

U.S. Department of Labor

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



MAR 23 1989

89-03A

Ms. Maria Stefanis
Arthur Young
3000 K Street, N.W.
Washington, D.C. 20007

Re: Individual Retirement Accounts of Edward E. and Frances S. Bowns
Identification Number: F-3879A

Dear Ms. Stefanis:

Your letter dated May 19, 1988, to the Internal Revenue Service has been forwarded to this office for our consideration and response. Your letter concerns whether a purchase of stock by an Individual Retirement Account (IRA) from a corporation would violate section 4975(c)(1)(A) of the Internal Revenue Code of 1986 (the Code).

You represent that Edward E. Bowns and his wife, Frances, established IRAs described in section 408 of the Code. Mr. and Mrs. Bowns are the only participants in their respective IRAs and have reserved the right to direct their IRA's investments. Mr. Bowns is Executive Vice President and General Manager of the Partition Division of the Rock-Tenn Company. Mr. Bowns owns directly 1,122 shares of Rock-Tenn common stock and 685 shares as custodian for his minor child. Mrs. Bowns owns directly 100 shares. Mr. Bowns holds incentive stock options, expiring from 1993 through 1998, to acquire an additional 27,020 shares. Assuming all options are exercised and including the 400 shares proposed to be purchased by the IRAs, the Bowns family would own a total of 29,327 shares. There are now approximately 2,500,000 shares of Rock-Tenn common stock outstanding. You further indicate that Rock-Tenn has not sponsored, maintained or made any contributions to the IRAs.

Mr. and Mrs. Bowns propose to direct their IRA trustee to purchase Rock-Tenn common stock from Rock-Tenn on behalf of each of their IRAs. The trustee will pay no more than adequate consideration for the Rock-Tenn stock.

You have requested an advisory opinion that the proposed purchase will not constitute a prohibited transaction under section 4975(c)(1)(A) of the Code.

Pursuant to section 2510.3-2(d) of the Department of Labor's (the Department) regulations, the Department does not have jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) over those IRAs described in section 408 of the Code which comply with the provisions of that section of regulation.¹ Such IRAs are, however, subject to section 4975 of

¹ Under the regulation, Title I is inapplicable only if the following conditions are met: (1) no contributions to the plan are made by the employer or employee association; (2) participation is

the Code. Pursuant to Presidential Reorganization Plan No. 4 of 1978, effective December 31, 1978, the authority of the Secretary of the Treasury to issue interpretations regarding section 4975 of the Code, subject to certain exceptions not here relevant, has been transferred to the Secretary of Labor and the Secretary of the Treasury is bound by such interpretations.

Section 4975(c)(1)(A) of the Code prohibits any direct or indirect sale, exchange or leasing of any property between a plan and a disqualified person. Section 4975(e)(1) of the Code, in relevant part, defines the term plan to include an IRA described in section 408(a) of the Code. Section 4975(e)(2) of the Code defines the term disqualified person to include a fiduciary, an employer any of whose employees are covered by the plan, and a corporation of which 50 percent or more of the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of the corporation, is owned directly or indirectly, or held by a fiduciary. Section 4975(e)(4) of the Code provides that, for purposes of section 4975(e)(2)(G), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c) of the Code. Section 4975(e)(3) of the Code defines the term fiduciary, in part, to include any person who exercises any discretionary authority or discretionary control respecting management of the plan, or exercises any authority or control respecting the management or the disposition of its assets.

Mr. and Mrs. Bowns are fiduciaries and, thus, disqualified persons with respect to their IRAs because of their authority under the IRAs to direct investments. Although section 4975 does not define the term employer, section 3(5) of ERISA provides, in part, that an employer is any person acting as an employer in relation to an employee benefit plan. You have stated that Rock-Tenn has no involvement with the establishment or maintenance of the IRAs. Therefore, it is the opinion of the Department that Rock-Tenn is not a disqualified person with respect to the IRAs under section 4975(e)(2)(C) of the Code. In addition, Rock-Tenn is not a disqualified person with respect to the IRAs under section 4975(e)(2)(G) of the Code by reason of the Bowns' stock ownership in Rock-Tenn.

Therefore, to the extent that Rock-Tenn is not a disqualified person under any other provision of section 4975(e)(2) of the Code, the purchase of Rock-Tenn stock by the IRAs from Rock-Tenn would not violate section 4975(c)(1)(A) of the Code.

We note, however, that this conclusion does not preclude the existence of other prohibited transactions under section 4975 of the Code. Section 4975(c)(1)(D) of the Code prohibits any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan. Section 4975(c)(1)(E) of the Code prohibits a fiduciary from dealing with the income or assets of a plan in his own interest or for his own account. The Department will

completely voluntary for employees or members; (3) the sole involvement of the employer or employee association is to permit the sponsor to publicize the program and to collect contributions on behalf of the sponsor through payroll deductions or dues checkoffs; and (4) the employer or employee association receives no consideration in the form of cash or otherwise other than reasonable compensation for services actually rendered in connection with such payroll deductions or dues checkoffs.

generally not issue advisory opinions with respect to inherently factual matters. We note, however, that Mr. and Mrs. Bowns are fiduciaries with respect to their IRAs. In addition, Mr. Bowns is an officer of Rock-Tenn and the Bowns have stock ownership interests in Rock-Tenn. Accordingly, you may wish to consider whether the purchases of stock involve violations of section 4975(c)(1)(D) or (E) of the Code.

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,

Robert J. Doyle
Director of Regulations and Interpretation

² See ERISA Proc. 76-1, section 5.01.