

Pension Benefit Guaranty Corporation

76-83

June 16, 1976

REFERENCE:

[*1] 208 Mergers, Consolidations and other Transfers of Plan Assets

4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate

4043(b)(8) Reportable Events. Mergers, Consolidations & other Transfers of Plan Assets

OPINION:

This is in response to your request to withdraw the notice of intent to terminate * * * participation in the * * *, Retirement Plan. The notice was received by this Corporation on December 13, 1974.

As I understand the pertinent facts, * * * (the "Plan") was established effective January 1, 1971 for the benefit of employees of * * * and employees of other companies owned by * * * a wholly-owned subsidiary of * * * has submitted a notice of intent to withdraw from participation in the Plan to this Corporation. The Plan has approximately 780 participants of which 26 are employed by * * *. Six of * * * 26 participants are entitled to vested benefits under the Plan. The remaining participants are entitled to the return of employee contributions to the Plan.

Prior to the Plan's amendment on January 23, 1976, only assets attributable to * * * could be used to provide benefits to * * * withdrawing employees. See § 9.04 of the plan document. Because [*2] of this provision, upon the withdrawal from the Plan by * * * this Corporation would treat each participating employer as having its own plan. Accordingly, * * * termination of its participation in the Plan, would result in a termination of the Plan with respect to * * *

On January 23, 1976 * * * amended its Plan retroactive to September 2, 1974. The amendment provides that all assets held by the Trustees of the Plan, whether or not attributable to the withdrawing employer, may be used to provide benefits to participants employed by the withdrawing employer. As a result of the amendment, upon the withdrawal by an employer the Plan is treated as one plan rather than an amalgamation of plans. In addition, because of the amendmen * * * employees will receive all vested benefits including those benefits which would not be guaranteed under Section 4022 of the Employee Retirement Income Security Act of 1974 (the "Act"). In these circumstances, * * * withdrawal from participation in the Plan does not constitute a termination of a separate plan. The notice of termination of * * * participation in the * * * is considered withdrawn.

The amendment, however, consolidates the assets and [*3] liabilities of each employer's separate plan into a single plan. A consolidation of assets or liabilities of one pension plan with those of any other plan is subject to the requirements of § 208 of the Act and the requirements for tax qualification of § § 401(a)(12) and 414(1) of the Internal Revenue Code (the "Code"). Section 4043(b)(8) of the Act requires the plan administrator the notify this Corporation of the consolidation of assets and liabilities under § 208 of the Act within 30 days after the plan administrator knows or has reason to know that the consolidation has occurred. Your letter of January 29, 1976, which enclosed a copy of the executed amendment to the Plan, satisfies the notice requirement of § 4043(b)(8). We take no position on whether the consolidation of assets and liabilities meets the requirements of § 208 of the Act or § § 401(a)(12) and 414(1) of the Code since those provisions are administered by the U.S. Department of Labor and the Internal Revenue Service, respectively.

I hope this is of assistance.

Henry Rose
General Counsel