



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2021-03; Exemption

Application Nos. L-12000 & L-12001]

Exemption from Certain Prohibited Transaction Restrictions

Involving the Electrical Insurance Trustees Insurance Fund

and the Electrical Joint Apprenticeship and Training Trust

(the Plans or the Applicants)

Located in Alsip, Illinois

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of Exemption.

SUMMARY: This document contains a notice of an exemption 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). The exemption permits: (a) the sale (the Sale) by the Electrical Joint Apprenticeship and Training Trust (the EJAT Trust) of 5.11 acres of unimproved real property (the Property) to the Electrical Insurance Trustees Insurance Fund (the EIT Fund), a party in interest with respect to the EJAT Trust; and (b) the EIT Fund's granting of a right of first offer (the Right of First Offer) to the EJAT Trust to purchase the Property back from the EIT Fund, provided all of the conditions described below are satisfied.

DATES: This exemption will be in effect on the date that this grant notice is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693-8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 22, 2021, the Department published a notice of proposed exemption in the Federal Register at 86 FR 15258, permitting: (a) the Sale by the EJAT Trust of the Property to the EIT Fund, a party in interest with respect to the EJAT Trust; and (b) the EIT Fund's granting of the Right of First Offer to the EJAT Trust to purchase the Property back from the EIT Fund.

This exemption provides only the relief specified in the text of the exemption. It provides no relief from violations of any law other than the prohibited transaction provisions of ERISA.

The Department makes the requisite findings under ERISA section 408(a) based on adherence to all of the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicants. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicants requested an individual exemption pursuant to ERISA section 408(a) in accordance with the

procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), 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. Accordingly, the Department grants this exemption under its sole authority.

WRITTEN COMMENTS

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for a hearing were due to the Department by May 6, 2021. The Department received one written comment and one request for a public hearing. The commenter raised no substantive issues regarding the proposed transactions, and the hearing requestor provided no reasons for requesting the hearing.¹ Accordingly, after considering the entire record developed in connection with the Applicants' exemption requests, the Department has determined to grant the exemption described below. The exemption contains minor clarifications to the proposal.

¹The Department made several attempts to contact the requestor for further information. However, no response was received.

The complete application files (L-12000 & L-12001) are available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. 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 22, 2021, at 86 FR 15258.

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 ERISA section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a)(1)(B).

(2) As required by ERISA section 408(a), the Department hereby finds that the exemption is (1)

administratively feasible, (2) in the interests of affected plans and of their participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other ERISA provisions, 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 determining whether the transaction is in fact a prohibited transaction; and

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

Accordingly, the following exemption is granted under the authority of ERISA section 408(a) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011):

EXEMPTION

SECTION I. COVERED TRANSACTIONS

The restrictions of ERISA sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) shall not apply to:

(a) EJAT Trust's sale of the Property to the EIT Fund,

which is a party in interest with respect to the EJAT Trust;² and (b) the EIT Fund's grant of the Right of First Offer to the EJAT Trust to purchase the Property back from the EIT Fund, provided conditions set forth in (a) through (1) below 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 EJAT Trust and the EIT Fund as an arm's-length transaction between unrelated and independent parties each of whom have full knowledge of the relevant facts and are not under any compulsion to buy or sell;

(c) The EJAT Trust Independent Fiduciary has not and will not enter into any agreement or instrument that violates section 410 of ERISA, and prudently:

(1) Represents the EJAT Trust's interests for all purposes with respect to the Sale;

(2) Determines that the Sale is in the interest and protective of the EJAT Trust and the EJAT Trust participants based on, among other things, an updated appraisal report described in (c) (5) below;

(3) Reviews and approves the terms and conditions of the Sale;

(4) Engages the EJAT Trust Independent Appraiser, ensures the Appraiser's independence, and ensures that the

² The EIT Fund is a party in interest with respect to the EJAT Trust under section 3(14)(C) of the Act because it is an employer whose employees participate in the EJAT Fund.

Appraiser bases its opinions upon complete, current, and accurate information;

(5) Ensures that the EJAT Trust's Independent Appraiser renders an updated fair market valuation of the Property, which is current as of the date of the Sale;

(6) Reviews the EJAT Independent Appraisal Report and the updated appraisal described in (c)(5), confirms that the underlying methodologies are reasonable and accurate, and prudently concludes that the appraisals can reasonably be relied upon; and

(7) Determines whether it is appropriate for the EJAT Trust to proceed with the Sale and whether the Sale is consistent with each condition of this exemption;

(d) The EIT Fund Independent Fiduciary has not and will not enter into any agreement or instrument that violates section 410 of ERISA, and prudently:

(1) Represents the EIT Fund's interests for all purposes with respect to the Sale;

(2) Determines that the Sale is in the interest and protective of the EIT Fund and the EIT Fund participants based on, among other things, an updated appraisal report described in (d)(5) below;

(3) Reviews and approves the terms and conditions of the Sale;

(4) Engages the EIT Fund Independent Appraiser for the Sale, ensures the Appraiser's Independence, and

ensures that the Appraiser bases its opinions upon complete, current, and accurate information;

(5) Ensures that the EIT Fund's Independent Appraiser renders an updated fair market valuation of the Property, which is current as of the date of the Sale;

(6) Reviews the EIT Fund Independent Appraisal Report and the updated appraisal described in (d) (5), confirms that the underlying methodologies are reasonable and accurate, and prudently concludes that the appraisals can reasonably be relied upon; and

(7) Determines whether it is appropriate for the EIT Fund to proceed with the Sale consistent with each condition of this exemption;

(e) The Sale is not part of an agreement, arrangement, or understanding designed to benefit any party other than the EJAT Trust and the EIT Fund;

(f) Any use of the Property by the EIT Fund and the Related Plans that is described in PTEs 76-1 and 77-10 complies with the conditions of those exemptions;

(g) No later than 90 days after the Sale is completed, the EJAT Trust and the EIT Fund Independent Fiduciaries each will submit a written statement to the Department documenting that the Sale has met all of the exemption requirements;

(h) The EIT Fund Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or

understanding regarding the Sale that indemnifies the EIT Fund Independent Fiduciary, in whole or in part, or waives any liability for negligence or for violation of state or federal law by the EIT Fund Independent Fiduciary;

(i) The Independent Appraiser selected by the EIT Fund Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the EIT Fund Independent Appraiser, in whole or in part, or waives any liability for negligence or for any violation of state or federal law by the Independent Appraiser;

(j) The EJAT Trust Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the EJAT Trust Independent Fiduciary, in whole or in part, or waives any liability for negligence or for any violation of state or federal law by the EJAT Trust Independent Fiduciary;

(k) The Independent Appraiser selected by the EJAT Trust Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the Independent Appraiser, in whole or in part, for negligence or for any violation of state or federal law by the Independent Appraiser; and

(1) The EJAT Trust may not re-purchase the Property from the EIT Fund absent an individual exemption granted by the Department.

Effective Date: This exemption will become effective on the date that this grant notice is published in the Federal Register.

Signed at Washington, DC, this 22nd day of June, 2021.

Christopher Motta,
Chief, Division of Individual
Exemptions,
Office of Exemption
Determinations,
Employee Benefits Security
Administration,
U.S. Department of Labor.

[FR Doc. 2021-13680 Filed: 6/25/2021 8:45 am; Publication Date: 6/28/2021]