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.

[FR Doc. 2010–19367 Filed 8–5–10; 8:45 am]

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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*", 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]

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).[1] If the exemption is granted, the restrictions of sections 406(a)(1)(A) and (D) and 406(b)(1) and 406(b)(2) of the Act and the sanctions imposed under section 4975 of the Code, by reason of sections 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the sale by the ESOP of all its shares of common stock (the "ESOP Shares") in Sherburne Tele Systems, Inc. (the "Company") to the Company, a party in interest with respect to the ESOP, 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 ESOP as those that the ESOP could obtain in an arm's length transaction with an unrelated third party;

(c) The sales price is the greater of (i) $5.01 per share, or (ii) the fair market value of the ESOP Shares as of the date of the sale, as determined by a qualified, independent appraiser (the appraiser);

(d) The sales proceeds received by the ESOP pursuant to the transaction are valued at a share price that is greater than the share price received by the non-ESOP shareholders;

(e) The benefits received by the members of the board of directors and officers of the Company pursuant to the board of directors awards program, the Company's phantom stock plan and retention plans, which were paid, coincident with the closing of the asset sale of the Company to Iowa Telecommunications Services, Inc. were reasonable;

(f) A qualified, independent fiduciary (the "Independent Fiduciary") for the ESOP was and is responsible for (i) reviewing the terms of the sale of the Company's assets; (ii) engaging the appraiser to value the ESOP Shares; (iii) reviewing and, if appropriate, approving the methodology used by the appraiser, to ensure that such methodology is properly applied in determining the fair market value of the ESOP Shares, to be updated as of the date of the sale; (iv) negotiating the terms of the sale of the ESOP Shares to the Company to ensure that the ESOP participants receive at least the fair market value of the ESOP Shares; (v) determining, and documenting in writing, whether the terms of the sale are fair and reasonable to the ESOP and whether it is prudent to proceed with the proposed transaction; (vi) approving the proposed transaction; and (vii) determining whether the proposed transaction satisfies the criteria set forth in section 404 and section 408(a) of the Act;

(g) The ESOP pays no fees, commissions, or other expenses in connection with the sale (including the fees paid to the appraiser and the Independent Fiduciary), other than a one-time $500.00 escrow fee (as described in Summary of Facts and Representations #10); and

(h) The proceeds from the sale are promptly forwarded to the ESOP's trust simultaneously with the transfer of the ESOP Shares to the Company.

Summary of Facts and Representations

1. The ESOP was established by Sherburne Tele Systems, Inc. (the "Company" or the applicant) on January 1, 1999. As of December 31, 2009, the ESOP had 102 participants. The Company is the named fiduciary of the ESOP. The Company formerly operated as a sub-chapter "S" corporation in Big Lake, Minnesota, providing local and long distance telephone services to residential and business customers. The Company's assets were acquired in 2009, as described in Item 7, below.

According to the applicant, the ESOP had total assets of approximately $8,204,432.51, as of December 31, 2009; this amount includes $2,966,920.46 invested in money market funds and certificates of deposit, as well as 1,427,115 shares of the Company's stock (the "ESOP Shares") with a current value of $5,237,512.05, based upon the annual valuation of the ESOP assets performed by a qualified, independent appraiser.

2. The Company has only one class of stock. As of June 29, 2009, there were 14,436,920 shares of the stock issued and outstanding. Robert Eddy is the President of the Company and a member of the board of directors. Mr. Eddy owned, directly and indirectly, approximately 87% of the outstanding shares of the stock; he owned 6,262,772 shares directly. Mr. Eddy's sister, Jane Eddy Shiota, was the only other shareholder who directly owned more than 10% of the stock; she owned approximately 35.46% (5,120,123 shares) of the outstanding shares of the stock.[2] The 1,427,115 shares of stock owned by the ESOP represent a minority interest in the Company of 9.89%.

3. The background to the ESOP's acquisition of the Company stock is as follows. The applicant represents that, on September 15, 1999, the ESOP acquired 285,423 shares of the stock at $9.81 per share, the fair market value of the stock as of that date, as determined by the ESOP's trustees, based upon a report by a qualified, independent appraiser, Chartwell Business Valuation, LLC (doing business as Chartwell Capital Solutions) ("Chartwell").[3] The total price for the stock purchased on September 15, 1999 was $2,799,999.63, which was financed in the form of an exempt loan (the "Exempt Loan").

