

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs Office

[Exemption Application No. D-4064]

Proposed Class Exemption for Certain Transactions Involving Persons Establishing Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals**AGENCIES:** Internal Revenue Service, Treasury; and Pension and Welfare Benefit Programs Office, Labor.**ACTION:** Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Internal Revenue Service (the Service) and the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1954 (the Code). The proposed class exemption would exempt the receipt of certain premiums, gifts, or other consideration paid to an individual in connection with a transaction involving an Individual Retirement Account (IRA) or a retirement plan for a self-employed individual (Keogh Plan) provided the conditions of the proposed exemption are met. If granted, the proposed exemption would affect individuals who receive such payments.

DATES: Written comments and requests for a public hearing must be received by the Service on or before March 18, 1983. If adopted, it is proposed that this class exemption will be effective for transactions entered into on or after January 1, 1975.

ADDRESSES: All written comments and requests for a hearing (preferably three copies) should be addressed to the Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: OP:E:EP:T:7. The comments received will be available for public inspection in the Internal Revenue Service National Office

Reading Room, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Richard Eggers, Employee Plans Technical Branch, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: OP:E:EP:T:7), (202) 566-3733, or Ivan Strasfeld, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, United States Department of Labor, 200 Constitution Avenue, NW., Room C-4528, Washington, D.C. 20216, (202) 523-7901. The telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Service and the Department of a proposed class exemption from the sanctions resulting from the application of sections 4975 (a) and (b), 4975(c)(3), and 408(e)(2) of the Code by reason of section 4975(c)(1) of the Code. This exemption is proposed pursuant to section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-28, 1975-1 C.B. 722, and in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

1. The Employee Retirement Income Security Act of 1974 (the Act) granted discretionary authority to the Secretaries of Labor and Treasury to issue administrative exemptions from the prohibited transactions provisions contained in Title I and Title II of the Act. In explaining these procedures, the Conference Report [H.R. Report No. 93-1280, 93rd Cong., 2d Sess. (1974) at p. 311] provides that the Secretary of Labor may refuse to grant an exemption if the transaction would constitute an abuse of the labor laws. Similarly, the Secretary of the Treasury may refuse to grant an exemption if the transaction would involve a tax abuse. 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 administrative exemptions under section 4975(c)(2) of the Code of the Secretary of Labor subject to certain narrow exceptions. Because the scope of the proposed exemption is limited to transactions involving IRAs and Keogh Plans which are not subject to Title I of the Act, the particular concern of the

Service and the Department is to assure that the transactions do not conflict with the basic purpose for which such plans are established and afforded special tax benefits, that is, to provide retirement savings for participants and their beneficiaries. The Service and the Department also recognize the business practice of providing incentives to encourage individuals to establish accounts with a particular institution. Accordingly, the Service and the Department have decided to jointly propose a class exemption more fully described below from the prohibited transaction restrictions of section 4975(c)(1) of the Code.

2. Many financial institutions now offer, or plan to offer, premiums to IRA owners, Keogh Plan participants, members of their families, or other individuals in connection with the establishment of, or additional contribution to, an IRA or Keogh Plan. A premium may be in the form of a cash bonus or a gift item. It may also take the form of a high interest rate retail purchase agreement (repo) available to depositors who actually establish or make additional contributions to an IRA.

3. The receipt by, or on behalf of, an individual establishing an IRA of property, cash, or other consideration from the institution sponsoring the IRA may be prohibited under section 4975(c)(1) of the Code, which describes certain types of transactions involving retirement plans that are prohibited. Under such circumstances, an individual for whose benefit an IRA is established and his or her beneficiaries may be exempt from the tax imposed by section 4975(a) and (b) of the Code but the account would cease to be an IRA by reason of section 408(e)(2)(A) of the Code. As a result, the contributions to such an account would not be deductible under section 219(a) of the Code and the account would not be exempt from taxation under section 408(e) of the Code.

4. Similarly, the receipt by, or on behalf of, an individual establishing a Keogh Plan of some personal consideration from the institution sponsoring the Keogh Plan may be prohibited under section 4975(c)(1) of the Code.

5. Although there have been many questions concerning this issue, neither the Service nor the Department has yet received formal applications for individual exemptions or applications for a class exemption for transactions of this type. However, because of the apparent prevalence of this type of transaction and the possible consequences to a large number of individuals establishing IRAs and Keogh Plans, the Service and the Department propose to deal with these transactions as a class on their own motion pursuant to Rev. Proc. 75-26 and ERISA Procedure 75-1. The Service and the Department believe that treating the transactions as a class is likely to be administratively feasible and protective of the interests and rights of IRA and Keogh Plan participants and their beneficiaries.

6. In addressing these transactions as a class, the Service and Department must insure that adequate protections for IRA and Keogh Plan participants and their beneficiaries are common features in all transactions subject to the exemption and that the transactions do not conflict with the basic purpose of such plans which is to provide retirement savings for participants and their beneficiaries. As a result, the proposed exemption contains specific conditions to protect the interests of the participants, their spouses, and beneficiaries. However, in order to insure that, consistent with their tax exempt purposes, IRAs and Keogh Plans provide a maximum deferred return at retirement, the IRA or Keogh Plan must be established solely to benefit the person receiving the property, cash, or other consideration, his or her spouse and their beneficiaries. The fair market value of the property, which may be measured by its cost to the financial institution, or the cash received must not exceed \$10 for a deposit of less than \$5,000 and \$20 for deposits of \$5,000 or more. The conditions of the proposed exemption do not specifically limit the form that the premiums may take.

7. The exemption will not be available to exempt individuals establishing Keogh Plans that are subject to Title I of the Act, nor will the exemption be available to exempt the receipt of cash, property or other consideration by third persons other than those described in the exemption.

Notice to Interested Persons

Because many participants in IRAs and Keogh Plans and financial

institutions sponsoring IRAs and Keogh Plans could conceivably be considered interested persons, the only practical form of notice is publication in the Federal Register.

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 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; nor does the exemption affect the requirement of section 408(a) of the Code that the IRA must operate for the exclusive benefit of the individual for whose benefit the IRA is maintained and his or her beneficiaries or 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) Before any exemption may be granted under section 4975(c)(2) of the code, the Service and the Department must find that the exemption is administratively feasible, in the interest of the individual for whose benefit the IRA and Keogh Plan is maintained and protective of the rights of that individual and his or her beneficiaries;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional 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

(4) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Written Comments and Hearing Request

All persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the address set forth above.

Proposed Exemption

The Service and the Department are considering granting the exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722, and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, effective January 1, 1975, the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the payment of cash, property, or other consideration by an organization authorized to sponsor IRAs or Keogh Plans, to an individual establishing or contributing to an IRA or Keogh Plan or to members of his or her family as defined by section 4975(e)(6) of the Code, provided that:

(a) The IRA or Keogh Plan in connection with which cash, property or other consideration is given, is established solely to benefit the participant, his or her spouse and their beneficiaries; and

(b) The fair market value to the financial institutions of the property or other consideration or the cash received, is not more than \$10 for deposits to the IRA or Keogh Plan or less than \$5,000 and \$20 for deposits to the IRA or Keogh Plan of \$5,000 or more.

Signed at Washington, D.C., this 3d day of January 1983.

S. Allen Winborne,

Assistant Commissioner for Employee Plans and Exempt Organizations, Internal Revenue Service.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs, United States Department of Labor.

[FR Doc. 83-2874 Filed 1-31-83; 8:45 am]

BILLING CODE 4830-01-M