



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY **200401018**
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OCT 10 2003

T:EP:RA:T:A1

This letter constitutes notice that waivers of the 10 percent excise tax due under section 4971(f)(1) of the Internal Revenue Code have been granted with respect to the liquidity shortfall for the Plan for the first, second, third, and fourth quarters of the plan year ending October 31, 2002. Hereinafter these four quarters will be known as the "Impacted Quarters".

The waivers of the 10 percent tax have been granted in accordance with section 4971(f)(4) of the Internal Revenue Code. For any quarter for which these waivers have been granted, the amount of the waiver is equal to 10 percent of the amount of the excess of (1) the liquidity shortfall of the Plan (as determined under section 412(m)(5)(E) of the Code) for the quarter, over (2) the aggregate amount of any contributions paid in the form of liquid assets which served to reduce the liquidity shortfall for the quarter and which were paid to the Plan between the last day of the quarter and the due date of the required installment under section 412(m) for such quarter.

The liquidity shortfall for the Plan arose as a result of the inability of the Company to satisfy the liquidity requirement of section 412(m)(5) of the Code for the quarters ending January 1, 2002, April 30, 2002, July 31, 2002, and October 31, 2002.

The information furnished indicates that the Company was unaware that liquidity shortfalls existed for the Impacted Quarters until April of 2003. At that time the Company was first informed by Consulting Firm Y of the liquidity shortfalls for the Impacted Quarters and that the Company was liable for excise taxes of 10 percent of such shortfalls. Shortly after being informed of the liquidity shortfalls and the tax due, the Company requested a waiver of the excise tax.

Consulting Firm Y also found that no liquidity shortfall currently existed for the Plan for the quarter ending January 1, 2003. The Plan has subsequently continued to satisfy the liquidity requirements.

In April of 2002, Consulting Firm Y replaced Consulting Firm X as the actuaries for the Plan. In the course of their due diligence, Consulting Firm Y discovered errors in prior years' valuations and informed Consulting Firm X of such errors. Consulting Firm X then redid the valuations for the plan years ending October 30, 2000, and October 31, 2001, completing the work in time for the Company to file amended Schedules B of Forms 5500 for these plan years in February of 2003.

Consulting Firm X had material in its possession, before the payment due dates of the quarters ending January 31, 2002, and April 30, 2002, to put it on notice of the potential for liquidity shortfalls but did not timely make any calculations, nor did it inform the Company of the potential for liquidity shortfalls in a timely manner. Both Consulting Firms X and Y had material in their possession, before the payment due dates of the quarters ending July 31, 2002, and October 31, 2002, to put each on notice of the potential for liquidity shortfalls. Neither, however, made any timely calculations, nor did either inform the Company of the potential for liquidity shortfalls in a timely manner.

There was no other information available to the Company that was sufficient for it to determine that there was a liquidity shortfall.

Based on the information above we conclude that the liquidity shortfalls experienced by the Plans was due to reasonable cause and not willful neglect and that reasonable steps were taken to remedy such liquidity shortfalls.

Because the liquidity requirement of section 412(m)(5) of the Code was satisfied for the Plan for the quarter ending January 31, 2003, the 100 percent excise tax of section 4971(f)(2) does not apply with respect to the liquidity shortfall that existed for the Plan for the first, second, third, and fourth quarters of the plan year ending October 31, 2002.

This ruling is being given with the understanding that all the representations made pursuant to this request are accurate. If such representations made pursuant to this request are not accurate, the Company may not rely upon this ruling letter.

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This ruling letter is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited by others as precedent.

A copy of this letter has been sent to the Manager, Employee Plans Classification in

If you have any questions on this ruling letter, please contact

Sincerely,

A handwritten signature in cursive script, appearing to read "Norman Greenberg".

Norman Greenberg, Manager
Employee Plans Actuarial Group 1