Internal Revenue Service

Department of the Treasury

200115042

Washington, DC 20224

Significant Index Nos. 401.28-00 & 415.01-00

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T:A1

Date:

JAN 19 2001

Re:

Pension Trust A =

Plan A =

Pension Trust E =

Plan E =

This is in reply to a ruling request, made on your behalf by your authorized representative, with respect to the creation of Plan E and its effect on Pension Trust A. You have asked us:

(1) whether the establishment, adoption, and operation of Plan E causes Pension Trust A to lose its tax-qualification or tax-exemption and

(2) whether the method of funding of Pension Trust E jeopardizes the tax-exempt status of Pension Trust A.

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Pension Trust A is a qualified collectively bargained multiemployer defined benefit pension fund. The date of the most recent determination letter of Plan A, the associated pension plan, is February 13, 1995.

Plan E is a non-qualified employee benefit plan, established pursuant to section 3(36) of the Employment Retirement Income Security Act of 1974 ("ERISA"), which provides participants with a supplemental benefit intended to offset any restriction caused by section 415 of the Internal Revenue Code of 1986 ("the Code"). Plan E is currently in operation.

The benefits payable under Plan E are restricted to participants who are receiving benefits under Plan A. A participant's benefit under Plan E is equal to the amount of such participant's otherwise calculated monthly benefit from Plan A less the participant's benefit under Plan A as restricted under the plan to satisfy the requirements of section 415 of the Code. This benefit amount under Plan E is grossed up to include F.I.C.A. taxes due, so that the benefit amount net of F.I.C.A. taxes is the same that the participant would be entitled to without the payment being subject to F.I.C.A. taxation.

Contributions paid to Pension Trust E are made pursuant to a collective bargaining agreement. The collective bargaining agreement provides that a portion of the pension fund contributions due under the agreement are contributed to Pension Trust E with the remainder of the pension fund contribution, if any, contributed to Pension Trust A. The agreement language provides that the administrator of Plan E determines the amount of the pension fund contribution that is allocated to Pension Trust E based on Plan E's "funding requirements". It is represented that Plan E is operated on an unfunded basis, and benefits are paid from current contributions, rather than from reserves or accumulated assets. Thus, Plan E's "funding requirements" are the amounts necessary to provide the current month's Plan E benefit payments.

Under the provisions of Plan A , the assets of Pension Trust A cannot be used to provide the benefits of Plan E. Similarly, under the provisions of Plan E, the assets of Pension Trust E cannot be used to provide the benefits of Plan A.

Section 3(36) of ERISA defines an "excess benefit plan" as one 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.

Section 401(a) of the Code provides the requirements for qualification of a trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries.

Section 401(a)(16) of the Code provides that a trust shall not constitute a qualified trust if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415 of the Code.

Section 412 of the Code provides minimum funding requirements that must be satisfied in pension plans.

Section 415 of the Code provides limitations on benefits and contributions that may be provided under a qualified trust.

Section 501(a) of the Code provides that an organization described in section 401(a) is exempt from taxation.

Section 1.414(l)-1(b)(1) of the Income Tax Regulations provides that a plan is a "single plan" if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries.

Because the assets of Pension Trust E are not available to pay benefits under Plan A, and the assets of Pension Trust A are not available to pay benefits under Plan E, Plan A and Plan E do not constitute a single plan. Furthermore, the benefits and provisions of Plan E do not affect Plan A or the amounts of benefits payable from Pension Trust A. Thus, the existence of Plan E does not affect the tax-qualified status of Pension Trust A.

Because the existence of Plan E does not affect whether Pension Trust A meets the requirements for qualification of section 401(a) of the Code, the existence of Plan E does not affect whether Pension Trust A meets the requirements for exemption from taxation of section 501(a) of the Code. Thus, the existence of Plan E does not affect the tax-exempt status of Pension Trust A.

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If the establishment, adoption, and operation of Plan E was not accompanied by an increase in the pension fund contribution rate under the collective bargaining agreement, the method of funding of Pension Trust E may cause Plan A to fail to meet the funding requirements of section 412 of the Code. However, a trust does not lose its tax-qualified status merely because the plan of which it is a part fails to meet the minimum funding requirements of section 412. Thus the method of funding of Pension Trust E does not affect the tax-qualified or tax-exempt status of Pension Trust A.

Therefore we hold that:

(1) the establishment, adoption, and operation of Plan E does not cause Pension Trust A to lose its tax-qualification or tax-exemption and

(2) the method of funding of Pension Trust E does not jeopardize the tax-exempt status of Pension Trust A.

This ruling does not consider the more general issue of Pension Trust A's qualified status, specifically, whether Pension Trust A complies with all the Code requirements for qualification. This letter addresses only the impact (if any) of the adoption and funding of Plan E and Pension Trust E on the purportedly otherwise qualified status of Pension Trust A.

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

Sincerely,

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