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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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MAY 2 2 2006

SE:T:EP:RA:T:A2

In re:
("Plan")

Company 1 =

Company 2 =

This letter constitutes notice that, with respect to the above-named defined benefit pension plan, section 401(a)(33)(A) of the Internal Revenue Code ("Code") and section 204(i)(1) of the Employment Retirement Income Security Act of 1974 ("ERISA") do not apply to the amendment described below.

Section 401(a)(33)(A) of the Code provides that a plan is not a qualified plan if an amendment is adopted while the employer is a debtor in a case under title 11, United States Code, or similar Federal or State law, and such amendment increases liabilities of the plan by reason of (i) any increase in benefits, (ii) any change in the accrual of benefits, or (iii) any change in the rate at which benefits become nonforfeitable under the plan, with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.

Section 401(a)(33)(B) of the Code provides that section 401(a)(33) will not apply to any plan amendment if (i) the plan, were such amendment to take effect, would have a funded current liability percentage of 100 percent or more, (ii) the Secretary of the Treasury determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor, (iii) such amendment only repeals an amendment described in subsection 412(c)(8), or (iv) such amendment is required as a condition of qualification under this part.

Section 204(i)(1) of ERISA prohibits a plan amendment that increases the liabilities of a plan maintained by an employer that is a debtor under Title 11 of the Code, or similar Federal or State law, by reason of (A) any increase in benefits, (B) any change in the accrual of benefits, or (C) any change in the rate at which benefits become nonforfeitable under the plan, with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.

Section 204(i)(2) of ERISA provides that section 204(i)(1) shall not apply to any plan amendment that (A) the Secretary of the Treasury determines to be reasonable and that provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor, (B) such amendment only repeals an amendment described in section 302(c)(8), (C) is required as a condition of qualification under the Code, or (D) was adopted prior to, or pursuant to a collective bargaining agreement entered into prior to, the date on which the employer became a debtor in a case under Title 11 of the Code, or similar Federal or State law.

Section 204(i)(3) of ERISA provides that section 204(i)(1) only applies to plans (other than multiemployer plans), for which the funded current liability percentage is less than 100 percent after taking into account the effect of the amendment.

Company 1 is a wholly-owned subsidiary of Company 2. Company 2 was the sponsor of the Plan prior to June 3, 2003. Company 2 filed for protection under Chapter 11 of the U.S. Bankruptcy Code on December 5, 2001. The plan of reorganization for Company 2, which was approved and effective June 3, 2003, provided that Company 1 became the sponsor of the Plan on June 3, 2003.

The Plan was adopted on December 15, 1992, and effective as of January 1, 1993. Several plans of Company 2 and its affiliates were merged into the Plan on December 30, 2000. While the Plan covers approximately 5,074 participants, no participants are currently accruing benefits under the Plan.

The Plan was amended on December 22, 2002, prior to Company 2's date of reorganization. The amendment consisted of 5 parts:

(1) Parts 1 and 2 of the amendment provide elective special early retirement provisions for certain employees effective March 7, 2002, and June 1, 2002, respectively. In particular, special early retirement provisions are set forth for 24 employees meeting the eligibility criteria related to location, age and service. The increase in accrued benefits provided there under was determined under the Plan's formula as in effect immediately prior to the plan mergers of December 30, 2000, taking into account service under predecessor plans (resulting in an improved benefit formula for some employees) and reflected an additional 2 years of credited service. The reductions for early commencement

of benefits were reduced, and temporary early retirement supplements were also provided, in some cases providing supplements to surviving spouses.

(2) Part 3 of the amendment provides for the updating of references to the applicable interest rate under section 417(e)(3) of the Code.

(3) Part 4 of the amendment adds provisions under the Economic Growth and Tax Relief Act of 2001 ("EGTRRA") based on the model amendments published in Notice 2001-57, 2001-38 I.R.B. 279.

(4) Part 5 of the amendment adds a new paragraph based on Model Plan Amendment 1 published in Revenue Ruling 2001-62, 2001-53 I.R.B. 632, relating to applicable mortality tables.

After the amendment described above, the Plan had a current liability percentage that was less than 100 percent, and the Employer was still a debtor in possession in a case under Title 11 of the Code. The amendment was adopted prior to Company 2's date of reorganization to (a) reflect changes to maintain the Plan's qualified status, based on applicable published guidance, and (b) coincide with reductions in force that Company 1 and Company 2 considered necessary based on business circumstances at specified locations, which allowed both Companies to reduce expenses and remain competitive.

Parts 3 through 5 of the amendment are clearly required as a condition of qualification under section 401(a) of the Code, so under section 401(a)(33)(B)(iv) of the Code and section 204(i)(2)(C) of ERISA, section 401(a)(33) of the Code and section 204(i)(1) of ERISA do not apply to these parts of the plan amendment.

Parts 1 and 2 of the amendment cannot be considered reasonable merely because they were adopted to coincide with reductions in force that Company 1 and Company 2 considered necessary based on business circumstances at specified locations, which allowed Company 1 to reduce expenses and remain competitive. However, while the minimum funding standard under section 412 of the Code for the plan year ending December 31, 2002 (the year the amendment was adopted), was zero, Company 1 made a contribution to the Plan in the amount of $4,000,000 on September 15, 2003, which exceeded the amount of the increase in actuarial accrued liability resulting from the amendment ($2,700,000). Accordingly, parts 1 and 2 of the amendment are considered reasonable.

The actuarial information furnished indicates that the increase in current liability resulting from the amendment was 1.6%, which is less than three percent (3%). The increase in actuarial accrued liability resulting from the amendment was 1.7%, which is also less than three percent (3%). The increase in the normal cost to the Plan of the amendment was zero, because benefit accruals in the Plan had previously ceased.

Moreover, the increase in the minimum funding standard for the Plan for the plan year ending December 31, 2002 (not taking into account the credit balance in the funding standard account), was less than 3%. Hence, the amendment provides for only de minimis increases in the liabilities of the Plan.

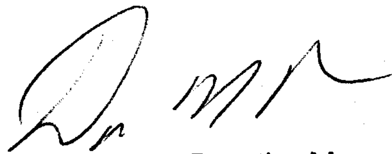
Accordingly, section 401(a)(33)(A) of the Code and section 204(i)(1) of ERISA do not apply to the amendment described above because parts 1 and 2 of the amendment are reasonable and provide for de minimis increases in plan liabilities of the Plan within the meaning of section 401(a)(33)(B) of the Code and section 204(i)(2) of ERISA, and parts 3 through 5 of the amendment are required as a condition of qualification under the Code within the meaning of section 401(a)(33)(B)(iv) of the Code and section 204(i)(2)(C) of ERISA..

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 Manager, EP Classification in , to the Manager, EP Compliance Unit in , and to your authorized representative pursuant to a power of attorney on file in this office.

If you require further assistance in this matter, please contact

Sincerely yours,



Donna M. Prestia, Manager
Employee Plans Actuarial Group 2