

Pension Benefit Guaranty Corporation

86-11

May 13, 1986

REFERENCE:

[*1] 4219 Notice and Collection of Withdrawal Liability
4221 Resolution of Disputes
29 CFR 2644.2(c) Review or Arbitration of Liability Determination
29 CFR 2644.2(d) Overpayments

OPINION:

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation regarding the meaning of the PBGC's regulation on Notice and Collection of Withdrawal Liability, 29 CFR § 2644.2(d). Specifically, you ask whether that section requires a sponsor of a multiemployer plan to refund to an employer, with interest, excess withdrawal liability paid by the employer to the plan, in the event the plan sponsor on its initiative discovers an error in its withdrawal liability assessment against the employer but the employer failed to initiate the plan review and arbitration process of sections 4219 and 4221 of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

Section 2644.2(d) of the PBGC's regulations provides as follows --

If the plan sponsor or an arbitrator determines that payments made in accordance with the schedule of payments established by the plan sponsor have resulted in an overpayment of withdrawal liability, the plan sponsor shall refund the overpayment, with interest, [*2] in a lump sum.

You note that this language is broad and might be interpreted to require a refund in any case where a plan sponsor determines that the amount of its original withdrawal liability determination is erroneous, notwithstanding the fact that the employer has failed, within the time prescribed by law, to initiate review or arbitration. You also note, however, that the context of § 2644.2(d) suggests that the plan sponsor is required to refund an overpayment only where an error is discovered by the plan sponsor or arbitrator during the dispute resolution process provided in sections 4219 and 4221 of ERISA.

We agree that, read in its proper context, § 2644.2(d) does not require a plan sponsor to refund an overpayment when the employer has failed to initiate the plan review and arbitration process of sections 4219 and 4221. Section 2644.2(d) requires a refund when, "the plan sponsor or an arbitrator determines that there was an overpayment." The preceding paragraph, § 2644.2(c), provides rules on the employer's obligation to make withdrawal liability payments during the pendency of any plan review or arbitration proceeding. Read in context with § 2644.2(c) and considering [*3] the reference to an arbitrator's determination in § 2644.2(d), we believe it is clear that the plan sponsor's determination referred to in § 2644.2(d) is limited to the plan sponsor's determination in a plan review under section 4219.

This conclusion is consistent with section 403(c) of ERISA and section 401(a)(2) of the Internal Revenue Code, which provide that a plan sponsor of a multiemployer plan may, within six months of determining that there has been an overpayment of withdrawal liability, return the overpayment to the employer. Section 2644.2(d) creates an exception to this rule, the purpose of which is to encourage the timely payment of withdrawal liability while an employer is pursuing its statutory rights to challenge the assessment. Once those rights have been exhausted or the time for their exercise has expired, the purpose for this exception no longer exists and thus the exception should no longer apply.

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

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