OPINION 81-41A
407

APR 6 1981

Garry P. Jerome, Esq.
Pepper, Hamilton & Scheetz
123 South Broad Street
Philadelphia, Pennsylvania 19109

Re: Identification Number: C-3286A

Dear Mr. Jerome:

This is in response to your letters of May 27, 1977 and March 10, 1980 requesting an advisory opinion under section 407 of the Employee Retirement Income Security Act of 1974 (ERISA) in connection with the employee benefit plan program of Sun Company, Inc. (Sun).

You state that Sun is the parent company of a consolidated group of companies whose members are engaged in all aspects of the oil business. Sun's corporate structure consists of the parent holding company, Sun, two primary subsidiaries: Sun Oil Company of Pennsylvania and Sun Oil Company of Delaware, and a number of other first, second and third-tier subsidiaries engaged in various phases of the oil business and miscellaneous activities unrelated to the oil business.

Included in Sun's employee benefit plan program is the Sun Retirement Plan (the Retirement Plan). Certain members of the Sun consolidated group of corporations have been designated by the Sun board of directors as "participating employers" in this plan. Sun contemplates that, in the future, other companies will be added to the corporate structure and as participating employers under the Retirement Plan with a resultant transfer of personnel between existing and new companies.

You desire a determination that the provisions of section 407 of ERISA apply to the Retirement Plan as a whole and not on an employer-by-employer basis. You have received a letter from the Internal Revenue Service (the Service) to the effect that the establishment of a new subsidiary, its adoption of the Retirement Plan and the transfer of employees to the new subsidiary does not appear to create any new employee benefit plans or result in a transfer of plan assets to which

section 414(1) of the Internal Revenue Code of 1954 (the Code) is applicable. You have also received a ruling from the Philadelphia District Director of the Service that the Retirement Plan is determined to be a single employee benefit plan and not a series of plans.

Section 407(a)(3)(A) of ERISA sets a limit on the amount of qualifying employer securities or qualifying employer real property that certain employee benefit plans like the Retirement Plan may hold after December 31, 1984. Section 407(a)(4) of ERISA requires a plan to dispose of 50 percent of any excess by December 31, 1979.

Language similar to section 414(1) of the Code is found in section 208 of ERISA. Under Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978), effective December 31, 1978, all authority to issue rulings under section 208 of ERISA has been delegated to the Secretary of the Treasury and the Secretary of Labor is bound by the decisions of the Secretary of the Treasury with respect to this section.

The Service has ruled that the Retirement Plan is a single plan covering employees of several employers, and has indicated that a transfer of employees between employers maintaining the Retirement Plan does not result in a transfer of assets between two employee benefit plans. Based on the representations of your submission, as set forth in this advisory opinion, and in light of the Service's ruling that the Retirement Plan is a single plan under section 208 of ERISA, the Department has determined that the Retirement Plan is also a single plan under section 407 of ERISA. Therefore, the provisions of section 407 of ERISA apply to the Retirement Plan as a whole and not on an employer-by-employer basis.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the Procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Alan D. Lebowitz
Assistant Administrator for Fiduciary Standards
Pension and Welfare Benefit Programs