

Signed at Washington, D.C. this 21st day of April 1995.

Katharine G. Abraham,
Commissioner.

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Pension and Welfare Benefits Administration

[Application No. D-09875, et al.]

Proposed Exemptions; Toyota Motor Sales, U.S.A., Inc.

AGENCY: Pension and Welfare Benefits 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 restriction of the Employee Retirement Income Security Act of 1974 (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 request 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 request 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. 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 request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

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 (43 FR 47713, October 17, 1978) 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.

Toyota Motor Sales, U.S.A., Inc. Money Purchase Pension Plan for Bargaining Unit Employees (the Plan), located in Torrance, CA

[Application No. D-09875]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 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) through (E) of the Code shall not apply to the proposed cash sale by the Plan (the Sale), of group annuity contract No. GA-4564 (the GAC) issued by Mutual Benefit Life Insurance Company (Mutual Benefit), located in Newark, New Jersey, to Toyota Motor Sales, U.S.A., Inc., a California corporation, (the Employer), a party in interest with respect to the

Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GAC as determined by the trustee of the Plan on the date of the Sale, or an amount that is equal to the total funds expended by the Plan in acquiring and holding the GAC, plus the amount of interest earned and accrued by the Plan on the GAC to the date of the Sale,¹ less all withdrawals from the Plan to the date of the Sale, and less all advances made to the Plan by the Employer to the date of the Sale.

Summary of Facts and Representations

1. The Employer is a California corporation with its corporate headquarters in Torrance, California and other facilities located throughout the United States, including port facilities, regional sales offices, and parts distribution centers. The Employer is primarily engaged in the wholesale distribution of automobiles, light trucks, industrial equipment and accessories throughout the United States (excluding Hawaii). In addition, the Employer exports automobiles and related replacement parts and accessories to Europe, Asia, and the U.S. Territories. Also the Employer manufactures certain automobiles and trucks through its subsidiaries in the United States.

2. The Plan is a defined contribution plan that is intended to qualify under the provisions of section 401(a) of the Code as a money purchase pension plan with individual accounts for its participants. The sponsor of the Plan and its principal funding source is the Employer; however, eligible employees who are participants of the plan may elect to make additional, voluntary funding contributions. The Plan is maintained pursuant to various collective bargaining agreements between the Employer and the unions representing the employees. As of September 30, 1994, the Plan had 548 active participants and total assets of \$4,468,556.

From April 4, 1986, to October 1, 1987, the named fiduciary of the Plan was Toyota Body, Inc., and from October 1, 1987, to August 19, 1994, the named fiduciary was the Employer. Since August 19, 1994, the named fiduciary for the Plan is the Toyota Employee Benefit Committee (the Benefit Committee), which consists of 4 or more individuals who are appointed

¹ This takes into account the rate of interest guaranteed after December 31, 1991, to the Plan by the Employer.