

Pension Benefit Guaranty Corporation

75-70

November 18, 1975

REFERENCE:

[*1] 4048 Date of Termination

OPINION:

Your letter to * * * dated October 15, 1975, regarding the * * * Employees' Retirement Plan (hereinafter, the "Plan"), was received on October 20, while * * * was out of town. Please be assured that as a result of your communications with the Pension Benefit Guaranty Corporation (hereinafter, the "PBGC"), we are keeping the * * * case open to allow you a full opportunity to comment.

As explained in * * * letter of September 16, 1975 to * * * of your firm, after examining material submitted to us by your firm and by counsel for * * *, we find that the Plan terminated on June 15, 1974, by a Resolution of the Board of Directors of * * * dated June 30, 1974. That decision was reached after * * *, which had changed ownership in late 1973, relocated from New York to Pennsylvania and 84% of its employees elected not to move with the company. Under the June 30, 1974 Resolution, implementation of the Plan's termination procedure could not begin until * * * received a determination from the Internal Revenue Service (hereinafter, "IRS") that the prior tax status of the Plan and the trust would not be adversely affected by the termination. The IRS determination was [*2] requested in * * * August, 1974, and IRS responded affirmatively in December, 1974. Termination procedures as set forth in the Plan were thereafter put into effect.

The PBGC does not use a fixed formula to establish the date a pension plan terminates, looking instead to the facts and circumstances of each case. Two very persuasive considerations are the dates on which contributions and benefits accruals cease. The last contribution to the Plan was made on October 16, 1973 and benefit accruals ceased as of June 15, 1974. Although action by the Plan administrator to liquidate the trust fund and distribute Plan assets was not implemented until receipt of IRS's determination letter, the Plan itself was terminated for Title IV purposes * * * effective June 15, 1974. For those purposes, notification to participants has not been considered dispositive. As you * * * know, our regulations do make provision for prompt notification to participants, in future cases.

Our determination is based on the following material:

1. A copy of the * * * Employees' Retirement Plan, with amendments;
2. A copy of a Resolution of the Board of Directors of * * * dated June 30, 1974, terminating [*3] the Plan as of June 15, 1974;
3. A copy of a letter from counsel for * * * to the IRS District Director, dated August 12, 1974, requesting a determination that termination of the Plan would not adversely affect the tax status of the Plan or trust;
4. A copy of a letter from the IRS District Director to * * *, dated December 4, 1974, making the requested determination;
5. A notice sent to participants and beneficiaries of the Plan by the * * * Employees' Retirement Plan Committee, dated February 4, 1975, stating that the Plan had been terminated;
6. A notice sent to certain Plan participants, dated April 4, 1975, setting forth the results of the * * * allocation of Plan assets;
7. Correspondence between PBGC and counsel for * * *;
8. Correspondence between PBGC and your firm.

You may obtain copies of any of these documents or arrange to see them by writing to the Director, Office of Communications, Pension Benefit Guaranty Corporation, P.O. Box 7119, Washington, D.C. 20044. I am enclosing a copy of our Regulations implementing the Freedom of Information Act, which set forth the conditions under which

PBGC records are made available to the public. You may also seek copies [*4] of these documents directly from counsel for * * * If you have further questions or would like an opportunity to make an oral presentation, please be in touch with * * * of this Office. Unless we hear from you within thirty days of your receipt of this letter we will close this case.

Henry Rose
General Counsel