

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



MAR 21 1986

86-13A
Sec.

H. Colin McBride, Esq.
Senior Counsel
R. J. Reynolds Industries, Inc.
Winston-Salem, NC 27102

Re: Sea-Land Corporation (Sea-Land)
Identification Number: F-2900A

Dear Mr. McBride:

This is in response to your letter of May 2, 1984, as well as a telephone conversation with a member of my staff on January 24, 1986, in which you request an advisory opinion that an employee pension benefit plan which Sea-Land has established for its employees (the Plan) constitutes an eligible individual account plan under section 407(d)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), and, therefore, is exempt from the limitations on the acquisition and holding of qualifying employer securities as provided in ERISA section 407(b)(1).

You represent that Sea-Land, formerly known as Sea-Land Industries Investments, Inc., was a wholly owned subsidiary of R. J. Reynolds Industries, Inc. (Reynolds). Sea-Land Industries was spun off as a separate corporation renamed Sea-Land Corporation effective May 15, 1984. The spin-off was accomplished by issuing shares of Sea-Land stock as a dividend on Reynolds' shares. When the transaction was completed, Reynolds shareholders also became shareholders in Sea-Land, and Sea-Land was no longer an affiliate of Reynolds. You state that Sea-Land has established the Plan, whose terms are identical to the terms of the R. J. Reynolds Industries, Inc. Individual Retirement Account Plan (the Reynolds Plan), under which employees of Sea-Land previously participated. The Sea-Land employees' individual accounts, which were formerly in the Reynolds Plan, have been transferred to the Plan.

On March 26, 1982, the Department issued an advisory opinion (Advisory Opinion 82-19) to R.J. Reynolds Industries, Inc. which addresses the same issue with respect to the Reynolds Plan. The Plan, like the Reynolds Plan, permits employees to deposit up to \$2,000 annually in individual accounts either through payroll deductions or in a lump sum. The deposits are forwarded to and invested by an independent banking institution acting as trustee under the provisions of a trust agreement. Each employee is able to direct that his deposits be invested in

25 percent multiples in three investment funds: an equity fund, a fixed income fund, and a Sea-Land Corporation Common Stock Fund. This last fund consists entirely of the common stock of Sea-Land. We assume that the individual accounts consist entirely of the participants' voluntary contributions and the income, expenses, gains, and losses which are allocated to each account and that a participant's benefit is based only on the amount in his or her individual account.

Advisory Opinion 82-19 concludes that the Reynolds Plan would be a savings plan and an eligible individual account plan under ERISA section 407(d)(3)(A) to the extent that the Reynolds Plan is a single plan qualified under section 401(a) of the Internal Revenue Code (the Code) rather than Code section 408(a) individual retirement accounts.

ERISA section 3(2) defines a "pension plan" as any plan, fund or program established or maintained by an employer which provides retirement income to employees. If the express purpose of the Plan is to permit participants to accumulate tax-favored retirement savings in accordance with the provisions of the Economic Recovery Tax Act of 1981 and if the Plan is reasonably designed to accomplish this purpose, the Plan would be a pension plan within the meaning of ERISA section 3(2).

ERISA section 3(34) 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. If, in fact, the Plan requires an individual account to be maintained for each participant who makes contributions, and if 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, the Plan would be an "individual account plan" within the meaning of ERISA section 3(34).

ERISA section 407(d)(3)(A) 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 Code section 408(a) from the definition. We note that, because section 408(a) of the Code is under the jurisdiction of the Internal Revenue Service, we are unable to give an opinion as to whether the Plan consists of individual retirement accounts. If the Plan does not consist of Code section 408(a) individual retirement accounts, but rather is a single plan qualified under Code section 401(a), the Plan would be a savings plan and an eligible individual account plan under ERISA section 407(d)(3)(A).

Section 407(d)(3)(B) of ERISA provides, in pertinent part, that, notwithstanding section 407(d)(3)(A), a plan shall be treated as an eligible individual account plan with respect to the

acquisition or holding of qualifying employer securities only if the plan explicitly provides for acquisition and holding of qualifying employer securities. For purposes of this letter, we have assumed, based on your representations, that the Plan explicitly provides for such investments.

This advisory opinion only addresses the issue of whether the Plan is an "eligible individual account plan" as defined in ERISA section 407(d)(3)(A). It does not address any other issues which may arise under ERISA, including issues under section 404(c), relating to participant-directed individual account plans.

This letter is an advisory opinion under ERISA Procedure 76-1 (ERISA Proc. 76-1, 41 FR 36281, August 27, 1976). Section 10 of the procedure describes the effect of advisory opinions.

Sincerely,

Elliot I. Daniel
Assistant Administrator for Regulations and Interpretations