Significant Index No. 412.00-00

200738026

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 29 2007

T:EP:RA:T:A2

In re:

Company =

Salaried 401(k) Plan =

Hourly 401(k) Plan =

Merged 401(k) Plan =

Retirement Plan =

Date 1 =

Date 2 =

Dear

This letter constitutes notice that, with respect to the Retirement Plan, the amendments described below are reasonable and provide for de minimis increases in plan liabilities of the Plan within the meaning of section 412(f)(2)(A) of the Internal Revenue Code (Code) and section 304(b)(2)(A) of the Employment Retirement Income Security Act of 1974 (ERISA).

Section 412(f)(1) of the Code provides that a plan is not a qualified plan if there is an amendment that increases the liabilities of a plan if a waiver under subsection (d)(1) is in effect with respect to the Plan. Section 412(f)(2)(A) provides an exception to section 412(f)(1) if the Secretary of Labor determines that the amendment is reasonable and provides for only de minimis increases in the liabilities of the plan. Section 412(f)(2)(C) also provides an exception to section 412(f)(1) if the amendment is required as a condition of qualification.

Section 304(b)(1) of ERISA provides that a plan is not a qualified plan if there is an amendment that increases the liabilities of a plan if a waiver under section 303(a) is in effect with respect to the Plan. Section 304(b)(2)(A) provides an exception to section 304(b)(1) if the Secretary of Labor determines that the amendment is reasonable and provides for only de minimis increases in the liabilities of the plan. Section 304(b)(2)(C) also provides an exception to section 304(b)(1) if the amendment is required as a condition of qualification under part I of subchapter D, of chapter 1, of the Internal Revenue Code.

Reorganization Plan No. 4, which became effective December 31, 1978, transferred the authority indicated in section 412(f)(2) from the Secretary of Labor to the Secretary of Treasury.

On Date 1, conditional waivers of the minimum funding standard for the Retirement Plan for the plan years ending December 31, and December 31, were granted to the Company. The ruling letter noted that any amendment to a profit sharing plan or any other retirement plans covering employees covered by the Retirement Plan maintained by the Company to increase the liabilities of those plans would be considered an amendment for purposes of section 412(f) of the Code and section 304(b) of ERISA.

Subsequently, the Retirement Plan was amended, effective Date 2, a date later than Date 1, to freeze all future benefit accruals for salaried and non-union hourly participants including accruals based on salary increases.

In addition to the Retirement Plan, the Company maintains the Salaried 401(k) Plan and the Hourly 401(k) Plan (hereinafter, collectively, the "Existing 401(k) Plans"). The Salaried 401(k) Plan currently provides a matching contribution equal to 50% of the first 6% of compensation contributed as elective deferrals. The Hourly 401(k) Plan currently provides a matching contribution equal to 10% of the first 6% of compensation contributed as elective deferrals. The Company does not currently offer nonqualified deferred compensation or equity based compensation to its employees.

The Salaried 401(k) Plan failed the ADP/ACP test for 2006. The Company states that it intends to refund excess contribution to HCEs in order to subsequently satisfy the test.

The Company expects that the Salaried 401(k) Plan will also fail the ADP/ACP Tests in 2007 and 2008. The Company states that it intends to make qualified non-elective contributions ("QNECs") in order to satisfy the nondiscrimination tests for 2007 and 2008.

The Company proposes to merge the Salaried 401(k) Plan and the Hourly (401(k) Plan into one plan to be called the Merged 401(k) Plan. The Company then proposes to amend the Merged 401(k) Plan to add the following provisions to be effective January 1, 2008:

- A safe harbor nonelective employer contribution provision in accordance with section 401(k)(12)(C) of the Code. Accordingly, all eligible employees will receive a nonelective contribution of 3% of compensation regardless of whether the employee makes elective deferrals.

- A provision extending the existing Salaried 401(k) Plan matching contribution to all eligible employees of the Merged 401(k) Plan. In particular, all eligible employees who make elective deferrals will receive matching contributions equal to the 50% of the first 6% of compensation contributed as elective deferrals. As noted above, the Hourly 401(k) Plan currently provides for matching contributions equal to 10% of the first 6% of compensation contributed as elective deferrals.

The Company states that the proposed amendments to the Existing 401(k) Plans are necessary in order to reduce employee turnover[1] and attract new employees. In particular it states that all departing employees have listed inadequate retirement benefits as one of the main reasons for leaving and that it has been told by several candidates for employment that poor retirement benefits was one of the major reasons for rejecting the Company's offer and seeking employment elsewhere.

The financial information furnished by the Company for the remaining years of the Retirement Plan's waiver amortization period (i.e., 2008 and 2009) show that the proposed amendments to the Existing 401(k) Plans will increase required contributions to those plans by approximately $ for each of 2008 and 2009. However, the Retirement Plan freeze resulted in current liability normal cost reductions to the Retirement Plan of approximately $ per year. Accordingly, the net cost effect of the Retirement Plan freeze and the proposed amendments to the Existing 401(K) Plans over the remaining years of the Retirement Plan's waiver amortization period is approximately $

The liability of the Retirement Plan[2] is expected to be over $ in each of 2008 and 2009. Accordingly the net cost effect of the Retirement Plan freeze and the proposed amendments to the Existing 401(K) Plans over the remaining years of the Retirement Plan's waiver amortization period as a percentage of the liability of the Retirement Plan is expected to be approximately 1.3%, an amount that is de minimis.

---

[1] The Company states that turnover in its headquarters has recently exceeded and that it has lost several key employees.

[2] Determined in accordance with section 412(l)(7) of the Code as in effect prior to January 1, 2008, using an interest rate of 5.77%.

Section 412(f)(2)(A) of the Code requires a determination that a plan amendment is reasonable and provides for only de minimis increases in plan liabilities in order for section (f)(1) not to apply to the plan amendment. Section 304(b)(2)(A) of ERISA contains parallel provisions. In the instant case, the proposed amendments to the Existing 401(k) Plans are reasonable because both former employees and prospective new employees who declined offers of employment, have informed the Company that its current retirement benefits are not competitive. In addition, the proposed amendments to the Existing 401(k) Plans provide for only de minimis increases in plan liabilities. Accordingly, the requirements of Section 412(f)(2)(A) of the Code and 304(b)(2)(A) of ERISA are satisfied.

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

The Employer has not requested a ruling as to whether any of the proposed amendments to the Existing 401(k) Plans meet the exception provided under section 412(f)(2)(C) of the Code and section 304(b)(2)(C) of ERISA. Accordingly, we have not addressed whether the proposed amendments to the Existing 401(k) Plans would otherwise be required as a condition of qualification.

A copy of this letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file. A copy of this letter is also being sent to the

If you have any questions on this ruling letter, please contact Lawrence Isaacs (ID#: 50-01177) at (202) 283-9710.

Sincerely,

James E. Holland, Jr.

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