

Pension Benefit Guaranty Corporation

83-11

May 16, 1983

REFERENCE:

[*1] 4062(d) Liability of Employer in Single Employer Plans. Corporate Reorganizations
4203 Complete Withdrawal
4205 Partial Withdrawals
4218 Withdrawal - No occurrence

OPINION:

This responds to your recent letter requesting a ruling regarding withdrawal liability under Sections 4203, 4205 and 4218 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1301 et seq. (1976) (amended by Pub. L. No. 96-364 (1980)) ("ERISA"). Specifically you wish to know if an employer ("A") who contributes to a multiemployer plan withdraws from the plan as a consequence of forming a wholly-owned subsidiary ("B") which assumes A's obligations to the plan for the same operations and employees for which A was obligated to contribute.

Under the Act the initial responsibility for determining whether any particular action constitutes a withdrawal from a multiemployer plan, the amount of any liability resulting therefrom, and the identify of the liable employer lies with the plan. The Act further provides that any disputes between a plan and an employer on these issues are to be resolved first through arbitration, subject to review in the courts. Given this scheme for enforcement of the Act, the [*2] PBGC prefers not to interject itself in such determinations by issuing an opinion on the application of the law to the particular transactions you describe. The PBGC, however, will continue its practice of answering general interpretive questions regarding the Act.

Section 4218 provides that a withdrawal shall not occur solely because an employer ceases to exist by reason of a change in corporate structure described in Section 4062(d) as long as there is no interruption of employer contributions or obligations under the plan. The kinds of corporate restructuring referred to in Section 4062(d) are changes which involve (1) "a mere change in identity, form, or place of organization," (2) "a liquidation into a parent corporation," and (3) a merger, consolidation, or division." In our view the creation of a subsidiary corporation is a transaction described in Section 4062(d).

I hope this response is helpful to you.

Henry Rose
General Counsel