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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP 11 2007

Number: **200749022**
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SE:T:EP:RA:T:A2

Re:

Dear :

This letter constitutes notice that your requests for waivers of the minimum funding standard for the Plan for the plan years ending , , and , have been denied. This decision was conveyed to your authorized representative by John Heil of this office by telephone on June 5, 2007.

The Plan is a collectively-bargained, multiemployer defined benefit plan benefiting employees who are covered by various collective bargaining agreements between the Union and 37 currently contributing employers. Based on information submitted with the request, the majority of contributing employers are involved in the trucking industry or the wholesale food distribution industry. In particular, the majority of contributing employers operate warehouses which service major retail supermarket chains, and deliver product from the warehouses to the supermarkets. Some employers perform warehousing and distribution of food products directly to business and institutions, a limited number of contributing employers are engaged in the warehousing and distribution of products unrelated to retail food distribution (such as liquor). As a result of the downturn in the economy after September 11, 2001, there has been a serious decline in the market served by the contributing employers, resulting in layoffs, and in some instances, buyouts. Some of the contributing employers have suffered a steady loss of their customer base to non-union competitors, and some are contemplating a bankruptcy filing or acquisition by another company not participating in the Plan. Two of the major contributing employers have ceased operations, and another is closing a large warehouse. These closings resulted in the loss of 600 participants, which represent 15% of all participants in the Plan. Major non-union national firms have also begun to encroach into the market areas served by the contributing employers and are in direct competition with them.

The Plan has also suffered a steady erosion of assets since September 11, 2001. The investment return of Plan assets was affected severely by the downturn in financial markets. Terminating employees, concerned with the state of the economy, have requested single sum distributions in lieu of monthly annuity payments in increasing numbers. To cover these single sum distributions, Plan assets had to be liquidated at depressed values.

As a result, employer contributions would have to be increased by over 100% to eliminate the funding deficiency. Such an increase would be a substantial financial hardship for at least 10 of the contributing employers.

The Plan Trustees took, or considered taking, the followings steps to improve the Plan's financial position:

(1) In addition to the contributions governed by collective bargaining, which are continuing to be made by each of the contributing employers, an additional 2% of their respective share of the employer withdrawal liability has been assessed since 2003;
(2) The prospective elimination of the single sum distribution option;
(3) Prospectively adopting a lifetime average for purposes of computing the monthly annuity payments;
(4) Prospectively decreasing benefits by 25% across the board;
(5) Prospectively eliminating the 30 year and out benefit, or assessing an additional $0.75 per hour to properly fund this benefit;
(6) Prospectively modifying the vesting schedule;
(7) Encouraging longer periods of service by permitting up to 40 years of credited service;
(8) Prospectively reducing benefits in conjunction with significant contribution rate increases; and
(9) Establishing a money purchase pension plan for new contributing employers.

In a letter dated October 18, 2006, the Plan Trustees were notified of our decision to tentatively deny the funding waiver requests and offered a conference of right. The conference of right was held on December 11, 2006, with the Pension Benefit Guaranty Corporation in attendance. During the conference, the authorized representatives of the Plan Trustees described a rescue plan that incorporated many of the elements described above. At the conclusion of the conference, an additional 21 days was afforded the Plan Trustees to provide additional information in support of their requests for funding waivers. In particular, we were concerned that the rescue plan described during the conference indicated that accumulated funding deficiencies would be generated in the Plan in future years even if the funding waivers were granted.

Since the conference of right, the Service and the PBGC have tried to obtain additional information that was promised to be forthcoming from the Plan Trustees and their authorized representatives. In a telephone call to the PBGC on , we were informed that the PBGC had not received any substantial new information since the conference of right despite repeated requests and that the PBGC would have no objection to the denial of the waiver requests.

On May 16, 2007, one of the Plan Trustees' authorized representatives was notified that the deadline for submitting additional information was May 22, 2007. We received a reply from this representative on May 16, 2007, confirming receipt of our correspondence and informing us that additional information would be forwarded to the Service by May 22, 2007.

On May 22, 2007, we received a letter from the representative. In this letter, the representative informed us that the Trustees have made little progress in getting the contributing employers to agree to the rescue plan since the conference of right and have also experienced difficulties in getting contributing employers to agree to make additional contributions to the Plan to resolve the Plans funding issues.

The accumulated funding deficiency in the Plan exceeds $ as of . The rescue plan described by the Plan Trustees and their authorized representatives during the conference of right held on December 11, 2006, has not been implemented because of resistance from certain of the Plan's contributing employers. Based on the information we have received to date, it is not reasonable to conclude that the Plan will continue only if the waivers are granted because a substantial number of contributing employers are unwilling to make the contributions necessary to adequately fund the Plan. Furthermore, the PBGC has no objection to the Service moving forward with the denial of the requests. Accordingly, your requests for waivers of the minimum funding standard for the plan years ending , , and , have been denied.

You should note that excise taxes under section 4971(a) of the Internal Revenue Code are currently due on the accumulated funding deficiencies in the Plan for the plan years ending , , , and . You should file a Form 5330 as soon as possible to report and pay the taxes.

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 and to your authorized representatives pursuant to a power of attorney on file in this office.

If you require further assistance in this matter, please contact

Sincerely yours,

Joseph H. Grant, Director
Employee Plans