

Significant Index No. 0431.00-00



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

AUG 26 2024

Release Number: 202447018

Release Date: 11/22/2024

Re: Request for approval of IRC §412(c)(7) Exception

Taxpayer =

(EIN: -)

Plan =

(EIN: - ; Plan No:)

Dear :

This letter is in response to your request for a ruling that was postmarked and received on November 1, 2023, as well as the additional information provided on June 28, 2024. Specifically, the ruling requested an exception under section 412(c)(7) of the Internal Revenue Code ("Code") and section 302(c)(7) of the Employee Retirement Income Security Act of 1974 ("ERISA") to amend the Plan to remove the additional six (6) month suspension of benefits for those Participants who fail to timely notify the Plan of their return to work in covered employment or employment with the union or an affiliated fund, and in doing so, not forfeit its five-year automatic extension of amortization periods under section 431(d)(1) of the Code.

Taxpayer is first seeking a ruling that 1) the proposed plan amendment is not a plan amendment that increases the liabilities of the Plan, as defined in section 412(c)(7)(A) of the Code.

The ruling request also seeks an alternative ruling if the Internal Revenue Service ("Service") rules unfavorably on 1) above and determines that the proposed amendment is an amendment that increases the liabilities of the Plan. The alternative ruling request is that 2) the proposed amendment satisfies the exception as being reasonable and de minimis as defined under section 412(c)(7)(B)(i) of the Code.

This letter constitutes notice that your first ruling request has been denied. The Service has concluded that the proposed plan amendment is a plan amendment that increases the liabilities of the Plan, as defined in section 412(c)(7)(A) of the Code. The second ruling request has been approved. The Service has concluded that the proposed amendment is reasonable and de minimis and satisfies the exception under section

412(c)(7)(B)(i) of the Code. As a result of this ruling, the ruling issued February 24, 2010, granting an extension of time to amortize certain unfunded accrued liabilities of the Plan for plan years beginning January 1, 2009 will not be adversely affected by the adoption of the proposed amendment.

The following facts and representations have been submitted under penalties of perjury in support of the rulings requested.

The Plan is a multiemployer plan. The Plan has a January 1 to December 31 plan year. The Plan consists of both active and inactive participants. The plan consists of both bargained and non-bargained participants.

The Plan remains open with ongoing benefit accruals. The Plan has a flat dollar benefit formula, where the participants' benefit formula is based on a flat dollar amount multiplied by the number of pension credits earned. Pension credits are earned based on hours worked, starting at 1/10 of a year of Future Service for each full 150 hours of service. The Plan has not been amended to improve benefits for at least the last five years.

The Plan received approval on February 24, 2010 for a five-year automatic extension of the eligible amortization bases. The extension was effective with the plan year beginning January 1, 2009. The last base that was extended is scheduled to expire in 2029.

For all Plan Years starting January 1, 2010, the Plan has been certified as in endangered status under section 432(b) of the Code, except for the plan year beginning January 1, 2016 when it was certified as critical. The Trustees adopted a funding improvement plan effective November 14, 2017, and commenced on January 1, 2019. The Trustees confirmed no changes were required to the Funding Improvement Plan at their December 2, 2021 Trustee meeting, however they did elect to extend the Funding Improvement Plan Period by 5 years under the terms of the American Rescue Plan Act of 2021. The Plan has certified each year that they are making the scheduled progress in meeting the requirements of the funding improvement plan.

The funded status of the Plan improved to 72.7% as of July 1, 2022. The most recent zone status certification noted that the Plan is not projected to have an accumulated funding deficiency in the current plan year or any of the nine succeeding plan years.

When the Plan entered critical status for the plan year beginning January 1, 2016, the Plan was amended to remove certain adjustable benefits including the subsidized early retirement benefit. The Plan was amended at the same time to provide an actuarially reduced early retirement benefit.

The Plan currently provides for the suspension of benefits with respect to retirees who return to work. In particular, the suspension of benefits applies to participants who retire prior to normal retirement age (age 64) and then return to work. Specifically, when a participant returns to work that may be disqualifying under the terms of the

plan document, the participant is required to notify the Plan within 15 days after starting that work. If a participant fails to meet the 15-day requirement, the participant's benefit is suspended for an additional 6 months over and above the suspended months while reemployed. This additional suspension does not result in the suspension of benefits for any period after the participant has attained normal retirement age.

Taxpayer's proposed amendment is to remove this 6-month suspension of benefits.