The Company approved a five-to-one split of its stock, effective November 3, 2005, which increased the shares of stock held by the ESOP from 285,423 shares to 1,427,115 shares. In 2007, the ESOP repaid the Exempt Loan in full, in advance of the amortized payment schedule under the loan agreement, and allocated the remaining ESOP Shares held in the ESOP's suspense account to the ESOP participant accounts.

The ESOP received income distributions from the Company with respect to the ESOP Shares in the following amounts: $19,647.92 (1999); $176,447.15 (2000); $66,638.00 (2001); $14,139.00 (2002); $11,479.00 (2003); $33,917.00 (2004); $54,852.00 (2005); $373,238.00 (2006); $5,651,375.40 (2007); and $841,997.85 (2008). There were no expenses charged to participant accounts in connection with holding the ESOP Shares.

4. The applicant represents that, after reviewing the strategic alternatives, the Company's board of directors decided that a sale of the Company was in the best interests of its shareholders. In October 2007, the Company retained the services of Green Holcomb & Fischer, LLC, an investment banking firm, to find a buyer.

Due to a potential sale of the Company, Barnes & Thornburg LLP, counsel to the Company (specifically, with regard to its ESOP matters), advised the Company to engage First Bankers Trust Services, Inc. (FBTS), a discretionary trustee, to serve as an independent fiduciary (the "Independent Fiduciary") for the ESOP in order to avoid any conflict of interest or appearance of impropriety.[4] As set forth in the July 22, 2008 retainer agreement, FBTS, as the sole discretionary trustee of the ESOP, agreed to "exercise all duties, responsibilities, and powers of a fiduciary under ERISA in its capacity as a discretionary trustee. * * *" As such, FBTS' responsibilities, in addition to other traditional trustee responsibilities, were (i) to exercise its exclusive discretion as trustee and make its independent decision concerning any transaction that may arise or occur under the ESOP, and (ii) to control the management and disposition of the assets held by the ESOP trust. FBTS represents that, pursuant to its retainer agreement, FBTS' responsibilities included: (i) Negotiating a fair transaction in which the ESOP participants would receive no less than fair market value for their Company stock as of the closing date of the transaction; (ii) reviewing an appraisal of the Company stock, which was prepared by an independent, qualified appraiser, and updated as of the closing date of the transaction; (iii) evaluating the sufficiency of the methodology of such appraisal; and (iv) determining the reasonableness of the conclusions reached in such appraisal.

5. It is represented that FBTS is a state chartered trust company that has been specializing in employee benefits as an independent trustee for over twenty years and that, at all times, FBTS has been and continues to be represented by its own counsel, Krieg Devault. Prior to its engagement as the discretionary trustee for

[1] For purposes of this proposed exemption, references to provisions of Title I in the Act, unless otherwise specified, should be read to refer also to the corresponding provisions of the Code.

[2] The non-ESOP shareholders besides Mr. Eddy and Ms. Shiota, some of whom are relatives to Mr. Eddy, are as follows: Rolland K. Eddy and Donna L. Eddy Trust (1,137,116 shares); Eric R. Morales (485,750 shares); and Fred I. Shiota, Sr. (4,044 shares).

[3] The Department expresses no opinion herein as to whether the ESOP paid "adequate consideration" for its initial purchase of the Company stock.

[4] FBTS represents that it is not acting as an "investment manager" within the meaning of section 3(38) of the Act because such section specifically excludes trustees.

the ESOP, FBTS had no relationship with the Company. Moreover, FBTS and its wholly-owned subsidiaries derived less than 1% of its consolidated gross income from the Company and its affiliates for the years ending December 31, 2008 and through May 4, 2010. In addition, FBTS represents that it has no relationship with Green Holcomb & Fischer, LLC.

6. In regard to its qualifications, FBTS states that the firm has four offices nationwide and 30 full-time employees devoted to providing trust services for over 600 account relationships. FBTS maintains that its professional staff has in-depth knowledge of Internal Revenue Service and Labor Department regulations and compliance requirements for all types of retirement plans.

