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Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Significant Index No. 0412.06-00

Third Party contact: Participants

Person to Contact:

Telephone Number:

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

Date: JUL 18 2001

In re:

This letter constitutes notice that, with respect to the above-named money purchase pension plan, we have granted a conditional waiver of the minimum funding standard for the plan year ending June 30, 2000. You previously withdrew your request for an application for approval of a plan amendment that would have retroactively reduced benefits for the plan year ending June 30, 2000.

This conditional waiver for the plan year ended June 30, 2000, has been granted in accordance with § 412(d) of the Internal Revenue Code and § 303 of the Employee Retirement Income Security Act of 1974 (ERISA). The waived amount is 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 year for which this conditional waiver has been granted.

The Company has a July 1-June 30 fiscal year. For the three fiscal years ended June 30, 1998-2000, the Company had net operating losses. For its fiscal years ended June 30, 1999 and 2000, the Company had negative net worth and working capital.

The Company filed for bankruptcy on August 20, 1999 and emerged from bankruptcy protection on April 3, 2000. Since then it has embarked on an ambitious cost-cutting program. It has closed three facilities. There has been a sharp decrease in the size of its workforce. Also, the Company hired an outside management-consulting firm in March 2000 to help manage the Company after the Company's CEO resigned in the prior month. The plan has been amended so that there are no further accruals of employer contributions for plan years after June 30, 2000 (but there would be employer contributions to amortize this conditional waiver). However, there is still some uncertainty as to the likelihood of recovery expectations.

Because of the recovery prospects of the sponsor are uncertain, the waiver is granted subject to the following conditions:

1. The contributions required to satisfy the minimum funding standard (taking into account this waiver) for the plan years ended June 30, 2001 and 2002 (which are the contributions to amortize the waiver), are to be timely made as defined in Code § 412(c)(10), and

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2. The Company adopts an amendment to reflect the waiver as described below.

If either of these conditions is not satisfied, the waiver is retroactively null and void. You agreed to these conditions in a letter dated July 18, 2001 sent by your authorized representative.

When a defined contribution plan receives a waiver of the minimum funding requirements, the plan, in accordance with Rev. Rul. 78-223, must be amended to reflect the waiver if the plan does not otherwise provide for such waiver.

Section 3.02 of Rev. Proc. 94-41 provides that the applicant requesting a waiver need not submit an amendment designed to satisfy Rev. Rul. 78-223. If no amendment is submitted, the IRS may issue a ruling letter granting a conditional funding waiver requiring the adoption of an amendment supplied by the IRS. Because no amendment accompanied your request, we are granting the waiver subject to your adoption of the enclosed proposed amendment. If that amendment is not adopted within a reasonable time, this waiver is null and void. However, if you disagree with our amendment or would like to modify it in any way, we will consider any such request if such request is submitted in writing to us no later than 60 days from the date of this letter. Such request would require a user fee in accordance with Rev. Proc. 2001-8, I.R.B. 2001-1 239.. Your letter should clearly state the exact changes you propose.

Your attention is called to Code § 412(f) which describes the consequences which would result in the event the plan is amended to increase benefits, change the rate in the accrual of benefits or to change the rate of vesting, while any portion of the waived funding deficiency remains unamortized.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that others may not use it or cite it as precedent.

Because we have granted a waiver of the minimum funding standard, when filing Form 5500 for the plan year ending June 30, 2000, Schedule B (Actuarial Information) must be filed. The date of this letter should be entered on Schedule B (Actuarial Information). See the instructions for Line 5 of Schedule R. A copy of this letter should be furnished to whoever will complete the Schedule B. We have sent a copy of this letter to the Employee Plans Classification Manager in

Sincerely,

James E. Holland Jr.

James E. Holland, Jr., Manager
Employee Plans Actuarial Group 1
Tax Exempt and Government Entities
Division

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The employer, if unable to satisfy the minimum funding standard for a given plan year, may apply to the Internal Revenue Service for a waiver of the minimum funding standard. If the waiver is granted, the following provisions apply.

1. The valuation date for a given plan year is the last day of each plan year.

2. An adjusted account balance shall be maintained for each plan participant whose actual account balance is less than or equal to his or her adjusted account balance.

   (a) For the plan year for which the first waiver is granted, the adjusted account balance as of the valuation date for each affected plan participant equals:

      (1) The participant's actual account balance, plus

      (2) The amount that such participant would have received if the amount waived had been contributed.

