

Pension Benefit Guaranty Corporation

77-155

August 3, 1977

REFERENCE:

[*1] 4021(a)(2) Plans Covered. Tax Qualification by IRS Determination

OPINION:

This is in response to your letter to * * * of this Corporation regarding the application of Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") to * * * (the "Plan").

As I understand the facts, the Plan was established on * * * On * * * the Internal Revenue Service issued * * * (the "Employer") a determination letter stating that the Plan met the requirements for tax qualification under § 401(a) of the Internal Revenue Code (the "Code") and the Plan's trust was exempt from income tax under § 501(a) of the Code.

On * * * the IRS issued another determination letter to the Plan's Trustees which revoked the earlier determination letter as of * * *, because in the Plan's trust made unsecured loans of substantially all of the trust assets to the Employer. The Service concluded that the Plan was not operated for the exclusive benefit of the employees, a violation of § 401(a) of the Code.

The revocation of the prior, favorable determination letter in * * * followed an audit in * * * of the Employer's income tax returns for tax years ending * * *. The audit resulted in the Service's disallowance of [*2] the Employer's contribution to the Plan of * * * for the tax year ending * * *. The Employer apparently agreed to the disallowance, and a letter dated * * * closing the case based on the IRS-taxpayer agreement was sent to the Employer by the Service. In * * * IRS audited the Employer's tax years ending in * * * and * * * and found that the trust had again made an unsecured loan to the Employer. IRS then disallowed the contribution made in * * * of * * * and the contribution made in * * * of * * *. Following the * * * audit, the plan was disqualified.

A plan operating under a favorable determination letter from the IRS as of September 2, 1974, which subsequently was revoked, meets § 4021(a)(2) of the Act. Section 4021(a)(2) provides that a plan which is, or has been determined by the Secretary of the Treasury to be, a plan described in § 401(a) of the Code, or which meets or has been determined by the Secretary of the Treasury to meet, the requirements of * * * § 404(a)(2) of the Code is subject to Title IV of the Act. Although in * * * the employer was disallowed a deduction for his * * * contribution to the plan for the same conduct which later resulted in the plan's disqualification, [*3] the mere disallowance of the deduction does not constitute the * * * revocation of the plan's favorable determination letter. Moreover, for purposes of determining whether a plan satisfies the requirements of § 4021(a)(2), it is the date of issuance, and not the effective date, of an IRS disqualification letter that is pertinent. As of September 2, 1974 the plan was operating under a favorable qualification letter. The letter disqualifying the plan was not issued until * * *. The Plan therefore meets § 4021(a)(2) and is subject to Title IV of the Act.

I hope this is of assistance.

Henry Rose
General Counsel