Kimberly Serbin, a senior trust officer with FBTS since 2001, is one of FBTS' employees responsible for providing trust services to the ESOP; she has an insurance license, and her past work experience includes manufacturing, investment/financial services, insurance services, and banking. In a letter dated June 18, 2009, Ms. Serbin asserts that FBTS is well qualified to review appraisals in connection with the sale of the ESOP Shares. She states: "In the last three years, FBTS has served as an independent transactional trustee for approximately 15–20 transactions in which the sale of stock by an employee benefit plan has occurred. The circumstances have usually been in connection with the sale of the plan sponsor (either a stock sale or an asset sale) or in connection with the termination of an employee benefit plan by the plan sponsor."

7. On or about November 21, 2008, the Company and its subsidiaries and all non-ESOP shareholders executed an Asset Purchase Agreement (the "Purchase Agreement"), which provided for the sale of substantially all of the assets of the Company and its subsidiaries to Iowa Telecommunications Services, Inc. ("ITSI"). The asset sale closed on June 30, 2009, and the final purchase price paid was approximately $82 million due to certain terms and conditions that allowed for adjustment to the purchase price based on changes in the Company's operations. The Purchase Agreement required that the Company "terminate" the ESOP immediately prior to the closing of the asset sale, which occurred on June 30, 2009.[5] Although the ESOP was "frozen" as of the same date, it continues to hold the ESOP Shares in trust.[6] It is represented that ITSI is not affiliated with any party in interest to the proposed exemption transaction, (*i.e.,* the sale of the ESOP Shares to the Company (the "ESOP Transaction")).

8. Because the ESOP was a minority shareholder of the Company, it did not have the authority to delay the asset sale that occurred on June 30, 2009. Prior to the sale, however, the Independent Fiduciary negotiated a Stock Redemption Agreement (the "Redemption Agreement") on May 26, 2009 with the Company and Robert Eddy, in his individual capacity and in his capacity as majority shareholder representative, providing for a sale of all of the ESOP Shares to the Company. Under the terms of the Redemption Agreement, the consummation of the ESOP Transaction is contingent upon first obtaining a prohibited transaction exemption from the Department.[7]

9. Prior to the anticipated sale of the Company's assets, the Company applied for authorization by the Department, pursuant to class Prohibited Transaction Exemption (PTE) 96–62, for the one-time cash sale by the ESOP of 100% of the ESOP Shares to the Company, a party in interest to the ESOP. Because the Company was notified by the Department in June 2009 that it would not qualify for authorization pursuant to PTE 96–62, it has requested an individual prohibited transaction exemption.

10. As a result, the cash value of the ESOP Shares, attributable to the sale of the Company's assets, is currently held in an escrow account, subject to the final closing of the Redemption Agreement, which is pending until the grant of the requested exemptive relief.[8] Wells Fargo Bank, National Association is the escrow agent. It is represented that the funds in the escrow account are invested in a money market account. There was a one-time escrow fee of $500.00 paid from the earnings on the escrowed funds and no other fees.

11. The applicant represents that the terms and conditions of the proposed ESOP Transaction are at least as favorable to the ESOP as those that the ESOP could obtain in an arm's length transaction with an unrelated third party. A fairness opinion, the ESOP Closing Valuation and Opinion, was prepared and issued on July 2, 2009 by Chartwell for the Independent Fiduciary, concerning the proposed sale of the ESOP Shares to the Company for adequate consideration. FBTS engaged Chartwell to perform this appraisal of the ESOP Shares pursuant to their January 26, 2009 retainer agreement. The Company has confirmed that the financial projections shared with Chartwell are identical with those shared with FBTS, other lenders and ITSI. As previously noted in Item 3, above, Chartwell is represented to be a qualified, independent appraiser and has performed the ESOP's annual stock valuations to date. It is represented that Chartwell derived less than 1% of its annual gross income from the Company and its affiliates for the years ending December 31, 2007 and December 31, 2008. It is further represented that Chartwell derived less than 3% of its annual gross income from the Company and its affiliates for the year ending December 31, 2009 and will derive no income from the Company and its affiliates for the year ending December 31, 2010.

