**Internal Revenue Service**

Department of the Treasury

20010904 9

Washington, DC 20224

Significant Index Nos. 401.28-00, 412.01-00, 415.01-00

Person to Contact:

Telephone Number:

Refer Reply to:

T:EP:RA:T:A2

Date:

DEC 0 5 2000

In re:

Plan T =

Plan E =

This letter is in response to your request, dated April 24, 2000, for rulings on behalf of Plan T related to the creation of an excess benefit plan and its effect on Plan T.

Facts

According to the facts as stated, Plan T is a multiemployer defined benefit pension plan that is qualified under section 401(a) of the Internal Revenue Code (Code). Plan T has been in existence since March 1974. The contribution rate to fund Plan T is established by the currently effective collective bargaining agreement between the union and the employers who maintain Plan T. Because the maximum annual benefit limitations of section 415 of the Code will limit benefits under Plan T for at least some participants who will be retiring in the immediate future, an excess benefit plan (Plan E) has been created. Plan E will provide the benefits that a participant of Plan T would have received except for the limitations of Code section 415. While Plan E has been established, Plan E has not received contributions and no benefits have been paid out from Plan E. Plan E will not become effective (and begin receiving contributions and paying benefits) until favorable responses to the rulings requested herein are received from the Internal Revenue Service (Service).

Plan E is designed to provide, on a nonqualified basis, benefits in excess of those permitted to be paid by Plan T by reason of the limitations imposed by section 415. The amount of the monthly payment that a participant of Plan E will receive from Plan E will be equal to the amount

255

by which the participant's monthly benefits from Plan T have been reduced by reason of the limitations under Code section 415. Additionally, the amount to be paid to participants under Plan E will be increased to reflect taxes due thereon under the Federal Insurance Contributions Act (FICA).

Plan E is not expected to hold a significant amount of assets. Pursuant to the collective bargaining agreement, the amount of benefits expected to be paid under Plan E in a given month plus FICA taxes and administrative expenses will be remitted to the administrators of Plan E each month. No principal amounts or interest income, if any, will be allowed to accumulate in the Plan E trust. Thus, the trust associated with Plan E will merely act as a passthrough entity for excess benefit payments and related expenses. The administrators of Plan T will also act as the administrators of Plan E.

Thus, a participant's benefit under Plan E is equal to the amount of the participant's benefit under Plan T's benefit formula (before limitation for section 415) in excess of the benefit Plan T can provide to the participant under section 415 (that is, after limitation for section 415). Such amount is to be further increased to reflect the FICA taxes due on such amount, so that the payments to be paid to a Participant, net of FICA taxes, are the same amounts the Participant would receive if the amounts were not subject to FICA taxes.

To fund Plan E, the collective bargaining agreement will be amended. The amendment to the applicable bargaining agreement, subject to receipt of a favorable response to the rulings requested herein, will modify Plan T's funding as follows.

a. First, the collective bargaining agreement amendment will require that on a monthly basis the administrator of Plan T and Plan E will calculate the amount necessary to pay Plan E benefits for the following month.

b. Second, the collective bargaining agreement amendment will require that the administrator of Plan T deduct from the funds (contributions for each hour worked) received from employers the monies necessary to pay the aforementioned Plan E benefits (including FICA taxes on such benefits). The monies necessary to pay Plan E benefits will be submitted directly to Plan E and thereupon paid directly to Plan E participants.

c. Third, the collective bargaining agreement amendment will require that all monies not paid to Plan E will be contributed directly to Plan T.

Thus, contributing employers will continue to submit the required employer contributions for each hour worked by each employee covered by the applicable collective bargaining agreement to the plan administrator. However, per the terms of the amendment, a portion of the funds received by the Plan T/Plan E administrator will be submitted to Plan E, and the remainder of the funds will be submitted to Plan T. The only contributions that will be allocated to Plan E are those that are required to be allocated to Plan E by the terms of the collective bargaining agreement. This allocation will always occur before the funds are deposited in any Plan T account. Once contributions are received by Plan T, they cannot be shifted to Plan E.

Rulings Requested

Based on the facts as stated, the following rulings have been requested on behalf of Plan T.

1. The establishment of Plan E will not cause Plan T to lose its qualified status under section 401(a) of the Code.

2. The proposed method of funding of Plan E will not cause Plan T to lose its qualified status under section 401(a) of the Code.

