

sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective August 23, 1999, to the sale of two parcels of unimproved real property (the Properties) by the Plan to Doctor G.D. Castillo (the Sales), a party in interest with respect to such Plan, provided that the following conditions are met:²

(a) The terms and conditions of the Sales were at least as favorable to the Plan as those obtainable in similar arm's-length transactions involving unrelated parties;

(b) Each Sale was a one-time transaction for cash;

(c) The amount of cash received by the Plan for each Property was not less than the fair market value of such Property as of the date of the Sales as determined by a qualified, independent appraiser; and

(d) The Plan did not pay any fees or commissions in connection with the Sales.

Written Comment

The Department received one comment letter from an accountant (the Commenter) representing Doctor G.D. Castillo (Dr. Castillo) in response to the proposed exemption. In the letter, the Commenter noted that in addition to the Sales, the initial application (see footnote 1 above) requested relief for the acquisition (the Acquisition) of certain improved real property located in Golden, Colorado (the Improved Property) by the Plan and Dr. Laura Diaz Del Castillo Vraney (Dr. Vraney), the daughter of Dr. Castillo.³

In the initial application, Dr. Castillo stated that the purpose of Dr. Vraney's participation in the Acquisition was to enable the Plan to acquire a suitable investment. In this regard, Dr. Castillo represented that he directed the Plan to acquire the Improved Property upon extensively researching improved real properties located in areas of high growth. In a letter to the Department dated April 27, 2001, Dr. Castillo stated that, subsequent to the Acquisition, he has retained control over all decisions relating to the Improved Property. In addition, Dr. Castillo has represented that Dr. Vraney's role with respect to such property is limited to that of a passive investor.

² The application for this exemption, which was filed on January 19, 2001, was initially assigned the number D-10967 before being reassigned the above-referenced application number on July 22, 2002.

³ On August 27, 1999, the Plan (at the direction of Dr. Castillo) and Dr. Vraney acquired the Improved Property from an unrelated third party for \$690,000. Of this amount, the Plan paid \$650,253.20 and Dr. Vraney paid \$36,746.80.

The Commenter seeks clarification from the Department regarding whether the acquisition of the Improved Property by the Plan and Dr. Vraney requires additional exemptive relief. As the Department noted in the preamble to a proposed individual exemption (52 FR 30965, 30973 (August 18, 1987)), section 406(a)(1)(D) of the Act prohibits the transfer to, or use by or for the benefit of, a party in interest (including the daughter of a plan fiduciary), of the assets of a plan. The Department further stated that section 406(a)(1)(D) is not violated merely because the party in interest may derive some incidental benefit from a transaction involving the simultaneous equity investment in an asset with the plan. We are assuming, for purposes of this analysis, that: (1) The fiduciary (or its designee) does not rely upon, and is not otherwise dependent upon, the participation of the plan in order to undertake its share of the investment; and (2) the terms of the transaction that are applicable to the plan are identical to the terms applicable to the party in interest.

Thus, with respect to the acquisition of the Improved Property through the co-investment of Plan assets and assets provided by Dr. Vraney, to the extent that the initial co-investment satisfied the criteria described above, it is the view of the Department that such transaction does not require additional relief pursuant to this exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 22, 2003 at 68 FR 3046.

FOR FURTHER INFORMATION CONTACT:

Christopher Motta of the Department, telephone (202) 693-8544. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of April, 2003.

Ivan Strasfeld,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D-10992, et al.]

Proposed Exemptions; Local 705 International Brotherhood of Teamsters Pension Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the