



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

201103060

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

OCT 22 2010

Uniform Issue List: 412.06-00

SE: T: EP: RA: A2

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In re: \*\*\*\*\*  
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Dear \*\*\*\*\*.

This letter constitutes notice that a waiver of the minimum funding standard for the Plan, for the plan year ending August 31, 2009, has been approved subject to the following conditions:

- (1) Contributions are made to the Plan in amounts sufficient to meet the minimum funding requirements for the Plan for the plan years ending August 31, 2010, through 2024, by May 15, 2011 through 2025, respectively (without applying for a waiver of the minimum funding standard);
- (2) Under section 412(c)(7) of the Internal Revenue Code, the Plan must not be amended to increase benefits and/or Plan liabilities while any portion of the waived funding deficiency remains unamortized over the 15-year period as stated in code section 431(b)(2)(C), with only certain exceptions as defined in section 412(c)(7)(B).
- (3) Company provides proof of payment of all contributions described above to the Service by fax or mail.

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You agreed to these conditions in letter dated June 11, 2010, sent via facsimile. If any one of these conditions is not satisfied, the waiver is retroactively null and void.

This conditional waiver has been granted to the Plan in accordance with section 412(c) of the Internal Revenue Code and section 303 of the Employee Retirement Income Security Act of 1974 ("ERISA"). The amount for which this conditional waiver has been granted is the contribution that would otherwise be required to reduce the balance in the funding standard account to zero as of August 31, 2009.

The Plan, a multiemployer plan comprised of three companies, came into existence with a large funding shortfall. The Plan was a spin-off of assets and liabilities from a predecessor multiemployer plan that itself had a large funding shortfall, some of which was transferred to the Plan. This created a large minimum funding requirement for the plan year ending August 31, 2009 for the participating employers in the Plan. Of the Plan's three participating employers, the Company has the largest liability to the Plan. Its employees comprise the vast majority of participants in the Plan, it is above 10 percent of contributors to the Plan as required under Code section 412(c)(1)(A), and it is the Plan's major contributor. Therefore, the Company is the focus of the Plan's request for waiver of its minimum funding requirement.

The Company is a large retailer owned cooperative that is comprised of \*\*\*\* members and employs more than \*\*\*\*\* employees. It operates approximately \*\*\*\*\* supermarkets in the northeastern United States. The Company does not maintain a large cash position since it is a cooperative and distributes almost all of its profit to its members. The financial submissions illustrate that the Company is financially healthy, but it would experience a substantial financial hardship if it were to use any additional cash flows for contributions to the Plan. The Company has represented that it will aggressively fund the Plan over the next five years to create a credit balance equal to the outstanding amortization base associated with this waiver. However, the waiver will be amortized over 15 years pursuant to Code section 431(b)(2)(C), or until considered fully amortized by Code section 431(c)(5).

Your attention is called to section 412(c)(7) of the Code and section 302(c)(7) of ERISA which describe the consequences that would result in the event the Plan is amended to increase benefits, change the rate in the accrual of benefits or to change the rate of vesting, while any portion of the waived funding deficiency remains unamortized. Please note that any amendment to a profit sharing plan or any other retirement plans (covering employees covered by this plan) maintained by the participating employers in the Plan to increase the liabilities of those plans would be considered an amendment for purposes of section 412(c)(7) of the Code and section 302(c)(7) of ERISA. Similarly, the establishment of a new profit sharing plan or any other retirement plan by the participating employers in the Plan (covering employees covered by this plan) would be considered an amendment for purposes of section 412(c)(7) of the Code and section 302(c)(7) of ERISA.

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

When filing Form 5500 for the plan year ending August 31, 2009, the date of this letter should be entered on Schedule MB (Actuarial Information). For this reason, we suggest that you furnish a copy of this letter to the enrolled actuary who is responsible for the completion of the Schedule MB.

We have sent a copy of this letter to the Manager, EP Classification in Baltimore, Maryland, and to the Manager, EP Compliance Unit in Chicago, Illinois.

If you require further assistance in this matter, please contact \*\*\*\*\*  
\*\*\*\*\*.

Sincerely yours,



Colleen Patton, Acting Director  
Employee Plans Rulings & Agreements

cc: Manager, EP Classification  
Baltimore, Maryland

Manager, EP Compliance Unit  
Chicago, Illinois

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