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FILED

OCT 3 1997

13 pgs

RICHARD SHOFER

Plaintiff

v.

STUART HACK

and

THE STUART HACK COMPANY

Defendants

CIRCUIT COURT FOR BALTIMORE CITY

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Part 20

CASE NO. 88102069/CL79993

THE STUART HACK COMPANY, et al.

Third Party Plaintiffs

v.

GRABUSH, NEWMAN & CO., P.A.

Third Party Defendant

CASE# 88102069/CL
APPEALS
CV CLERK FEE 65.00
CJ CF SP APP 30.00
TOTAL 110.00
REC'D 65.00 ACCT # 73104
PTD REC SEQ # 057
OCT 03 1997 11:03:23

NOTICE OF APPEAL

Mr. Clerk:

You will please note an appeal to the Maryland Court of Special Appeals from the Memorandum and Order entered in the above captioned matter on September 5, 1997.

Douglas R. Taylor
Attorney for Plaintiff
P.O. Box 4566
Rockville, Maryland 20850
(301) 565-0209

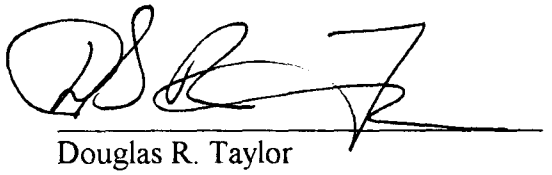
P.R.)
PHC & memo 10/3/97 given to DRT

Certificate of Service

I hereby certify that on this 3rd day of October 1997, I mailed, by U.S. Mail, postage prepaid, a copy of the foregoing Notice of Appeal to the following:

Ms. Janet Truhe, Esquire
Janofsky & Truhe, P.A.
Court Towers, Suite 505
210 W. Pennsylvania Avenue
Towson, Maryland 21204
Attorney for Defendants, Hack and
The Stuart Hack Company

John Tremain May, Esquire
Deborah M. Whelihan, Esquire
Jordon, Coyne & Savits
Suite 600
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036



Douglas R. Taylor

HAUK PENSION SERVICES INC

CONSULTANTS & ACTUARIES 1501 WEST MOUNT ROYAL AVENUE BALTIMORE, MARYLAND 21217 / (301)669-6900 / WASH. D.C. DIRECT LINE - 621-1923

August 21, 1975

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Md. 21207

Dear Mr. Shofer:

At our meeting on August 21, 1975 decisions were made regarding conforming your Money Purchase Pension and Profit Sharing Plans to the "Pension Reform Act" as listed below.

I. Eligibility

A. The present eligibility requirement of 1 year will remain but we will institute two eligibility dates per year.

B. The present minimum age of 25 will reamin, but as required by the law there will be no maximum age.

II. Vesting

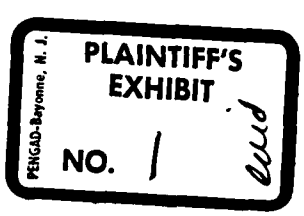
A. In each plan the accrued benefit is the account balance.

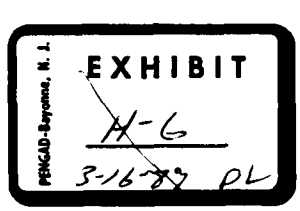
B. The present vesting schedules will remain the same except that as required it will be computed based upon years of service.

C. Service prior to age 22 and years when an employee works less than 1,000 hours will be excluded for purposes of computing vesting.

D. The present early retirement and death benefits will remain the same.

III. Joint and Survivor Annuity - As required, the normal form of benefit in the plans will be stated in terms of a joint and 50% survivor annuity and the annual reports will reflect this.





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IV. Contribution Limitation - We will compute the contribution limitations to insure they are not violated and voluntary contributions will be allowed under the plan. If you intend to make up previous years voluntary contribution please do so before 1976 when the contribution limitation will be effective for your plans.

V. Fiduciary Responsibility - You will remain as the Trustee of both plans and continue your present investment game plan. The plans will allow for investment in Employer Securities and will allow loans to be made to employees.

VI. Portability

A. You do not want portability of other plan's benefits into your plan.

B. You wish to remain the maximum flexibility to decide on a non-discriminatory basis, how employees who incur a break in service are to be paid their vested benefits.

We will accept full responsibility as the plan administrator. I expect to, have to prepare documents this winter so that they will be effective for the plan year beginning 1976.

Please let me know if you wish to change any of the decisions or if you have any other questions.

Cordially,

Louis G. Omansky

LGO/ce

cc: Harvey Newman, CPA

HACK
PENSION
SERVICES
INC

CONSULTANTS & ACTUARIES 1501 WEST MOUNT ROYAL AVENUE BALTIMORE, MARYLAND 21217 / (301)669-8900 / WASH., D.C. DIRECT LINE - 621-1923

October 6, 1976

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, MD 21207

Dear Mr. Shofer:

Stuart tells me that your pension and profit sharing plans are considering two possible transactions, both of which would involve second mortgages on the real estate now owned by the plans. As I understand it, a second mortgage in the amount of $25,000 to $35,000 is being considered to finance a new roof on one of the buildings or a second mortgage in the amount of approximately $100,000 is being considered with part of the proceeds being used to replace the roof and the remainder being invested in investments with a greater liquidity than the investments now owned by the plan.

