

(3) If granted, the proposed amendment will be applicable to a transaction only if the conditions specified in the class exemption are met.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendment

Under section 408(a) of ERISA 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 proposes to amend PTE 97-11 as set forth below:

Section III(b) is amended to read: "The term "IRA" means an individual retirement account described in Code section 408(a) or an education individual retirement account described in section 530 of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions."

Signed at Washington, DC this 6th day of October 1998.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98-28213 Filed 10-20-98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number: D-10567]

Proposed Amendment to Prohibited Transaction Exemption 93-33 (PTE 93-33) for the Receipt of Certain Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained

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

ACTION: Notice of Proposed Amendment to PTE 93-33.

SUMMARY: This document contains a notice of pendency before the Department of Labor of a proposed amendment to PTE 93-33. PTE 93-33 is a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a bank, provided that the conditions of the exemption are met. The proposed amendment, if adopted, would affect individuals with beneficial interests in such plans who receive such services as well as the banks that provide the services.

DATES: If adopted, the proposed amendment would be effective January 1, 1998. Written comments and requests for a public hearing should be received by the Department on or before December 7, 1998.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N-5649, 200 Constitution Ave, NW, Washington, DC 20210, (Attn: D-10567).

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams Lavigne, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U. S. Department of Labor, (202) 219-8971 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 93-33 (58 FR 31053, May 28, 1993, as amended, 59 FR 22686, May 2, 1994). PTE 93-33 provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA)

and the sanctions resulting from the application of sections 4975 (a) and (b), 4975(c)(3) and 408(e)(2) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1)(D), (E) and (F) of the Code.¹ The amendment proposed herein was requested in an exemption application dated January 26, 1998, filed by the American Bankers Association (the ABA). The ABA is the largest banking trade association in the United States representing the interests of banking institutions. Its membership includes community, regional and money center banks and holding companies, savings associations, trust companies and savings banks. The application was filed pursuant to section 408(a) of ERISA 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).

PTE 93-33, as amended, permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a bank pursuant to an arrangement in which the account balance in the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided the conditions of the exemption are met.

The ABA requests an amendment to PTE 93-33 which would expand the definition of the term "IRA" as defined in section III(b) of the exemption to include any plan account (currently existing or that Congress may create in the future) subject to the provisions of section 408(e) and/or section 4975 of the Code. The Department has decided not to expand the definition of the term "IRA" to include any plan account subject to the provisions of section 408(e) and/or section 4975 of the Code because the conditions contained in PTE 93-33, as amended, were developed based upon the specific characteristics of the IRAs and Keogh Plans described in section III(b) and (c) respectively. The Department does not believe that a sufficient showing has been made that the safeguards contained in the exemption would adequately address the concerns that the Department may have with regard to an unidentified class of new accounts.

In the alternative, the ABA requests that the Department expand the definition of the term "IRA" to include

¹ Section 102 of Reorganization Plan No. 4 of 1978 (42 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

the following new investment vehicles: Roth IRAs, education IRAs, Simple Retirement Accounts and Medical Savings Accounts. Section III(b) of the exemption defines the term "IRA" as an individual retirement account described in Code section 408(a). The definition further states that, for purposes of this exemption, the term "IRA" shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code which provides participants with the unrestricted authority to transfer their SEP balances to IRAs sponsored by different financial institutions.

The Taxpayer Relief Act of 1997 (TRA) established the Roth IRA by adding section 408A to the Code and the education IRA by adding section 530 to the Code.² The Small Business Job Protection Act of 1996 amended section 408 of the Code to create the Simple Retirement Account by adding section 408(p) to the Code.³ The Medical Savings Account was established by the Health Insurance Portability Act of 1996 by adding section 220 to the Code.⁴

Section 408A(a) of the Code provides that, except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan. Section 408A(b) of the Code provides that, for purposes of this title, the term *Roth IRA* means an individual retirement plan (as defined in section 7701(a)(37)) which is designated at the time of the establishment of the plan as a Roth IRA.

In Advisory Opinion 98-03A (March 6, 1998), the Department stated that a Roth IRA which satisfies the definition of an individual retirement plan contained in section 7701(a)(37)(A)⁵ of the Code is an "individual retirement account" described in section 408(a) of the Code for purposes of the definition of the term "IRA" contained in section III(b) of PTE 97-11 (62 FR 5855 (February 7, 1997))⁶. Therefore, a Roth

IRA, as described above, which is not an employee benefit plan covered by Title I of ERISA (except for certain SEPs and Simple Retirement Accounts described in section 408(k) and 408(p) of the Code, respectively) would be covered by the relief provided in PTE 97-11, if all conditions therein are met. In this regard, we note that the definition of the term "IRA" used in section III(b) of PTE 93-33 is identical to the definition of an IRA contained in section III(b) of PTE 97-11 (except that the definition of the term "IRA" in PTE 97-11 was amended to include Simple Retirement Accounts). Accordingly, since the relevant portion of the definition of IRA under PTE 97-11 is identical to the language contained in PTE 93-33, the Department is of the view that a Roth IRA would be covered by the relief provided in PTE 93-33, if all the conditions therein are met. Thus, there is no need to specifically amend PTE 93-33 to include Roth IRAs.

