Prohibited Transactions — Proposed Class Exemption and the Voluntary Fiduciary Correction Program

Announcement 2002–31

On March 15, 2000, the U.S. Department of Labor (the "DOL") published at 65 **Fed. Reg**. 14164, its interim Voluntary Fiduciary Correction ("VFC") program. On March 28, 2002, the DOL adopted its permanent VFC program. In conjunction with that program, the DOL, which, generally, has the authority to determine whether a transaction is prohibited under § 4975 of the Internal Revenue Code, published a notice of a proposed class exemption (Application No. D–10933) from the prohibited transaction rules pertaining to four of the enumerated transactions that come under the VFC program.

The proposed class exemption when finalized will provide relief from the sanctions of § 4975 (a) and (b) of the Internal Revenue Code, *i.e.*, the application of the excise taxes described therein applied as a result of § 4975(c)(1)(A) through (E),[1] with respect to the four enumerated transactions. Among the conditions for an applicant to be eligible for the proposed class exemption are the following: (1) meeting the requirements of the VFC program pertaining to the particular transaction, (2) receiving a no action letter from the DOL regarding the transaction, and (3) providing notice to all interested persons.

The Service recognizes that a disqualified person who meets the conditions described in the proposed class exemption could nevertheless be subject to the sanctions of § 4975 during the pendency of the proposed class exemption despite the fact that the proposed class exemption when finalized will cause those sanctions not to apply with respect to the transactions enumerated in the class exemption (assuming all of the conditions of the class exemption are met). In order to encourage fiduciaries that meet the terms of the proposed class exemption to participate in the DOL's VFC program and to remove a significant disincentive from participating in that program, the Service will not seek to impose the § 4975 (a) and (b) excise taxes with respect to any prohibited transaction that is covered by the proposed class exemption notwithstanding any subsequent changes to the proposed class exemption when it is finalized, provided that all of the requirements specified in the proposed class exemption are met.

Drafting Information

The principal author of this announcement is Michael Rubin of the Tax Exempt and Government Entities Division, Employee Plans. For further information regarding this announcement, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday. Mr. Rubin can be contacted at 202–283–9888 (not a toll-free number).

[1] The prohibited transactions described in § 4975(c)(1)(F), *i.e.*, the receipt of any consideration for his of her own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan, does not come within the framework of the DOL's proposed class exemption or this announcement.