Significant Index Nos. 0412.06-00 and 0412.07-00

200349005

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SE:T:EP:RA:T:A2

In re:
(the "Plan").

Dear

This letter constitutes notice that (1) your request dated December 11, 2002 (as modified by the letter dated June 11, 2003, from the authorized representative listed on the power of attorney (Form 2848) on file with this office), to retroactively amend the above-named money purchase pension plan under section 412(c)(8) of the Internal Revenue Code (the "Code") and section 302(c)(8) of the Employee Retirement Income Security Act of 1974 ("ERISA"), for approval of the plan amendment (the "Amendment") adopted on June 26, 2002, has been granted solely as it pertains to the two officers of (the "Company"), and has been denied to the extent that it pertains to all other participants in the Plan, and (2) a conditional waiver of the minimum funding standard has been granted for the Plan for the plan year ending September 30, 2002. Accordingly, the retroactive amendment shall apply only to the contribution otherwise due for the officers of the Company.

Facts

The Company designs, builds and acts as a manufacturer's representative for automatic : The Company purchased patents for the Pace sorting machines in and licensed the patents to . located in in 1983. have accounted for 50% of the Company's sales over the last 20 years.

Prior to the Amendment, the contribution formula under the Plan was equal to 10% of each participant's total compensation, provided that the participant completed a "Year of Service" as defined under the Plan. A "Year of Service" is generally defined as the computation period of 12 consecutive months in which the employee has at least 1000 hours of service. The Amendment effectively ceased contributions to the Plan by reducing the contribution formula under the Plan to 0% of each participant's total

compensation, effective October 1, 2001. The Amendment does not reduce the accrued benefits of any participants as of October 1, 2001, the first day of the 2001-2002 plan year.

As of October 1, 2001, a total of eight participants were covered under the Plan. The contribution required for the eight participants who completed 1,000 hours of service as of June 26, 2002, was approximately $32,062. Of this amount, approximately $15,939 is attributable to the two officers of the Company. The Plan was merged into the Profit Sharing Plan (the "Profit Sharing Plan") effective July 15, 2002.

Applicable Law

Section 411(d)(6) of the Code and section 204(g) of ERISA prohibit a plan amendment, except for an amendment described in section 412(c)(8) of the Code, that has the effect of reducing a participant's accrued benefit under the plan.

Section 412(c)(8) of the Code and section 302(c)(8) of ERISA provide that any amendment applying to a plan year which:

(A) is adopted after the close of such plan year but no later than 2 1/2 months after the close of the plan year,

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No such amendment shall take effect unless the plan administrator files a notice with the Secretary of Labor notifying him of such amendment and the Secretary of Labor has approved such amendment, or within 90 days after the date on which the notice was filed, failed to disapprove of such amendment.

Reorganization Plan No. 4 which became effective December 31, 1978, transferred the authority of the Secretary of Labor under section 412(c)(8) of the Code and section 302(c)(8) of ERISA to the Secretary of the Treasury.

Section 412(c)(8) of the Code and section 302(c)(8) of ERISA also provide that no amendment which reduces the accrued benefits of plan participants shall be approved unless it is determined that (1) such amendment is necessary because of substantial business hardship as determined under Code section 412(d)(2), and (2) a waiver of the minimum funding standard is unavailable or inadequate.

Section 412(d)(2) of the Code provides that the factors taken into account in determining temporary substantial business hardship shall include (but shall not be limited to) whether or not:

(A) the employer is operating at an economic loss,

(B) there is substantial unemployment or underemployment in the trade or business or in the industry concerned,

(C) the sales and profits of the industry concerned are declining, and

(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

Analysis

In considering the request for approval of the retroactive amendment, we must consider the factors set forth in section 412(d)(2) of the Code as they apply in the context of a request for a reduction of accrued benefits under Code section 412(c)(8). Other factors may be considered as well. The first factor under section 412(d)(2) considers whether the Company is operating at an economic loss. The Company reported net losses in income in three of the last four fiscal years. For the fiscal year ended September 30, 2000, the Company had a net income of approximately $49,125. For the fiscal years ended September 30, 1999, 2001,and 2002, the Company had net losses in income of approximately $50,160, $41,856, and $202,454, respectively. According to the letter of June 11, 2003, the Company was operating at a loss for the fiscal year ending September 30, 2003.

