Pension Benefit Guaranty Corporation

85-27

December 2, 1985

REFERENCE:
[*1] 4217(a) Applicability of MPPAA to Certain Pre-1980 Withdrawals. Applicability in Other MPPAA Provisions
4219(c)(1) Notice and Collection of Withdrawal Liability. Withdrawal Liability Payment Amounts

OPINION:

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation (PBGC) as to whether section 4217(a) of the Employee Retirement Income Security Act, as amended (ERISA), applies to the determination of the annual withdrawal liability payment under ERISA section 4219(c)(1).

Section 4217(a) states:

For the purpose of determining the amount of unfunded vested benefits allocable to an employer for a partial or complete withdrawal from a plan which occurs after September 25, 1980, and for the purpose of determining whether there has been a partial withdrawal after such date, the amount of contributions and the number of contribution base units, of such employer properly allocable--

(1) to work performed under a collective bargaining agreement for which there was a permanent cessation of the obligation to contribute before September 26, 1980, or

(2) to work performed at a facility at which all covered operations permanently ceased before September 26, 1980, or [*2] for which there was a permanent cessation of the obligation to contribute before that date,

shall not be taken into account.

Section 4217(a) clearly applies to determinations under sections 4211 and 4206(a) (the computations of unfunded vested benefits for complete and partial withdrawals) and under section 4205 (the determination of whether a partial withdrawal has occurred). There is nothing in that provision, however, to suggest that it applies to the determination of the annual payment amount and amortization schedule under section 4219(c)(1). Accordingly, it is the opinion of the PBGC that section 4217(a) does not so apply, except to the extent that the application of that provision to sections 4211 and 4206(a) affects the computations under section 4219(c)(1).

Thus, application of section 4217(a) decreases the amount of unfunded vested benefits calculated under section 4211, and it is this smaller amount that is to be amortized in accordance with section 4219(c)(1). In addition, the annual payment amount for partial withdrawal liability is calculated (pursuant to sections 4219 (c)(1)(E)) using the section 4206(a)(2) fraction that is used to calculate the unfunded vested [*3] benefits for a partial withdrawal. As stated above, the computation of this fraction is modified by section 4217(a).

While this interpretation results in a different application of section 4217(a) with respect to calculating the annual payment amount for a complete withdrawal and for a partial withdrawal, it is our view that this interpretation is supported by the legislative history, equitable considerations and the underlying purposes of the statute.

As you may be aware, the ERISA legislative history contains a reference to the applicability of section 4217(a) to section 4219(c)(1). This reference is found in the following colloquy between Representative Rostenkowski (D-Ill.) and Representative Thompson (D-N.J.):

Mr. ROSTENKOWSKI: Mr. Speaker, I rise to confirm with my distinguished colleague, the gentleman from New Jersey (Mr. Thompson), the withdrawal liability provisions. I am concerned with whether withdrawal liability provisions do not apply retroactively to events such as, for example, a closing of a facility which occurred prior to April 29, 1980 [since changed to September 26, 1980 by the Deficit Reduction Act of 1984], the effective date of the withdrawal liability [*4] provisions.

Specifically, I would like to confirm my understanding of section 4217. My understanding is that neither

contributions nor base units attributable to facilities closed before April 29, 1980, will be taken into account in any of the following determinations: First, whether or not a partial withdrawal, as defined in section 4205, has occurred; second, the amount of unfunded vested benefits allocable to a withdrawing employer pursuant to section 4211; third, the partial withdrawal adjustment set forth in section 4206; and fourth, the determination of annual liability payments pursuant to section 4219(c).

Is that correct, Mr. Chairman?

Mr. THOMPSON: If the gentleman will yield, yes, I will say to the gentleman from Illinois: that is correct.

(126 Cong. Rec. H9179 (daily ed., September 19, 1980).)

While the reference to section 4219(c) in this colloquy is ambiguous, we believe that paragraph (c)(1)(E) of section 4219 was the intended subject of this reference. Representative Rostenkowski was confirming that the section 4217(a) modification to section 4206 was to apply for all purposes under ERISA and not merely to calculations under only section 4206.

If section 4217(a) [*5] were applied directly to section 4219(c)(1), it would lead to arguably inequitable results with respect to complete withdrawals. Because the application of section 4217(a) would decrease the annual payment amount, the liability paid over 20 years (the maximum length of the amortization schedule) would be less than if section 4217(a) were not applied. For an employer whose amortization schedule exceeds 20 years, this means that the application of 4217(a) reduces its liability for a complete withdrawal. Such a reduction is not available to an employer who is assessed the same amount of unfunded vested benefits and who can apply section 4217(a), but whose scheduled of payments falls just under the 20-year cap. There is no indication in section 4217(a) or its legislative history that Congress intended thus to favor some employers over other similarly situated employers. In the absence of explicit statutory language mandating this result (e.g., section 4219(c)(1)(E)), the PBGC does not believe it should interpret ERISA in such a way as to create this disparate treatment of employers.

Moreover, we note that this differing treatment of partial and complete withdrawals makes sense [*6] in the overall statutory scheme. Amounts not assessed because of the 20-year cap against an employer that partially withdraws would be assessable against that employer in the event of a subsequent partial or complete withdrawal. On the other hand, in the case of a complete withdrawal, amounts in excess of the 20-year cap will generally never be assessable against that employer. The general statutory purpose of protecting multiemployer plans from the effects of employer withdrawals favors the approach of interpreting the statute in such a way as not to increase the amount of unassessable complete withdrawal liability.

I hope this information is of assistance to you. If you have further questions, please call or write the attorney handling this matter, * * *, of the Corporate Policy and Regulations Department. * * * telephone number is (202) 254-4860.

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