Significant Index No. 0412.01-00

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200728049

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 2 0 2007

T:EP:RA:T:A2

Re:

Retirement Plan =

Savings Plan =

Dear

This letter is in response to your request for a ruling which was submitted by your authorized representative on August 2, 2005, and amended September 21, 2006. Specifically, you asked us to rule on the following issues:

(1) the proposed amendment to the Savings Plan described below is reasonable and provides for only de minimis increases in plan liabilities in accordance with section 412(f)(2)(A) of the Internal Revenue Code ("Code") and section 304(b)(2)(A) of Employee Retirement Income Security Act of 1974 ("ERISA"); and

(2) the amendments to the Plan and the Savings Plan made as a result of corrections approved in the Audit CAP and VC Programs to increase benefits are required as a condition of qualification in accordance with section 412(f)(2)(C) of the Code and section 304(b)(2)(C) of ERISA.

The Retirement Plan is a defined benefit plan with a cash balance benefit formula. Accruals to the Retirement Plan ceased effective December 31, . The Retirement Plan covers the Hospital's union and non-union employees employed by the Hospital as of December 31, .

The Savings Plan was adopted effective July 1, . The Savings Plan is a profit sharing plan with a qualified cash or deferred arrangement under section 401(k) of the Code covering substantially the same group of Hospital employees covered by the

Retirement Plan. The Savings Plan provides for annual profit sharing contributions that are allocated under a service-weighted formula, plus elective contributions and matching employer contributions under the 401(k) feature. Profit sharing contributions range from 3% to 15.5 % of each participant's base pay, depending on the participant's years of service.

The Retirement Plan is subject to a waiver of the minimum funding standard it received on May 14, . As such, any amendment increasing benefits in the Retirement Plan or any other plan sponsored by the Hospital covering substantially the same group of employees covered by the Plan is subject to the restrictions of section 412(f) of the Code.

Certain participants who were employees represented by a particular union did not participate in the Retirement Plan prior to January 1, , the date that they became eligible to participate in the Retirement Plan. Prior to participating in the Retirement Plan, these employees participated in a multiemployer defined benefit plan. When the Savings Plans was adopted, the Hospital intended that the definition of years of service include service recognized under the Retirement Plan or other plans to which the Hospital contributed for each participant who was employed by the Hospital on December 31, . However, the language in the Savings Plan was interpreted, and the Savings Plans was operated, to recognize only years of service recognized under the Retirement Plan. The union objected to the way the definition of years of service was interpreted and applied in the operation of the Savings Plan. Upon reviewing the definition of years of service and the operation of the Savings Plan, the Hospital agreed that the plan language defining years of service was ambiguous and that it was not applying the definition as had been intended when the Savings Plan was adopted. Hence, the Hospital has proposed to amend the Savings Plan, effective for all participants represented by this union in service as of December 31, , to clearly recognize all service that would have been recognized under the Retirement Plan had these participants been eligible to participate prior to January 1, . The amendment would also give these participants a make up contribution for the plan years ending December 31, , and .

The proposed amendment would affect at most 11 participants. The cost of the added contributions to the Savings Plan for the plan years ending December 31, , and , would be $ and $ , respectively. This would represent a 0.56% increase for and a 0.02% increase for . The Hospital represents that all the impacted participants are non-highly compensated, and that the proposed contributions would be well below the limits under section 415(c) of the Code.

After the August 2, 2005 ruling request was submitted, the Hospital became aware of certain operational defects in both the Retirement Plan and the Savings Plan that were caused by recordkeeping errors. In the Retirement Plan, the recordkeeper incorrectly programmed the interest rate assumption for calculating single sum distributions upon termination of employment and failed to take into account certain provisions of the Retirement Plan. As a result, 135 participants who terminated employment were either underpaid or overpaid. The aggregate amount of the underpayments was $ and the aggregate amount of overpayments was $ .