Section 412(c)(7)(A) of the Code states, in relevant part, that no amendment of a plan which increases 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 under the plan shall be adopted if an extension of time under section 431(d) or section 433(d) is in effect with respect to the plan. If a plan is amended in violation of the preceding sentence, any extension of time shall not apply to any plan year ending on or after the date on which such amendment is adopted.

Section 412(c)(7)(B) of the Code provides an exception to the restriction on plan amendments, stating that Section 412(c)(7)(A) shall not apply to any plan amendment which the Secretary determines to be reasonable, and which provides for only de minimis increases in the liabilities of the plan.

Section 431(b)(2) of the Code states, in relevant part, the charges to the Funding Standard Account. For a plan year, the funding standard account shall be charged with the sum of—

- a) the normal cost of the plan for the plan year,
- b) the amounts necessary to amortize in equal annual installments (until fully amortized) —
 - (i) in the case of a plan which comes into existence on or after January 1, 2008, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,
 - (ii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,
 - (iii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and
 - (iv) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

Section 431(d)(1) of the Code states, in relevant part, the automatic extension of amortization periods upon application by certain plans. If the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the amortization period for any unfunded liability described in sections 431(b)(2)(B) or 431(b)(4) of the Code, and includes the certification by the Plan's actuary described in section 431(d)(1)(B) of the Code, the Secretary shall extend the amortization period for the period (not in excess of five years) requested in the application.

This ruling addresses the following requests:

1) Ruling regarding Taxpayer's assertion that the proposed plan amendment is not a plan amendment that increases the liabilities of the Plan, as defined in section 412(c)(7)(A) of the Code.

Taxpayer asserts that the proposed plan amendment is not a plan amendment that increases the liabilities of the Plan, as defined in section 412(c)(7)(A) of the Code for the following reasons:

Taxpayer's first argument is that the participants can already avoid the additional suspension simply by notifying the Plan of their return to work, and a majority of participants in the Plan who do later return to work do notify the Plan within the required time period. Therefore, Taxpayer argues that the proposed plan amendment is not an increase because the ability to avoid the suspension is already available and most affected participants avoid the additional suspension. The amendment merely removes a burdensome procedural requirement, which can confuse a participant who may think that the Plan has been notified of their return to covered employment because contributions are being made on account of their hours worked.

Taxpayer's second argument is that the value of the Plan's early retirement benefit is considerably lower than when the five-year amortization extension was originally granted in 2010 due to amendments to the Plan since that time. In 2016, the Plan was amended to remove the subsidized early retirement benefits. As a result of that plan amendment, the Plan's current actuarially reduced early retirement benefit has a lower value than the actuarial value measured at the time the amortization extension was granted. Therefore, Taxpayer argues that removing the additional period of suspension would not result in an increase of the cost of the benefit compared to the cost of the Plan benefits at the time of the amortization extension.

The Service agrees that participants can avoid the suspension if they timely notify the participants. However, the proposed plan amendment would still increase benefits for those that do not timely notify the Plan of their return to work. Taxpayer stated in the ruling request that approximately 5.3% of the retirees who return to work fail to notify the Plan in a timely manner and have their benefits suspended in accordance with the terms of the Plan.

Taxpayer's second argument is that the amendment is not an increase in liabilities because further reductions to the benefits have been made since the Plan's amortization extension was approved, and in aggregate, the benefits today are still lower than the benefits provided at the time of amortization extension request. Section 412(c)(7)(A) of the Code states, in relevant part, that "no amendment of a plan increases the liabilities of the plan by reason of *any* increase in benefits, ...". Given that the Code specifically references any increase, the Service concludes that the proposed plan amendment should be analyzed separately from other plan amendments to determine compliance with the Code, rather than evaluating all plan amendments in aggregate since the time of the amortization extension. Given that the

proposed amendment would lead to an increase in benefits over the current terms of the Plan, the Service concludes that the proposed amendment fails to meet this standard.

Therefore, the Service denies the Taxpayer's first request for a favorable ruling regarding Taxpayer's assertion that the proposed plan amendment is not a plan amendment that increases the liabilities of the Plan, as defined in section 412(c)(7)(A) of the Code¹.

As a result of the denial, the Service next reviewed the 2nd request for whether the proposed amendment satisfies the exception as being reasonable and de minimis as defined under section 412(c)(7)(B)(i) of the Code.

2) Ruling regarding whether the proposed plan amendment satisfies the exception as being reasonable and de minimis as defined under section 412(c)(7)(B)(i) of the Code.

