



WHD-OL-1964

December 24, 1964

**Name\***

This is in further reference to your letter of October 5, 1964, in which you request to be advised as to the interpretation of the vesting requirements with respect to a deferred profit-sharing plan under the Fair Labor Standards Act (copy enclosed).

The plan described in your letter provides for 100 percent vesting only after a certain period of an employee's continuous service (10 percent a year vesting with 100 percent vesting after 10 years of service), in case of termination of service for reasons other than death, disability or retirement, such voluntary quit, discharge, or illness which does not qualify as a "disability" under the plan's definitions. Thus, vesting is extended on the basis of 10 percent of accumulated values in the employee's individual account for each year of participation in the plan.

As stated in our opinion letters of March 18 and July 5, 1963, referred to by you, the right of an employee to receive his share under a bona fide profit-sharing plan may not be dependent upon his continuing in the employ of the employer after the period for which the determination of profits has been made (section 549.1 of the enclosed Regulations). This means that, with respect to the employee's share of each periodic contribution, the regulations require 100 percent vesting. If this were not, so a profit-sharing plan could be nothing more than a length of service bonus, a method of paying monetary regards to employees for continuing to work for the employer while penalizing them for failure to do so. However, as stated in the regulations, payments under a bona fide profit-sharing plan may be deferred until after a specified period of time or upon the occurrence of some appropriate contingencies specified in the plan.

Section 549.0(b) further states that a plan or trust providing old age, retirement, life, accident or health insurance or similar benefits for employees (regardless of whether the plan or trust is financed out of profits) is governed by section 7(d)(4) of the act, the requirements of which are set forth in section 778.6(g) of the enclosed Interpretative Bulletin, Part 778 on Overtime Compensation. A benefit plan may have a vesting period in it as opposed to a profit-sharing plan under Regulations, Part 549.

If you have further questions, you may wish to contact the Divisions' Regional Office at U.S. Courthouse and Federal Office Building, 219 South Dearborn Street – 7<sup>th</sup> Floor, Chicago, Illinois 60604. That office will be pleased to give you every possible assistance in matters relating to the payment of wages and benefits under the Fair Labor Standards Act.

Sincerely yours,

Clarence T. Lundquist  
Administrator

Enclosures

\*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).