

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:

Telephone Number:

Refer Reply To:
CC:EEE:EB:QP2
PLR-122455-23

In Re:

Date:
May 13, 2024

Taxpayer =
Plan =

Dear :

This letter constitutes notice that the conditions applicable to the waiver of the minimum funding standard for the Plan (PLR-115183-20) previously granted for the plan year ending December 31, 2020 (Plan Year) have been modified subject to the conditions listed below. This waiver is for the remaining unpaid minimum required contribution for the Plan Year; all waiver amortization payments attributable to this waiver and all outstanding waivers must be paid as stated in § 412(c)(1)(C) of the Internal Revenue Code (the Code).

This waiver is contingent on Taxpayer's satisfaction of all of the following conditions, and the failure to satisfy conditions 1-6 renders this waiver retroactively null and void as of the date the waiver is granted. However, if Taxpayer satisfies conditions 7-9, then a failure to satisfy condition 4 will not result in this waiver being retroactively null and void as of the date the waiver is granted.

1. Collateral acceptable to the Pension Benefit Guaranty Corporation (PBGC) is provided to Plan for the full amount of the minimum funding waiver for the 2020 plan year within 120 days from the date of the IRS ruling letter granting the waiver;
2. Pursuant to section 3608(a) of the CARES Act, Pub. L. 116-136, and Notice 2020-82, 2020-49 IRB 1458, Taxpayer will make a timely contribution to the Plan

in an amount sufficient to meet the minimum funding requirement for the Plan for the plan year ending December 31, 2019;

3. Starting with the quarterly contribution due on April 15, 2021, Taxpayer will make timely contributions equal to the required quarterly contributions to the Plan while a waiver under § 412(c) of the Code is in effect with respect to Plan. For this purpose, the total amount of each quarterly contribution will be determined in accordance with § 430(j)(3)(D) and, whenever applicable, sections 430(j)(3)(E) and 430(j)(4);
4. Under § 412(c)(7), Taxpayer is restricted from amending Plan to increase benefits and/or Plan liabilities while a waiver under § 412(c) is in effect with respect to the Plan, except to any extent otherwise permitted under § 412(c)(7)(B), in which case Taxpayer must copy PBGC on any correspondence with the Internal Revenue Service (IRS) regarding notification of or application for such an exception;
5. Taxpayer makes timely contributions to Plan in an amount sufficient to meet the minimum funding requirements for Plan for the plan years ending December 31, 2021, through December 31, 2025, by September 15, 2022 through September 15, 2026, respectively;
6. Taxpayer provides proof of payment of all contributions described above to IRS and PBGC within (5) business days of each payment thereof, using the following fax numbers or addresses:

IRS - EP Classification
Mr. Chris Huxtable
400 North 8th Street, Room 480
Richmond, VA 23219
Fax: 877-751-6769

Pension Benefit Guaranty Corporation
Corporate Finance & Restructuring
1200 K Street, N.W.
Washington, DC 20005
Fax: 202-842-2643
Email: SACompliance@PBGC.GOV

However, the failure to meet Condition 4 (above) does not render this waiver retroactively null and void as of the date the waiver is granted (but see § 412(c)(7)(A) for rules regarding the consequences of a plan amendment described in Condition 4) if the following additional conditions are met:

7. No later than January 15, 2024, the Taxpayer makes a contribution that, when

adjusted to January 1, 2024, in accordance with § 1.430(j)-1(b)(4) (using the Plan's effective interest rate for the 2023 plan year), is equal to the amount of the remaining waiver amortization installments for 2024 and 2025.

8. This contribution may be used to satisfy the remainder of the minimum required contribution for the 2023 plan year, and may be added to the plan's prefunding balance for 2024 to the extent contributions have been made that exceed the minimum required contribution for the 2023 plan year.
9. Taxpayer provides proof of payment this contribution to the IRS and PBGC within (5) business days of the payment, using the following fax numbers or addresses:

IRS - EP Classification
Mr. Chris Huxtable
400 North 8th Street, Room 480
Richmond, VA 23219
Fax: 877-751-6769

Pension Benefit Guaranty Corporation
Corporate Finance & Restructuring
1200 K Street, N.W.
Washington, DC 20005
Fax: 202-842-2643
Email: SACCompliance@PBGC.GOV

This waiver is granted in accordance with § 412(c) of the Code and § 302 of the Employee Retirement Income Security Act of 1974 (ERISA).

Section 412(c)(1) of the Code provides generally that if an employer is unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship and application of the standard would be adverse to the interests of plan participants in the aggregate, the minimum funding standard requirements may be waived for the year with respect to all or any portion of the minimum funding standard.

Section 412(c)(2) provides that the factors taken into account in determining a temporary substantial business hardship include whether the employer is operating at an economic loss, whether there is substantial unemployment or underemployment in the trade or business and in the industry concerned, whether the sales and profits of the industry concerned are depressed or declining, and whether it is reasonable to expect that the plan will be continued only if the waiver is granted.

Taxpayer had been suffering from a temporary substantial business hardship due in part to the cost of servicing its heavy debt obligations, and Taxpayer filed for a reorganization under Chapter 11 of the Bankruptcy Code. It appeared likely that the

Taxpayer would emerge from the reorganization with a substantially reduced debt load. Taxpayer also provided detailed plans to cut costs and substantially invest in the business in order to improve future prospects. As a result of these actions to facilitate its long-term improvement, Taxpayer's financial projections illustrated that its cash flows would improve adequately to satisfy the Plan's funding obligation in the near future.

Based on the facts as represented by Taxpayer, the legal standard for a "temporary substantial business hardship" pursuant to § 412(c) were met, and the IRS granted a waiver with respect to the minimum required contribution for the Plan Year on January 5, 2021.

Taxpayer has recently emerged from bankruptcy in an improved financial position, and wishes to accelerate payment of the remaining funding waiver balance. As a result, the previous waiver of the minimum funding standard for the Plan Year (PLR-115183-20) has been modified in order to allow Taxpayer to do so and subsequently make changes to the Plan without causing the waiver to be rendered retroactively null and void as of the date the waiver was granted pursuant to Condition 4.

Section 412(c)(7) of the Code and § 302(c)(7) of ERISA describe the consequences that result in the event the Plan is amended to increase benefits, change the accrual of benefits, or change the rate of vesting, while any portion of the waived funding deficiency remains unamortized. Any amendment to a profit sharing plan or any other retirement plan (covering employees covered by Plan) maintained by Taxpayer, to increase (or any action by Taxpayer or its authorized agents or designees, such as a Board of Directors or Board of Trustees, that has the effect of increasing) the liabilities of the plan is considered an amendment for purposes of § 412(c) of the Code and § 302(c)(7) of ERISA. Similarly, the establishment of a new profit-sharing plan or any other retirement plan by Taxpayer (covering employees covered by the Plan) is considered an amendment for purposes of § 412(c)(7) of the Code and § 302(c)(7) of ERISA.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2024-1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2024-1, § 11.05.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences or other consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

/s/ Linda Marshall

Linda Marshall
Senior Counsel
Qualified Plans Branch 1
Office of the Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: