

Pension Benefit Guaranty Corporation

85-15

May 31, 1985

REFERENCE:

[\*1] 4204 Sale of Assets  
4212(c) Obligation to Contribute - Liability

OPINION:

This responds to your request for the PBGC's opinion concerning Section 4204 of ERISA. Specifically you wish to know whether Section 4212(c) applies to a transaction involving a sale by an employer of an unincorporated division under Section 4204 when the sole purpose of applying Section 4204 is to avoid the seller's immediate withdrawal liability. Similarly, you wish to know whether Section 4212(c) applies if the division is first incorporated and then its stock is sold. In other words, can a plan disregard these transactions and impose liability on the seller because the sale violates the "principal purpose" rule of Section 4212(c)?

Section 4212(c) provides that "[i]f a principal purpose of any transaction is to evade or avoid liability under this part, this part shall be applied (and liability shall be determined and collected), without regard to such transaction." Section 4204, on the other hand, provides a statutory exception to the general rule that an employer is liable if it ceases to contribute to a multiemployer pension plan. The purpose of Congress in providing Section 4204 was to allow an employer to [\*2] avoid liability if a sales transaction meets the statutory conditions. Thus, the application of Section 4204 to a sales transaction does not by itself violate Section 4212(c). A plan, however, may find under all the circumstances of the transaction that Section 4212(c) was violated. A dispute in such a case would be subject to the dispute resolution procedures of Sections 4219 and 4221.

Likewise, as PBGC Opinion Letter 82-4 explains, the sale of the stock of a subsidiary is permitted without liability being incurred under the Act. Thus, if a division of a corporation is first incorporated and then sold, the transaction does not automatically violate 4212(c). However, as explained above, Section 4212(c) may be applied by a plan, if all the circumstances of the transaction so warrant, to disregard the transaction.

I hope this has been of assistance to you. If you have further questions concerning this matter, please contact \* \* \* of my staff at the above address or (202) 254-4873.

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General Counsel