

## FLSA-752

July 13, 1982

Thank you for your letter of May 27, 1982, enclosing the Plan of \*\*\*. You request a determination from us as to whether the plan is a "bona fide thrift or savings plan" within the meaning of Section 7(e)(3)(b) of the Fair Labor Standards Act.

Under the plan, an eligible participant is any non-bargaining class employee who has worked at least 1,000 hours-of-service during each eligibility computation period and has completed one year of eligibility service before his/her entry date. Such employee may, depending on vesting years of service, contribute 4 percent, 3 percent, 2 percent, or 1 1/2 percent of his/her annual compensation to the thrift plan. The employer will contribute a matching 4 to 6 percent of the employee' pay to the plan. In addition, the employer will make a contribution for each participant who is an active participant on the last day of the fiscal year in an amount equal to 4 percent of the participant's annual compensation for the latest compensation year.

A "bona fide thrift or savings plan" for the purpose of section 7(e)(3)(b) is required to meet all the standards set forth in paragraphs (b) through (f) of section 547.1 and must not contain any of the disqualifying provisions set forth in Section 547.2 of 29 CFR Part 547. Subsection 547.1(e) provides, among other things, that the employer's total contribution in any year may not exceed the total amount saved or invested by the participating employees during that year, provided, however, that a plan permitting a greater contribution may be approved by the Administrator, if the plan would otherwise be a valid one. Although the amount to be contributed by the employer exceeds the amount to be contributed by the employees, the difference is minimal. Accordingly, the plan is approved since the four requirements of section 547.1(e) are satisfied.

It is noted that Section 8.06 (Spendthrift Clause) states that none of the benefits payable under the plan will be subject to the claims of any creditor of any participant. We wish to point out that Title III of the Consumer Credit Protection Act defines "garnishable earnings" as meaning compensation payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

Accordingly, it is our opinion that the plan's payments are garnishable subject to the disposable earnings limitations of Sections 303(a) and 303(b) of Title III of the Consumer Credit Protection act.

Sincerely,

/s/ William M. Otter

William M. Otter  
Administrator