12. The applicant represents that Chartwell is a nationally recognized financial services firm located in Minneapolis, Minnesota, serving privately held companies and their shareholders. The firm focuses on business valuation and transaction consulting and has provided opinions and advisory services to hundreds of organizations in a variety of industries, including over 150 ESOPs throughout the United States. The individuals involved in the July 2, 2009 appraisal of the ESOP Shares were Paul J. Halverson, Managing Director, and Matthew R. Schubring. Mr. Halverson is an Accredited Senior Appraiser, a Certified Business Appraiser, and a member of the American Society of Appraisers and the Institute of Business Appraisers, who has provided financial advisory services to privately-held companies since 1987; a substantial portion of his work relates to ESOPs and providing independent financial advisory services to ESOP trustees and other corporate fiduciaries. Mr. Schubring is an Accredited Senior Appraiser who has provided valuation services since 1999 and also has extensive valuation experience with ESOPs, buy/sell agreements, and other corporate matters.

13. It is represented that the methodologies used by Chartwell to evaluate the fairness of the proposed sales price are uniformly accepted and approved for valuing companies of the size and within the industry of the Company and took into consideration all known and relevant facts and circumstances attendant to the proposed ESOP Transaction. Chartwell represents that it valued the ESOP Shares using the merger and acquisition method of the market approach. Chartwell states, "In the merger and acquisition method, the sales of entire companies or large blocks of companies are analyzed to determine appropriate valuation multiples for the subject company. In this case, the sale of the subject company presented the best indication of fair market value under this method. Based upon our knowledge of the diligence of the transaction process undertaken by the Company and the

[5] Counsel for FBTS explained that as a technical matter the ESOP has not yet "terminated." Rather, according to the counsel, a "partial termination" of the ESOP occurred, for purposes of the Internal Revenue Code, because the employees of the Company were terminated from employment and, generally were re-hired by ITSI. Because of the "partial termination," counsel for FBTS represented that participants are 100% vested in their account balances.

[6] The Department notes that, as the ESOP Transaction has not yet been consummated, the ESOP Shares are "plan assets" subject to the requirements of, among other things, Part 4 of Title I in the Act.

[7] In general, the applicant notes that section 408(e) of the Act provides a statutory exemption for the sale of qualifying employer securities (QES) by an individual account plan to a party in interest. Section 408(d) of the Act, however, excludes from this exemption transactions involving an individual account plan and (i) any person who is an owner-employee with respect to the plan, (ii) a family member of such owner-employee, or (iii) any corporation of which such owner-employee owns 50 percent or more of the combined voting stock of the corporation. Thus, section 408(d) excludes any transaction between the ESOP and the Company because Mr. Eddy, an owner-employee of the Company, owns 50% or more of the combined voting stock of the Company. The Taxpayer Relief Act of 1997 granted some relief to subchapter "S" corporations that maintain ESOPs. Specifically, section 408(d)(2)(B) of the Act provides an exemption for sales of QES to an ESOP by an owner-employee, a family member of such owner-employee, or related Subchapter "S" corporation. It does not, however, exempt a sale *by* an ESOP to such parties.

[8] The Department is not expressing an opinion whether the cash equivalent of the value of the ESOP Shares held in the escrow account are "plan assets" subject to the requirements of Part 4 of Title I in the Act.

results of these efforts we believe that the value received by the non-ESOP shareholders represents the best indication of fair market value of the Company. Because this represented the actual fair market value and not theoretical values indicated by the income, guideline public company or asset approaches we chose to rely on the merger and acquisition method." As a condition of the proposed exemption, Chartwell will update the appraisal of the ESOP Shares as of the date of the ESOP Transaction.

14. The Independent Fiduciary not only evaluated the Chartwell appraisal of the ESOP Shares, it also negotiated the Redemption Agreement with the Company for the sale of ESOP Shares. It is represented that, over the course of several months, FBTS negotiated vigorously on behalf of the ESOP to receive the sales price of $5.01 per share rather than participating in the liquidating distribution from the available net asset proceeds, alongside the non-ESOP shareholders. In other words, according to FBTS' counsel, the Redemption Agreement allows the ESOP to avoid being subject to, among other things, potential indemnification liabilities and certain other expenses that FBTS determined should not be borne by the ESOP. Thus, the negotiation resulted in the ESOP receiving a sales price of $5.01 per share rather than the estimated $4.64 per share that would be received by the non-ESOP shareholders of the Company under the terms of the Purchase Agreement with ITSI.[9] The $5.01 per share price will be paid in cash upon closing of the ESOP redemption.

