

servicing agencies. It is used as an aid for grant recipients to report the status of their expenditures.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated number of respondents is 15, 304, and the estimated time for an average respondent to reply is 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 30,608 annual burden hours associated with this collection.

*If additional information is required contact:* Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 3, 2005.

**Brenda E. Dyer,**

*Department Clearance Officer, Department of Justice.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Exemption Application No. D-11246]

#### Adoption of Amendment to Prohibited Transaction Exemption (PTE) 99-29 Involving Bankers Trust Company, Deutsche Bank Trust Company Americas (DBTCA), and Deutsche Bank, AG

**SUMMARY:** This document contains an amendment to PTE 99-29 (64 FR 40623, July 27, 1999), an exemption granted to Bankers Trust Company. PTE 99-29 permits DBTCA (formerly known as Banker's Trust Company) to continue to function as a qualified professional asset manager (QPAM) under PTE 84-14 (49 FR 9494, March 13, 1994). The amendment affects participants and beneficiaries and fiduciaries of employee benefit plans to which DBTCA served as custodian.

**EFFECTIVE DATE:** The amendment is effective as of January 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Allison Padams Lavigne, Office of Exemption Determinations, Employee Benefits Security Administration, US Department of Labor, Washington, DC 20210 at (202) 693-8540. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On February 3, 2005, the Department

published a notice of proposed exemption that would amend PTE 99-29. The amendment was requested in an application filed on behalf of DBTCA. DBTCA is a New York banking, fiduciary, record keeping custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans, and private investors worldwide, Deutsche Bank, AG indirectly wholly owns DBTCA.

The proposed amendment invited interested persons to submit comments to the Department on or before March 21, 2005. On February 17, 2005, the applicant notified the Department that the names and addresses of certain individuals who may be entitled to receive notice of the proposed amendment were contained in records that were destroyed by the events that occurred on September 11, 2001. As a result, the applicant did not notify interested persons within the three-day period specified in the proposed amendment. The applicant requested that the comment period be extended to ensure that interested persons would have a sufficient amount of time in which to provide their comments to the Department. In addition, the applicant stated that it had the names and addresses of custody clients of DBTCA as of December 31, 2002. The applicant believed that this list of clients would reasonably include all parties that would have an interest in the proposed amendment. The Department concurred with the applicant. Accordingly, on March 29, 2005, the applicant sent notice to all custody clients of DBTCA as of December 31, 2002. This notice informed interested persons of their right to comment on the proposed amendment, and informed these persons that comments were due to the Department on or before May 27, 2005.

#### Written Comments

The Department received one written comment. No requests for a public hearing were received. The comment was submitted by the applicant who wished to clarify that check ledgers, cancelled checks and class action records that are described in the notice of proposed amendment continue to be the property of the applicant, but such materials can only be effectively searched using State Street's record keeping systems. In this regard, State Street currently serves as inquiry response and information agent for the applicant, and maintains information on its systems. The applicant relies upon State Street to answer inquiries related to these records. Under the terms of the applicant's arrangement with State

Street, State Street may resign from its inquiry response and information retrieval duties on or after April 28, 2007. The applicant represents that in the event of State Street's resignation, the applicant will locate another agent who will create a similar retrieval system, or re-establish an in-house information retrieval system. Under either arrangement, records will be maintained in accordance with the terms specified under the amendment to PTE 99-29.

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-11246). The complete application file and all supplemental submissions received by the Department, are available for public inspection in the Public Disclosure Room of the Employee Benefits Security 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 adopt the amendment to PTE 99-29.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and/or 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and/or the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary provisions of section 404 of the Act which, among other things, requires a fiduciary to discharge his or her duties respecting the plan solely in the interests 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) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and/or Code, including statutory or administrative exemptions and transitional 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;

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

(4) Under section 408(a) of ERISA, the Department finds that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of such plan.

