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Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–14; Exemption Application No. D–09743, et al.]

Grant of Individual Exemptions; Sammons Enterprises, Inc. Employee Stock Ownership Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) 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).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Sammons Enterprises, Inc., Employee Stock Ownership Trust (the Trust), Located in Dallas, TX; [Prohibited Transaction Exemption 95–14; Exemption Application No. D–09743]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the 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 to the cash sale (the Sale) by certain accounts (the Prior Plan Accounts) in the Trust of certain limited partnership interests (the Limited Partnership Interests) and an undivided interest in certain real property (the Property Interest; collectively, the Interests) to Otter, Inc., a party in interest with respect to the Trust.

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Prior Plan Accounts as those obtainable in an arm's length transaction; (2) the Sale is a one-time cash transaction; (3) the Prior Plan Accounts are not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Prior Plan Accounts receive a sales price equal to the greater of: (a) the fair market value of the Interests as determined by qualified, independent appraisers; or (b) the Prior Plan Accounts' aggregate costs of acquiring and holding the Interests; (5) Churchill Management Corporation (Churchill) determines that the Sale is appropriate for the Prior Plan Accounts and is in the best interests of the Prior Plan Accounts and their participants and beneficiaries; (6) the Prior Plan Accounts, prior to the Sale, obtain the written consent of the general partner of each of the limited partnerships involved with respect to the sale of the Limited Partnership Interests; and (7) the other partners of such limited partnerships, as per the limited partnership agreements, are given the right of first refusal with respect to the Limited Partnership Interests.

Written Comments: In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments on the proposed exemption within forty-five days from the date of publication of the Notice in the **Federal Register**. All written comments were to have been received by the Department by January 12, 1995. The Department received two written comments and no requests for a hearing.

The first comment was submitted on behalf of Texas Commerce Bank, N.A., the trustee of the Trust (the Trustee). The Trustee states that Churchill is the investment manager with respect to the assets of the Prior Plan Accounts. As such, the Trustee does not have the sole investment discretion with respect to the assets of the Prior Plan Accounts. As a result, the following changes must be made to the Notice:

(1) The references to ''the trustee of the Trust'' or ''Trustee'' found in Condition #5 of the Notice, the entire second paragraph of Representation #3 and subsection (e) of Representation #7 of the Summary of Facts and Representations (the Summary) should be replaced with ''Churchill.''

(2) The third sentence of Representation #2 of the Summary is stricken and replaced with ''Churchill, as investment manager, has discretion with respect to the assets of the Prior Plan Accounts. The Trustee has investment discretion with respect to all remaining assets of the Trust.''

The Department concurs with the proposed modifications and, accordingly, amends the language of the Notice.

The second comment was submitted on behalf of the applicants. The issues addressed in the comment and the Department's responses are summarized as follows:

(1) The first sentence of Representation #1 of the Summary names the sponsored plan as the ''Sammons Employee Stock Ownership Plan.'' The correct name of such plan is the ''Sammons Enterprises, Inc. Employee Stock Ownership Plan.''

(2) The third sentence of the first paragraph of Representation #3 of the Summary states that, effective 1991, the TMIS Plan merged into the Plan. The correct year of such merger is 1989.

(3) The first sentence of the first paragraph of Representation #4 of the Summary states that the Plan has a 14.5 percent Class B interest in Sunbelt City, Ltd. The correct name of such partnership is ''Sunbelt Oklahoma City, Ltd.''

(4) The first sentence of the third paragraph of Representation #4 should be revised as follows: ''Annual valuations of interests in both partnerships are furnished to investors by Churchill Management Corporation (Churchill), the investment adviser to the Prior Plan Accounts and for most of

the other limited partners of the Limited Partnerships.''

(5) The last sentence in the fourth paragraph of Representation #5 states that the Liabilities increased by $350,000 to $842,000. The correct amount of the increase in the Liabilities was $225,000 to $842,000.

The changes described above are hereby incorporated into the exemption as granted. After consideration of the entire record, including the comments, the Department has determined to grant the exemption. In this regard, the comments have been included as part of the public record for the exemption application. The complete application file is made available for public inspection in the Public Documents Room of the Pensions and Welfare Benefits Administration, room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

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 November 28, 1994 at 59 FR 60839.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

American Express Incentive Savings Plan (the Plan) Located in New York, NY; [Prohibited Transaction Exemption 95–15; Exemption Application No. D–09813]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the 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 to (1) the extensions of credit (the Loans) to the Plan by American Express Company (the Employer), the sponsor of the Plan, with respect to two guaranteed investment contracts (the GICs) issued by Confederation Life Insurance Company (Confederation); (2) the Plan's potential repayment of the Loans; and (3) the potential purchase of the GICs from the Plan by the Employer for cash; provided the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest and/or expenses are paid by the Plan in connection with the transactions;

(C) The proceeds of the Loans are used solely in lieu of payments due from Confederation with respect to the GICs;

(D) Repayment of the Loans will be restricted to the GIC Proceeds, defined as the cash proceeds obtained by the Plan from or on behalf of Confederation with respect to the GICs;

(E) Repayment of the Loans will be waived to the extent that the Loans exceed the GIC Proceeds; and

(F) In any sale of he GICs to the Employer, the Plan will receive a purchase price which is no less than the fair market value of the GICs as of the sale date, and no less than the GICs' accumulated book value, defined as the total principal deposits plus accrued interest at the rates guaranteed by the GICs, less previous withdrawals and any Loans made pursuant to this exemption, as of the sale date.

