Part III.--- Administrative, Procedural and Miscellaneous

Extension of Election of Alternative Deficit Reduction Contribution

Notice 2006-105

This notice sets forth the procedures for electing an alternative deficit reduction contribution under § 412(l)(12) of the Internal Revenue Code (the Code) (which was added by section 102 of the Pension Funding Equity Act of 2004 (PFEA), Pub. L. No. 108-218), as modified by section 402(i) of the Pension Protection Act of 2006 (PPA), Pub. L. No. 109-280. Except as outlined below, all references to the Code and the Employee Retirement Income Security Act of 1974 (ERISA) are to the Code and ERISA as in effect on August 16, 2006.

I. Background

Section 412(l)(12) of the Code permits certain employers who are required to make additional contributions under § 412(l) to elect a reduced amount of those contributions ("alternative deficit reduction contributions") for plan years beginning after December 27, 2003, and before December 28, 2005. Section 412(l)(12) is generally limited to a plan maintained by either (1) a commercial passenger airline or (2) an employer primarily engaged in the production or manufacture of a steel mill product or the processing of iron ore pellets.[1] Section 302(d)(12) of ERISA permits an identical election and provides identical requirements with respect to the minimum funding standard of section 302.

Announcement 2004-38, 2004-1 C.B. 878, provides procedures for electing an alternative deficit reduction contribution including a model election form. Announcement 2004-43, 2004-1 C.B. 955, provides guidance on the types of notices that must be given by an employer to plan participants and their beneficiaries and to the Pension Benefit Guaranty Corporation (the PBGC) if that employer elects to make an alternative deficit reduction contribution described in Announcement 2004-38. In addition, Announcement 2004-43, as corrected by Announcement 2004-51, 2004-1 C.B. 1041, sets forth timing requirements for the election. Notice 2004-59, 2004-2 C.B. 447, provides guidance on the restrictions that are placed on plan amendments following an employer's election of an alternative deficit reduction contribution under § 412(l)(12) of the Code and section 302(d)(12) of ERISA.

Section 402(i) of PPA extended the alternative deficit reduction election for certain employers. The extension under the PPA is limited to an eligible employer that is a commercial passenger airline, can be made for any plan year beginning after December 27, 2003, and before December 28, 2007, and applies without regard to the two plan year limit contained in § 412(l)(12)(D)(ii) of the Code.

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[1] An eligible employer under PFEA (but not PPA) also included an organization described in § 501(c)(5) of the Code that established a plan on June 30, 1955, to which § 412 now applies.

Other than as necessary to reflect the statutory narrowing of the class of eligible employers, the elimination of the two-year rule and the extension of time described in the preceding paragraph, all of the guidance described above with respect to the election under PFEA remains applicable to the election under section 402(i) of the PPA with the following exceptions. Notwithstanding the requirement under Announcement 2004-43 that any alternative deficit reduction contribution election be made by the end of the first quarter of the plan year, if, on or before December 21, 2006, an employer makes an alternative deficit reduction contribution election for the first plan year beginning on or after December 28, 2005, that election will be deemed timely. In addition, if an employer issues a PBGC notice for a plan for such a plan year on or before December 21, 2006, the PBGC will treat the PBGC notice as timely issued. The content of the PBGC notice should reflect a reasonable effort to make any appropriate modifications to the projections in order to take into account the enactment of the PPA.

Section III of this notice sets forth the information that must be contained in the election and the address to which the election must be sent. If an employer elects an alternative deficit reduction contribution for any plan year, the employer must provide written notice of the election to the plan’s participants and beneficiaries and (except to the extent that an earlier notice is required by the preceding paragraph) to the PBGC within 30 days of filing the election.

II. Effect on Other Documents

Announcement 2004-38 is modified, Announcement 2004-43 is amplified and modified, and Notice 2004-59 is amplified.

III. Election of Alternative Deficit Reduction Contribution for Commercial Passenger Airlines

A. As an officer of the employer maintaining the plan, I hereby elect an alternative deficit reduction contribution under § 412(l)(12) of the Code and section 302(d)(12) of ERISA and include the following information:

1. The name and EIN of the employer: ___________________________

2. The name and plan number of the plan: _____________________

3. The plan year to which the election relates: _____________________

4. Specify the plan year beginning in 2000 for which the additional contributions under § 412(l) did not apply: __________________

5. If any of the information in items 1 or 2 was different for the 2000 plan year than in the plan year for which the election is being made, enter the plan name, plan number, and name and EIN of the employer for the 2000 plan year:

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6. Signature of employer ___________________________ Date ______

The election must be signed by an officer of the employer maintaining the plan. An authorized representative of the employer, plan administrator, or enrolled actuary may not sign this election on behalf of the employer.

B. This election must be filed at the following address:

Internal Revenue Service
Commissioner, Tax Exempt and Government Entities Division
Attention: SE:T:EP:RA:T
Alternative DRC Election
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

Drafting Information

The principal author of this notice is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance telephone service at (877) 829-5500 (a toll-free number) between the hours of 8:30 am and 4:30 pm Eastern Time, Monday through Friday . Mr. Rubin may be reached at (202) 283-9888 (not a toll-free number).