

Pension Benefit Guaranty Corporation

84-5

May 21, 1984

REFERENCE:

[\*1] 4204 Sale of Assets

OPINION:

This responds to your request for the PBGC's opinion concerning the application of ERISA § 4204 to a purchase of assets from a bankrupt employer (the "seller") that contributed to a multiemployer plan. You have indicated that the buyer of the assets (the "buyer") will continue the operation of the seller and contribute to the same multiemployer plan to which the seller contributed. However the buyer will not post a bond nor will the sales contract provide secondary liability for the seller. Your question is whether in these circumstances the buyer would be responsible for the seller's withdrawal liability when the buyer "does not obligate itself" under § 4204.

Section 4204 provides that if certain conditions are met, withdrawal liability is not imposed on an employer solely for cessation of the employer's covered operations or of its contribution obligation when such cessation results from a bona fide, arm's-length sale of assets to an unrelated party. The conditions that must be met for § 4204 to apply are that (1) the purchaser have a contribution obligation for substantially the same number of contribution base units for which the seller was obligated (2) [\*2] the purchaser provide a bond or escrow account meeting specified requirements and (3) the contract for sale create a specified secondary liability in the seller. If all of these conditions are not met then § 4204 does not apply. Since you have indicated that the buyer will not comply with the bond/escrow and sales contract requirements, this transaction would not meet the requirements for application of § 4204.

I hope this has been of assistance.

Henry Rose  
General Counsel