By way of further explanation, the total per share proceeds from the asset sale of the Company to ITSI came to $5.68 per share, but this amount was reduced to the putative $4.64 per share after taking into account various payments that the Company intended to make. The Independent Fiduciary believed that the ESOP participants' benefits should not be reduced by certain post-sale payments that the Company was making, which the ESOP had no control over, including: Certain awards to members of the Company's board of directors and officers (some of whom are also shareholders) for completing the sale of the Company's assets; S-corporation insurance; and amounts due under the Company's phantom stock plan and retention agreements.[10]

Based on the sales price of $5.01 per share, the ESOP will realize in the aggregate approximately $7,149,846.15 on the sale of the 1,427,115 ESOP Shares, which constitute approximately 71% of the total assets of the ESOP. It is represented that the Independent Fiduciary reviewed the Purchase Agreement, the Redemption Agreement, and the ESOP Closing Valuation and Opinion and determined that the ESOP Transaction would be in the best interests of the ESOP participants. The Independent Fiduciary, on behalf of the ESOP, reviewed and approved the valuation methodology used by Chartwell, ensured that such methodology was properly applied in determining the fair market value of the ESOP Shares, and determined that the terms of the sale are fair and reasonable to the ESOP. The Independent Fiduciary also will determine whether it is prudent to go forward with the ESOP Transaction.

15. The applicant represents that the sale of the ESOP Shares for cash pursuant to the terms of the Redemption Agreement is in the best interests of the ESOP and its participants because, in addition to the reasons given by the Independent Fiduciary, above, it will allow participants to diversify their investments. Except for the one-time $500.00 escrow fee, as described in Item 10, above, which was paid from earnings on the ESOP's share of cash proceeds derived from the asset sale of the Company to ITSI and held pursuant to an Escrow Agreement between Wells Fargo Bank and FBTS, the ESOP will not be responsible for any fees, commissions, or other expenses that may be associated with the sale of the ESOP Shares—including the cost of filing the exemption application, notifying interested persons, and engaging Chartwell and FBTS. The sale proceeds will be credited to the ESOP's trust simultaneously with the transfer of title of the ESOP Shares to the Company, and each participant's individual account will receive its *pro rata* share of the sale proceeds.

16. In summary, the applicant represents that the ESOP Transaction meets the statutory criteria of section 408(a) of the Act because, among other things: (a) The ESOP Transaction will be a one-time transaction for cash; (b) the sales price for the ESOP Shares will be the greater of (i) $5.01 per share, or (ii) the fair market value of the ESOP Shares as of the date of the sale, as determined by Chartwell; (c) FBTS was and is responsible for (i) reviewing the terms of the sale of the Company's assets; (ii) engaging Chartwell to value the ESOP Shares; (iii) reviewing and approving the methodology used by Chartwell to ensure that such methodology is properly applied in determining the fair market value of the ESOP Shares, to be updated as of the date of the sale; (iv) negotiating the terms of the ESOP Transaction to ensure that the ESOP participants receive at least the fair market value of the ESOP Shares; and (v) determining whether the terms of the sale are fair and reasonable to the ESOP and whether it is prudent to go forward with the ESOP Transaction; and (e) the ESOP will pay no fees, commissions, or other expenses in connection with the sale (including the fees paid to the independent appraiser and the Independent Fiduciary), other than a one-time $500.00 escrow fee.

[9] Of the $4.64 per share value received by non-ESOP shareholders, $3.65 per share was paid upon closing, $0.75 per share was placed in a separate escrow account to be released 18 months following the closing, and the remaining proceeds (*i.e., approximately* $0.23 per share) are expected to be distributed after finalizing all transaction costs. The administrative file refers to the $4.64 per share amount even though the sum of the three amounts equals $4.63. The Department assumes that the discrepancy is attributable to it being an estimated amount.

[10] For example, FBTS determined that it was not appropriate, in an asset acquisition, for the ESOP to bear the allocable cost of S-corporation insurance, which apparently ITSI required the Company to pay in the event the Internal Revenue Service made a determination that the Company's S-corporation's tax status election was improper and resulted in the assessment of additional taxes.

