Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply to: OP:E:EP:A:1

Date: DEC 11 1998

Company:

Plan O:

Plan P:

This letter is in response to your request for a ruling concerning the determination of the limit on contributions that may be deducted under section 404(a)(3)(A) of the Internal Revenue Code.

The Company sponsors and maintains two deferred compensation plans, Plan O and Plan P. Plan O is a profit-sharing plan with a cash or deferred arrangement. All employees in an executive, administrative or clerical capacity including employees in office, sales, engineering or drafting work along with all officers, directors and shop foremen who have completed at least one year of service with the Company may elect to participate in the plan. Under Plan O, participants may elect to make before-tax contributions through payroll deductions (i.e., through a cash or deferred arrangement). In addition, the Company may make discretionary profit-sharing contributions from its profits on behalf of each participant in Plan O.

Plan P is a profit-sharing plan with a cash or deferred arrangement and with a discretionary contribution feature. All employees who are covered by a collective bargaining agreement and receive remuneration on an hourly basis who have completed at least one year of service with the Company participate in Plan P. Under Plan P, participants may elect to make before-tax contributions through payroll deductions (i.e., a cash or deferred arrangement). In addition, the Company may make discretionary profit-sharing contributions from its profits on behalf of each participant in Plan P. Participation in the two plans is mutually exclusive.

Each of the plans has received a prior determination letter holding that the plan satisfies the requirements of section 401 of the Code. A determination letter with respect to the provisions of the Tax Reform Act of 1986 and subsequent laws was issued on May 29, 1997 for each of the plans.

The Company maintains a trust for each respective employee benefit program. Contributions to the two plans are made to the respective trust. Each trust states that the assets shall not be used to satisfy the liabilities of any other plan.

Based on the information furnished, the Company's current contribution rate to Plan O is close to 15 percent of the total compensation of the participants in such plan. In addition, the Company's contribution rate to Plan P is stated to be less than 5 percent of the total compensation of the participants in such plan. The Company would like to aggregate the compensation of the participants in Plan O and the participants in Plan P for purposes of determining the 15 percent limitation on deductible contributions to both plans under section 404(a)(3)(A)(i) of the Code.

A ruling is requested that the deductible limit under section 404(a)(3)(A) of the Code is determined by aggregating all the contributions to Plan O and Plan P and by limiting such aggregate amount to 15 percent of the aggregate compensation of all participants in both plans, regardless of whether the amount of employer contributions to one of the plans exceeds 15% of compensation of the employees covered by that plan.

Section 404(a)(3)(A)(i) of the Code limits the deduction for contributions to a profit-sharing or stock bonus plan to 15 percent of the compensation otherwise paid or accrued during the taxable year to all employees covered under the plan. Section 404(a)(3)(A)(iv) of the Code provides that when contributions are made to two or more stock bonus or profit-sharing trusts, the trusts will be considered a single trust for purposes of applying the limitations of section 404(a)(3)(A) of the Code.

Section 1.401(k)-1(c)(5)(ii) of the Income Tax Regulations provides that elective contributions under a qualified cash or deferred arrangement are treated as employer contributions. Thus, they are treated as employer contributions for purposes of section 404 of the Code.

Section 1.404(a)-9(b) of the regulations provides that the limitation under section 404(a)(3)(A) shall be based on the compensation otherwise paid or accrued by an employer during the taxable year to its employees who are beneficiaries of the trust funds accumulated under the plan. Section 1.404(a)-9(b) of the regulations further provides that where contributions are paid to two or more profit-sharing or stock bonus trusts satisfying the conditions for deductions under section 404(a)(3)(A) of the Code, such trusts are considered as a single trust in applying the limitation of section 404(a)(3)(A) of the Code.

Both plans are qualified profit-sharing plans covering employees of the employer. The contributions made to the plan are employer contributions for purposes of section 404 of the Code. Under section 404(a)(3)(A) of the Code, the contribution to the plans must be aggregated for purposes of applying the limitations of section 404(a)(3)(A)(iv). Section 404(a)(3) is concerned with the limitation on the aggregate amount deducted by an employer with respect to profit-sharing plans covering its employees and is not concerned with the allocation of the deductible amount between plans.

Accordingly, we conclude that the deductible limit under section 404(a)(3)(A) with respect to the plans is determined by aggregating all contributions to the plans and by limiting such aggregate amount to 15 percent of the aggregate compensation of the employees covered by the plans. This ruling is based upon the information furnished, particularly on the continued qualification of the plans.

Sincerely yours,

James E. Holland, Jr.

James E. Holland, Jr.
Chief, Actuarial Branch 1