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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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413.04-00
414.04-00

T:EP:RA:T1

Company A
Company B
Company C
State Y
State Z
Union

This is in response to your request for rulings on the application of Internal Revenue Code ("Code") Sections 412 and 414(f) to the ("the Plan"). The Plan was originally established, as a single-employer plan, December 1, 1997, pursuant to a collective bargaining agreement between the Union and Company A.

Company B, a State Y corporation, was formed, via a and Shareholders' Agreement, dated March 27, 1994. Its common shareholders are Company A and Company C, a State Z corporation. Company A and Company C are unrelated and each owns a fifty percent equity share of Company B.

From March 27, 1994, until April 1, 2000, Company B did not sponsor a pension plan. It is represented that, pursuant to a collective bargaining agreement between Company B and the Union, dated May 1, 1999, Company B agreed to provide employees with defined pension benefits effective April 1, 2000, with retroactive eligibility and service credits effective May 1, 1999.

The collective bargaining agreement between Company A and the Union includes an explicit schedule of pension benefits. The collective bargaining agreement between Company B and the Union states that all bargaining unit employees will be placed in the Plan and that a summary plan description will be distributed as a supplement to the agreement upon IRS approval of the Plan. Neither of the collective bargaining agreements explicitly require contributions to the Plan. That is, neither agreement includes, for example, a table of required contributions per hour of credited service.

The Plan, however, provides that the Company and the Participating Employers shall make contributions to the Plan in the amounts and at the times the Company determines to be necessary to meet legal funding standards or appropriate to further the purposes of the Plan. Under the provisions of the Plan, Company B is a Participating Employer.

The Plan includes both collectively bargained and non-bargained groups covering a total of bargained and nonbargained participants as of January 1, 2001. Of these participants, approximately are employees of Company B, and the remainder are employees of Company A. Company B does not maintain a defined benefit pension for its nonbargained employees.

The Form 5500 for 2000 was filed by the plan administrator, reflecting the Plan as a multiple-employer plan. The enrolled actuary for the Plan for the 2000 plan year disclosed the existence of the Company B benefit structure in the Plan effective as of April 1, 2000. The Plan has been taken over by a new enrolled actuary for the plan year beginning January 1, 2001. The new enrolled actuary intends to continue using the same method funding method as the prior actuary.

In accordance with the foregoing, you request the following rulings:

(1) That the Plan is a multiemployer plan under section 414(f) for the purpose of applying the minimum funding rules under section 412, effective with the 2001 plan year and

(2) That the change in status for the Plan from a single-employer plan during the 2000 plan year to a multiemployer plan during the 2001 plan year does not, in itself, constitute a change in funding method.

Section 413(b)(5) of the Code provides that for plans maintained pursuant to collective bargaining agreements between employee representatives and one or more employers, the minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.

Section 414(f)(1) of the Code provides that the term "multiemployer plan" means a plan ------

(A) to which more than one employer is required to contribute,
(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and
(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

Company A and Company B are separate employers and, according to the provisions of the Plan, are each required to make contributions to the Plan in the amounts at the times the Company determines to be necessary to meet legal funding standards or appropriate to further the purposes of the Plan. In addition, the Plan is maintained pursuant to separate collective bargaining agreements between the Union and Company A and Company B. Thus, the requirements of sections 414(f)(1)(A) and (B) have been satisfied.

Section 2510.3-37 (29 C.F.R.) of the regulations, issued by the Secretary of Labor, provides that a multiemployer plan must meet the requirement that it was established for a substantial business purpose and that a substantial business purpose includes the interest of a labor organization in securing an employee benefit plan for its members. In addition, paragraph (c) of § 2510.3-37 provides four factors that are relevant in determining whether a substantial business purpose existed for the establishment of the plan, any one of which may be sufficient to constitute a substantial business purpose:

(1) the extent to which the plan is maintained by a substantial number of unaffiliated contributing employers and covers a substantial portion of the trade, craft, or industry in terms of employees or a substantial number of the employees in the trade, craft, or industry in a locality or geographic area;

(2) The extent to which the plan provides benefits more closely related to years of service within the trade, craft, or industry rather than with an employer, reflecting the fact that an employee's relationship with an employer maintaining the plan is generally short-term although service in the trade, craft, or industry is generally long-term;

(3) The extent to which collective bargaining takes place on matters other than employee benefit plans between the employee organization and the employers maintaining the plan; and

(4) The extent to which the administrative burden and expense of providing benefits through single employer plans would be greater that through a multiemployer plan.

The information provided with the request was not sufficient to establish whether the requirements of paragraph (c) of § 2510.3-37 are satisfied. Accordingly, we recommend that an advisory opinion be requested from the Secretary of Labor as to whether the requirements of paragraph (c) of § 2510.3-37 are satisfied. A determination by the Secretary of Labor that the requirements of paragraph (c) of § 2510.3-37 are satisfied and that the plan is a multiemployer plan will satisfy the requirements of section 414(f)(1)(C) of the Code.

As stated above, the Plan has satisfied the requirements of sections 414(f)(1)(A) and (B) of the Code. Therefore, it is ruled, that, if the Secretary of Labor concludes that the requirements of paragraph (c) of § 2510.3-37 are satisfied and that the Plan is a multiemployer plan, the Plan will be a multiemployer plan within the meaning of section 414(f).

In regard to the request for a ruling that a change in status of the Plan from a single-employer plan to a multiemployer plan is not a change in funding method, we can not, as stated above, now rule that the Plan is a multiemployer plan. However, we note that the language of section 413(b)(5) provides that for funding purposes there is no distinction between a multiemployer plan and a single employer plan. Therefore, it is ruled that, if the Plan is subsequently determined to be a multiemployer plan, the change in plan status from a single-employer plan to a multiemployer plan will not, in itself, constitute a change in funding method.

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.

A copy of this letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file.

If you have any questions on this ruling letter, please contact:

Sincerely,

James E. Holland, Jr., Manager
Employee Plans Technical