

by the president of the Employer. The Benefit Committee has full authority to control and manage the assets and administration of the Plan. The powers of the Benefit Committee includes, among other things, the authority to appoint legal counsel and other agents for the Plan.

On September 15, 1994, the Eagle Trust Company (the Trustee), a trust company incorporated under the Pennsylvania Bankruptcy Code, was selected by the Benefit Committee to serve as the trustee of the assets of the Plan. The applicant represents the Trustee to be independent and not affiliated with the Employer in any other capacity.

From July 16, 1984, when the Plan acquired the GAC from Mutual Benefit until July 16, 1991, the GAC served as the exclusive investment vehicle for the Plan.² Until July 16, 1991, Mutual Benefit would periodically make a determination of the interest rate used to compute the earnings paid to the Plan by the GAC. This involved the establishment of a separate subfund by Mutual Benefit for each annual deposit period of contributions during the life of the GAC, and the applicable interest rate for such subfund thereafter was reset on an annual basis. From the issuance of the GAC through December 31, 1991, the GAC was earning various interest rates, ranging from 8.35 percent to 14.05 percent. The applicant represents that the GAC had no stated maturity date. The GAC can be discontinued unilaterally by either the Employer or Mutual Benefit, or if certain stipulated conditions arise.

3. On July 16, 1991, Mutual Benefit was placed into rehabilitation proceedings by the New Jersey Commissioner of Insurance.³ As a result of these proceedings the assets of the Plan invested in the GAC were frozen. Following cessation of payments by Mutual Benefit with respect to the GAC, the Employer decided to make periodic advances of funds (the Advances) to the Plan to enable the payment of distributions to terminating and retiring participants and the payment of certain

²The Department notes that the investment in the GAC is governed by the provisions of Part 4, Subtitle B, of Title I of the Act. In this regard, the Department is not proposing herein relief for any violations of Part 4 which may have arisen as a result of not diversifying the investments of the Plan.

³The Department notes that the decision to acquire and hold the GAC are governed by the fiduciary responsibility provisions of Part 4, Subtitle B, of the Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GAC by the Plan.

in-service withdrawals to current participants.⁴ The applicant represents that at the same time the Advances commenced, the Employer committed itself to enhance the rate of return the individual accounts of the participants would earn and accrue after December 31, 1991, by guaranteeing a 6 percent per annum return for the calendar year 1992 and a 5 percent per annum return for the subsequent calendar years. The applicant further represents that the periodic Advances made by the Employer to the Plan, as of September 30, 1994, totaled \$460,668.

The applicant represents that it desires to enter into the proposed transaction in order to protect the participants of the Plan from the risks of investment loss associated with the GAC. Further, the applicant represents that the Plan needs to sell its interest in the GAC in order to give the participants of the Plan more investment flexibility to direct the investments of their respective account balances to other investments. The applicant also represents that the Plan will not incur any expense with respect to the proposed transaction.

4. In order to protect the interests of the participants and beneficiaries of the Plan, the Employer proposes to purchase the GAC from the Plan for cash. The proposed purchase price for the GAC is to be the greater of the fair market value of the GAC as determined by the Trustee 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,⁵ less all withdrawals from the Plan to the date of the Sale, and less all advances to the Plan made by the Employer to the date of the Sale. As of September 30, 1994, the GAC had a fair market value of \$2,349,840.

The Trustee has reviewed the proposed transaction as an independent fiduciary on behalf of the Plan and its participants and beneficiaries. The Trustee represents that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries.

5. In summary, the applicant represents that the proposed transaction

⁴The applicant represents that the terms of the periodic advances to the Plan satisfied the conditions of the class exemption PTE 80-26 (45 FR 28545, April 29, 1980). The Department express no opinion herein as to whether the periodic advances to the plan satisfied the terms and conditions of PTE 80-26.

⁵This takes into account the rate of interest guaranteed after December 31, 1991, to the Plan by the Employer.

will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the Plan will receive, from the Employer in a one-time transaction, cash in an amount that is the greater of either (1) the fair market value of the GAC; or (2) the total funds expended by the Plan in acquiring and holding the GAC plus the amount of interest earned or accrued by the Plan to the date of the Sale, less withdrawals and less prior advances of funds to the Plan made by the Employer; (b) the proposed transaction will enable the Plan and its participants and beneficiaries to avoid any risk associated with continued holding of the GAC; (c) the Plan will not incur any loss or expense from the proposed transaction; and (d) the Trustee of the Plan has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries, and that the proposed price for the GAC is not less than its fair market value.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Masik Tool and Die Corporation Profit Sharing Plan (the Plan), located in Cudahy, WI

[Exemption Application No. D-09899]

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), 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: (1) The past leasing (the Lease) of a lathe (the Lathe) owned by the Plan and certain individually-directed accounts in the Plan (the Accounts) to Masik Tool and Die Corporation (Masik), a party in interest with respect to the Plan; and (2) the proposed cash sale (the Sale) of the Lathe by the Accounts to Masik.

This proposed exemption is conditioned on the following requirements:

(1) With respect to the past Lease—

(a) the terms and conditions of the Lease have been at least as favorable to the Plan and the Accounts as those obtainable in an arm's length transaction with an unrelated party; (b) the value of the Lathe did not exceed