You have asked us to comment on whether these transactions would constitute prohibited transactions under the Employee Retirement Income Security Act of 1974 and on the prudence of the transactions.

As to the prohibited transaction question, the answer depends entirely on the relationships of all the parties involved. There is no absolute bar to plans which wish to borrow money, and whether the loan is in the form of a first or second mortgage or an unsecured demand note is immaterial; any prohibition of the loan would come as a result of the relationship of the parties involved.

If you could supply us with written details of the proposed loans and all the parties involved, it may then be possible to determine whether or not the transaction is prohibited under the law.

As to whether or not these investments would be prudent, unfortunately this is not an area that has any clear cut rules or lends itself to an easy answer.

Certainly, it would seem to be imprudent if the plans borrowed money to invest and the investment income on the borrowed

money was less than the debt service on the loan. But where loans are made for other purposes, there are just no clear rules on how to determine if a particular transaction is prudent or not. In fact, under the law, it is not even clear if the trustees would be declared imprudent if there was one imprudent act but the overall experience of the fund had been favorable.

This is one area where you certainly would be wise to discuss the matter with your legal counsel before going ahead.

You may recall that on March 19, 1976 I sent to you drafts of your pension and profit sharing plans which had been revised to conform to the Employee Retirement Income Security Act of 1974. If these documents are in order, I would appreciate the return of an executed copy of each so I may prepare the other material needed to conform your plans to the law and submit them to the Internal Revenue Service for approval.

Very truly yours,

Louis G. Omansky

LGO/sm

February 12, 1981

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore MD 21207

Re: Sale of Notes to Plans

Dear Mr. Shofer:

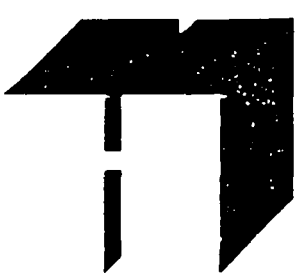
In March of 1979 the Department of Labor issued a temporary class exemption plan from prohibited transactions which would allow plans to purchase customer notes if the purchase met certain criteria. Under the law if the Department of Labor issues an exemption from prohibited transactions, then the transactions will not be prohibited and the fiduciaries will not be subject to penalties if they engage in the transactions that are covered by the exemption. Under certain conditions the Department of Labor can issue a class exemption and this is what they have chosen to do in this case.

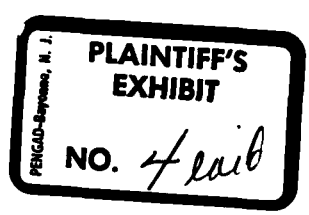
In order to fall under the class exemption each purchase by the plan of a "Security Agreement-Conditional Sales Agreement" must meet all of the following requirements.

1. The agreement or note must be accepted by the plan sponsor in the normal course of its primary business activity and must be secured by tangible personal property.

2. Any sale of customer notes to the plan must be on terms at least as favorable to the plan as an arm's length transaction with an unrelated third party would be.

3. The plan cannot invest more than 50% of its assets in customer notes and not more than 10% of its assets can be invested in the notes of any one customer.





4. The employer must guarantee in writing the immediate repayment of the outstanding balance of the note and accrued interest in the event the note is more than 60 days in arrears, or the customer fails to comply with any terms or conditions of the note, or the customer becomes insolvent or bankrupt, etc. Also, the note must be repurchased if the condition of affairs of the customer so change as to, in the opinion of the plan fiduciaries, impair its security or increase its credit risk; or should the customer fail to take proper care of the goods or abandom them.

5. The plan receives adequate security for the note. Adequate security means that the note is secured by a perfected security interest in the property purchased by the customer. This means that the title would have to specifically name the plan as having the lien and if existing notes are purchased the Motor Vehicle Administration would have to be notified to change the lienholder on the title.

6. The collateral must be insured against loss or damage from fire or other hazards.

7. The terms of the note cannot exceed 48 months for passenger cars and light-duty vehicles (propelled by its own motor and under 10,000 pounds gross weight); 60 months trucks over 10,000 pounds and certain heavy machinery; and 36 months for other types of equipment.

8. Records must be kep for at least six years and annually we must file a special report with the Department of Labor.

You should carefully review each requirement to insure that you fully understand them. Item 4 which is the repurchase requirement will probably cause the most difficulty. The other items you should be able to handle easily in your normal course of business.

The assignment to the plan should have some language in it which permits the employer to act as a collection agent and also these accounts will have to be marked to insure that payments are promptly

made to the plan after the employer collects the money. Also, the employer should not take any collection fee. Also, I would recommend a large stamp saying perhaps "Discounted to P.P." (for the pension plan), and "Discounted to P.S." (for the profit sharing plan) and then stamp your ledger card for each conract sold so your bookkeeper can deposit the payments on those accounts directly to the plan.

The exemption covers both new notes and existing notes, what the Labor Department calls seasoned notes, and in fact, the Labor Department mentions that seasoned notes might be better because a payment history is already estblished.