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

John D. Simmons Individual Retirement Account (the IRA), Located in West Chester, PA, [Application No. D–11597]

Proposed Exemption

The Department is considering granting an exemption under the authority of 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 sanctions resulting from the application of section 4975(c)(1)(A)–(E) of the Code, shall not apply to the proposed sale (the Sale) by the IRA to John D. Simmons, (the Applicant) a disqualified person with respect to the IRA,[11] of a 50 percent interest (the Interest) in a condominium (the Condo); provided that the following conditions are satisfied:

(a) The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

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

(c) As consideration, the IRA receives the lesser of $192,500 or the fair market value of the Interest as determined by a qualified, independent appraiser in an updated appraisal on the date of Sale; and

(d) The IRA pays no commissions, costs, fees, or other expenses with respect to the Sale.

Summary of Facts and Representations

1. The Applicant is an attorney residing in West Chester, Pennsylvania. In August 2008, the Applicant established the IRA because it permitted self-directed purchases of real property and other non-stock investments. The Applicant then transferred approximately $195,000 from various mutual funds held by his rollover individual retirement account with Vanguard to the IRA. As of January 4, 2010, the IRA had total assets of $195,189.74. Entrust MidAtlantic, LLC, the directed trustee of the IRA, is based in Frederick, Maryland.

2. Rose Marie Simmons (Mrs. Simmons) is the mother of the Applicant and a disqualified person with respect to the IRA. Mrs. Simmons resides in Millsboro, Delaware. Mrs. Simmons formerly owned investment real property in Drexel Hill, Pennsylvania (the Drexel Property) which was about 125 miles from her home in Southern Delaware. Mrs. Simmons had difficulty with her Drexel Property tenants and required the Applicant's assistance in subsequent eviction proceedings against such tenants. In August 2008, Mrs. Simmons sold the Drexel Property to one of her neighbors.

3. During 2008, the Applicant sought to diversify his IRA's holdings into non-equity investments in light of the waning economy. So, he decided to invest one-half of his tax-

[11] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

favored retirement holdings in alternative investments, such as real property. As discussed above, Entrust MidAtlantic, LLC allows IRA owners to invest in real property. The Applicant also represents that he and Mrs. Simmons desired to purchase a long term investment property together for well below its value, and wait for it to increase in value as market conditions improved. Moreover, Mrs. Simmons wished to reside closer to her investment property so that she could inspect it more frequently than she could the Drexel Property.

Thus, on October 6, 2008, the IRA and Mrs. Simmons incorporated Beach Rent, LLC in Delaware, described in detail below, to act as an investment property manager. In the same month, the Applicant found the Condo, located at 1609 Coastal Highway, Dewey Beach, Delaware. The Condo, which is Unit S204, was listed for $399,900 in the Opal Condominiums Complex (the Opal). The Applicant represents that in comparison, similar two-bedroom units in the Opal, had sold for approximately $500,000 to $550,000 in 2006. Additionally, the Condo is located approximately 30 miles from Mrs. Simmons' residence.

4. On October 17, 2008, the IRA and Mrs. Simmons purchased the Condo for $384,500. The IRA's Interest and Mrs. Simmons' 50 percent interest in the Condo each equaled $192,250.00. Both the IRA and Mrs. Simmons paid cash for their respective interests in the Condo from the Opal Dewey Beach, LLC, an unrelated party. Mrs. Simmons used the proceeds from the sale of the Drexel Property to purchase her 50 percent interest in the Condo pursuant to a tax-favored exchange under section 1031 of the Code. Currently, the IRA's Interest in the Condo accounts for 98 percent of the IRA's total value.

5. The IRA and Mrs. Simmons are named as the managing members of Beach Rent, LLC. The Applicant acts as its uncompensated manager. Beach Rent, LLC, which was created to simplify the bookkeeping of the rents and bills, is a flow-through tax entity intended to pass profits (*i.e.,* rental income) received by the Beach Rent, LLC to the IRA and Mrs. Simmons based on their respective ownership interests in the Condo. Both Mrs. Simmons and IRA each own 50 percent of the shares of Beach Rent, LLC. For the years 2008 and 2009, the Condo's total rental income was $13,400 and total expenses have been $12,128. In these years, the IRA's share of total income was $6,700 and total expenses were $6,064. Thus, the IRA's net acquisition cost for the Interest is $191,864 [$192,500 (purchase price) + $6,064 (expenses)—$6,700 (income)].

