

**MEMO# 975**

February 10, 1989

## **IRS INFORMATION LETTER ON SECTION 401(K) HARDSHIP WITHDRAWALS**

February 10, 1989 TO: PENSION MEMBERS NO. 9-89 RE: IRS INFORMATION LETTER ON SECTION 401(k) HARDSHIP WITHDRAWALS

\_\_\_\_\_ Under section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code and the proposed regulations thereunder, for plan years beginning after December 31, 1988, hardship distributions under a cash or deferred arrangement are limited to: (1) all elective contributions; and (2) any earnings on such contributions, but only if allocable as of December 31, 1988. Thus, the amount eligible to be distributed on account of hardship is limited to elective contributions and earnings thereon as of December 31, 1988 (referred to as the frozen amount) and any future elective contributions. Attached is a copy of an IRS information letter responding to a request concerning the effect of a subsequent loss in the account upon the frozen amount. The letter states that the frozen amount eligible for hardship distributions is not adjusted for any gains or losses after December 31, 1988. The frozen amount is adjusted only for actual hardship distributions. If a loss brings the value of the participant's account below the frozen amount, however, the letter provides that employer contributions that satisfy the section 401(k) vesting and distribution requirements (and earnings thereon) may be distributed on account of hardship to the extent necessary to reach the frozen amount. We will keep you informed of further developments. Kathy D. Ireland Assistant General Counsel  
Attachment

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