One final item about the exemption and that is it is temporary. It expires on June 30, 1984, unless the exemption is extended. The government says that the plans can continue to hold notes after June 30, 1984 so long as they were purchased before June 30, 1984. The exemption was made temporary so the government could evaluate the date it will get on the transactions before determining whether to extend the exemption.

If either plan does purchase any of these notes you have to send us a detailed breakdown of the amount paid by the plan and the principal and interest paid to the plan each year. So you should expect to be sending us at a minimum a copy of the note, assignment to the plan, and ledger card showing payment breakdown.

If you have any questions about these transactions please call me.

Very truly yours,

Louis G. Omansky

LGO/cf

LABOR DEPARTMENT TEMPORARY CLASS EXEMPTION TO ALLOW PLANS TO PURCHASE CUSTOMER NOTES FROM EMPLOYERS MAINTAINING PLANS

44 FR 17819, March 1979

[Prohibited Transaction Exemption 79-9]

PLANS TO PURCHASE CUSTOMER NOTES FORM EMPLOYERS MAINTAINING PLANS

Temporary Class Permit Exemption

AGENCY: Department of Labor.

ACTION: Grant of Temporary Class Exemption.

SUMMARY: This document contains a temporary class exemption from certain restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). It permits employee benefit plans to purchase certain notes from employers any of whose employees are covered by the plan where the employers receive such notes from their customers in the ordinary course of their business and the notes are collateralized by security agreements on the property purchased by the customers.

FOR FURTHER INFORMATION CONTACT:

Charles Humphrey, Office of Fiduciary Standards, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-8881). This is not a toll-free number

SUPPLEMENTARY INFORMATION: On October 14, 1977, notice was published in the FEDERAL REGISTER (42 FR 55321) of the pendency before the Department of Labor (the Department) and the Internal Revenue Service (the Service) of a temporary class exemption from the restrictions of sections 406(a), 406 (b)(1) and (2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code.

The proposed class exemption was based on more than 45 applications that requested the Department and the Service to grant individual exemptions to permit employee benefit plans to purchase customer notes from employers any of whose employees are covered by the plan. According to these applicants, prior to the enactment of the Act, it had been a common practice among businesses engaged in the retail sale of property (e.g., construction equipment or motor vehicles) for the seller to accept a secured note for part of the purchase price of the property and then sell the note to its employee benefit plan or to an unrelated third party financial institution. The applicants represented that these notes were good investments for plans, providing adequate security in the event of default and returns which were generally greater than the returns available from alternative investments.

The proposed exemption contained specific conditions to protect the interest of plan participants, including requirements that the sale of the notes be on arm's length terms; that the employer guarantee repayment of the note if it is more than 30 days in arrears; that no more than 25 percent of plan assets be invested in customer notes of the employer; that the note be adequately secured; that the term of the note not exceed a certain number of months, determined by the security underlying the note; and that insurance against loss or damage to the collateral be provided by the obligor until the note is repaid or repurchased by the employer. Because the Department and the Service believed that it would be appropriate for it to reassess the basis for the exemption, the exemption was proposed to be temporary in nature, and would expire on December 31, 1981. In order to enable the Department and the Service to monitor the operation of the exemption to determine whether it should be made permanent, modified or be permitted to lapse upon expiration, the proposed exemption required certain information to be submitted to the Service by a plan which entered into a transaction in reliance on the exemption.

The exemption was proposed in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722, and all interested persons were invited to submit comments and request a public hearing on the proposed exemption. Pursuant to these requests and to notice published in the FEDERAL REGISTER on January 20, 1978 (43 FR 2963), a public hearing was held on March 9, 1978, in which interested persons were afforded the opportunity to present their views on the proposed exemption.

It should be noted that under Presidential Reorganization Plan No. 4 of 1978, effective December 31, 1978, the authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code has been, with certain exceptions not here relevant, transferred to the Secretary of Labor, and the Secretary of the Treasury is bound by the exemptions issued by the Secretary of Labor pursuant to such authority. Therefore, this exemption is issued solely by the Department.

DISCUSSION OF SIGNIFICANT COMMENTS AND MODIFICATIONS TO THE CLASS EXEMPTION: Over 170 comments supporting the grant of the exemption have been received. Several commentators, while supporting the exemption, suggested that certain sections of the exemption be changed, as discussed below.

DEFINITION OF CUSTOMER NOTES (SECTION I): Several commentators recommended the use of the term "security agreement" rather than "conditional sales contract" in defining the term "customer notes," since under the Uniform Commercial Code (UCC), the term "security agreement" is the generic term for any agreement which creates or provides for a security interest. This suggestion was accepted and incorporated in the exemption. Accordingly, the reference to "conditional sales contract" has been deleted and the term "security agreement," as defined in UCC section 9-105(1)(1), has been substituted in its place.

PERCENTAGE LIMITATION (SECTION IID): Many commentators urged that the proposed limitation that only 25 percent of plan assets can be invested in customer notes of the employer be increased; some suggested that this limitation be eliminated. The commentators stated that plans were adequately protected without this percentage limitation. They argued that their plans had invested substantially in customer notes prior to the effective date of the Act and had achieved, without any increased risk of loss, a higher net yield on their investments than plans which had not invested in such notes.

