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By Federal Express

Office of Regulations and Interpretations,
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

ATTN: 408(b)(2) Amendment

To Whom It May Concern:

This letter is in furtherance of my comment of February 8, 2008 (copy of enclosed), which comment expressed concern that the preamble discussed application of the excise tax utilizing revised standards, but the proposed operative language did not include any such discussion.

There may be an issue with regard to whether there has been adequate notice of amendments to regulations interpreting the excise tax under Internal Revenue Code (the "Code") Section 4975. In this connection, it is important that any final regulation conform to the Administrative Procedure Act and other laws applicable to the issuance of regulations in order not to raise any question concerning the validity of the regulation. The Department may be assisted in this regard by the fact that the Reorganization Plan No. 4 of 1978, while issued administratively was later the subject of legislation and reflects the intent by Congress that the relevant provisions of Code Section 4975 and ERISA Section 406 be interpreted in the same manner. Therefore, it could be argued that this intent combined with the notice in the preamble provide sufficient basis for expanding application of the regulation to Code Section 4975 if this is the direction in which the Department wished to proceed. However, it would be helpful if the Department specifically discussed the legal basis supporting why the procedures it followed were sufficient for any final action it takes.

Please note that if the Department re-proposes the regulation, I will consider submitting a comment supporting more stringent standards for plans that are not subject to Title I of ERISA. This is based on my information and belief that records may exist that demonstrate that such plans have been materially harmed by the relative lack of protection in the conditions in PTE 86-128 for transactions involving such plans. I have not urged such a standard in the present regulation as there was not any opportunity for notice and comment on this issue in the proposed regulation.

Thank you for your attention to and consideration of this comment.

Sincerely,

Marcia S. Wagner

MSW/krk
Enclosure