In the Savings Plan, the recordkeeper incorrectly input certain employment and salary information into its recordkeeping system. This defect caused 413 participants to receive excess allocations of profit sharing contributions in the aggregate amount of $ .

The Hospital intended to correct the defects under the Voluntary Compliance Program ("VCP"). However, the Retirement Plan was audited prior to the Hospital being able to submit the VCP application. However, the Hospital voluntarily disclosed the defects to the auditor, and the defects were corrected under Audit Compliance Agreement Program ("Audit CAP").

The Hospital was able to submit a VCP application for the Savings Plan and received a favorable compliance statement dated July 26, . However, the compliance statement will not become effective until the Hospital receives a favorable response to the determination letter request submitted with the VCP application.

The corrections to the defects in the Retirement Plan and Savings Plan involve retroactively amending each Plan to authorize the overpayments or over allocations. The underpayments will be corrected through payments of the shortfalls, including applicable interest, to each affected participant.

Section 412(f)(1) of the Code and section 304(b)(1) of ERISA provide that if a waiver of the minimum funding standard under section 412(d) of the Code and section 303 of ERISA is in effect with respect to a plan that is amended to increase the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable, such waiver shall not apply to any plan year ending on or after the date on which such amendment is adopted. Section 412(f)(2)(A) of the Code and § 304(b)(2)(A) of ERISA provide that section 412(f)(1) of the Code and section 304(b)(1) of ERISA shall not apply to any plan amendment which the Secretary of Labor determines to be reasonable and which provides only de minimis increases in the liabilities of the plan. Section 412(f)(2)(C) of the Code and § 304(b)(2)(C) of ERISA provide that section 412(f)(1) of the Code and section 304(b)(1) of ERISA shall not apply to any plan amendment which the Secretary of Labor determines to be required as a condition of qualification.

Reorganization Plan No. 4, which became effective December 31, , transferred the authority indicated in section 412(f)(2) from the Secretary of Labor to the Secretary of Treasury.

H. R. Report No. 93-807 states, "It is contemplated that generally other plans of the employer may not be established or amended to establish or increase benefits during a period of waiver."

S. Report No. 93-383 states, "The committee intends that in all cases the Service will condition a waiver of funding requirements by providing that the employer may not amend any plan in a way that would increase plan liabilities as long as there are any unfunded waived contributions outstanding under any of his qualified plans."

The proposed amendment to the Savings Plan, effective for all participants represented by the union in service as of December 31, , to explicitly recognize all service that would have been recognized under the Retirement Plan had they been eligible to participate prior to January 1, , is being made to clarify an ambiguous interpretation in the definition of years of service under the Savings Plan. While the existing plan language appears to clearly reach this result, it was helpful in negotiations with the affected union to make the clarifying amendment. Accordingly, the amendment to the Savings Plan is reasonable. The proposed amendment would only increase liabilities in the Savings Plan by 0.56% in and 0.02% in . Hence, the amendment to the Savings Plan is de minimis. Hence, in accordance with section 412(f)(2)(A) of the Code and section 304(b)(2)(A) of ERISA, section 412(f)(1) of the Code and section 304(b)(1) of ERISA do not apply to the proposed amendment.

The amendments to the Retirement Plan and the Savings Plan made as a result of corrections approved in the Audit CAP and VC Programs are required as a condition of qualification. Hence, in accordance with section 412(f)(2)(C) of the Code and section 304(b)(2)(C) of ERISA, section 412(f)(1) of the Code and section 304(b)(1) of ERISA do not apply to the corrective amendments to the Retirement Plan and the Savings Plan.

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 or cited by others as precedent.

We have sent a copy of this letter to the Manager, EP Classification in
to the Manager, EP Compliance Unit in and to your authorized representative pursuant to a power of attorney on file in this office.

If you require further assistance in this matter, please contact

Sincerely yours,

James E. Holland, Jr., Manager
Employee Plans Technical