U.S. Department of Labor

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

February 8, 1996

96-01A
ERISA SEC 514(a)

Mr. Carlos González Padró
McConnell Valdés
P.O. Box 364225
San Juan, Puerto Rico 00936-4225

Dear Mr. Padró:

This is in response to your request for an advisory opinion concerning the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether section 5(g) of Puerto Rico Act No. 17 of April 17, 1931, as amended (P.R. Act 17), is preempted under section 514(a) of Title I of ERISA insofar as it may be applied to prohibit a pension plan from requiring the repayment of plan loans through payroll deductions, as described below.

You advise that the Sensormatic Electronics Corporation maintains the Sensormatic Electronics Corporation $enso Ahorros Plan (the Plan) for the benefit of its employees performing services in Puerto Rico. The Plan, you further advise, was amended, effective as of October 1, 1994, to permit participant loans pursuant to the provisions of ERISA section 408(b)(1). It is intended that the participant loans will be repaid through employee-authorized payroll deductions.

Section 5 of P.R. Act 17 generally prohibits employers from withholding or deducting amounts from employee wages unless certain criteria are met. Specifically, Section 5 provides, in pertinent part:

> Except as provided in this section, no employer may, for any reason, deduct or retain any part of the wages due to laborers, except:
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> (g) When the laborer authorizes his employer in writing to deduct from his wages a sum stipulated by the laborer or stipulated in a labor collective agreement entered into between an employer and a representative of his employees in an appropriate unit for collective bargaining as an assessment or payment toward any plan or group pension, saving, retirement, allowance, annuity life, life, accident and health and hospital insurance policy, any combination of these plans, or any similar social security plan authorized by the laborer and by the union in case there exists a labor organization duly certified or recognized to bargain collectively with the employer or authorized by the laborer and the Secretary of Labor in the case of the nonexistence of such labor organization duly certified and recognized, but in both cases for the sole benefit of the laborers or their dependents or beneficiaries, provided that the employer contributes with a sum not less than the sum contributed by the laborer and subject to the condition that said deduction shall be used by the employer to pay the cost of said benefit or for the said purposes: (1) an insurance company, acceptable to the union or, in default thereof, to the Secretary of Labor, which has issued a contract insuring the employees and is authorized to operate in Puerto Rico under the supervision of the Commissioner of Insurance of Puerto Rico, or (2) a trust bank acceptable to the union or, in default thereof, to the Secretary of Labor, authorized to operate in Puerto Rico under the supervision of the Secretary of Treasury, if the deductions are not used as aforesaid, no deduction shall be made until the plan or insurance policy has been approved in writing by the Secretary of Labor of Puerto Rico. Every plan or policy under this section shall be filed with the Department of Labor of Puerto Rico before it takes effect. No deduction shall be made for

> any plan or insurance which permits the employer to receive, take or withhold for his own use and benefit the total or any part of the sum deducted. All plans shall contain appropriate provisions to permit the voluntary retirement of any laborer in a manner consistent with the continuation and due operation of the plan.

You assert that section 5 of P.R. Act 17 permits payroll withholding only for the purpose of making contributions to plans, under the circumstances there described, and does not contemplate and would not permit payroll deductions for the purpose of repaying plan loans.

> Section 514 of title I of ERISA provides, in pertinent part:
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> Sec. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.
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> Section 3(10) of ERISA defines the term "State" to include Puerto Rico.

Thus, section 514(a) of ERISA broadly preempts all state laws (including laws of Puerto Rico) insofar as they "relate to" employee benefit plans covered by Title I of ERISA, subject only to certain exceptions as expressly provided in section 514(b) of ERISA.

In Opinion 84-18A (issued April 19, 1984), the Department expressed the view that subsection 5(g) of P.R. Act 17 is a state law within the meaning of section 514(c)(1) of ERISA and that section 514(a) of Title I of ERISA generally preempts subsection 5(g) to the extent that subsection 5(g) is applied, or attempted to be applied, to ERISA covered employee benefit plans. In Opinion 88-17A (issued April 19, 1984), the Department further stated:

> [I]t is the position of the Department that to the extent that Section 5 of P.R. Act 17 is interpreted to limit, prohibit, or regulate the funding of employee benefit plans covered by title I of ERISA, including payroll deductions to employee benefit plans covered by title I of ERISA, it is preempted by section 514(a) of ERISA.

The Department reaffirmed this position in Opinion 93-05A (issued March 9, 1993) and Opinion 94-27A (issued July 14, 1994). Although the Department's previous opinions did not address the specific issue presented here, which concerns the discretionary methods by which a plan chooses to operate a participant loan program, we reach the same conclusion.

Subsection 5(g) expressly refers to plans covered by ERISA and to all payments made to such plans through the use of payroll deduction arrangements. Its express references to plans are specifically designed to limit and control the manner in which plans are to be administered, both with respect to contributions and, more generally, in all aspects of the relationship between the employer's payroll processes and the plan. Any state law that imposes requirements specifically directed to regulate the administration of ERISA-covered plans is preempted by ERISA on that basis alone, whether the requirements favor or disfavor plans. District of Columbia v. Greater Washington Bd. of Trade, 113 S. Ct. 580 (1992); Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825 (1988). Furthermore, such a law clearly "relates to" plans in a manner that contravenes the objectives of the preemption provision. See New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S.Ct. 1671, 1677 (1995) ("The basic thrust of the preemption clause was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans."). Therefore, it is the position of the Department that, to the

extent P.R. Act 17 is interpreted to prohibit the repayment of plan loans through payroll deductions to employee benefit plans covered by Title I of ERISA, it is preempted by section 514(a) of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Susan G. Lahne, Chief
Division of Coverage
Office of Regulations and Interpretations