

for each adjustment period were required to represent 14 percent of the appraised value of the Buildings, in no event could the lease payments be less than that of the preceding three year period. The lease required the Employer to maintain fire and casualty insurance on the Buildings and to name the Plan as the loss payee. As in the other two Prior Exemptions, both Mr. Arnold and the Employer agreed to indemnify the Plan against any decrease in the fair market value of the Buildings below their \$567,000 appraised value.

Commercial was again designated as the independent fiduciary to approve and monitor the contribution and leaseback transactions on behalf of the Plan and to determine whether it would be appropriate to sell the Buildings. Commercial concluded that the transactions were in the best interests of the Plan and its participants and beneficiaries and found the Buildings to be of high quality. Moreover, Commercial examined the Plan's financial records and asset portfolio and concluded that the Plan had sufficient liquidity. Finally, Commercial determined that the terms of the lease were arm's length, the Employer was financially solvent and had never defaulted on rental payments to the Plan, and the Buildings were readily adaptable to other uses.

It is represented that there were never any defaults or delinquencies on the part of the Employer under its respective leases with the Plan. It is also represented that the terms and conditions of the leases were always complied with by the parties.

## II. Replacement of Leases Described in the Prior Exemptions

When the Prior Exemptions were granted, it was the Employer's understanding that the New Facilities Property, the Home Site Property and the Buildings (collectively, the Properties) could be wrapped into a single lease such that the last lease would encompass all of the Properties. This mistake resulted in both a prohibited leasing arrangement with respect to the New Facilities Property and an inconsistency in the actual termination date of the lease involving the Home Site Property.

As stated above, PTE 81-56, permitted the Employer to lease the New Facilities Property from the Plan until September 30, 1984. However, the Employer was allowed to extend the lease for three additional five year terms, provided Commercial approved each such extension. Because the Employer extended the lease for the additional terms, it appears that the

lease expired on September 30, 1999. As a result, the Employer continued to lease the New Facilities Property from the Plan without the benefit of an administrative exemption, even though the Employer represents that it had always been compliant with the other terms and conditions of the lease.

With the exception of its July 1, 1984, commencement date, the lease described in PTE 85-19 was based on terms that are identical to those described in PTE 81-56. However, it appears that both the lease (including all applicable extensions) is due to expire on June 30, 2004.<sup>3</sup> Nevertheless, it is represented that the Employer expected, with the approval of the independent fiduciary, to be able to extend such lease until June 30, 2008. Assuming the extension is approved by the independent fiduciary, the leasing arrangement would be prohibited, inasmuch as it would not be covered by an administrative exemption.

To correct the inconsistencies in the termination dates of the leases described in PTEs 81-56 and 85-19, and to consolidate these leases, with the lease described in PTE 89-5, into one master lease, the Plan and the Employer entered into a new leasing arrangement with respect to the Properties, effective October 1, 2002. Accordingly, an administrative exemption is requested from the Department to cover this past and continued leasing arrangement.

The Master Lease has a primary term of three years, which commenced on October 1, 2002, and will end on September 30, 2005. Under the Master Lease, the Employer is required to pay the Plan a monthly rental of \$14,933.33 on the first day of each calendar month. The Master Lease may be renewed by the Employer for four additional three year terms, exercisable solely at the discretion of Regions, as independent fiduciary for the Plan. The monthly lease payments for each such renewal term are to be established by an independent appraisal. Regions is also responsible for selecting the independent appraiser to conduct the appraisals for the Plan. As in the provisions of the Prior Leases, the rental installments due for the renewal terms will be in an amount equal to a 14 percent return upon the appraised value of the properties covered under the Master Lease, and in no event will the lease payments be less than that of the preceding three year period. During each renewal term, all monthly rental installments will be due and payable on the first day of each month. In addition,

<sup>3</sup> The Employer, however, determined that the lease would expire on June 30, 2003.

the Employer is required to pay for all utilities, taxes and assessments, and to insure the Properties against loss.

As of August 27, 2002, the Properties that are subject to the Master Lease, had a combined fair market value of \$1,280,000 according to an independent appraisal report prepared by Messrs. P.M. Brown, ASA, CRA, and Michael Hendrix, qualified, independent appraisers affiliated with the real estate appraisal firm of P.M. Brown Real Estate Appraisers, located in Texarkana, Texas. The appraisers also confirmed that in their opinion, net fair market rentals on comparable properties within the Texarkana marketing area were equal to or less than 14 percent of the market value of the subject Properties. Thus, the monthly fair market rental value of the Properties was set at \$14,933.33 on the commencement date of the Master Lease.<sup>4</sup>

## III. Independent Fiduciary Changes

Since the Prior Exemptions were granted, several unrelated banks succeeded Commercial as the independent fiduciary for the Plan with respect to the leases. In this regard, during 1990, Commercial was acquired by the Deposit Guaranty Bank (Deposit). In 1998, Deposit merged with First American Bank (First American). During 1999, First American merged with AmSouth. In each instance, these banks succeeded to the independent fiduciary responsibilities of Commercial under applicable banking laws. It is also represented that there were never any time lags between the departure and replacement of these independent fiduciaries.

On December 17, 2002, the Employer appointed Regions, the Plan's current trustee,<sup>5</sup> as the successor independent fiduciary to AmSouth with respect to oversight of the Master Lease. Regions was selected by the Employer to serve as the independent fiduciary for the Plan for reasons of administrative convenience and to facilitate the handling of Plan-related matters. Moreover, Regions is not charging the Plan any additional fees for services

<sup>4</sup> To the extent that the amount of rent paid by the Employer to the Plan under the Master Lease exceeds the fair market rental value of the subject Properties, the Employer represents that such excess rent, if any, when combined to the balance of the annual additions to the Plan, will not exceed the limitations prescribed by section 415 of the Code.

<sup>5</sup> The Plan's former trustee was State First National Bank (State First) of Texarkana, Texas. On March 10, 1994, State First was merged into First Commercial Corporation (First Commercial). On July 31, 1998, First Commercial was merged into Regions Bank Financial Corporation, the parent of Regions. On that same date, Regions also became the Plan trustee.