

Pension Benefit Guaranty Corporation

85-32

December 31, 1985

REFERENCE:

[*1] 4204 Sale of Assets

OPINION:

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation ("PBGC") on the application of the relief provisions of Section 4204 of the Employee Retirement Income Security Act, as amended ("the Act"). Specifically, you ask whether an employer that has withdrawn from a multiemployer pension plan may be relieved of withdrawal liability by a subsequent sale of assets in accordance with Section 4204.

In the situation you describe, an employer that was obligated to contribute to a multiemployer plan ceased contributions upon contracting out the work on which the contributions to the plan were based ("the covered * * * operations"). The required contributions were then made by the contractor. At a subsequent date, the contractor agreed to purchase the covered operations.

Section 4201 of the Act provides that an employer may be liable to a multiemployer plan upon a complete or partial withdrawal from the plan. A complete withdrawal is defined under Section 4203 as occurring when an employer either 1) permanently ceases to have an obligation to contribute under the plan or 2) permanently ceases all covered operations under the plan. [*2] Section 4204 establishes a limited exception to this definition of withdrawal so that the transfer of ownership of a business by a sale of assets can be effected without withdrawal liability being incurred by the seller. Thus, subject to certain conditions, Section 4204 provides that a withdrawal will not occur "solely because, as a result of a bona fide, arm's-length sale of assets to an unrelated party . . . the seller ceases covered operations or ceases to have an obligation to contribute for such operations."

When an employer withdraws from a plan before a sale of assets, it is our opinion that Section 4204 cannot be used to prevent the assessment of withdrawal liability. For Section 4204 to apply, the employer's withdrawal must be as a result of the sale of assets and not the product of an earlier event. This letter does not express any opinion as to whether, in the circumstances that you describe, the employer's obligation to contribute to the plan permanently ceased before the sale of its assets. The determination of when a withdrawal has occurred and whether Section 4204 may be applied is to be made by the plan sponsor in a given case, subject to arbitration and review [*3] in the courts.

I hope this has been of assistance. If you have further questions please contact the attorney handling this matter, * * *, of the Corporate Policy and Regulations Department. His telephone number is (202) 956-5050.

Edward R. Mackiewicz
General Counsel