

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION NO. 83-30A
Sec. 103(a)(3)(A), 103(a)(3)(C)

JUN 20 1983

Ms. Doris Bowling
Plan Administrator
American General Life Insurance Company
P.O. Box 1931
Houston, Texas 77001

Dear Ms. Bowling:

This is in response to your letter of April 5, 1983 concerning the application of the annual reporting requirements under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have requested an advisory opinion as to the necessity of engaging an independent qualified public accountant for purposes of conducting an examination of the financial statements of the Rebsamen Companies Inc. Employees Pension Plan (the Plan) pursuant to section 103(a)(3)(A) of ERISA.

In your letter you state that the Plan is a money purchase plan that annually covers more than 100 participants and that all of the Plan's assets are invested in a public mutual fund and in a commingled deposit administration group annuity contract invested with the general assets of the American General Life Insurance Company. Further, you indicate that, under 29 CFR §2520.103-3 and §2520.103-4, assets held in a common or collective trust or a pooled separate account may be exempt from reporting and audit requirements provided that the requirements of §2520.103-9 are satisfied. In this regard, you contend that, because plan assets are held and invested with the general assets of American General Life Insurance Company and in a public mutual fund, an accountant's opinion is not required for the Plan.

In general, §2520.103-4 provides an exemption from certain reporting requirements for plans the assets of which are held in whole or in part in a pooled separate account of an insurance carrier provided that, among other things, the insurance carrier is regulated and supervised and subject to periodic examination by a State or Federal agency. Plans electing to report in accordance with the requirements of §2520.103-4 are required to include as part of their annual report: information regarding the value of the units of participation in the pooled separate account; transactions involving the plan's acquisition or disposition of such units of participation; and the most recent statement by the insurance carrier of the assets and liabilities of the pooled separate account. The regulation also provides that the statement of assets and liabilities of the pooled separate account is not required to be attached to the annual report filed by the administrator if the administrator meets the requirements of §2520.103-9, regarding direct filing of the statement of assets and liabilities of the pooled separate account by an insurance carrier. Section 2520.103-3 provides a similar exemption for plans with assets held in a common or collective trust maintained by a bank, trust company or similar institution.

While §§2520.103-4 and .103-3, as discussed above, provide an exemption from certain annual reporting requirements, neither section provides an exemption from the requirement to engage an independent qualified public account pursuant to section 103(a)(3)(A) of ERISA.

Section 103(a)(3)(A) of ERISA provides, in relevant part, that:

Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage ... an independent qualified public accountant, who shall conduct an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report ... are presented fairly in conformity with generally accepted accounting principles Such examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant.

Section 103(a)(3)(C) of ERISA provides that:

The opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b)(3)(G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

Under 29 CFR §2520.103-8, which interprets and implements ERISA section 103(a)(3)(C), the examination and report of the independent qualified public accountant need not address any statement or information regarding plan assets held by a bank or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that the statement or information is transmitted and certified to by the plan administrator in accordance with 29 CFR §2520.103-5.1¹

While the scope of an accountant's examination and report may be limited under §2520.103-8 and ERISA section 103(a)(3)(C), if a plan is required under 29 CFR §2520.103-1 to engage an accountant to render an opinion with respect to the financial statements of the plan an exemption is not provided under §2520.103-8 and 103(a)(3)(C) from such requirement solely because the plan's assets are held by a bank or insurance company and certification has been provided under §2520.103-5.

Accordingly, it is the opinion of the Department that, based on the information provided, the Rebsamen Companies, Inc. Employees Pension Plan is not exempt from the requirement to engage an independent qualified public accountant to conduct an examination and render an opinion pursuant to section 103(a)(3)(A) of ERISA. However, the scope of the accountant's examination and report may be limited under §2520.103-8, provided that the conditions of that regulation are satisfied.

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,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs

¹ §2520.103-5 implements section 103(a)(2) of ERISA which requires an insurance carrier or other organization which provides some or all of the benefits under a plan or holds plan assets, a bank or similar institution which holds plan assets, or a plan sponsor to transmit and certify to the accuracy and completeness of such information as needed by the plan administrator to comply with the requirements of title I of ERISA.