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 December 19, 1994 at 59 FR 65397.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bermo, Inc. Profit Sharing Plan and Trust (the Plan), Located in Circle Pines, MN; [Prohibited Transaction Exemption 95–16; Application No. D–09826]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the 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 to the series of loans (the Loans), originated within a five year period, by the Plan to Bermo, Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The total amount of outstanding Loans shall not exceed 25 percent of the Plan's total assets at any time during the transaction;

(b) All terms and conditions of the Loans are at least as favorable to the Plan as those which the Plan could obtain in an arm's length transaction with an unrelated third party;

(c) Each loan will be: (1) For a maximum term of forty-eight months fully amortized and payable in equal monthly installments of principal and interest, (2) the Loan proceeds shall be used exclusively by the Employer to purchase new equipment (the Equipment) used by the Employer in the course of its business, (3) collateralized by the Equipment and other assets owned by the Employer such that at all times each Loan will be collateralized in an amount equal to at least 200% of the outstanding balance of such Loan, (4) equal to no more than 80% of the purchase price of the Equipment financed, and (5) guaranteed personally by Fred Berdass, the principal shareholder of the Employer.

(d) The value of the collateral offered by the Employer will be determined by a qualified independent appraiser;

(e) Prior to the granting of each Loan, an independent qualified fiduciary determines, on behalf of the Plan, that each Loan is feasible and in the best interests of the Plan and protective of the Plan and its participants and beneficiaries;

(f) The independent fiduciary will conduct a review of the terms and conditions of the exemption and the Loans, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the Employer and compliance with the 25 percent of the Plan asset maximum total Loan amount prior to approving each disbursement under the Loan agreement;

(g) The independent fiduciary will monitor the terms and conditions of the exemption and the Loans; and

(h) The independent fiduciary is authorized to take whatever action is appropriate to protect the Plan's rights throughout the duration of the exemption and throughout the duration of any Loan granted pursuant to this exemption.

Temporary Nature of Exemption

The exemption is temporary and will expire five years from February 28, 1995. Subsequent to the expiration of this exemption, the Plan may hold any Loans originated during this five year period until the Loans are repaid or otherwise terminated.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 19, 1994 at 59 FR 65398.

FOR FURTHER INFORMATION CONTACT: Allison K. Padams of the Department, telephone (202) 219–8971.

Jerome Companies Profit Sharing Plan and Trust (the Plan), Located in Barron, WI [Prohibited Transaction Exemption 95–17; Exemption Application No. D–09829]

Exemption

The restrictions on sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the 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 to the cash sale (the Sale) of the

Guaranteed Investment Contract #62043 (the GIC) issued by Confederation Life Insurance Company (Confederation), a Canadian insurance corporation, by the Plan to Jerome Food, Inc. (the Employer), a Wisconsin corporation, the sponsoring employer and a party in interest with respect to the Plan: provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or the principal amount of $500,000 plus simple interest accrued at the rate of 9.03 percent per annum on the principal amount of the GIC for the period from January 25, 1994, to the date of the Sale.

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 4, 1995, at 60 FR 487.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employee Profit Sharing-Savings Plan and Trust Agreement of Modern Globe, Inc. (the Plan), Located in Wyomissing, PA [Prohibited Transaction Exemption 95–18; Exemption Application No. D–09893]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the 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 apply to the cash sale (the Sale) of the Guaranteed Investment Company Contract No. 62580 (the GIC), issued by Confederation Life Insurance of Atlanta, Georgia (Confederation), by the Plan to VF Corporation, a Pennsylvania corporation (the Employer), the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or an amount that is equal to the total amount expended by the Plan when acquiring the GIC, plus all interest accruing under the terms of the GIC until date of Sale.

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 4, 1995, at 60 FR 491.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employees' Savings Plan of Bassett-Walker, Inc., Located in Martinsville, VA [Prohibited Transaction Exemption 95–19; Exemption Application No. D–09894]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the 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 to the cash sale (the Sale) of the Guaranteed Investment Contract No. 62012 (the GIC), issued by Confederation Life Insurance Company of Atlanta, Georgia (Confederation), by the plan to VF Corporation, a Pennsylvania corporation, a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or $1.5 million, the principal amount of the GIC, plus simple interest accrued at the rate of 8.7 percent per annum on the principal amount of the GIC for the period from April 4, 1994, to the date of the Sale.

For a 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 4, 1995, at 60 FR 489.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (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) These exemptions are 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 these exemptions is subject to the express condition that the material facts and representations contained in each application accurately described all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 23rd day of February, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–4888 Filed 2–27–95; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation will meet Friday, March 31, 1995. The meeting will be held from 9:00 a.m. to 3:00 p.m. on Friday, March 31, 1995, in Room 105 of the National Archives Building, 7th and Pennsylvania Avenue NW., Washington, DC 20408.

The agenda for the meeting will be:

1. Charters of Freedom monitoring program

2. Review of Charters' encasement system

3. Condition of encasement glass

4. Risk analysis and options

This meeting is open to the public. For further information, contact Alan Calmes on (301) 713–7403.

Dated: February 15, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–4799 Filed 2–27–95; 8:45 am]

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