The Taxpayer asserts that the proposed plan amendment meets the "reasonableness" requirement of the section 431(c)(7)(B) for an exception to the restriction on plan amendments that increase the liability of a plan with a previously approved amortization extension.

Taxpayer noted that the proposed amendment would resolve several issues with respect to what is seen as a six-month penalty for a failure to timely notify the Plan of the return to covered employment. Taxpayer argues that the proposed amendment is reasonable for the following reasons:

- The change is beneficial to participants because the burden of having to timely notify the Plan is removed. A person who is one day late in notifying the Plan would not be harshly penalized. Taxpayer states that the requirement that the participant timely notify the Plan is seen as burdensome to the participant and is viewed as a trap for the unwary.
- The proposed plan amendment would help avoid some confusion on who is responsible for notifying the Plan. Currently, there is some confusion on whether it is the participant's or the local union's responsibility to inform the Plan of a participant's return to work.
- Taxpayer also asserts that removing the penalty would be seen as competitive because some of the local plans which also cover these participants have been amended to remove similar benefit suspension provisions. Taxpayer noted that having different terms in this Plan could be considered confusing to participants.

The Service agrees with Taxpayer's conclusion that the proposed amendment is reasonable for the reasons stated above.

¹ The Service offered Taxpayer an opportunity to have a conference of right to discuss this then tentative denial, but the Taxpayer confirmed in a letter dated June 28, 2024 that it was not desired as long as the Service proposed to rule favorably on one of the requests.

Taxpayer also asserts that amending the Plan to remove the suspension penalty is a de minimis increase in liabilities of the Plan. Taxpayer noted that the actuarial valuation assumptions do not currently assume any participants return to service after retirement, and therefore the benefit suspensions are a source of actuarial gains to the fund when they occur. As such, this would not result in an increase in the present value of benefits in the actuarial valuation, but the actuarial gain experienced will decrease over time after the amendment.

The Plan's actuary estimated the additional cost of this amendment by considering an additional 6 months of pension benefits to be awarded to those pensioners who returned to work without providing the required notice. Taxpayer estimates that the proposed plan amendment would increase the Plan's normal cost by approximately 0.001% and would increase the Plan's total accrued liability by approximately 0.001% (0.005% for active participants). The Taxpayer noted that the probability of a plan participant being impacted by the plan amendment (returning to work and not notifying the Plan timely) was estimated to be 0.14%.

In evaluating whether the amendment is de minimis, Taxpayer explained the rationale on why the use of 6 months in calculating the cost impact of the amendment is appropriate and that the penalty would not have caused a participant to work longer². In a letter dated June 28, 2024, Taxpayer noted that the additional suspension has no impact on the participant's decision to continue working because the circumstances of a return to work after retirement are often out of the participant's control. Taxpayer further noted that typically a participant will return to work after retirement for a specific project and the amount of time a participant then works is based on the time it takes to complete the contracted project. Once the project is complete the participant then will generally return to retirement. Therefore, the Taxpayer believes that the decision to return to work is based on the needs related to the project and not the additional suspension period, and removing the 6-month suspension will not impact a participant's decision to continue working.

Given the rationale and estimated impacts noted above, the Service agrees with the Taxpayer's assessment that the proposed plan amendment can be considered a de minimis increase in the liabilities of the Plan.

Therefore, the Service concludes that the proposed plan amendment meets both the "reasonable and de minimis" requirements of the section 431(c)(7)(B) for an exception to the restriction on plan amendments that increase the liability of a plan with a previously approved amortization extension.

Approval for the proposed plan amendment is granted.

We are not expressing any opinion outside the ruling requested. This ruling does not address whether the proposed amendment complies with the rules for operation while a plan is in critical or endangered status under section 432(b) of the Code.

² In other words, why this penalty would not trap a rehired participant into working beyond a 6-month period to perhaps their normal retirement date.

Furthermore, we are not expressing any opinion as to the accuracy of any material submitted as part of your application.

This letter ruling may be revoked or modified retroactively if there was a misstatement or omission of controlling facts, the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling was based, or the transaction involves a continuing action or series of actions, and the controlling facts change during the course of the transaction.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representatives. Additionally, a copy of this letter ruling is being sent to the Manager, Classification Group 4 in Houston, Texas.

If you require further assistance concerning this matter, please contact Mr. (ID#) at () - or Ms. (ID#) at () - .

Sincerely yours,

David M. Ziegler, Manager
Employee Plans Actuarial Group 2

Enclosures

Notice 437, Notice of Intention to Disclose (Rulings)

A deleted copy of the ruling

cc:

Manager, Classification Group 4
Houston, TX