Many of the commentators suggested that any increase in the percentage limitation should be accompanied by additional safeguards to protect plan participants. The suggested safeguards included: 1) requiring additional security; 2) requiring a third party to purchase any note in default; 3) requiring the employer to have a net worth sufficient to satisfy its obligation as guarantor on the notes; 4) requiring at least a 15 percent customer down payment; or 5) limiting the percentage of plan assets that may be invested in the customer notes of any one customer.

After considering the comments, the Department has decided that the percentage limitation should be increased, but that any increase should be accompanied by additional protections for plan participants. Accordingly, the exemption has been revised to permit plans to invest up to 50 percent of plan assets in customer notes of the employer, and a new condition has been added which provides that any acquisition of customer notes after the date of the exemption which would cause a plan to hold more than 10 percent of plan assets in the notes of any one customer will not be covered by the exemption. Current plan holdings of customer notes would not be affected by this condition. These changes should, in the Department's view, offer plans the flexibility of investing a higher percentage of plan assets in such notes while providing an additional safeguard for plan participants. The Department will specifically mon-

for the operation of this condition to determine whether at the expiration of the interim exemption the condition should be modified in light of plan experiences.

EMPLOYER GUARANTEE OF REPAYMENT (SECTION II E): Several commentators argued that it is unreasonable to consider a note in default (in which case, under the terms of the exemption, the employer would be required to repurchase the note) because it is 30 days in arrears. According to the commentators, even the best customers may, for valid business reasons, be in arrears for a longer period of time. The commentators noted that some industries are seasonal and that many excellent accounts have temporary cash flow problems and urged that a plan should be given additional time to consider the reasons for a missed payment—e.g., whether the circumstances are permanent or temporary or whether the plan expect repayment within a reasonable time period. They argued that this additional time would provide the plan sufficient flexibility to retain what it believes are sound investments. Most of the commentators suggested extending the default period to 60 or 90 days.

In light of these comments, the Department has lengthened to 60 days the period after which a note would be deemed to be in default for purposes of this exemption.[1] The Department notes, however, that plan fiduciaries have certain responsibilities under section 404 of ERISA with respect to delinquent payments, regardless of the length of the "default period" in this exemption.

SEASONED NOTES (SECTION II H): Section II H of the exemption requires repayment of the note to be made within a certain number of months, determined by the type of property which secures the note. Several commentators questioned whether these time limits for the maximum duration of customer notes refer to the remaining term of a seasoned note at the time it is sold to the plan or only to the original term of a newly issued note. These commentators stated that the exemption should cover the sale of seasoned notes, because notes on which the debtor has shown the ability to make timely payment may be better investments than newly issued notes. The exemption is not limited to the acquisition of newly issued notes. The purchase of seasoned notes, therefore, is permitted if the remaining term of the note at the time it is sold to the plan satisfies the requirements of Section II H, and the requirements of the exemption are otherwise satisfied.

MISCELLANEOUS: The exemption, as proposed, would expire on December 31, 1981. In order to provide the Department a sufficient period of time to monitor the operation of the exemption, the expiration date has been changed to June 30, 1984. The provision which would have required the submission of information to the Service has been changed to require that the information be submitted to the Department. In addition, in response to several comments, the time for filing the requested information has been changed to coincide, generally, with the filing of the applicable Form 5500 series annual return/report. Further, the amount of information which must be submitted has been reduced.

The Department was requested to expand the scope of the exemption to include the sale of notes secured by leases, intangible personal property, real property, mortgage contracts, construction notes, etc. However, as stated in the notice of pendency, the Department has not received sufficient information to determine that a class exemption for such transactions can be proposed with adequate safeguards against abuse. The Department, however, will continue to consider applications for these types of transactions on an individual basis.

Questions have been raised concerning the applicability of the temporary class exemption to a contribution of customer notes to an employee benefit plan by the employer who sponsors the plan. It is the Department's view that to the extent a contribution of customer notes constitutes a prohibited indirect sale between a plan and a party in interest, the transaction would be exempt if the conditions of this class exemption are satisfied.[2]

The Department also has been asked whether plans may hold, beyond the expiration date, notes purchased before such date in accordance with the terms of the exemption. The Department intends to permit plans to hold, beyond June 30, 1984, notes purchased before that date, in conformance with the terms of the exemption, in order not to require plans to dispose of all of their customer notes purchased from the employer by June 30, 1984. In this regard, the Department expects that its evaluation of the temporary exemption and its determination whether the exemption should be made permanent, modified, or extended will be made and published in the FEDERAL REGISTER sufficiently in advance of the expiration date so as to avoid any undue disruption of plan investment activities.

GENERAL INFORMATION: The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person/party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and 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/her duties respecting the plan solely in the interest of the plan's participants and beneficiaries 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 a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) The exemption set forth herein is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory 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.

(4) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(5) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of October 14, 1977, the Department makes the following determinations:

(i) The class exemption set forth herein is administratively feasible;

(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of participants and beneficiaries of the plans.

EXEMPTION

Accordingly, the following exemption is hereby granted 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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

SECTION I. DEFINITION OF CUSTOMER NOTES.

For purposes of this exemption a customer note is a two-party instrument, executed along with a security agreement for tangible personal property, which is accepted in connection with, and in the normal course of, the employer's primary business activity as a seller of such property. A two-party instrument is a promissory instrument used in connection with the extension of credit in which one party (the maker) promises to pay a second party (the payee) a sum of money.