The second factor under section 412(d)(2) considers whether or not there is substantial unemployment or underemployment industry concerned. According to the information received, there has been significant unemployment in the tool and die industry over the past several years with industry-wide production levels operating at only 40%-60% capacity.

The third factor under section 412(d)(2) considers whether or not the sales and profits of the industry concerned are declining. According to the information received, there has been a decline in the sales and profits of the tool and die industry as a whole resulting from the overall reduction in capital equipment purchasing due to the weak economy.

The fourth factor under section 412(d)(2) concerns whether it is reasonable to expect the Plan to be continued only if the Amendment adopted June 26, 2002 is approved. In the Company's case, the Plan, with mandatory contributions for all participants, was merged into the Profit Sharing Plan, with discretionary contributions for participants. The Company, as it recovers from its economic losses, will be able to more easily afford future contributions to the Profit Sharing Plan (including contributions required as a result of the waiver of the minimum funding standard granted herein). Thus, the Plan, as merged, is expected to continue.

Under Code section 412(c)(8), a plan amendment that reduces the accrued benefits of participants shall not be approved unless, among other things, a waiver under section 412(d)(1) is unavailable or inadequate. In general, a funding waiver would not reduce the liability of the Company to the Plan. Payment of the additional liability of the contributions pertaining to the two officers of the Company would further weaken the working capital and available cash of the Company. Accordingly, a waiver of the minimum funding standard, which includes the additional liability of the contributions pertaining to the two officers of the Company, would be inadequate.

The Company has implemented various cost cutting measures to recover from this hardship. Specifically, the Company has reduced its workforce and it has reduced compensation for its corporate officers. Additionally, more aggressive purchasing of materials and supplies has further helped in reducing overall operating expenses.

Conclusion

Based upon our consideration of the statutory factors and of the information submitted to us, we have determined that:

1. The request for approval of the plan amendment adopted on June 26, 2002, has been granted solely as it pertains to the two officers of the Company, and has been denied to the extent that it pertains to all other participants in the Plan. The Company's authorized representative was notified of the proposed denial for all other participants in the Plan, and declined to have a conference-of-right on this issue.

2. A conditional waiver of the minimum funding standard has been granted in accordance with section 412(d) of the Code and section 303 of ERISA for the plan year ending September 30, 2002. The amount for which the waiver has been granted is the contribution that would otherwise be required to reduce the balance in the funding standard account of the plan to zero (including the amounts owed as a result of the partial denial of the request for approval of the plan amendment adopted on June 26, 2002) as of the end of the plan year. Because no plan amendment accompanied your request, we are granting the waiver conditioned upon your adoption of the enclosed proposed amendment (Attachment I). If the amendment is not adopted within a

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reasonable time, this conditional waiver is retroactively null and void. However, if you disagree with our amendment or would like to modify it in any way, we will consider any such request if such request is submitted in writing no later than 60 days from the date of this letter. You should clearly state the exact changes you propose. This ruling is not a ruling as to the effect such plan amendment may have on the qualified status of the Plan.

Your attention is called to section 412(f) of the Code and section 304 of ERISA which describes the consequences which result in the event the plan is amended to increase benefits, to change the rate in the accrual of benefits, or to change the rate of vesting while any portion of the waived amount remains unamortized.

This ruling 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 as others as precedent.

When filing Form 5500 for the plan year ending September 30, 2002, the date of this letter should be entered on Schedule B (Actuarial Information). We have sent a copy of this letter to the EP Classification Manager in and to the authorized representative listed on the power of attorney (Form 2848) on file with this office.

If you have any questions concerning this matter, please contact

Sincerely,

Paul T. Shultz

Paul T. Shultz, Director
Employee Plans Rulings and Agreements

ATTACHMENT I

The employer, if unable to satisfy the minimum funding standard for a given plan year, may apply to the Internal Revenue Service for a waiver of the minimum funding standard. If the waiver is granted, the following provisions apply.

1. The valuation date for a given plan year is the last day of each plan year.

2. An adjusted account balance shall be maintained for each plan participant whose actual account balance is less than or equal to his or her adjusted account balance.

