

Pension Benefit Guaranty Corporation

82-13

April 12, 1982

REFERENCE:

[\*1] 4001(b) Definitions. Employer and Controlled Group  
4201 Withdrawal Liability Established  
4205 Partial Withdrawals

OPINION:

This is in response to your inquiry regarding the definition of the term "employer" under Title IV of the Employee Retirement Income Security Act ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("Multiemployer Act"). You ask whether the "employer" for purposes of ERISA sections 4201 and 4205, relating to partial withdrawals by employers from multiemployer pension plans, includes all trades or businesses under common control. We conclude that the term "employer" as defined in ERISA Section 4001(b) applies for all purposes under Title IV of ERISA, including a determination by a plan sponsor of whether a complete or partial withdrawal has occurred.

The term "employer" for purposes of ERISA Title IV, including those sections added by the Multiemployer Act, is defined in section 4001(b):

For purposes of this title, under regulations prescribed by the corporation [the PBGC], all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades [\*2] and businesses as a single employer.

When Congress added the multiemployer provisions of Title IV of ERISA, it specifically indicated its intention that the definition of "employer" in section 4001(b) continue to apply to a group of trades or businesses under common control.

Under current law, a group of trades or businesses under common control, whether or not incorporated, is treated as a single employer for purposes of employer liability under Title IV. Thus, if a terminating single employer plan is maintained by one or more members of a controlled group, the entire group is the "employer" and is responsible for any employer liability. The leading case in this area is *Pension Benefit Guaranty Corporation v. Ouimet Corp.*, 470 F. Supp. 945 (D. Mass. 1970) [aff'd 630 F.2d 4 (1st Cir. 1980 cert. denied, 450 U.S. 914 (1981))], in which the court correctly held that all members of a controlled group are jointly and severally liable for employer liability imposed under section 4062 of ERISA. The bill does not modify the definition of "employer" in any way, and the *Ouimet* decision remains good law.

126 Cong. Rec. S11672, 96th Cong., 2d Sess. (Aug. 16, 1980). [\*3]

That this definition of employer also extends to businesses which contribute to multiemployer plans is made clear by the report of the Senate Labor Committee:

A group of trades or businesses under common control as described in ERISA section 4001(b) is treated as a single employer if fewer than all the businesses in a controlled group withdraw.

S. 1076 The Multiemployer Pension Plan Amendments Act of 1980: Summary of Analysis and Consideration, Senate Committee on Labor and Human Resources, (Committee Print, April 1980), p. 13. See also, Report of the House Committee on Ways and Means on H.R. 3904 (Rept. 96-869, Part II, April 23, 1980), p. 16 ("the controlled group . . . would be considered an employer with an obligation to contribute to the plan").

Therefore, in order to determine whether a complete or partial withdrawal has occurred within the meaning of ERISA sections 4203 and 4205, contributions of the entire commonly controlled group must be taken into account by the plan sponsor.

I hope this response is helpful to you. If we can be of further assistance please let us know.

Henry Rose

General Counsel