

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 83-59A
Sec. 408(a), PTE 79-41

NOV 10 1983

Honorable Julio A. Brady
Lieutenant Governor
U.S. Virgin Islands
P.O. Box 450
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Dear Sirs:

The Government of the Virgin Islands has requested an advisory opinion pursuant to ERISA Procedure 76-1 (41 FR 36281, August 27, 1976) regarding the application of Prohibited Transaction Class Exemption 79-41 (44 FR 46365, August 7, 1979) (PTE 79-41). Specifically, you request an opinion to the effect that an insurance company licensed to sell insurance in the U.S. Virgin Islands will meet the requirement in section II(a)(2) of PTE 79-41 that an insurance company covered by the exemption must be licensed to sell insurance "in at least one of the United States or in the District of Columbia."

PTE 79-41 allows insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to sell life insurance, health insurance or annuity contracts which fund such plans if certain conditions are met, including the licensing requirement of section II(a)(2) of the exemption mentioned above. Although PTE 79-41 was intended as an expansion of the relief granted to insurance companies in section 408(b)(5) of ERISA, the exemption is otherwise governed by the remaining provisions of ERISA. Among such provisions is section 3(10), which defines the term "state" to include "any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island and the Canal Zone." (Emphasis added.)

It was not the Department's intention in section II(a)(2) of PTE 79-41 to modify the definition of the term "state" for the purposes of the exemption. As a result, it is the Department's opinion that any insurance company licensed by an entity meeting the definition of the term "state" in section 3(10) of ERISA will be deemed to meet the licensing requirement imposed by section II(a)(2) of PTE 79-41. Therefore, an insurance company licensed by the U.S. Virgin Islands would be covered by the relief granted in PTE 79-41 if all the other conditions of the exemption are met.

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. This opinion relates only to the prohibited transactions provisions of Title I of ERISA and section 4975 of the Internal Revenue Code of 1954. No opinion is expressed with regard to the application

of any other regulatory or tax provision that may be relevant to transactions engaged in by an insurance company pursuant to PTE 79-41.

Sincerely,

Alan D. Lebowitz
Acting Administrator
Pension and Welfare Benefit Programs