



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

MAR 03 2004

In re: Plan =

Company = :

Consulting Firm X = :

This letter constitutes notice that a waiver of the 10 percent excise tax due under section 4971(f)(1) of the Internal Revenue Code has been granted with respect to the liquidity shortfall for the Plan for the second quarter of the plan year ending December 31, Hereinafter this quarter will be known as the "Impacted Quarter".

The waiver of the 10 percent tax has been granted in accordance with section 4971(f)(4) of the Internal Revenue Code. For any quarter for which this waiver has 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 quarter ending June 30,

In 2003, a potential buyer approached the Company and requested access to the Company's financial statements including the Plan's valuations. A large actuarial firm was hired by the buyer to review the valuations. In the course of their due diligence, the actuarial firm questioned whether a liquidity shortfall contribution was due. Consulting Firm X then redid the calculations for the plan year ending December 31, Their calculations confirmed that a liquidity shortfall contribution was due for the Impacted Quarter.

The information furnished indicates that the Company was unaware that a liquidity shortfall existed for the Impacted Quarter until August of . At that time the Company was first informed by Consulting Firm X of the liquidity shortfall for the Impacted Quarter and that the Company was liable for excise taxes of 10 percent of such shortfall. After being informed, in August . of the liquidity shortfall for the impacted quarter (and the excise taxes thereon) the Company immediately made a contribution to the Plan in an amount such that liquidity shortfalls did not exist for the third and fourth quarters of the plan year ending December 31, . Shortly thereafter the Company requested a waiver of the excise tax.

Consulting Firm X had material in its possession, before the payment due date of the quarter ending June 30, , to put it on notice of the potential for a liquidity shortfall but did not timely make any calculations, nor did it inform the Company of the potential for a liquidity shortfall in a timely manner. They did not, however, make any timely calculations, nor did they inform the Company of the potential for liquidity shortfall 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 it is concluded that the liquidity shortfall experienced by the Plan was due to reasonable cause and not willful neglect and that reasonable steps were taken to remedy such liquidity shortfall.

Because the liquidity requirement of section 412(m)(5) of the Code was satisfied for the Plan for the quarter ending September 30, 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 second quarter of the plan year ending December 31, .

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.

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. Furthermore, this letter does not address any possible fiduciary violations that may have occurred due to failure to limit distributions to life annuities paid by the plan as required under section 206(e) of Title I of ERISA.

A copy of this letter has been sent to the Manager, Employee Plans Classification in .
A copy of this letter is also being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence E. Isaacs".

Lawrence E. Isaacs, Acting Manager
Employee Plans Actuarial Group 2