[1] The Department has also modified Section II to make clear that the prohibited transaction provisions of the Act and the Code shall not apply to a repurchase by the employer in accordance with the terms of the exemption.

[2] Fiduciaries of plans to which customer notes are contributed should be aware, however, that the decision by a plan fiduciary to accept the notes is subject to the same standards of prudence under section 404 of ERISA which would apply to a decision to purchase such notes for cash.

SECTION II. GENERAL EXEMPTION.

Effective immediately the restrictions of sections 406(a), 406(b) (1) and (2), and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply until July 1, 1984 to the purchase and holding by employee benefit plans of customer notes (as defined in Section I) acquired from employers any of whose employees are covered by such plans and the repurchase of such notes by such employers in accordance with paragraph (E), below provided that the following conditions are met:

(A) Within seven months after the close of a plan year during which a plan engages in a transaction in reliance on this class exemption, the trustees or other appropriate fiduciary of the plan shall submit the following information to the U.S. Department of Labor, Pension and Welfare Benefit Programs, 200 Constitution Avenue, N.W., Washington, D.C. 20216 (Attention: Customer Notes):

1. Name and address of employer;
2. Employer's identification number;
3. Name and address of plan administrator;
4. Plan administrator's identification number;
5. Plan name and number.

(B) Upon request by the Department, the trustees or other appropriate fiduciary of a plan which engaged in a transaction in reliance on this exemption shall submit to the Department such additional information regarding transactions subject to this exemption as may be requested. All requests for additional information shall be in writing.

(C) Any sale of customer notes to the plan is on terms at least as favorable to the plan as an arm's length transaction with an unrelated third party would be.

(D) The acquisition of a customer note from the employer shall not cause a plan to hold: (i) more than 50 percent of the current value (as the term is defined in section 3(26) of the Act) of plan assets in customer notes of the employer; and (ii) more than 10 percent of plan assets (as defined above) in customer notes of any one customer.

(E) The employer guarantees in writing the immediate repayment of the outstanding balance of the note and accrued interest in the event the note is more than 60 days in arrears, or the obligor on the note fails to comply with any terms or conditions of the note, or in the event the obligor shall become insolvent, commit an act of bankruptcy, make an assignment for the benefit of creditors or a liquidating agent, offer a composition or extension to creditors, make a bulk sale; or in the event any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or of amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation, or dissolution shall be begun by or against the obligor; or in the event of the appointment under any jurisdiction at law or in equity of any receiver of any property of the obligor; or in the event the condition of affairs of the obligor shall so change as to, in the opinion of the plan trustees or other appropriate fiduciaries, impair its security or increase its credit risk; or should the obligor fail to take proper care of the goods or abandon the same.

(F) The plan receives adequate security for the note. For purposes of this exemption, the term adequate security means that the note is secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security is such that it may reasonably be anticipated that loss of principal or interest will not result. In no event shall adequate security mean an interest in intangible personal property, such as, but not limited to, accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

(G) Insurance against loss or damage to the collateral from fire or other hazards will be procured and maintained by the obligor until the note is repaid or repurchased by the employer, and the proceeds from such insurance will be assigned to the plan.

(H) Repayment must be provided for in the following manner:

1. Where the note is secured by heavy equipment, the term shall in no event exceed 60 months. For purposes of this exemption, heavy equipment shall include machinery sold by equipment distributors such as, but not limited to, earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications, such as, but not limited to, portable air compressors, backhoes, cranes, crushers, dozers, earthboring machines, excavators, fork lifts, graders, hydraulic hammers, loaders, rollers, scrapers, tractors, trailers, trenchers, trucks over 10,000 pounds, and highway material handling equipment, but shall not include such equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be expected to be resold in the ordinary course of the equipment distributor's business.

2. Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term shall in no event exceed 48 months. For purposes of this exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation.

3. Where the note is secured by tangible personal property other than heavy equipment or motor vehicles, described in paragraph II 1 and 2 above, the term shall in no event exceed 36 months.

I. A plan which relies upon this exemption shall maintain or cause to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the Department to determine whether the conditions of this exemption have been met, except that:

1. A prohibited transaction will not be deemed to have occurred if due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six year period; and

2. Such employer shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph J below.

(J. Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph I above are unconditionally available at their customary location for examination during normal business hours by:

1. The Internal Revenue Service;
2. The Department of Labor;
3. Plan participants and beneficiaries;
4. Any employer of plan participants;
5. Any employee organization any of whose members are covered by the plan; or
6. Any duly authorized employee or representative of a person described in subparagraph (1) through (5) of this paragraph.

SECTION III. SPECIAL EXEMPTION.

