

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 these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of May 1998.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98-22;
Exemption Application Nos. D-10461, D-
10462 and D-10463]

Grant of Amendment to Prohibited Transaction Exemption (PTE) 93-8 Involving the Fortunoff Pension Plans (the Plans) Located in Westbury, NY

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

ACTION: Grant of Amendment to PTE
93-8.

SUMMARY: This document contains a final exemption which amends PTE 93-8 (58 FR 7258, February 5, 1993), a purchase, leaseback and license exemption involving Plans sponsored by Fortunoff Fine Jewelry and Silverware, Inc. (FFJ) and M. Fortunoff of Westbury Corporation (M. Fortunoff) and parties in interest. These transactions are described in a notice of pendency that was published in the **Federal Register** on May 8, 1992 at 57 FR 19951.

EFFECTIVE DATE: This exemption is effective as of May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, D.C. 20210, telephone (202) 219-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 19, 1997, the Department of Labor (the Department) published a

notice of proposed exemption (the Notice) in the **Federal Register** (62 FR 66685) that would amend PTE 93-8. PTE 93-8 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 Notice was requested in an application filed on behalf of M. Fortunoff and FFJ (collectively, the Applicants) 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) (the Procedures). 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 Notice gave interested persons the opportunity to comment and to request a public hearing on the matters described therein. Although the Notice and supplemental statement were to be posted and distributed to interested persons during the month of December 1997, the Applicants stated that this action was not taken but inadvertently overlooked. Therefore, the Applicants represented that they posted copies of the Notice and supplemental statement on employee bulletin boards in company stores and executive offices and also mailed this documentation to all other participants in the Plans who were not current employees, on or about March 9, 1998. The Department received no comments or hearing requests from interested persons following the dissemination of the Notice and supplemental statement and, therefore, has determined to grant the amendment to PTE 93-8.

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

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find 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) This exemption will be 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 Summary of Facts and Representations set forth in the proposed exemption relating to PTE 93-8, as amended by this grant notice, accurately describe, where relevant, the material terms of the transactions consummated pursuant to that 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 cited above, the Department hereby amends PTE 93-8. 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 to the leasing by the Fortunoff Pension Plan—Employer Group A Plan, the Fortunoff Pension Plan—Employer Group B Plan and the Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (collectively, the Plans) to Fortunoff Fine Jewelry and Silverware, Inc. (FFJ), under the provisions of an amended lease (the Amended Lease) described in Prohibited Transaction Exemption (PTE) 93-8 (58 FR 7258, February 5, 1993), of certain real property (the Substitute Property), acquired by the Plans through

a third party exchange (the Exchange Property), as well as all remaining real estate which constitutes the leased premises (the Property), provided the following conditions are met:

(a) The terms of the Amended Lease remain at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

(b) The independent fiduciary—

(i) Determines that the acquisition and subsequent leasing of the Substitute Property by the Plans under the Amended Lease are in the best interest of the Plans and their participants and beneficiaries;

(ii) Monitors and enforces compliance with the terms and conditions of the Amended Lease, the Escrow Agreement and the new exemption, at all times; and

(iii) Appoints one or more independent fiduciaries to resolve any conflicts of interest which may develop among the Plans with respect to the Amended Lease, the Escrow Agreement, the Property, or the Plans' respective interests therein.

(c) The fair market value of the proportionate interests held by each Plan in the Property as a whole following the exchange transaction does not exceed 25 percent of each Plan's assets.

(d) The Property, the Exchange Property and the Substitute Property are all appraised by qualified, independent appraisers prior to the consummation of the exchange transaction.

(e) The base rent for the Property is adjusted annually by the independent fiduciary based upon an independent appraisal of such Property.

(f) FFI incurs all real estate taxes and other costs which are incident to the Amended Lease.

(g) The Escrow Agreement is maintained by M. Fortunoff of Westbury Corporation (M. Fortunoff), in favor of the Plans, as security for FFI's rental obligations under the Amended Lease.

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 application 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

93-8, refer to the proposed exemption, grant notice and technical correction notice which are cited above.

Signed at Washington, D.C., this 13th day of May, 1998.

Ivan L. Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10583, et al.]

Proposed Exemptions; McClain's R.V., Inc. 401(k)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and

Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, 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. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

McClain's R.V., Inc. 401(k) Profit Sharing Plan (the Plan) Located in Lake Dallas, Texas

[Application No. D-10583]

Proposed Exemption

The Department is considering granting an 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, 32847, August 10, 1990). If the exemption is granted, 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 to the proposed sale of certain unimproved real property (the Land) by the Plan to Larry McClain (Mr. McClain), the sole shareholder of McClain's R.V. Inc., the sponsor of the Plan, and a party in interest with respect