

**DEPARTMENT OF LABOR****Employee Benefits Security Administration****Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: 2010–23, D–11500, Carle Foundation Hospital & Affiliates Pension Plan; 2010–24, D–11565, Citizens Bank Wealth Management, N.A.; and 2010–25, D–11602, State Street Bank and Trust Company (State Street); et al.**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon

the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Carle Foundation Hospital & Affiliates Pension Plan, Located in Urbana, Illinois. [Prohibited Transaction Exemption 2010–23; Exemption Application No. D–11500]

**Exemption**

The restrictions in section 406(a)(1)(A) and (D) and section 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), (D), and (E) of the Code, shall not apply to the sale of a certain limited partnership interest (the LPI) by the Carle Foundation Hospital & Affiliates Pension Plan (the Plan) to Carle Foundation Hospital (the Employer), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) The terms and conditions of the sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated third party;

(c) The sales price is the greater of: (1) The fair market value of the LPI as of the date of the sale, as determined by a qualified, independent appraiser, or (2) the Plan's total capital contributions as of the date of the sale, plus imputed earnings (calculated based upon the applicable one-month Treasury bill rates) from the date of the Plan's acquisition of the LPI to the date of the sale;

(d) The Plan pays no commissions, fees, or other expenses in connection with the sale; and

(e) The Plan fiduciaries review and approve the methodology used by the qualified, independent appraiser, ensure that such methodology is properly applied in determining the fair market value of the LPI, and also determine whether it is prudent to go forward with the proposed transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 15, 2010 at 75 FR 12305.

**Written Comments**

The Department received two written comments from participants of the Plan with respect to the notice of proposed exemption. One participant, a former employee, inquired how much longer she must wait to obtain a distribution of her remaining account balance. Another participant, who is a retiree and requested a hearing, also inquired about the distribution of her remaining account balance and expressed concern about lost investment opportunities and earnings.

The applicant responded that it intends to consummate the proposed sale of the LPI as soon as practicable following publication of

a final exemption, if granted, in the **Federal Register**. Each affected participant will then receive his or her *pro rata* share of the cash proceeds from the sale of the LPI, as well as his or her *pro rata* share of the imputed earnings. Because the LPI is an illiquid investment (constituting less than one percent of total Plan assets) and the applicant was unable to identify an unrelated purchaser, it requested an administrative exemption from the Department to purchase the LPI from the Plan. The Department also notes that the grant of the exemption will facilitate the commenters' requested distribution, and the conditions, including the sales price formula described in condition (c), provide appropriate safeguards consistent with the requirements of section 408(a).

The Department has determined not to hold a public hearing. The Department's regulations provide that a hearing will be held where necessary to fully explore material factual issues identified by the person requesting the hearing. *See* 29 CFR 2570.46. In this case, the Department concludes that the commenter has not identified any material factual issues that would require a hearing.

Based upon the information contained in the entire record, the Department has determined to grant the proposed exemption.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

Citizens Bank Wealth Management, N.A., Located in Flint, Michigan. [Prohibited Transaction Exemption 2010–24; Exemption Application No. D–11565]

**Exemption****Section I. Transaction**

The restrictions of section 406(a)(1)(A) and (D) and section 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), (D), and (E) of the Code, shall not apply, effective December 16, 2008, to the past sale of certain Auction Rate Securities (ARS) by the Four-Way Tool & Die, Inc. Profit Sharing Plan and Trust (the Plan) to Citizens Republic Bancorp (Citizens Republic), a party in interest with respect to the Plan, provided that the following conditions were satisfied:<sup>1</sup>

(A) The subject ARS were acquired for the Plan by Citizens Bank Wealth Management, N.A. (the Trustee), acting in its capacity as trustee of the Plan, from an independent broker;

(B) The last auction for each of the ARS was unsuccessful;

(C) The sale of the ARS was directly between the Plan and Citizens Republic for solely cash consideration against prompt delivery of the ARS;

(D) The sale price for each of the ARS was equal to the par value, plus any accrued but unpaid interest;

<sup>1</sup> For purposes of this exemption, references to section 406 of the Act should be read to refer also to the corresponding provisions of section 4975 of the Code.

(E) The Plan did not waive any rights or claims in connection with the sale;

(F) The decision to sell the ARS to the Trustee was made by a Plan fiduciary independent of the Trustee;

(G) The Plan did not pay any commissions or transaction costs in connection with the sale;

(H) The sale was not part of an arrangement, agreement, or understanding designed to benefit a party in interest to the Plan;

(I) Upon termination of the Plan, the Plan participants received 100 percent of their account balances, and as a result of the pre-termination sale of the ARS to Citizens Republic at face value, plus any accrued but unpaid interest, no participant was adversely affected by the absence of an auction market for the ARS or the resulting decline in their market value;