A. The restrictions of sections 406(a) and 406(b) (1) and (2), and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the purchase and holding by employee benefit plans of customer notes purchased on or before June 30, 1975, from employers any of whose employees are covered by such plan, provided that the following conditions are met:

1. The terms of the purchase of the note by the plan were at least as favorable to the plan as an arm's length transaction with an unrelated third

party would have been:

2. The plan received adequate security as defined in Section (II)(F) above; and

3. Such purchases were ordinarily and customarily made by the plan prior to January 1, 1975.

B. The restrictions of section 406(a) and 406(b) (1) and (2) of the Act and section 4975(c)(1) (A) through (E) of the Code shall not apply until September 20, 1979 to the sale, exchange, or other disposition of customer notes which are owned by the plan on October 14, 1977, to a disqualified person or party in interest if:

1. Such sale is made in order to comply with the conditions of this exemption; and

2. The plan receives not less than adequate consideration.

Signed at Washington, D.C., this 16th day of March, 1979.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U. S. Department of Labor.

-- End of Section R --

Expires
6/30/84

THE STUART HACK COMPANY

Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

Writer's Direct Dial No.

August 9, 1984

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Crown Motors
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

You questioned whether assets of your money purchase pension plan and profit sharing plans can be used as collateral for loans, whether you can borrow against these plans and whether there is any special treatment for your voluntary account under these plans.

First of all, let's distinguish between the voluntary account and the employer account. The employer account cannot be put up as collateral for a loan, and loans to participants against their employer account are limited to a total of $50,000 for all plans for up to a maximum of five years (for a longer period of time if used for the purchase or substantial improvement to a primary residence). Further, we would recommend that any loans against an employer account should be fully collateralized (this means collateral in addition to the value of the account itself).

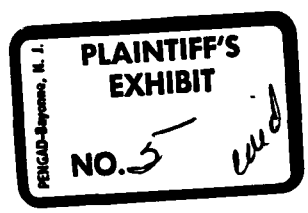
There is an entirely different treatment for voluntary accounts. First, there is no limit on the amount that can be borrowed against the account or the length of time for which it can be outstanding. Also, the account, itself, can stand as collateral for the loan against the voluntary account. Further, the voluntary account can be put up as collateral for a loan from a bank or other source. The loan agreement will have to include a provision that you cannot withdraw money from your voluntary account, and thus dissapate the collateral, however.

The law is pretty clear on the inability to use employer account values as collateral for a loan. There is no law on restrictions of using voluntary account money for collateral for a loan. The TEFRA provisions on the limits on loans apply only to employer accounts and specifically do not apply to employee voluntary accounts. In my opinion, you can use your voluntary account as collateral for a loan or you can borrow up to 100% of your voluntary account. The terms of the loan must be reasonable as to the interest rate and pay back period.

Cordially,

Stuart Hack

SH:mn



$ 150,000.00/xx 8/23 1984

after date I promise to pay

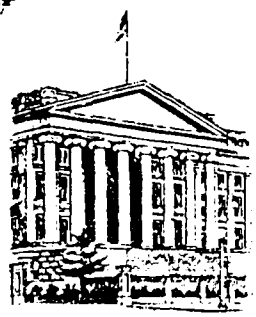
to the order of CATALINA ENTERPRISES INC. PENSION TRUST

ONE HUNDRED FIFTY THOUSAND Dollars

at 500 CLASS A MTS PAR - AT A RATE OF 12% PER YEAR

Value received.

No. Due ON DEMAND



$ 50,000.00/xx 9/5/ 1984

after date I promise to pay

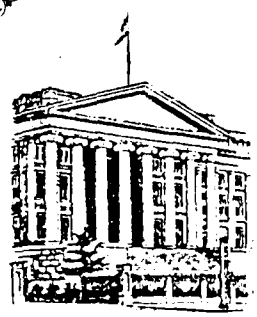
to the order of CATALINA ENTERPRISES INC. PENSION TRUST

FIFTY THOUSAND Dollars

at 500 CLASS A MTS INC. - AT A RATE OF 12% PER YEAR

Value received.

No. Due ON DEMAND



$ 75,000.00/xx FEB 21, 1985

after date I promise to pay

to the order of CATALINA ENTERPRISES INC. PENSION TRUST

THIRTY-FIVE THOUSAND AND 00/xx Dollars

at 12% INTEREST PER YEAR

Value received.

No. Due ON DEMAND

$ 3000.00/xx 2/25/ 1985

after date I promise to pay

to the order of CATALINA ENTERPRISES INC. PENSION TRUST

THREE THOUSAND AND 00/xx Dollars

at 12% INTEREST

Value received.

No. Due ON DEMAND

PENGAD-Bayonne, N. J.
JOINT EXHIBIT
D-4
ewd

PENGAD-Bayonne, N. J.
PLAINTIFF'S EXHIBIT
NO. 6
ewd

PENGAD-Bayonne, N. J.
DEPOSITION EXHIBIT
Shofer #2-A

$ 12,000 — 7/30/ — 1985

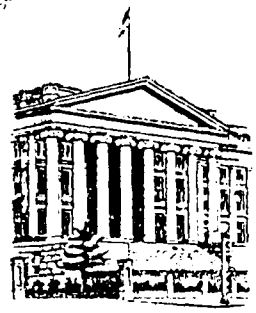
after date I promise to pay to the order of CATALINA ENTERPRISES INC, PENSION TRUST

