

Department of Labor (the Department) of a proposed individual exemption which, if granted, will replace PTEs 81-56 (46 FR 36273, July 17, 1981), 85-19 (50 FR 3045, January 23, 1985) and PTE 89-5 (54 FR 4348, January 30, 1989). These are individual exemptions (the Prior Exemptions) that were previously issued by the Department to the Truman Arnold Companies (the Employer), a party in interest with respect to the Plan. Each of the Prior Exemptions permitted the Employer to contribute and/or lease from the Plan certain improved real property (the Properties) under the provisions of three distinct written leases.

If granted, the proposed exemption will incorporate many of the facts and representations contained in the Prior Exemptions and update information to the extent there have been changes. Because it appears that PTE 81-56 expired on September 30, 1999, and the parties have been not been covered by an administrative exemption since that time, the proposed exemption will provide retroactive exemptive relief from October 1, 1999, until September 30, 2002. In addition, to resolve uncertainty regarding the expiration dates of the leases described in PTEs 81-56 and PTE 85-19, the proposed exemption merges the leases, along with the lease described in PTE 89-5, under a new master lease (the Master Lease) and provides retroactive exemptive relief, effective October 1, 2002, with respect to such past and continued lease arrangements. This will ensure that the subject Properties are, at all times, covered by an administrative exemption.

Further, the proposed exemption will permit the replacement of AmSouth Bank (AmSouth), the Plan's former independent fiduciary, with Regions Bank (Regions), the Plan's current trustee. Thus, the proposed exemption will affect participants and beneficiaries of the Plan, as well as Plan fiduciaries.

EFFECTIVE DATE: If granted, this proposed exemption will be effective from October 1, 1999, until September 30, 2002, with respect to the leasing arrangement described in PTE 81-56. In addition, the proposed exemption will apply retroactively from October 1, 2002, with respect to the consolidation of the properties described in the Prior Exemptions under the Master Lease.

DATES: Written comments and requests for a public hearing should be received by the Department on or before March 24, 2003.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent by mail to

the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Notice of Proposed Individual Exemption to Replace Prohibited Transaction Exemptions 81-56, 85-19 and 89-5 Involving the Truman Arnold Companies Retirement Plan and Trust; Application No. D-11059). Interested persons are also invited to submit comments and/or hearing requests to the Department by facsimile to (202) 219-0204 or by electronic mail to moffitb@pwba.dol.gov by the end of the scheduled comment period. The application pertaining to the exemptive relief proposed herein and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that will replace PTEs 81-56, 85-19 and 89-5. The Prior Exemptions provided exemptive relief from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code). The proposed exemption has been requested in an application filed on behalf of the Plan pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

I. Background

The Plan is a defined contribution plan with 369 participants as of September 30, 2002. Also as of September 30, 2002, the Plan had total assets with a fair market value of

\$11,080,680. The Plan is sponsored by the Truman Arnold Companies, which are engaged in the petroleum wholesale business in Texarkana, Texas. Currently, Regions of Texarkana, Texas serves as the Plan trustee and the independent fiduciary for the leasing arrangements described herein.

Between 1981 and 1989, the Department granted the Prior Exemptions which provided exemptive relief primarily from the prohibited transaction provisions of sections 406(a), 406(b)(1) and (b)(2) of the Act¹ and from the sanctions resulting from the application of section 4975 of the Code, as amended, by reason of section 4975(c)(1)(A) through (E) of the Code. Specifically, PTE 81-56 permitted the Employer, which was then known as the "Truman Arnold Distributing Company, Inc.," to contribute to the Plan a parcel of real property and the improvements situated thereon (the New Facilities Property), as part of the Employer's annual contribution to the Plan. The New Facilities Property is located on South Robison Road in Texarkana, Texas and it is contiguous to other property also owned by the Plan and leased to the Employer and its sister corporation, Truman Arnold Transport Company, Inc. (Transport) for use as the Employer's headquarters. During 1979, the Employer purchased the land portion of the New Facilities Property for \$33,667 from unrelated parties and subsequently caused a building to be constructed thereon for \$219,372, or an aggregate cost of \$253,039. As of September 30, 1979, the Plan had \$692,797 in total assets and as of March 12, 1980, it had 80 participants.

PTE 81-56 also permitted the Employer to lease the New Facilities Property from the Plan under the provisions of a written, triple-net lease for an initial annual rental of \$37,800. Taxes, insurance or other costs incident to the ownership of the New Facilities Property were to result in a corresponding increase in the amount of the rental payment under the lease.

An independent appraisal report was prepared of the New Facilities Property on November 17, 1980, by Jim Freeman of P.M. Brown, Inc. Realtors in Texarkana, Texas. Mr. Freeman, a qualified independent appraiser and a senior member of both the American Society of Appraisers and the American Association of Certified Appraisers, placed the gross fair market rental value of such property at \$38,405 and its net rental value (after expenses) at \$34,560.

¹ It should be noted that exemptive relief from section 407(a) of the Act is also provided in PTE 81-56.