#### Exemption

Accordingly, PTE 99-29 is amended 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 32836, August 10, 1990), as set forth below:

Section I is amended to read as follows: "Bankers Trust Company (now known as DBTCA) shall not be precluded from functioning as 'qualified professional asset manager' pursuant to Prohibited Transaction Exemption 84-14 (49 FR 9494, March 13, 1994) (PTE 94-14) for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company pled guilty on March 11, 1999 and ending July 27, 2009, solely because of a failure to satisfy section I(g) of PTE 84-14 as a result of the conviction of Bankers Trust Company for felonies described in the March 11, 1999 felony information (the Information) entered in the U.S. District Court for the Southern District of New York, provided that:"

Section I(c) is amended to read as follows: "The custody operations that were part of Bankers Trust Company at the time of the March 11, 1999 information, and which have subsequently been reorganized as part of Global Institutional Services (GIS), are subject to an annual examination of its abandoned property and escheatment policies, procedures and practices by an independent public accounting firm. The examination required by this condition shall determine whether the written procedures adopted by Bankers Trust Company are properly designed to

assure compliance with the requirements of ERISA. The annual examination shall specifically require a determination by the auditor as to whether the Bank has developed and adopted internal policies and procedures that achieve appropriate control objectives and shall include a test of a representative sample of transactions, fifty percent of which must involve ERISA covered plans, to determine operational compliance with such policies and procedures. The auditor shall issue a written report describing the steps performed by the auditor during the course of its examination. The report shall include the auditor's specific findings and recommendations. This requirement shall continue to be applicable to the custody operations that were part of Bankers Trust Company as of March 11, 1999, notwithstanding any subsequent reorganization of the custody operation function during the term of the exemption. *Such audit requirements shall be applicable for any year or part thereof in which DBTCA held ERISA covered plan assets in custody.*"

Section III(a) is amended to read as follows: "For purposes of this exemption, the term 'Bankers Trust Company' includes Bankers Trust Company, and any entity that was affiliated with Bankers Trust Company prior to the date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, other than BT Alex. Brown Incorporated and its subsidiaries. *This term also refers to Deutsche Bank Trust Company Americas (DBTCA).*"

For a more complete statement of facts and representations supporting the Department's decision to grant PTE 99-29, refer to the proposed exemption (64 FR 30360, July 7, 1999), and the grant notice (64 FR 30360, June 7, 1999), and the grant notice (64 FR 40623, July 27, 1999). For a more complete statement of fact and representations supporting the Department's decision to amend PTE 99-29, refer to the notice of proposed amendment to PTE 99-29 (70 FR 5699, February 3, 2005).

Signed at Washington, DC, this 31st day of October, 2005.

**Ivan L. Strasfeld,**

*Director, Office of Exemption Determinations,  
Employee Benefits Security Administration,  
Department of Labor.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-57,143]

#### ACCPAC International, Inc., Customer Support, Santa Rosa, CA; Notice of Negative Determination on Reconsideration

By letter of August 19, 2005, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of ACCPAC International, Inc., Customer Support, Santa Rosa, California. The denial notice was signed on June 24, 2005, and published in the **Federal Register** on July 20, 2005 (70 FR 41793).

The investigation revealed that the petitioning workers of this firm or subdivision do not produce an article within the meaning of Section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and further conveys that the workers of the subject firm supported the production of the software during the pre-production phases. The petitioner further conveys that the software was recorded on CD media or floppy diskettes for further distribution to customers.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated the workers of the subject firm provided development, marketing, sales, professional services, administrative, training and technical support of the ACCPAC software. The technical support representatives of the subject firm provided post-sale technical assistance, troubleshooting and training via telephone to ACCPAC customers and business partners. In addition, the workers of the subject firm provided some support to software development prior to its release on gold CDs. However, the physical gold CDs are not sold to customers, but rather represent a master copy of the software, which in its turn is sent for mass-production to an independent non-affiliated party vendor for further duplication on CD-ROMs, floppy diskettes or paper. The official supported the information previously provided by the subject firm that software created at the subject facility is not mass-produced on any media device by the subject firm for further duplication and distribution to