Significant Index No. 412.04-00

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL 17 2002

T:EP:RA:T:A2

Re:

EIN:
Plan Number:

Dear

This letter constitutes notice that your request, on behalf of the Trustees of the above-named multiemployer pension plan dated September 7, 2001, for a ruling further described below has been denied. In a letter to you dated May 7, 2002, we offered you the opportunity of a conference of right to discuss the denial of your request and set a deadline of 21 days to schedule the conference. As of the date of this letter, you have not exercised your right to a conference. Therefore, the tentative denial of your request is final and we have closed our file on this request.

Ruling Requested

You requested a ruling that it is reasonable to reflect the unfunded actuarial liability as a negative number in the plan's funding standard account, without limitation. In your request, you recognize that such a ruling could require the IRS to revise applicable provisions of Rev. Rul. 81-213, 1981-2 C.B. 101.

Applicable Law

Section 412 of the Internal Revenue Code (Code) provides for the minimum funding standards for certain pension plans.

Section 412(b) of the Code describes the elements (charges and credits) to the funding standard account that is maintained for plans subject to the minimum funding standards. Net experience gains and losses are amortized in the funding standard account pursuant to sections 412(b)(3)(B)(ii) and 412(b)(2)(B)(iv), respectively.

Rev. Rul. 81-213 provides guidelines regarding the establishment and treatment of experience gains and losses under a defined benefit plan for purposes of sections

412(b) and 404(a) of the Internal Revenue Code. Section 5.01 of Rev. Rul. 81-213 states that:

> "For an immediate gain type of funding method the actual unfunded liability as of any valuation date is the excess, **if any**, of the accrued liability over the actuarial value of assets as of that date." (emphasis added)

Analysis

In a situation where the actuarial value of assets in the plan as of a valuation date exceeds the accrued liability determined on that same date (such as in the above-named plan), there will be no excess of the accrued liability over the actuarial value of assets. Accordingly, the actual unfunded liability must be deemed to be $0.

Conclusion

Your request rightly points out that in order to rule as you have requested, a change to the established guidance contained in Rev. Rul. 81-213 would be required. However, because no such change has occurred to date, a favorable ruling on your request cannot be granted.

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

If you have any questions regarding this matter, please call
Also, please refer written replies to

Sincerely yours,

Martin L. Pippins

Martin L. Pippins, Manager
Employee Plans Actuarial Group 2

T:EP:RA:T:A2/MPippins
(202)-283-9698/2-14-02