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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 14 2012

UIL Code: 412.06-00

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In re: ***
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Sponsor = ***
Plan = ***
Competitor = ***
LLC = ***
State A = ***
State B = ***
Area = ***
Year 1 = ***
Year 2 = ***

Dear ***:

This letter constitutes notice that a waiver of the minimum funding standard for the Plan for the plan year ended May 31, 2009 has been approved subject to the following conditions:

1. Starting with the quarterly contribution due on March 15, 2012, the Sponsor makes the required quarterly contributions to the Plan in a timely fashion while the Plan is subject to a waiver of the minimum funding standard. For this purpose, the total amount of each quarterly contribution will be determined in accordance with section 430(j)(3) of the Internal Revenue Code (the "Code"), and can be comprised of several installments made prior to the respective due date of the quarterly contribution;

2. The Sponsor makes contributions to the Plan in amounts sufficient to (a) meet the minimum funding requirements for the Plan for the plan years ending May 31, 2012, through 2014, by February 15, 2013 through 2015 respectively (without applying for a waiver of the minimum funding standard);

3. The 10% excise tax due under section 4971(a) of the Code on any accumulated funding deficiency that occurred prior to the plan year beginning June 1, 2008,

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and on any unpaid minimum required contribution for plan years subsequent to the plan year ended May 31, 20 is satisfied in a timely manner.

4. Under section 412(c) of the Code, the Sponsor is restricted from amending the Plan to increase benefits and/or Plan liabilities while any portion of the waived funding deficiency remains unamortized, with only certain exceptions as defined in section 412(c)(7)(B).

5. The Sponsor provides proof of payment of all contributions described above in a timely manner to ************ of the Service using the fax number or address below:

If any one of these conditions is not satisfied, the waiver is retroactively null and void.

This conditional waiver has been granted in accordance with section 412(c) of the Code and section 302(c) of the Employee Retirement Income Security Act of 1974 ("ERISA"). The amount for which this conditional waiver has been granted is the contribution that would otherwise be required to reduce the balance in the funding standard account to zero as of May 31, 2009.

Formed in 1934, the Sponsor was a prosperous wine and liquor distributor in State A until first encountering financial difficulties in mid-Year 1. Over the years the Sponsor had expanded its operations by acquiring distributors in several other states. However, in April Year 2, the Sponsor ceased all business operations in State A. In Year 1, Competitor entered the Area market. The Sponsor alleges that the increased competition by such a large entity, with much more available capital and relationships with large suppliers of top wine and liquor brands throughout the US, combined with massive consolidation in the industry at both the distributor and supplies levels, caused the Sponsor to lose many of its marquis suppliers.

The Sponsor represents that this led to a "snowball effect" in which more of the Sponsor's suppliers terminated their relationships with the Sponsor and its subsidiary responsible for wine and liquor distribution in the Area market. This led to the Sponsor suffering a combined $ million loss for the fiscal years ended May 31, Year 1 and May 31, Year 2 which resulted in a restructuring that left Sponsor with control of only one operating subsidiary, LLC, a successful wholesale wine and liquor distributor operating solely in State B.

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Sponsor cites (1) its corporate restructuring and attendant financial difficulties caused by its loss of market share due to Competitor's entrance into the Area market and (2) poor Plan investment returns during the economic downturn in 2008 and 2009 as reasons it is seeking the requested waiver.

Since restructuring, the Sponsor has stabilized into a smaller outfit, but one that shows signs of quickly returning to sustained profitability. The Sponsor has taken steps to reduce Plan costs (and the costs of other retirement plans in its controlled group), control overall costs, and increase revenue.

To reduce Plan costs, the Plan was frozen as of December 31, 2000, and as of the plan year beginning June 1, 20 the Plan had no active participants. Further, Sponsor has discontinued all matching and employer contributions to its 401(k) plan, resulting in annual savings of roughly $ To control overall costs, the Sponsor has drastically cut its expenses (including by more than $ million in the last fiscal quarter of the waiver year) by downsizing the sales management team and warehouse personnel and reducing executive compensation. Finally, the Sponsor has detailed several efforts to increase revenue and profitability. In addition to an improving economy which Sponsor expects will increase demand on wine and spirits, and thus increase its distribution of those products, the Sponsor has successfully launched distribution of a brisk-selling and highly profitable new vodka, has expanded its distribution of several other profitable brands and is actively pursuing acquisition targets to expand its reach in State B. The Sponsor asserts that because of the cost cutting measures it has taken, the potential revenue increasing efforts it has made, plus signs of an improving economic environment, it reasonably expects that it will generate enough cash to resume funding the minimum funding standard beginning in the plan year ended May 31, 20

Your attention is called to section 412(c) of the Code and section 302(c)(7) of ERISA which describe the consequences that would result in the event the Plan is amended to increase benefits, change the rate in the accrual of benefits or change the rate of vesting, while any portion of the waived funding deficiency remains unamortized. Any amendment (or authorized action – such as a board action implementing a discretionary increase in employer matching contributions – by the governing body currently permitted under relevant plan documentation) to a profit sharing plan or any other retirement plans (covering employees covered by the Plan) maintained by the Sponsor or any entity under its control to increase the liabilities of those plans is considered an amendment of the Plan for purposes of section 412(c) of the Code and 302(c)(7) of ERISA. Similarly, the establishment of a new profit sharing plan or any other retirement plan by the Sponsor or any entity under its control (covering employees covered by this plan) would be considered an amendment for purposes of section 412(c) of the Code and section 302(c)(7) of ERISA.

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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.

When filing Form 5500 for the plan year ending May 31, 20(the date of this letter should be entered on Schedule SB (Actuarial Information). For this reason, we suggest that you furnish a copy of this letter to the enrolled actuary who is responsible for the completion of the Schedule SB.

We have sent a copy of this letter to the Sponsor's Power of Attorney. ******** ***********************************, and to ** **********.

If you require further assistance in this matter, please contact **************** at (202) ***-****.

Sincerely,

for William Hulteng, Manager
Employee Plans Technical

cc: ***
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