TWELVE THOUSAND AND 00/100 Dollars

at 12% PER ANNUM INTEREST

Value received with interest at 12% percent per annum

No. Due ON DEMAND



$ 25,000 00/100 — 8/13/ — 1985

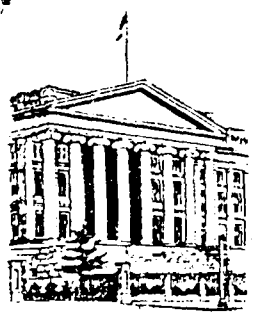
after date I promise to pay to the order of CATALINA ENTERPRISES INC, PENSION TRUST

TWENTY FIVE THOUSAND Dollars

at 12% PER YEAR INTEREST RATE

Value received

No. Due ON DEMAND



$ 5,000-00/100 — 8/21/ — 1985

after date I promise to pay to the order of CATALINA ENTERPRISES INC, PENSION TRUST

FIVE THOUSAND AND 00/100 Dollars

at 12% ANNUAL INTEREST

Value received

No. Due ON DEMAND

$ 35,000 — SEPT. 30, — 1986

after date I promise to pay to the order of CATALINA ENTERPRISES INC, PENSION TRUST

THIRTY-FIVE THOUSAND AND 00/100 Dollars

at

Value received with interest at 12% percent per annum

No. Due ON DEMAND

HARVEY M. NEWMAN, CPA
GERALD L. GRABUSH, CPA
BARRY B. BONDROFF, CPA
PHILIP I. MATZ, CPA
NORMAN N. POLONSKY, CPA
KENNETH E. LARASH, CPA
ALLEN M. SCHIFF, CPA

Grabush, Newman & Co., P.A.
Certified Public Accountants

February 20, 1987

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights
Baltimore, Maryland 21207

Dear Dick:

It has come to our attention, during the preparation of you corporation and individual income tax returns for 1985, that your individual income tax return, Form 1040 should be amended for the year ended December 31, 1984.

The amendment would be in the form of additional income of approximately $150,000 which is the amount that was drawn out of the pension in 1984, in the form of loans, that was in excess of the allowable loan amount of $50,000. The changing of the character of these items from loans to withdraws and consequently income to you, would also effect the interest deduction claimed that year.

If you have any questions on this letter, or want us to proceed with making the amendment as noted, please call me.

Very truly yours,

Kenneth E. Larash

KEL/njj

CATALINA ENTERPRISES, INC.
5000 LIBERTY HEIGHTS AVENUE
BALTIMORE, MARYLAND 21207

RICHARD SHOFER
PRESIDENT

TELEPHONE:
AREA CODE (301) 466-3333

March 12, 1987

PERSONAL AND CONFIDENTIAL

Stuart Hack
The Stuart Hack Co.
4623 Falls Rd.
Baltimore, Md. 21209

Dear Stuart:

My accountants, Grabush, Newman & Co., have recently informed me that I am subject to income tax on a considerable amount of money that I have borrowed from my pension fund voluntary contribution account. They have informed me that loans in excess of fifty thousand dollars are taxable according to I.R.S. regulations.

Needless to say, this came as quite a disturbing revelation. I presented Grabush Newman with the letter you had written me on August 9, 1984, a copy of which I am enclosing. Despite what your letter states, they say I may owe a lot of money to Uncle Sam.

This news disturbed me to the extent that I sought advise from an independent pension attorney, Nicholas Giampetro. He only confirmed that tax is due.

At this time I envision among other things:
1. Federal and state income tax on approximately $200,000 resulting from loans from the voluntary account in excess of the allowable fifty thousand dollars - all at the maximum personal tax rate.
2. Penalties and interest on these taxes going back to 1984 when the first loan was made.
3. Amended personal income tax returns going back to 1984.
4. Additional penalties and interest for underestimating income tax due based on the new amended returns.
5. A general I.R.S. audit of my personal, corporate, and pension returns for several years, triggered by the amending of my personal returns.
6. An unthinkable amount of time expended relating to this matter and possible audits.
7. An even more unthinkable amount of money for accountants, and lawyers related to the consequences of this matter and any audits that may occur.
8. A devastating loss to the future value of my voluntary pension

account as a result of these loans.
9. A general weakening of the soundness of the Pension Plan effecting not only me but, perhaps, other participants.
10. The appearance of a significant six figure personal tax liability on my personal balance sheet, which would undoubtedly undermine my auto business credit line and relationship with my bank as well as others.
11. Possible Federal and State liens against both myself personally and my business as a result of not being able to pay this large and unexpected tax and penalty burden.

I was entitled to rely on your advice. I did, and now I am in a jam. Relying on your advice I borrowed $200,000 in 84 more in 85 and still more in 86.

Although there could be even other, as yet unforseen consequences, you can well imagine that the nightmarish possibilities above have moved me to seek additional legal advice.

It is my understanding from the advice that I have received that I should be able to look to the Stuart Hack Co. for relief.

I am writing you now that the present situation is clear to me to enlist your aid in resolving this mess in a friendly way if possible.

Our relationship has spanned about fourteen years without a negative word between us. I desire to keep it that way as much as possible.

There is no doubt that based on the legal advice that I have been forced to seek, that this matter will soon be brought to the attention of your insurers.

The question is - Can we communicate openly, attack this unfortunate issue together, and resolve it with a minimum of expense and discomfort to us all (including your insurers) or - are the lawyers going to be the only winners.

