

September 28, 1976

Dear :

This is in response to your recent letter concerning the Employee Retirement Income Security Act of 1974 (ERISA). We regret that we were unable to reply to your inquiry earlier.

Your letter relates to an employee pension benefit program that was established and maintained by the [Predecessor] Company, Inc., now known as [Predecessor]. Although not having any written or other contractual obligation to do so, [Predecessor] followed a consistent practice of paying pension benefits to both hourly and salaried employees funded on a pay-as-you-go basis. [Predecessor] disposed of its cotton compressing and warehousing assets and business in 1969, and these were subsequently acquired under a net-lease arrangement by (Deleted) Corporation, now known as the (Company).

At the time of the disposal by [Predecessor] it had more than one thousand active hourly and salaried employees as well as a large number of retired employees receiving pension benefits. Under the net-lease instrument the Company agreed to continue to pay retirement benefits to [Predecessor] retirees and to commence payments of such benefits to the former employees of [Predecessor] as they became eligible. Effective December 31, 1974, it was agreed between the Company and [Predecessor] that, except for former [Predecessor] employees retiring during 1975, all benefits were frozen and vested as of that date.

It is your position that the [Predecessor] program was effectively terminated on December 31, 1974, and the Company is no longer maintaining a pension plan, but is merely liquidating a fixed contractual liability that has been imposed on it by the net-lease agreement. You request a ruling to this effect

We have concluded that as the Company has assumed the pension commitments of [Predecessor], it is an employer for the purposes of the ERISA, and that the contractual obligation to pay benefits to the former [Predecessor] employees is an "employee pension benefit plan" within the meaning of section 3(2) of the Act. Additionally, although the earning of further pension credits has been terminated, coverage for the plan under the ERISA continues to be presumed until the plan no longer has the purpose of providing covered benefits.

Sincerely,