turn. However, in view of the fact that taxpayers may have relied on indications to the contrary in Publication 590 (dated April 1975) the Service will not assess the 6% excise tax with respect to an excess contribution made to an individual retirement savings program for any tax year ending before the date of this release, provided that the excess amount (and any earnings thereon) is withdrawn by the participant no later than the time required for filing his tax return for the year in question (including any extensions). No deduction would be allowed for the amount returned and any earnings thereon would be includible in gross income.

Persons making such a timely withdrawal should report on line 10 of Form 5329 the amount paid under all individual retirement savings arrangements reduced by the amount of the withdrawal. Persons who have already filed Forms 1040 and 5329 and who made a timely withdrawal should file claim for refund (Form 843) for any tax paid as a result of the excess contributions.

Future editions of Publication 590 will contain a statement clarifying the treatment of excess contributions.

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JOINT IRS-LABOR DEPARTMENT LETTER TO NCCMP REGARDING EXEMPTIONS FROM PROHIBITED TRANSACTIONS FOR MULTIEMPLOYER PLANS

February 13, 1976

Mr. Robert Georgine
Chairman
National Coordinating Committee
for Multiemployer Plans
Suite 603
815 16th Street, N.W.
Washington, D.C. 20006

Dear Mr. Georgine:

Our two agencies have for more than a year expended considerable efforts analyzing transactions customarily engaged in by multiemployer plans and parties in interest (disqualified persons), which have been brought to our attention by representatives of the National Coordinating Committee for Multiemployer Plans and others, with the view to determining whether exemptions were proper from the "prohibited transactions" provisions added by ERISA. As you know, the class exemption which has been issued for various types of transactions between plans (including multiemployer plans) and securities broker-dealers and reporting banks has lifted restrictions that otherwise would have prohibited or impeded customary securities transactions engaged in by plans and their fiduciary asset managers. Other projects are currently nearing completion, such as the three class exemptions proposed on June 2, 1975, and a project to issue proposed regulations and a class exemption relating to service-providers to plans, which will add considerable additional relief (both prospective and retroactive) from the prohibited transactions provisions for many other ordinary and customary transactions engaged in by multiemployer plans.

In addition to the foregoing projects, we are now prepared to entertain an application for class exemptions from the prohibitions of section 406(a)(1) of ERISA and section 4975(c)(1)(A) through (D) of the Code, covering (1) the sale of goods to multiple employer plans by parties in interest (disqualified persons), (2) loans to such plans to satisfy temporary cash emergency needs, and (3) loans from such plans to service providers. Further, as noted in the attached chart (which indicates our preliminary views as to the documents in which we may deal with the multiple-employer transactions brought to our attention), we will also consider exemption from section 406(b)(2) of ERISA for certain transactions. In all of these matters, if you apply for same, we will consider, on an expedited basis and as a matter of the highest priority, retroactive and prospective exemptions.

Based on the information that has been furnished to us, we are not at this time aware of any other transactions in which multiple employer plans ordinarily and customarily become involved that would necessitate any broader exemptions for MEPs in particular than those indicated above (except for one or two relatively infrequent situations noted in the attached chart for which you may wish to make separate exemption applications). Of course, as other transactions are identified by your organization or others as needing exemptive relief, we will be pleased to consider them on receipt of applications therefor.

If you have any question about the matters herein noted, we would suggest you call Alan Lebowitz (964-3065) at the IRS or William Chadwick (523-9044) at OEBS.

Very truly yours,

/s/ James D. Hutchinson
Administrator for Pension and
Welfare Benefit Programs
Office of Employee Benefits
Security
Department of Labor

Alvin D. Lurie
Assistant Commissioner
(Employee Plans and
Exempt Organizations)
Internal Revenue Service

Attachment

PROJECTS ADDRESSING MEP PROBLEMS

PROJECTS

TRANSACTIONS	NCCMP Class Exemption 77-10, 6/23/77	A-B-C 41 FR 12740 3/26/76	Service Provider Regs 2550.408b-2 6/24/77	Separate Class Exemption (Service Provider)	Other	COMMENTS
MEP leases office space to PII.	X (2)	X (1)				1. A-B-C does not contain an exemption from section 406(b)(2) of ERISA.

PROJECTS

TRANSACTIONS	NCCMP Class Exemption	A-B-C	Service Provider Regs	Separate Class Exemption (Service Provider)	Other	COMMENTS
MEP provides services to PII.	2 X	1 X				2. The NCCMP Class Exemption will contain an exemption from section 406(b)(2). Exemp 80-8A
MEP sells goods to PII.	2 X	1 X				
MEP leases goods to PII.	2 X	1 X				
MEP leases office space from a PII. No 406(b) exemp			X			
MEP is provided services by a PII. No 406(b) excmp			X			
MEP buys goods from a PII.	X			X		
Pro Rata Allocation — MEP secures office space or administrative services jointly with a PII. NOT PT		3 X	Not PT			3. The preamble to A-B-C provides that this transaction is not prohibited.
MEP lends money to owner of real property. Borrower contracts with contributing employer to make improvements. NOT PT		4 X				4. The preamble to A-B-C provides that generally this transaction is not prohibited.
MEP transfers assets to HMO.					5 X	5. This transaction is probably not prohibited by 406 or 4975. If prohibited, it may be exempt under 408(b)(2) and 4975(d)(2). NCCMP should apply for a separate class exemption.
Allocation of assets between plans by fiduciary - definite formula.	2 X		X	PTE 80-8A		
Allocation of assets between plans by service provider - definite formula.	2 X		X	"		
Allocation of assets between plans by fiduciary - discretionary formula.	2 X		X	Denied in 80-8A		6. Situations brought to our attention by NCCMP probably do not involve knowledge. Code restrictions limited to highly compensated employees.
7 MEP performs allocation function for related plans.	2 X	X				7. We would prefer to deal with this problem in a separate individual or class exemption.

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PROJECTS ADDRESSING MEP PROBLEMS

PROJECTS

TRANSACTIONS	NCCMP Class Exemption	A-B-C	Service Provider Regs	Separate Class Exemption (Service Provider)	Other	COMMENTS
Erroneous payment of benefits.					X[6]	
MEP construction loan to contributing employer.	————	X				
Violation of §407 10% limit.					X[7]	
MEP purchases or sells real property from or to a PII.					ALASKA TEAMSTERS (unimproved)	
MEP lends money to PII.	X[8]					8. NCCMP Class Exemption limited to loans to service providers. Loans to employers and unions not covered.
MEP lends money to MEP	X[9]					9. If related plans are parties in interest with respect to each other, the loan will be exempt only if the borrower is a party in interest because it is a service provider.
MEP borrows money from PII.	X[10]					10. NCCMP Class Exemption limited to loans for temporary cash emergency needs.

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