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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos: 401.28-00
415.01-m

Contact Person:

Telephone Number:

In Reference to:

OP:E:EP:T:1

Date:

NOV 2 - 1999

Attn:

Legend:

Plan A =

Plan B

City C =

Union =

Dear Mr. :

This is in response to a letter ruling request dated October 22, 1998, as supplemented by correspondence dated April 7, 1999, and August 31, 1999, submitted on your behalf by your authorized representative. In your letter, you request rulings that the establishment and operation of a non-qualified excess benefit plan (Plan B) does not adversely affect the qualified status of a collectively-bargained plan (Plan A) under section 401(a) of the Internal Revenue Code (the "Code").

You submitted the following facts and representations in support of your request:

Plan A is a multiemployer defined benefit pension plan established in for the benefit of members and their beneficiaries of three union locals in City C. Plan A is qualified under section 401(a) of the Code and is funded through a trust exempt from federal income tax under section 501(a). Plan A had active participants, total participants, and assets exceeding $ as of April 30, 1998. The collective bargaining agreements of the three union locals set the amount that must be contributed to Plan A for each hour worked by a union member employee at $. Annual employer contributions to Plan exceed $.

Recently, the maximum annual benefit limitation under section 415(b) of the Code limited Plan

A benefits that were to be paid to participants who retired, some at a relatively young age (i.e., late 40s or early 50s). To supplement the benefit, the union locals and employers established Plan B. Plan B is designed to be a non-qualified excess benefit plan providing benefits in excess of those allowable under Plan A. Plan B, to be effective on the receipt of a favorable ruling from the Internal Revenue Service, provides that a retiree or beneficiary of a retiree is to receive payments equal to the amount by which his or her monthly benefits from Plan A have been reduced by the section 415 limits, not reduced by the amount of taxes imposed by the Federal Insurance Contributions Act (FIC.4) on contributions to Plan B.

The employers will m&e monthly contributions which will be deposited in a holding account at a bank and contributed to Plans A and B by a third-party administrator. The administrator will determine each month how much is required the following month to pay affected participants an amount equal to the amount by- which their benefits under Plan A are reduced to comply with section 415, add the amount necessary to pay FICA taxes, and contribute the resulting total from the holding account to Plan B. The remaining pension contributions of the employers will then be contributed to Plan A. Plan B is not expected to hold significant assets, because the exact amount of benefits expected to be paid by Plan B in a given month will be deposited into Plan B at the beginning of the month during which benefits are expected to be paid. All amounts received by Plan B will be paid to retirees each month and certainly by the end of each year. No principal amounts or interest income will be allowed to accumulate in Plan B's trust.

To implement the above transaction, an amendment to the collective bargaining agreements was approved which provides that before the contributions are made to Plan A from the received contributions, the third-party administrator will cause the amounts in excess of the benefits permitted under Plan A pursuant to section 415(b) of the Code to be paid to ?!an B for distribution, with the remainder of the funds then being contributed to Plan A.

None of the funds actually contributed to Plan A can be distributed to participants to cover benefits provided under Plan B, nor can they be shifted or transferred to Plan B once they are received by Plan A. Plan A's actuary represents that the contributions to Plan B should not cause Plan A to fail to satisfy the minimum funding requirements under section 412.

You request a ruling ?hat the use of Plan B and the method of funding Plan B will not adversely affect Plan .4's qualified status under section 401(a) of the Code.

Section 3(36) of the Employee Retirement Income Security Ac! of 1974 (ERISA), P. L. No. 93-406, defines an "excess benefit plan" as a p!an maintained solely for the purpose of providing 'benefits for certain plan participants in excess of the limitations imposed by section 415 of the Code, without regard to whether the plan is funded. There is no corresponding Code section relating to excess benefit plans.

Section 415 of the Code limits annual contributions or benefits for plans qualified under section 401 (a). Section 4!5(b) provides the limit for defined benefit plans.

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Section 401 (a) of the Code provides that in order for a trust to be qualified, it must be impossible for any part of the trust corpus or income to be used for, or diverted to purposes other than for the exclusive benefit of the employees and their beneficiaries.

Section 1.414(l)-1(b)(1) of the federal Income Tax Regulations (the "regulations") provides that a plan is a "single plan" only if all of the plan assets are available to pay benefits to participants on an ongoing basis.

In this case, all assets contributed to Plan A are in fact only used to fund benefits for plan participants under Plan A. No assets will be transferred from Plan A's trust to Plan B's. Although part of the employers contributions will be directed to Plan B by the third-party administrator, this will be done prior to actual contribution to Plan A under the terms of the amendment to the collective bargaining agreement. Under the amendment, Plan A has no right to the contributions that are used to fund the benefits under Plan B.

Regarding minimum funding requirements, the level of contributions is set by the collective bargaining agreement and not by actuarial calculations. The minimum funding requirements under section 412 of the Code must be satisfied independently of the contributions required under the collective bargaining agreement. Plan A's actuary will adjust and monitor actuarial computations to ensure that Plan A continues to comply with section 412. Currently, the adjustment to contributions to Plan A to fund Plan B will not cause Plan A to fail minimum funding standards. Thus, minimum funding requirements for Plan A will be unaffected by amounts that will be contributed to Plan B. We also note that the minimum funding requirements under section 412 are not qualification requirements, which are found in sections 401 through 411.

Plan A and Plan B will not constitute a single plan under the regulations since assets from either one cannot be used to pay benefits of the other. Plan B will be a non-qualified, unfunded plan operating separately from Plan A, and will merely provide a supplement for certain benefits payable under Plan A.

Accordingly, we rule that the establishment and use of Plan B will not adversely affect the qualified status of Plan A under section 401(a) of the Code.

This letter does not consider the whether Plan A complies with all the qualification requirements under section 401(a). The determination of whether Plan A is qualified under section 401(a) is within the jurisdiction of the Ohio Key District Office of the Service. Also, this ruling does not address the effects, if any, of the proposed action under Title I of ERISA.

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

Sincerely yours,

John Swieca
Chief, Employee Plans
Technical Branch 1

cc: