Internal Revenue Service

Department of the Treasury

Washington. DC 20224

Significant Index No. 0419.00-00

Contact Person:

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Telephone Number:

In Reference to:

T:EP:RA:T:A1

Date:

JUN 2 2 2001

Re: Request for rulings on behalf of behalf of the

A Fund =

A Plan =

G Fund =

G Plan =

D e a r

This is in reply to the ruling request made by your authorized representative with respect to the income tax consequences under sections 419, 419A, and 512 of the Internal Revenue Code of 1986, as amended (the "Code"), of the A Fund's coverage of certain non-collectively bargained employees as a result of the merger (the "Merger") of the A Fund and the G Fund. You have requested the following ruling:

> That the A Fund's coverage, as a result of the Merger, of the non-collectively bargained employees formerly covered under the G Fund, does not adversely affect the determination that the A Fund is a collectively bargained welfare benefit fund for purposes of Code sections 419, 419A, and 512.

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The G Fund was a trust fund authorized under section 302(c)(5) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 186(c)(5). The G Fund provided hospital, medical, life insurance, accident and sickness, and other related benefits to both collectively bargained and non-collectively bargained employees and their dependents of certain employers doing business in the states of At all times under the G Fund at least fifty percent of the employees eligible to receive benefits thereunder were covered by a collective bargaining agreement. As of the date immediately preceding the Merger, 94.7% of the employees eligible to receive benefits under the G Fund were collectively bargained employees.

The date of the last determination by the Internal Revenue Service that the G Fund was exempt from federal income taxes under Code section 501 (c)(9) was December 30, 1999.

The A Fund is a trust fund authorized under section 302(c)(5) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 186(c)(5). The A Fund provides benefits similar to those provided by the G-Fund to collectively bargained employees of certain employers doing business primarily in the states of As of the date immediately preceding the Merger, 100% of the employees eligible to receive benefits under the A Fund were collectively bargained employees.

The date of the last determination by the Internal Revenue Service that the A Fund was exempt from federal income taxes under Code section 501(c)(9) was October 28, 1999.

In order to provide continuing benefit improvements for the participants in both the A and G Funds (collectively, the "Funds"), and to control the administrative expenses of maintaining two Funds, the trustees of the individual Funds each adopted and approved the Agreement and Plan of Merger (the "Plan of Merger") by resolutions each dated December 17, 1999.

Pursuant to the Plan of Merger, the Merger was effective as of January 1, 2000, subject to the A Fund's obtaining rulings from the Internal Revenue Service that (i) the Merger does not adversely affect the tax-exempt status of the A Fund under section 501 (c)(9) of the Code and (ii) the A Fund's coverage of the non-collectively bargained employees who previously received coverage under the G Fund does not adversely affect the determination that the A Fund is a collectively bargained welfare benefit fund for purposes of Code sections 419, 419A, and 512.

A ruling that the Merger does not affect the tax-exempt status of the A Fund under section 501 (c)(9) of the Code was issued by letter dated, April 25, 2000, from the Manager, Exempt Organizations Technical Branch 4.

On the date of the Merger the following events occurred to effect the Merger.

(1) All of the assets and liabilities of the G Fund were assigned, transferred, and conveyed to the A Fund.

(2) All of the liabilities of the G Fund became liabilities of the A Fund

(3) The beneficiaries of the G Fund became beneficiaries of the A Fund.

(4) Contributions formerly due and payable to the G Fund became due and payable to the A Fund.

(5) The separate existence of the G Fund ceased, and the G Fund merged with the A Fund, which continued in effect.

(6) Beginning on the date of the Merger, the former participants in the G Plan became covered under the A Plan; provided however that the former A Fund participants who prior to the Merger had been continuing their coverage under the A Fund by making self contributions are being permitted to continue their eligibility under the A Fund for the remainder of the self pay period that otherwise would have applied under the A Fund.

(7) The participants in the A Plan prior to the Merger continued and will continue to receive benefits under the A Plan, as it may be amended from time to time.

Because certain beneficiaries under the G Plan were non-collectively bargained employees, the A Fund was amended to provide coverage to the non-collectively bargained employees who were formerly covered under the G Fund prior to the Merger. As of the date immediately following the Merger, 99% of the employees eligible to receive benefits under the A Fund were collectively bargained employees.

Section 1.419A-2T, Q&A-l of the Temporary Income Tax Regulations provides that contributions to a welfare benefit fund maintained pursuant to one or more collective bargaining agreements and the reserves of such a fund generally are subject to the rules of section 419, 419A, and 512. However, neither contributions to nor reserves of such a collectively bargained welfare benefit fund shall be treated as exceeding the otherwise applicable limits of sections 419(b), 419A(b), or 512(a)(3)(E) until the earlier of: (i) The date on which the last of the collective bargaining agreements relating to the fund in effect on, or ratified on or before, the date of issuance of final regulations concerning such limits for collectively bargained welfare funds terminates (determined without regard to any extension thereof agreed to after the date of issuance of such final regulations), or (ii) the date 3 years after the issuance of such final regulations.

Section 1.419A-2T, Q&A-2 of the Temporary Income Tax Regulations provides that:

(1) For purposes of Q&A-i, a collectively bargained welfare benefit fund is a welfare benefit fund that is maintained pursuant to an agreement which the Secretary of Labor determines to be a collective bargaining agreement and which meets the requirements of the Secretary of the Treasury as set forth in paragraph 2 below.

(2) Notwithstanding a determination by the Secretary of Labor that an agreement is a collective bargaining agreement, a welfare benefit fund is considered to be maintained pursuant to a collective bargaining agreement only if the benefits provided through the fund were the subject of arms-length negotiations between employee representatives and one or more employers, and if such agreement between employee representatives and one or more employers satisfies section 7701 (a)(46) of the Code. Moreover, the circumstances surrounding a collective bargaining agreement must evidence good faith bargaining between adverse parties over the welfare benefits provided through the fund. Finally, a welfare benefit fund is not considered to be maintained pursuant to a collective bargaining agreement unless at least 50 percent of the employees eligible to receive benefits under the fund are covered by the collective bargaining agreement.

(3) In the case of a collectively bargained welfare benefit fund, only the portion of the fund (as determined under allocation rules to be provided by the Commissioner) attributable to employees covered by a collective bargaining agreement, and from which benefits for such employees are provided, is considered to be maintained pursuant to a collective bargaining agreement.

(4) Notwithstanding the preceding paragraphs and pending the issuance of regulations setting account limits for collectively bargained welfare benefit funds, a welfare benefit fund will not be treated as a collectively bargained welfare benefit fund for purposes of Q&A-l if and when, after July 1, 1985, the number of employees who are not covered by a collective bargaining agreement and are eligible to receive benefits under the fund increases by reason of an amendment, merger or other action of the employer of the fund. In addition, pending the issuance of such regulations, for purposes of applying the 50 percent test of paragraph (2) to a welfare benefit fund that is not in existence on July 1, 1985, "90 percent" shall be substituted for "50 percent".

Substantively the 'merger of the G Fund into the A Fund is no different than a merger of the A Fund into the G Fund, which clearly would not have caused an increase in the number of eligible employees in the G Fund who were not covered by a collective bargaining agreement. Moreover, substantively the merger of the G Fund into the A Fund is also no different than a closure of both the G and A Funds, and the immediate creation of a "new" A Fund consisting of-the assetsand liabilities of such just terminated G and A Funds. Closure of both the G and A Funds, and the transfer of the liabilities and assets to a "new" A Fund, would. not contravene paragraph (4) of section 1.419A-2T, Q&A-2 of the Temporary Income Tax Regulations. In addition, because 99% of the employees eligible to receive benefits under this "new" A Fund would be collectively bargained employees, the 90 percent requirement of paragraph (2), as modified by paragraph (4), of section 1.419A-2T, Q&A-2 of the Temporary Income Tax Regulations would be met.

Therefore, because the merger of the G Fund into the A Fund is not substantively different from two alternative formulations that would create the identical end result without adversely affecting the determination of whether the fund is a collectively bargained welfare benefit fund. we hold that:

> The A Fund's coverage, as a result of the Merger, of the non-collectively bargained employees formerly covered under the G Fund, does not adversely affect the determination that the A Fund is a collectively bargained welfare benefit fund for purposes of Code sections 419, 419A, and 512.

This ruling does not consider the more general issue of the A Fund's status, specifically, whether the A Fund meets all the Code requirements to be considered a collectively bargained welfare benefit fund. This letter addresses only the impact (if any) of the Merger on the purported status of the A Fund as a collectively bargained welfare benefit fund.

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

A copy of this letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file.

Sincerely,

James E. Holland, Jr., Manager
Employee Plans Actuarial Group 1
Tax Exempt and Government
Entities Division