Applicable Law

Section 3(36) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) provides that the term "excess benefit plan" means a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of the Code on plans to which that section applies, without regard to whether the plan is funded. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan that is an excess benefit plan.

Section 401(a)(16) of the Code provides that a qualified plan must not provide for benefits or contributions that exceed the limitations of section 415.

Section 412 of the Code provides minimum funding standards that pension plans must satisfy. Section 412(h) provides exceptions to the minimum funding standards of section 412 for certain plans.

Section 415 of the Code provides limitations on benefits and contributions that may be provided under qualified plans. Section 415(b) provides limitations that qualified defined benefit plans must satisfy. Section 415(b)(1) provides, in general, that the annual benefit a participant can receive under a qualified defined benefit plan must not exceed the lesser of a specified dollar amount or 100 percent of the participant's average compensation for his high 3 years. The specified dollar amount effective January 1, 2000, is $135,000.

Section 1.414(l)-1(b)(1) of the Income Tax Regulations provides that, for purposes of that section, 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 employees who are covered by the plan and their beneficiaries.

Rationale

Code section 401(a)(16) provides that a qualified plan must satisfy section 415. Section 415(b) provides limitations that benefits provided under a qualified defined benefit plan must satisfy. Thus, where a participant's benefit under Plan T's benefit formula exceeds the section 415(b) limitation applicable to the participant, adjusted as necessary for the commencement age and the form in which the benefit will be paid, the participant's benefit under Plan T must be limited (reduced) so that it does not exceed such limitation.

Section 3(36) of Title I of ERISA provides that an excess benefit plan is a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the section 415 limitation applicable to the employee, without regard to whether the plan is funded. Plan E is intended to be an excess benefit plan under section 3(36) of ERISA.

Section 1.414(l)-1(b)(1) of the regulations provides that a plan is a single plan, for purposes of that section, if and only if all of the plan assets are available to pay benefits to participants and beneficiaries. The assets of Plan T are not available to pay benefits under Plan E, and assets of Plan E are not available to pay benefits under Plan T. Therefore, Plan T and Plan E do not constitute a single plan. Plan E is separate from Plan T and provides benefits on a nonqualified basis that supplement the benefits that certain participants in Plan T receive from Plan T. Furthermore, the benefit provided to a participant under Plan E cannot be provided by Plan T because it would cause the participant's Plan T benefit to exceed the limitations of section 415. Thus, the establishment of Plan E, an excess benefit plan, does not affect the qualified status of Plan T.

The contribution rate for employers who sponsor Plan T and Plan E is established as part of the collective bargaining agreement. In order to provide promised benefits under Plan T and Plan E, amounts necessary to provide such benefits must be actuarially calculated. Additionally, because Plan T is a qualified defined benefit plan subject to Code section 412, the contributions required to avoid a funding deficiency in Plan T's funding standard account for each plan year must be actuarially calculated. Such actuarial calculations are independent of the contribution rate established by the collective bargaining agreement. Furthermore, the minimum funding requirements for Plan T are independent of the amounts contributed to Plan E. Thus, the allocation of employer contributions to Plan E pursuant to the collective bargaining agreement will not affect the qualified status of Plan T. Note that, in general, whether or not a plan is qualified under section 401(a) of the Code is determined under the rules of section 401(a). The proposed allocation of contributions to Plan E will not, by itself, cause Plan T to fail to satisfy section 401(a).

Holdings

1. The establishment of Plan E will not cause Plan T to lose its qualified status under section 401(a) of the Code.

2. The proposed method of funding of Plan E will not cause Plan T to lose its qualified status under section 401(a) of the Code.

Note that 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.

This letter does not consider the more general issue of Plan T's qualified status, specifically, whether Plan T complies with all the Code requirements for qualification. This letter addresses only the impact (if any) of the adoption and funding of Plan E on the purportedly otherwise qualified status of Plan T. Additionally, except as specifically ruled above, no opinion is expressed regarding the subject transaction under any other provision of the Code, including the consequences to participants under section 83 and 402(b) of the Code. Moreover, we express no opinion regarding the federal employment tax aspects of the above-described transaction.

Sincerely yours,

Martin L. Pippins

Martin L. Pippins, Manager
Employee Plans Actuarial Group 2
Tax Exempt and Government Entities Division

259