6. Beach Rent, LLC is responsible for renting and maintaining the Condo. Beach Rent, LLC deducts expenses, such as insurance, taxes, Opal condominium fees, cleaning service fees, cable and utilities, against the income generated from the seasonal rentals. During the off-season, Beach Rent, LLC pays for the maintenance of the Condo.

Since 2008, neither the Applicant nor Mrs. Simmons nor any other disqualified person has stayed at the Condo. Since its acquisition by the IRA and Mrs. Simmons, the Applicant and Mrs. Simmons periodically visit the Condo for inspections and repairs, including installing furniture and window treatments. Neither the Applicant nor Mrs. Simmons have been compensated by the IRA for the services rendered to the Condo. As far as the Condo's furnishings and electronics are concerned, Mrs. Simmons has either purchased or contributed them to the Condo.

7. Beach Rent, LLC advertises for Condo renters on the Internet. At one time, Mrs. Simmons and the Applicant used Ocean Sothesby Realtors, which is not a related party, to locate renters. However, the Applicant represents that using Beach Rent, LLC to find renters has been more cost effective. On or about Memorial Day, Beach Rent, LLC typically begins renting the Condo for the beach season. Stays vary in price from a three-day stay at $600 up to a weekly rate for $1,500 plus a refundable $350 security deposit. A deposit of half the rent plus the security deposit is due a month prior to the rental and the other half is due at signing. Beach Rent, LLC refunds the security deposit 14 days after a rental if its cleaning service confirms the Condo is in good condition. For the 2008 and 2009 rental seasons, the Condo has been rented a total of 11 times to unrelated parties.

8. The Applicant represents that he and Mrs. Simmons thought the Condo would be a good investment because they believed the housing market would rebound more quickly than it has to date and there would be a substantial increase in the IRA's equity holding in the Interest. Since 2008, the Applicant explains that the Opal Dewey Beach, LLC has been unable to sell the remaining 7 condominium units out of the original 36 in the Opal. The unsold units are currently being rented for less than fair market value. Additionally, the Applicant states that a bank-owned two-bedroom unit in the Opal failed to sell for its short sale price of $290,300 in May 2010 at a sheriff's auction. This property had originally sold for $547,000 in October 2006. Thus, the Applicant believes there is the possibility that the IRA could face future equity losses in the Condo and that any equity improvement may not occur for a long time. Further, the Applicant states that, the IRA's current rate of return is low. In this regard, the Applicant projects the Condo's total 2010 rentals will be $15,000 and total expenses will be $9,500, with a profit of $5,500. Accordingly, the IRA's rate of return for its $192,500 Interest will be approximately 1.4 percent per annum (($5,500 *.5)/$192,500).

Because of these events, the Applicant proposes to purchase the Interest from the IRA in order that his IRA's assets can be placed in investments yielding higher rates of return. Due to the joint ownership of the Condo, the Applicant explains that a Sale of the Interest to an unrelated party would be unduly burdensome and unreasonable, such Sale and would likely force the IRA to offer a discount for the Interest. In the alternative, the Sale avoids forcing Mrs. Simmons to sell her 50 percent interest in the Condo during down market conditions because her interest would be sold during a down market at a discounted price. Although the Applicant believes that there will be an equity improvement in 10–15 years, he states that the short-term returns are too low for a tax-deferred investment and the IRA needs to divest itself of the Interest as soon as possible. Accordingly, the Applicant requests an administrative exemption from the Department.

9. The Sale will be a one-time cash transaction. The terms will be at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party. The IRA will receive no less than the fair market value for the Interest, as determined by a qualified, independent appraisal on the date of the Sale. Further, the IRA will pay no commissions, costs, or other expenses in connection with the Sale. Following the Sale, Beach Rent, LLC will be dissolved and its assets will be distributed to the IRA and Mrs. Simmons.

10. The Applicant retained R. Stephen White of First State Appraisal, Inc. of Rehoboth Beach, Delaware to appraise the Condo. Mr. White is licensed in the State of Delaware as a certified residential real property appraiser. During 2009, he received less than one percent of his income from services provided to the Applicant and related parties, including Mrs. Simmons.

