

3(2)  
4(a)  
201(2)  
301(a)(8)  
401(a)(1)  
403(a)

November 15, 1976

Dear :

Thank you for your letter dated May 27, 1976, requesting reconsideration of coverage of the (named) Profit Sharing Plan (Plan) under the Employee Retirement Income Security Act of 1974 (ERISA). The Plan was adopted by 14 (named) corporations. You were advised that the Plan is covered under the ERISA.

According to Article 3 of the Amendments to the Plan, dated April 25, 1972, supervisory personnel, executive staff personnel, department heads, and employees with three years' service to the corporation or a sister corporation are eligible to be participants in the Plan. Also, in Article 4 of the Amendments, there is listed a percentage of gross profit to be allocated to nonsupervisory qualifying employees and office staff. Article 7 of the Plan (effective April 1, 1968) provides for the distribution of a participant's account upon retirement, death or disability.

Section 3(2) of the ERISA defines an employee pension benefit plan as "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program -

- (A) provides retirement income to employees, or
- (B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan".

Based on the above, it is concluded that the Plan is an employee pension benefit plan within the meaning of section 3(2) of the ERISA and is covered under Title I pursuant to section 4(a). The Plan does not qualify for the exemptions provided in section 201(2), 301(a)(3) or 401(a)(1) as an unfunded plan maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees because the Plan is open to all employees with three years of service to the corporation or a sister corporation. The Plan is subject to the Reporting and Disclosure, Participation, Vesting, and Fiduciary requirements of Title I but not to the Minimum Funding Standard requirements. Section 301(a)(8) exempts an individual account plan from the Minimum Funding Standard requirements. However, it will be required that a trust be established pursuant to the provisions of section 403(a) to hold the plan assets.

Sincerely,