

Pension Benefit Guaranty Corporation

81-41

December 16, 1981

REFERENCE:

4203 Complete Withdrawal
4205 Partial Withdrawals
4205(a)(1) Partial Withdrawals. Contribution Decline
4205(a)(2) Partial Withdrawals. Partial Cessation
4205(b) Partial Withdrawals. Cessation of Contributions
4212 Obligation to Contribute - Special Rules
4212(c) Obligation to Contribute - Liability

OPINION:

We have received your letter in which you asked the Pension Benefit Guaranty Corporation ("PBGC") to rule on several issues arising under the provisions of the Multiemployer Pension Plan Amendments Act of 1980 (the "Act") as they apply to the transactions described in your letter. (Section references hereinafter are to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., as amended by the Act).

It is clear under the Act that the initial responsibility for determining whether any particular action constitutes a withdrawal from a multiemployer plan, and the amount of any liability resulting therefrom, lies with the plan sponsor. The Act further provides that any disputes between a plan sponsor and an employer on these issues are to [*2] be resolved first through arbitration and, if necessary, in the courts. Given this scheme for enforcement of the Act, the PBGC will ordinarily avoid interjecting itself in such a determination by issuing an opinion on the application of the law to particular transactions.

The PBGC will, however, continue its practice of answering legal questions regarding the Act. In this regard, with respect to your question regarding the definition of "employer", we point out that Section 4001(b) provides that all trades or businesses under common control shall be treated as a single employer. PBGC's regulation on trades or businesses under common control, 29 CFR Part 2612, provides that "trades or businesses which are under common control" has the same meaning as in section 414(c) of the Internal Revenue Code ("IRC") and the regulations issued thereunder. Accordingly, if certain entities are under common control as defined in section 414(c) of the IRC, they would constitute the "employer" for purposes of Title IV of ERISA.

The remainder of your questions relate to whether there is a complete or partial withdrawal under the circumstances you outlined. Section 4203 provides, inter alia, [*3] that a complete withdrawal occurs when an employer (1) permanently ceases to have an obligation to contribute under the plan or * * * (2) permanently ceases all covered operations under the plan.

The rules governing partial withdrawals are contained in Section 4205. Since Section 4205(a)(1), which provides for a partial withdrawal if there is a 70% contribution decline, does not apply to plan years beginning before April 29, 1982, there can be no partial withdrawal under this section until the end of the first plan year beginning on or after April 29, 1982. However, a contribution decline at the present time may result in a partial withdrawal under Section 4205(a)(1) in a future plan year because the contribution decline is measured at the end of a 3-year test period, and the first two years of that period can begin before April 29, 1982.

Section 4205(a)(2) provides that a partial withdrawal occurs if there is partial cessation of the employer's contribution obligation. Section 4205(b)(2)(A)(i) provides that there is a partial cessation of the employer's contribution obligation if "the employer permanently ceases to have an obligation to contribute under one or more but fewer [*4] than all collective bargaining agreements under which the employer has been obligated to contribute under the plan but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location". Your questions on the type of work for which contributions were previously required under the collective bargaining agreement, and whether an employer continues to perform such work in the jurisdiction of the agreement or transfers such work to another location are factual issues

to be resolved in accordance with the statutory scheme.

Section 4205(b)(2)(A)(ii) provides that there is a partial cessation if "an employer permanently ceases to have an obligation to contribute under the plan with respect to work performed at one or more but fewer than all of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceased". Generally, a cessation of operations at a facility by an employer due to a sale of the facility, under circumstances where the employer continues to contribute to the plan for other facilities, will not in [*5] itself constitute a partial withdrawal under Section 4205(b)(2)(A)(ii).

Note that under Section 4212(c), if a principal purpose of any transaction is to evade or avoid liability under Part I of Subtitle E of Title IV of ERISA, that part shall be applied (and liability shall be determined and collected) without regard to such transaction.

I hope this response is helpful. If you have any further questions, please call me or * * * of my staff at (202) 254-3010.

Henry Rose
General Counsel