

II. Discussion of Unifi's Response to the Comment

In its response to the Comment (the Response), Unifi states that the Comment made by Wachovia does not discuss the substance of the proposed sale of the Property by the Plan to Unifi, which is the subject transaction in the Notice.

The Response further states that the reason Unifi mentioned Wachovia in the Application was to clarify to the Department why Unifi, and not Wachovia, was submitting the Application to the Department. Unifi states that apart from Wachovia's status as the independent fiduciary for the Lease under PTE 87-28, Wachovia is not an interested party to the proposed sale.

In conclusion, Unifi states that Wachovia has no real interest in the proposed sale of the Property by the Plan to Unifi. There are no statements in the Comment that are in support or against the terms of the proposed sale. Therefore, Unifi respectfully requests that the Department grant the exemption as proposed.

The Department notes that it is offering no views at this time with regard to either Wachovia's conduct as the independent fiduciary for the Plan for purposes of the Lease, pursuant to PTE 87-28, or Unifi's concerns relating thereto. In this regard, the Department notes that the Comment does not object to the proposed sale of the Property by the Plan to Unifi.

Copies of the letters mentioned above, as well as other relevant correspondence, are available for public inspection and may be obtained by interested persons from the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210. Interested persons should request File No. D-11094 (with respect to the proposed sale of the Property by the Plan to Unifi) and File No. D-11080 (with respect to Unifi's initial exemption request for a continuation of the Lease).

Upon consideration of the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693-8540. (This is not a toll-free number.)

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

408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect 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) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of August, 2002.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002-39; Exemption Application No. D-11036]

Grant of Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 85-131, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify and replace PTE 85-131.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) that amends and replaces PTE 85-131 (50 FR 32333,

August 9, 1985). PTE 85-131 is an individual exemption providing relief, since March 29, 1985, for (1) the leasing of certain improved real property by the Trust to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the plans (the Plans) participating in the Trust under the terms of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Watkins.

The final exemption modifies an option to purchase provision in the New Lease by allowing Watkins to acquire the Trust's leasehold interests in a building, the improvements constructed thereon, and in a ground lease on May 8, 2002, instead of at the end of New Lease renewal term on December 31, 2008. In addition, the exemption replaces PTE 85-131, which expired by operation of law upon the consummation of the sale. The exemption affects participants and beneficiaries of, and fiduciaries with respect to the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693-8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 18, 2002, the Department published a notice of proposed exemption in the **Federal Register** at 67 FR 41517 that would amend and replace PTE 85-131. PTE 85-131 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption was requested in an application filed on behalf of the Trust and Watkins,* pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). 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 exemptions of the type

* The Department also has under consideration a similar exemption request (D-11038) that was filed on behalf of Wilwat Properties, Inc., a party in interest with respect to the Plans participation in the Trust.

requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before August 2, 2002. All comments were to be made a part of the record.

During the comment period, the Department received one written comment from a participant in the Watkins Associated Industries, Inc. Profit Sharing Plan, who objected to the exemption and requested that no changes be made to his individual account in this Plan. The Department received no requests for a public hearing.

For further information regarding the comment or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11036) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comment received, the Department has decided to grant the exemption.

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 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of

the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act, section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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

(5) This exemption is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 85-131 and the proposal underlying this grant notice, accurately describe, where relevant, the material terms of the transaction that was consummated pursuant to this exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department hereby amends and replaces PTE 85-131. Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 8, 2002, to the sale by the Watkins Master Trust (the Trust) of its leasehold interests in certain improved real property, consisting of a building (the Building), the improvements constructed thereon (the Improvements), and a ground lease (the Ground Lease) to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the Trust, in connection with an amendment to an option to purchase provision contained in a written lease between the Trust and Watkins, as described in Prohibited Transaction Exemption 85-131 (50 FR 32333, August 9, 1985).

This exemption is subject to the following conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

(b) The sale was a one-time transaction for cash;

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified, independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, an amount that was no less than the greater of (1) the fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease; or (2) the Trust's total investment in such property, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Watkins agreed to assume all liabilities under such lease and indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 85-131 and this final exemption, refer to the proposed exemptions and the grant notice which are cited above.

Signed at Washington, DC, this 19th day of August, 2002.

Ivan L. Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002-40; Exemption Application No. D-11038]

Grant of Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 90-15, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify and replace PTE 90-15.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) that amends and replaces PTE 90-15 (55 FR 12967, April 6, 1990). PTE 90-15 is an individual exemption providing relief, since September 20, 1989, for (1) the leasing of office space in a commercial office building (the Building) by the Trust to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the plans (the Plans) participating in the Trust under the provisions of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Wilwat.

The final exemption modifies an option to purchase provision in the New Lease by allowing Wilwat to acquire the Trust's leasehold interests in the Building, including the improvements constructed thereon, and the Trust's interest in a ground lease on May 8, 2002, instead of at any time during the final six months of the New Lease renewal term ending on December 31, 2008. In addition, the exemption replaces PTE 90-15, which expired by operation of law upon the consummation of the sale. The exemption affects participants and beneficiaries of, and fiduciaries with respect to the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202)

693-8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 18, 2002, the Department published a notice of proposed exemption in the **Federal Register** at 67 FR 41521 that would amend and replace PTE 90-15. PTE 90-15 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption was requested in an application filed on behalf of the Trust and Wilwat,* pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). 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 exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before August 2, 2002. All comments were to be made a part of the record.

During the comment period, the Department received one written comment from a participant in the Watkins Associated Industries, Inc., Profit Sharing Plan, who objected to the exemption and requested that no changes be made to his individual account in this Plan. The Department received no requests for a public hearing.

For further information regarding the comment or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11038) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and

* The Department also has under consideration a similar exemption request (D-11036) that was filed on behalf of Watkins Associated Industries, Inc., the sponsor of the Trust and a party in interest with respect to the Plans participating in the Trust.

Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment received, the Department has decided to grant the exemption.

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 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act, section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 90-15 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.