

Pension Benefit Guaranty Corporation

76-57

April 26, 1976

REFERENCE:

[*1] 4021(a) Plans Covered. Requirements of Coverage
4082(a) Effective Date; Special Rules. Effective Date of Title IV

OPINION:

This is in response to your letter of February 5, 1976 to * * * of this Corporation.

As I understand the pertinent facts, the * * * (the "Plan") was established by * * * (the Employer") effective December 15, 1967. The Louisville District Director of the Internal Revenue Service, in a letter dated August 30, 1968 determined that the Plan and its trust met the requirements for tax qualification under § § 401(a) and 501(a) of the Internal Revenue Code of 1954 (the "Code").

Contributions were made to the Plan in 1968, 1969 and 1971. In a letter dated December 12, 1972, the Internal * * * Revenue Service concluded that the Plan did not meet the requirements of § 401(a) of the Code and that the trust was not exempt from federal income tax under § 501(a) beginning in 1968. The Service also determined deficiencies in the Employer's taxes for 1968 and 1969. The Service's position was based on two grounds. First, it found that the Employer's contributions to the Plan were geared to the Employer's profits rather than the plan's benefits in violation of Income Tax Regulation [*2] 1.401-1(b)(1). Second, the Plan failed to vest all participants in accrued benefits, to the extent funded, upon the complete discontinuance of contributions, as required by § 401(a) of the Internal Revenue Code.

In May of 1973, the Employer filed a petition with the United States Tax Court for a redetermination of its income tax liability for taxable years 1968 and 1969. In an order entered July 29, 1974, the Tax Court, pursuant to a stipulation of the parties, allowed deductions for contributions to the Plan in 1968 and 1969 but did not address the question of whether the Plan was tax qualified after 1972.

The IRS has never revoked its letter disqualifying the Plan, and its position is that the Plan is presently not tax * * * qualified. For every year after 1972, the Plan's trust filed a tax return and for taxable year 1975 paid taxes of * * * approximately \$43.00. The employer's last contribution to the Plan was in 1971. Pursuant to § 8.2 of the Plan document, in 1972 all participants vested in accrued benefits to the extent funded.

Under Section 4021(a) of the Act, a plan is covered by Title IV of the Act if it (1) "has, in practice, met the requirements of part I of subchapter [*3] D of chapter 1 of the Internal Revenue Code of 1954 (as in effect for the preceding 5 plan years of the plan) applicable to plans . . . [under § 401(a) or § 404(a)(2) of the Code] for the preceding 5 plan years; or (2) is, or has been determined by the Secretary of the * * * Treasury to be, a plan described in section 401(a) of the Internal Revenue Code of 1954, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of the Code." The * * * effective date of § 4021 is September 2, 1974 (Act § 4082(a)).

Since the Plan has not met the conditions of § 4021(a) of the Act after September 2, 1974, the provisions of Title IV of the Act do not apply to the termination of the Plan, unless otherwise provided in Title I, II or III of the Act, e.g. Act § 403(d)(1).

If you have additional questions related to this matter, you may telephone * * * of my staff at (202) 254-4395.

Henry Rose
General Counsel