

ERISA OPINION

OPINION NO. 82-19A
Sec. 3(34), 407(d)(3)(A)

MAR 26 1982

R. F. Sharpe, Jr., Esq.
R. J. Reynolds Industries, Inc.
World Headquarters
Winston-Salem, NC 27102

Re: Identification Number F-2293

Dear Mr. Sharpe:

This is in response to your request of February 18, 1982 on behalf of R.J. Reynolds Industries, Inc. in which you seek an advisory opinion concerning the R. J. Reynolds Industries, Inc. Individual Retirement Account Plan (the "Plan"), which Reynolds has adopted and proposes to amend. Specifically, you ask for an opinion that the Plan is a "savings plan" and, as amended, is an "eligible individual account plan" under section 407(d)(3) of the Employee Retirement Income Security Act of 1974 (ERISA).

In your request, you represent that eligible employees are permitted to make voluntary contributions to the Plan of any amount up to \$2,000 annually either through payroll deductions or in a lump sum. All contributions to the Plan are forwarded to and invested by a banking institution acting under a trust agreement. Individual accounts are maintained for each participant who contributes to the Plan consisting entirely of the participants voluntary contributions and the income, expenses, gains, and losses which are allocated to each account. A participant's benefit is based only on the amount in his or her individual account.

You also represent that the purpose of Reynolds in establishing the Plan was to afford its employees the opportunity to take advantage of the provisions of the Economic Recovery Tax Act of 1981 which permit individuals to deduct up to \$2,000 annually from their income taxes for voluntary retirement contributions which they make to employer plans qualified under §401(a) of the Internal Revenue Code (the Code). You indicate that Reynolds believes the Plan would qualify as a pension plan under Code §401(a) and intends to seek a determination letter from the Internal Revenue Service to that effect. However, you do not believe or intend that accounts in the Plan are qualified under Code §408, as individual retirement accounts. You further represent that the current Plan allows participants to invest their contributions in 25% multiples between two funds: an equity fund and a fixed income fund, but that as amended, the Plan would offer a third fund consisting entirely of the Common Stock of R. J. Reynolds Industries, Inc. You represent that the Reynolds Plan as amended would expressly provide for

the acquisition and holding of up to 100 percent of R. J. Reynolds Industries, Inc. Common Stock.

Section 3(2) of ERISA defines a "pension plan" as any plan, fund, or program established or maintained by an employer which provides retirement income to employees. Because the express purpose of the Plan is to permit participants to accumulate tax-favored retirement savings in accordance with the recent Code changes and because the Plan appears reasonably designed to accomplish this purpose, it is the Department's opinion that the Plan would be a pension plan within the meaning of section 3(2).

Section 3(34) of ERISA defines an "individual account plan" as a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income expenses, gains and losses and any forfeitures of accounts of other participants which may be allocated to the participant's account. Because the Plan would require an individual account to be maintained for each participant who makes contributions, and because each participant's benefit would be based only on the amount contributed to his or her account and any net gains or losses allocated to the account, it is the Department's opinion that the Plan would be an "individual account plan" within the meaning of section 3(34) of ERISA.

Section 407(d)(3)(A) of ERISA defines an "eligible individual account plan" as an individual account plan which is (i) a profit-sharing, stock bonus, thrift or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on the date of enactment of ERISA and which on that date invested primarily in qualifying employer securities. It excludes individual retirement accounts described in section 408(a) of the Code from the definition. Because section 408(a) is under the jurisdiction of the Internal Revenue Service, we are unwilling to give an opinion as to whether the Plan would consist of individual retirement accounts. If the Plan does not consist of Code section 408(a) individual retirement accounts, however, but rather is a single plan qualified under section 401(a) of the Code, it is the Department's opinion that it would be a savings plan and an eligible account plan under ERISA section 407(d)(3)(A).

This letter is an advisory opinion under ERISA Procedure 76-1. Section 10 of the procedure describes the effect of advisory opinions.

Sincerely,

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