The Employer expects to realize significant savings through the reduction in force. The Employer also expects to receive the applicable unions' further cooperation and assistance in the reorganization of this plant.

Amendment 2

Prior to this amendment, employees who had attained at least age 40 with at least 10 years of service as of January 1, 1996 receive the greater of:

(A) The benefit determined as of December 31, 2000 under the formula of the respective pre-merger plan of which they were a participant, or
(B) The benefit determined as of December 31, 2000 under the cash balance portion (Attachment #1) of the Plan.

Under this amendment, the "grandfathered" employees described in the above paragraph would receive the sum of:

(A) The benefit determined as of December 31, 2000 under the formula of the respective pre-merger plan of which they were a participant, plus
(B) The accruals under Attachment #1 for 2001 and 2002.

Also, Attachment #1 would be amended to increase the pay credits to all eligible employees (including non-grandfathered employees) to a flat four percent (4%) of pay from the current integrated schedule of two percent (2%) on pay up to 50 percent of the social security wage base and four percent (4%) of pay over such amount. Finally, the interest credit rate used for adding interest credits to all cash balance accounts would be increased by 25 basis points (0.25%) for the 2001 and 2002 plan years.

The Employer has stated that the purpose of this amendment is to eliminate a wear-away period that would otherwise begin January 1, 2001 and to increase pay and interest credits. These increases were negotiated with the union at this plant. The Employer states that failure to enact these changes would cause it to be non-competitive and that employee attrition and/or work stoppages would result.

Amendment 3

Effective February 1, 2001, and continuing through January 31, 2006, the flat dollar accrual rate under Attachment #6 for collectively bargained employees at the Employer's plant will be increased by $3.00, $3.00, $2.00, $2.00 and $1.00, respectively. Also, the cash balance portion of the Plan (Attachment #1) will cover all employees hired at the plant on or after February 1, 2001.

The Employer has stated that these increases were negotiated with the union at this plant. The Employer states that failure to enact these changes would cause it to be non-competitive and that employee attrition and/or work stoppages would result.

After the amendments described above, the Plan has a funded current liability percentage that is less than 100 percent and the Employer is a debtor in possession in a case under title 11 of the United States Code. Merely because the amendments were negotiated with the union does not cause them to be considered reasonable. However, some of the amendments will enable the Employer to reduce expenses. The Employer believes that the amendments will help it to remain competitive. Furthermore, upon receipt of this ruling letter, the Employer will contribute to the Plan an amount equal to the increase in current liability resulting from all of the amendments. Accordingly, if such contribution is made, the amendments are considered reasonable.

The actuarial information furnished is that the increase in current liability resulting from all of the amendments results in a three percent (3%) increase in current liability. Similarly, the increase in accrued liability and in the present value of accrued benefits is three percent (3%). The Plan was fully funded within the meaning of Code § 412(c)(7) and ERISA § 302(c)(7) for the 2000 plan year so the minimum required contribution was zero. There will be a minimum required contribution greater than zero for 2001. Based upon the above, the increase in Plan liabilities is de minimis.

This ruling considers only the application of Code § 401(a)(33) and ERISA § 204(i) to the amendments described in your March 21, 2001 ruling request and does not consider any other issues that may arise in connection with the Plan or these amendments.

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

We have sent a copy of this letter to the Employee Plans Area Manager for the Area in We have also sent a copy of this letter to your authorized representative pursuant to a Power of Attorney (Form 2848) on file with this office.

Sincerely,

Ken Yednock

Ken Yednock, Manager
Employee Plans Technical
Tax Exempt and Government Entities
Division

184