In an appraisal report dated September 17, 2009 (the Appraisal), Mr. White compared the Condo in an "as is" condition with six other two-bedroom condominium sales in Dewey Beach and Rehoboth Beach, Delaware using the Sales Comparison Approach to valuation. Also as of September 17, 2009, Mr. White valued the Condo at $385,000. Mr. White will update the Appraisal on the date of Sale. Accordingly, the Applicant represents that the Interest is valued at $192,500.00 ($385,000 × 50 percent).

11. The Applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The terms and conditions of the Sale will be at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(b) As consideration, the IRA will receive the lesser of $192,500 or the fair market value of the Property as determined by a qualified, independent appraiser in an updated appraisal on the date of Sale; and

(d) The IRA will pay no commissions, costs, fees, or other expenses with respect to the Sale.

Notice to Interested Persons

Because the Applicant is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Therefore, comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (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 of the Act and/or the Code, including any prohibited transaction 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, 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 whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each 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

Employment and Training Administration

[TA–W–71,174]

General Electric Company, Transportation Division, Including On-Site Leased Workers From Adecco Technical, Erie, PA; Notice of Revised Determination on Remand

On April 15, 2010, the U.S. Court of International Trade (USCIT) granted the U.S. Department of Labor's (Department's) motion for voluntary remand for further investigation in *Former Employees of General Electric Company, Transportation Division, Erie, Pennsylvania* v. *United States,* Case No. 10–00076. Further, on June 3, 2010, the USCIT remanded *United Electrical, Radio and Machine Workers of America, Local 506* v. *United States,* Case No. 10–00108, to the Department for further review. The two cases were consolidated on the same date under Case No. 10–00076.

On June 10, 2009, former workers of General Electric Company, Transportation Division (hereafter referred to as the subject firm) filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers of General Electric Company, Transportation Division, Erie, Pennsylvania (hereafter referred to as the subject facility). On July 1, 2009, United Electrical, Radio and Machine Workers of America, Local 506 (UE 506), also filed a petition for TAA on behalf of workers at the subject facility. The UE 506 petition was consolidated with the petition filed on June 10, 2009, as it covered the same worker group.

The initial investigation revealed that, during the period under investigation, workers at the subject facility, including on-site leased workers from Adecco Technical (hereafter referred to as the subject worker group) were engaged in the production of locomotives, locomotive kits, and propulsion and specialty parts. The findings of that investigation revealed that there had been a significant number or proportion of workers at the subject facility that was totally or partially separated from employment.

It was determined, however, that imports of articles like or directly competitive with those produced by the subject firm did not contribute importantly to worker separations at the subject facility and that the subject firm did not shift production to a foreign country. A survey of the subject firm's major declining domestic customers revealed decreasing imports of articles like or directly competitive with those produced by the subject worker group, both in absolute terms and relative to the production at the subject facility.

Consequently, the Department determined that the subject worker group could not be considered import impacted, and a negative determination regarding the subject worker group's eligibility to apply for TAA was issued on October 8, 2009. The Department's Notice of Determination was published in the **Federal Register** on December 11, 2009 (74 FR 65800).

By application dated October 28, 2009, the petitioning workers requested administrative reconsideration of the Department's negative determination. In the request, the petitioners alleged that production had shifted out of the subject facility to facilities located outside of the United States that were operated by the subject firm. The petitioners also alleged that the subject firm imports articles like or directly competitive with those produced at the subject facility.

To investigate the petitioners' claims, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration, on November 16, 2009. The Department's Notice of Determination was published in the **Federal Register** on December 8, 2009 (74 FR 64712).

During the reconsideration investigation, the Department obtained new and additional information from the subject firm regarding the petitioners' claims. Based on the findings of the reconsideration investigation, the Department concluded that worker separations at the subject facility were not caused by either a shift in production abroad or increased imports of articles like or directly competitive with those produced by the subject worker group. As such, the Department issued a Notice of Negative Determination on Reconsideration on January 22, 2010. The Department's Notice of determination was published in the **Federal Register**, on February 1, 2010 (75 FR 5151).

In the complaint filed with the USCIT, dated March 1, 2010, the Plaintiffs allege that workers at the subject facility were impacted by import competition and by a shift in production to overseas facilities by the subject firm.

In the complaint filed with the USCIT on March 29, 2010, the UE 506 alleged that workers at the subject facility were impacted by import competition, shifts abroad of multiple production lines by the subject firm, and foreign acquisitions by the subject firm of articles like or directly competitive with