Section 530(b)(1) of the Code provides in part, that the term "education individual retirement account" means a trust created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of the designated beneficiary of the trust (and designated as an education individual retirement account at the time created or organized). Section 530(b)(1) further provides: but only if the written governing instrument creating the trust meets the following requirements:

(A) no contribution will be accepted—
(i) unless it is in cash, (ii) after the date on which such beneficiary attains age 18, or (iii) except in the case of rollover contributions, if such contributions would result in aggregate contributions for the taxable year exceeding \$500; (B) the trustee is a bank (as defined in section 408(n) of the Code or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent

with the requirements of this section or who has so demonstrated with respect to any individual retirement plan; (C) no part of the trust assets shall be invested in life insurance contracts; (D) the assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund; and (E) upon the death of the designated beneficiary, any balance to the credit of the beneficiary shall be distributed within 30 days after the date of death to the estate of such beneficiary.

The Education IRA is subject to disqualification provisions which are similar to those in section 408(e)(2) and (4) of the Code that are applicable to IRAs described in section 408(a) of the Code.⁷ In addition, as with section 408(a) IRAs, the Education IRA balance can be transferred to different sponsoring institutions.⁸ Further, the TRA amended the definition of *plans* as defined in section 4975(e)(1) of the Code to include an educational IRA described in section 530 of the Code. Based on the ABA's representations, it appears that Education IRAs share many of the same characteristics as those IRAs covered by the exemption. Thus, the Department sees merit in the ABA's request, and, accordingly, has modified the definition of IRA in section III(b) of PTE 93-33 to include Education IRAs.

Simple Retirement Accounts are defined in section 408(p) of the Code as an individual retirement plan (as defined in section 7701(a)(37))—(A) with respect to which the requirements of paragraphs (3), (4) and (5) are met; and (B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement. Simple Retirement Accounts are funded by employee contributions and matching employer contributions.⁹ Section 408(p)(7) of the Code provides that participants of Simple Retirement Accounts have the unrestricted authority to transfer their account balances without cost or penalty to Simple Retirement Accounts sponsored by different financial institutions. In its application, the ABA noted that the Department modified the definition of the term "IRA" under PTE 97-11 to include Simple Retirement Accounts. The Department agrees with the ABA and has modified section III(b) under the proposed amendment to include Simple Retirement Accounts.

Finally, the ABA represents that a Medical Savings Account is a tax-exempt trust or custodial account established to pay medical expenses.

²Taxpayer Relief Act of 1997 (Pub. L. 105-34, title III, sec. 302(a) and sec. 213(a), August 21, 1997, 111 Stat 788)

³Small Business Job Protection Act of 1996 (Pub. L. 104-188, title I, sec. 1421, August 20, 1996, 110 Stat 1755)

⁴Health Insurance Portability Act of 1996 (Pub. L. 104-191, title III, sec. 301(a), August 21, 1996, 110 Stat 1936; amended Pub. L. 105-34, title XVI, sec. 1602, August 5, 1997, 111 Stat 788)

⁵Section 7701(a)(37) of the Code defines the term "individual retirement plan" to mean: (A) an individual retirement account described in section 408(a) of the Code, and (B) an individual retirement annuity described in section 408(b) of the Code.

⁶PTE 97-11 permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or, if self-employed, a Keogh Plan, is established or maintained or by members of his

or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that the conditions of the exemption are met. The term "IRA" is defined in section III(b) of PTE 97-11 as an individual retirement account described in section 408(a) of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides the participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

⁷See section 530(e) of the Code.

⁸See section 530(d)(5) of the Code.

⁹See section 408(p)(2)(A) of the Code.

The ABA exemption application included a copy of IRS Notice 96-53, 1996-51 I.R.B. 5, (December 6, 1996) (the Notice) which describes the Medical Savings Accounts. Although the Notice states that a number of the rules that apply to Medical Savings Account also apply to IRAs, the Notice also states that Medical Savings Accounts differ from IRAs in important respects. In this regard, neither the ABA application nor the Notice discuss these differences. In addition, the Department does not believe that a sufficient showing has been made that the safeguards and conditions currently contained in PTE 93-33 are relevant in the context of Medical Savings Accounts. Consequently, the Department has determined not to propose the requested relief for Medical Savings Accounts.

Notice to Interested Persons

Because many participants in IRAs and Keogh Plans and banks could conceivably be considered interested persons, the only practical form of notice is publication in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the IRAs and Keogh Plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

(2) The proposed amendment if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code including statutory or administrative exemptions and transitional rules. 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.

(3) If granted, the proposed amendment will be applicable to a transaction only if the conditions specified in the class exemption are met.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments will be made a part of the

record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced application at the above address.

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Signed at Washington, DC this 6th day of October, 1998.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.
[FR Doc. 98-28214 Filed 10-20-98; 8:45 am]
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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Opera Section (Education & Access category) to the National Council on the Arts will be held on November 16-17, 1998. The panel will meet from 9:00 a.m. to 6:00 p.m. on November 16th and from 9:00 a.m. to 3:30 p.m. on November 17th in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 1:00 p.m. to 2:30 p.m. on November 17th, will be open to the public for a policy discussion on field

issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on November 16th and from 9:00 a.m. to 1:00 p.m. and 2:30 p.m. to 3:30 p.m. on November 17th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: October 14, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98-28160 Filed 10-20-98; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Notice of Public Meeting

Date: Monday, October 26, 1998, 1:30 p.m. to 4:30 p.m. (CST).

Address: The meeting site will be: The Admiral's Club, Terminal III, Level 2, Chicago O'Hare International Airport, Chicago, IL 60666.

Status: The meeting will be open to the public. However, seating will be limited. Members of the public wishing to attend should contact Doug Seay, Research Director, at (202) 523-8217 to make arrangements for attendance.

Summary: At the meeting of the Research Subcommittee of the National Gambling Impact Study Commission, established under