(J) The Trustee and its affiliate, as applicable, maintain, or cause to be maintained, for a period of at least six (6) years from the date of the sale, such records as are necessary to enable the persons described in paragraph (K), below, to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to the Plan that engaged in the sale, other than the Trustee and its affiliate, as applicable, shall be subject to a civil penalty under section 502(j) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required, below, by paragraph (K); and

(ii) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of the Trustee or its affiliate, as applicable, such records are lost or destroyed prior to the end of the six-year period; and

(K)(i) Except as provided in subparagraph (ii), below, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (J), above, are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission;

(b) Any fiduciary of the Plan, or any duly authorized employee or representative of such fiduciary; or

(c) The employer of participants of the Plan, and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities;

(ii) None of the persons described above in paragraph (K)(i)(b) or (c) of shall be authorized to examine trade secrets of the Trustee, or commercial or financial information which is privileged or confidential; and

(iii) If the Trustee refuses to disclose information on the basis that such information is exempt from disclosure, the Trustee shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the

reasons for the refusal and that the Department may request such information.

## Section II. Definitions

For purposes of this exemption:

(A) The term “affiliate” means any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person (with respect to the Trustee, “affiliate” includes, but is not limited to, its parent corporation, Citizens Republic Bancorp)

(B) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(C) The term “Auction Rate Securities” or “ARS” means securities that are debt instruments (generally with a long-term nominal maturity) with an interest rate that is reset at specific intervals through a Dutch Auction process;

(D) A person is “independent” of the Trustee if the person is (1) not the Trustee or an affiliate, and (2) not a “relative” (as defined in section 3(15) of the Act) of the party engaging in the transaction; and

(E) The term “Plan” means the Four-Way Tool & Die, Inc. Profit Sharing Plan and Trust, which is an employee benefit plan as defined in section 3(3) of the Act, and its related trust, which is an entity holding plan assets within the meaning of 29 CFR 2510.3-101, as modified by section 3(42) of the Act.

*Effective Date:* This exemption is effective as of December 16, 2008.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on April 8, 2010 at 75 FR 17966.

## Written Comments

No comments were received by the Department with respect to the notice of proposed exemption.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 693-8557. (This is not a toll-free number.)

State Street Bank and Trust Company (State Street), Located in Boston, MA. [Prohibited Transaction Exemption 2010-25; Exemption Application No. D-11602]

## Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(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,<sup>2</sup> shall not apply as of December 22, 2009 to the cash sale of certain fixed income securities (the Securities) for an aggregate purchase price of \$113,977,880.15 by the Quality D Short-Term Investment Fund (the Fund) to State Street, a fiduciary with respect to the Fund and a party in interest with respect to employee

<sup>2</sup>For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

benefit plans (the Plans) invested, directly or indirectly, in the Fund, provided that the following conditions are met:

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

(b) The Fund received an amount which was equal to the sum of (1) the aggregate current amortized cost of the Securities as of the date of the transaction plus (2) the aggregate accrued interest on the Securities through the date of the transaction, calculated at the applicable contract rate for each of the Securities;

(c) The Fund did not bear any commissions, fees, transaction costs, or other expenses in connection with the sale;

(d) The amount received by the Fund with respect to each of the Securities was no less than the fair market value of each such Security, based upon the closing price obtained from an independent pricing service, as of the close of business on the date prior to the date of the transaction;

(e) State Street, as trustee of the Fund, determined that the sale of the Securities was appropriate for and in the best interests of the Fund, and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction;

(f) State Street took all appropriate actions necessary to safeguard the interests of the Fund and the Plans invested, directly or indirectly, in the Fund, in connection with the transaction;

(g) State Street and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (h)(1), to determine whether the conditions of this exemption have been met, except that:

(1) No party in interest with respect to a Plan which engages in the covered transaction, other than State Street and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by sections 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (h)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of State Street or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided, in paragraph (h)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of any Plan that engages in the covered transaction, or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transaction, or any

authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in the covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in paragraphs (h)(1)(B)–(D) shall be authorized to examine trade secrets of State Street or its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should State Street refuse to disclose information on the basis that such information is exempt from disclosure, State Street shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

**Effective Date:** This exemption is effective as of December 22, 2009.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 30, 2010 at 75 FR 22860.

**FOR FURTHER INFORMATION CONTACT:** Brian Shiker of the Department, telephone (202) 693–8552. (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 29th day of July, 2010.

**Ivan Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Application Nos. and Proposed Exemptions; D–11569, Sherburne Tele Systems, Inc.; and D–11597, John D. Simmons Individual Retirement Account; et al.

**AGENCY:** Employee Benefits Security 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 (ERISA or 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 requests 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 requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. **Attention:** Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to:

“[moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov)”, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**Warning:** If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

#### 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, 5 U.S.C. App. 1 (1996), 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.

Sherburne Tele Systems, Inc., 2008 Amended and Restated Employee Stock Ownership Plan and Trust (the “ESOP”), Located in Big Lake, Minnesota [Application No. D–11569]