   (a) For the plan year for which the first waiver is granted, the adjusted account balance as of the valuation date for each affected plan participant equals

      (1) the participant's actual account balance, plus

      (2) the amount that such participant would have received if the amount waived had been contributed.

   (b) For each plan year following the plan year for which a waiver is granted, the adjusted account balance of each participant affected by such waiver (calculated as of the valuation date for that year) equals:

      (1) the adjusted account balance as of the valuation date in the prior plan year, plus

      (2) the amount equal to the actual investment return credited or charged to the participant's actual account balance plus

      (3) the amount equal to 5% of the excess of the amount in (1) over the participant's actual account balance calculated as of the same date, plus

      (4) the amount equal to such participant's allocated share of the employer's required contribution (whether or not waived) for the plan year (determined without regard to adjusted waiver payments and discretionary contributions), minus

      (5) the amount of the participant's adjusted account balance forfeited during the plan year under the plan's provisions.

3. For a given plan year the employer is required to contribute a certain amount in order to satisfy the minimum funding standard for such plan year. For each plan year which follows a plan year for which a waiver of the minimum funding standard was granted the amount equals:

(1) the amount due in accordance with the plan's contribution formula (without regard to this section), plus

(2) the adjusted waiver amount.

The adjusted waiver amount for a given plan year equals:

(1) the sum of the amounts necessary to amortize each waived funding deficiency over a period of 5 plan years (15 plan years for waivers granted for plan years beginning prior to January 1, 1987) measured from the valuation date of the plan year for which the corresponding waiver was granted at t%* interest, compounded annually, minus

(2) the sum of the amounts necessary to amortize the total of each year's forfeitures (which have arisen since the first waiver was granted) over a period of 5 plan years (15 plan years for forfeitures occurring in plan years beginning prior to January 1, 1988) measured from the valuation date of the plan year in which the corresponding forfeitures arose at 5% interest, compounded annually.

An amount equal to the adjusted waiver amount must be contributed only until each actual account balance equals the adjusted account balance. Any plan provision which provides that employer contributions shall be reduced immediately by forfeitures is revoked until each participant's actual account balance equals that participant's adjusted account balance.

Discretionary employer contributions, which are in addition to the amounts contributed to satisfy the minimum funding standard can be made in any given plan year. However, the total employer contribution for the plan year cannot exceed the then remaining underfunded amount (the sum of the adjusted account balances minus the total plan assets).

4. The adjusted waiver payments, discretionary contributions and the forfeitures of actual account balances for the current plan year shall be allocated as of that year's valuation date to the actual account balance of the affected plan participants.

Each time a waiver is granted, an Original Waiver Amount (OWA) will be determined for each affected plan participant. The OWA equals the participant's portion of the amount which was waived.

Commencing with the valuation date of the plan for which a waiver is granted, a Remaining Original Waiver Amount (ROWA) must be calculated for each affected plan participant. As of such valuation date the OWA equals the ROWA. On the valuation date of a succeeding plan year the ROWA equals the prior plan year's ROWA multiplied by (1 + t), minus the forfeiture of amounts in the prior year's ROWA incurred in the current plan year, minus the allocation with respect to the OWA for the current plan year. For each waiver that is granted one OWA and a corresponding ROWA will be established for each affected plan participant.

The sum of the adjusted waiver payments, discretionary contributions and forfeitures of the actual account balances for a given plan year are allocated to those participants who have ROWA's by multiplying the sum of these three amounts by the fraction:

(i) the numerator of which equals the sum of OWA's for a particular participant, and

(ii) the denominator of which equals the sum of the OWA's for all participants.

To determine the portion of this allocation which is to be assigned to a given ROWA multiply the allocation by the corresponding OWA, then divide by the sum of the OWA's for the particular participant.

If the calculation of a ROWA results in a value which is less than zero, then

(1) the ROWA is set equal to zero,

(2) the corresponding OWA is set equal to zero, and

(3) the excess payments will be reallocated to the remaining ROWA's.

5. A distribution is determined by multiplying a participant's vested percentage by his or her adjusted account balance. However, distributions from the plan may not exceed a participant's actual account balance. If so limited, plan participants shall receive subsequent distributions derived from future adjusted waiver payments.

* t is the interest rate determined, on the first day of the plan year, in accordance with section 412(d)(1) of the Internal Revenue Code (as in effect at the time the waiver was requested).