   (b) For each plan year following the plan year for which a waiver is granted, the adjusted account balance of each participant affected by such waiver (calculated as of the valuation date for that year) equals:

      (1) The adjusted account balance as of the valuation date in the prior plan year, plus

      (2) The amount equal to the actual investment return credited or charged to the participant's actual account balance, plus

      (3) The amount equal to 5% of the excess of the amount in (1) over the participant's actual account balance calculated as of the same date, plus

      (4) The amount equal to such participant's allocated share of the employer's required contribution (whether or not waived) for the plan year (determined without regard to adjusted waiver payments and discretionary contributions), minus

      (5) The amount of the participant's adjusted account balance forfeited during the plan year under the plan's provisions.

3. For a given plan year, the employer is required to contribute a certain amount in order to satisfy the minimum funding standard for such plan year. For each plan year that follows a plan year for which a waiver of the minimum funding standard was granted, the amount equals:

(1) The amount due in accordance with the plan's contribution formula (without regard to this section), plus

(2) The adjusted waiver amount.

The adjusted waiver amount for a given plan year equals:

(1) the sum of the amounts necessary to amortize each waived funding deficiency over a period of 5 plan years measured from the valuation date of the plan year for which the corresponding waiver was granted at t%* interest, compounded annually, minus

(2) the sum of the amounts necessary to amortize the total of each year's forfeitures and other experience gains (which have arisen since the first waiver was granted) over a period of 5 plan years measured from the valuation date of the plan year in which the corresponding forfeitures and gains arose at 5% interest, compounded annually, plus

(3) the sum of the amounts necessary to amortize the total of each year's experience losses (which have arisen since the first waiver was granted) over a period of 5 plan years measured from the valuation date of the plan year in which the corresponding losses arose at 5% interest, compounded annually

An amount equal to the adjusted waiver amount must be contributed only until each actual account balance equals the adjusted account balance. Any plan provision which provides that employer contributions shall be reduced immediately by forfeitures is revoked until each participant's actual account balance equals that participant's adjusted account balance.

Discretionary employer contributions, which are in addition to the amounts contributed to satisfy the minimum funding standard, can be made in any given plan year. However, the total employer contribution for the plan year cannot exceed the then remaining underfunded amount (the sum of the adjusted account balances minus the total plan assets).

4. The adjusted waiver payments, discretionary contributions, and forfeitures of actual account balances for the current plan year shall be allocated as of that year's valuation date to the actual account balance of each affected plan participant.

Each time a waiver is granted, an Original Waiver Amount (OWA) will be determined for each affected plan participant. The OWA equals the participant's portion of the amount that was waived.

Commencing with the valuation date of the plan year for which a waiver is granted, a Remaining Original Waiver Amount (ROWA) must be calculated for each affected plan participant. As of such valuation date, the OWA equals the ROWA. On the valuation date of a succeeding plan year, the ROWA equals the prior plan year's ROWA multiplied by (1 + t*), minus the forfeiture of amounts in the prior year's ROWA incurred in the current plan year, minus the allocation with respect to the OWA for the current plan year. For each waiver that is granted, one OWA and a corresponding ROWA will be established for each affected plan participant.

The sum of the adjusted waiver payments, discretionary contributions, and forfeitures of the actual account balances for a given plan year are allocated to those participants who have ROWA's by multiplying the sum of these three amounts by the fraction:

(i) The numerator of which equals the sum of OWA's for a particular participant, and

(ii) The denominator of which equals the sum of the OWA's for all participants.

To determine the portion of this allocation which is to be assigned to a given ROWA, multiply the allocation by the corresponding OWA, then divide by the sum of the OWA's for the particular participant.

If the calculation of a ROWA results in a value which is less than zero, then

(1) The ROWA is set equal to zero,

(2) The corresponding OWA is set equal to zero, and

(3) The excess payments will be reallocated to the remaining ROWA's.

5. A distribution is determined by multiplying a participant's vested percentage by his or her adjusted account balance. However, distributions from the plan may not exceed a participant's actual account balance. If so limited, plan participants shall receive subsequent distributions derived from future adjusted waiver payments.

6. All the amounts described in paragraph (3) of this section shall first be applied to the actual account balance of the affected rank and file participants until the actual account balance for each participant is equal to his or her adjusted account balance as determined in paragraph (2).

*t is the interest rate determined, on the first day of the plan year, in accordance with § 412(d)(1) of the Internal Revenue Code (as in effect at the time the waiver was requested).