At this time I desire that you present this matter to your insurers quickly. Please give this matter your urgent attention. Assess the situation as soon as possible and likewise have your insurers do the same.

Many of the potentially damaging events mentioned earlier in this letter may be avoided if we work together to resolve this.

I have not got much time. Based on what I have now learned I must file an amended return soon for 84 and perhaps 85. I do not have cash to pay with those amended returns.

Please write me, and have your insurers write, stating (as I have done) your willingness and desire to expedite this matter in a

pleasant manner.

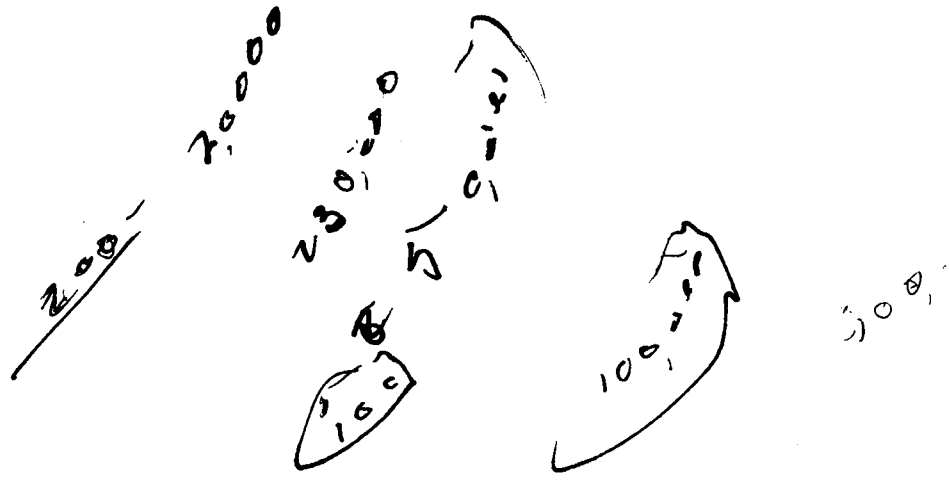
As soon as you clarify you position to me regarding this matter and as soon as your insurers state their position to me I will know how to proceed.

On the other hand, a lack of timely communication from you that you desire to work this out, as you must realize, will both fracture our relationship and force me into the arms of attorneys to seek relief. Please do not allow this to happen. Because of my relationship with you, I want to do everything possible to avoid the agonies of litigation.

Cordially,

Richard Shofer

RS/ca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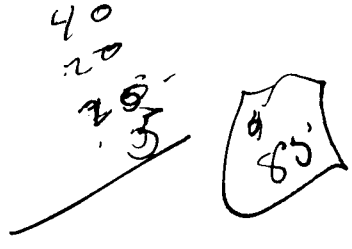
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20'
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THE STUART HACK COMPANY

Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 470-7435 Writer's Direct Dial No.

April 8, 1987

PERSONAL AND CONFIDENTIAL

Richard Shofer, President
Catalina Enterprises, Inc.
5000 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

This is in response to your letter dated March 12, 1987, regarding loans you made from the retirement plan.

Your accountants raised the issue on the loans some time ago. We did some research and concluded there was not a problem. I have suggested to Ken Larash that he arrange a meeting with you, him, the attorney you have hired and me to go over the facts together. The best possible resolution is to be able to conclude you do not have a problem. To conclude otherwise could be very costly to all of the parties involved.

I recommend we meet with this positive goal in mind.

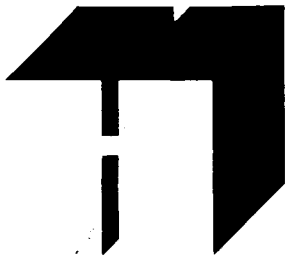
Cordially,

Stuart

Stuart Hack

SH/rbp

CC: Harvey Newman, CPA
Kenneth Larash, CPA
Alan Vandendriessche



THE STUART HACK COMPANY

Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

Writer's Direct Dial No.

November 26, 1984

PERSONAL AND CONFIDENTIAL

Ms. Pam Somers
Catalina Enterprises
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: **Fee Agreement for Catalina Enterprises Money Purchase Plan 1984 Administration**

Dear Pam:

There are two types of work we do for you on an annual basis. The first type is "regular annual administration." The second is "special work." Special work includes procedures which we are unable to predict or quantify in advance, and will be billed on an actual time basis unless we quote you a special additional fixed fee. A list of regular annual administration work and special work for your plan is enclosed.

Although there may be additional changes as a result of regulations issued in regard to TEFRA this year, we can quote you a fee for the regular annual administration. For the plan year 12/31/84, the fee for regular annual administration of the plan will be $1,100.00, plus any out-of-pocket expenses (out-of-pocket expenses include photocopies, delivery service charges, postage, and the like). One-half of the quoted fee is due with the renewal data for your plan. One-fourth will be billed when we notify you of the plan deposit and the remaining one-fourth will be billed when we deliver your annual statement. Out-of-pocket expenses and any charges for special work will be billed monthly as they are incurred.

Please sign and return the enclosed copy of this letter as your authorization for us to proceed with the work.

Sincerely,

Alan Vandendriessche
Account Executive

AV:lcs
Enclosures

Authorized by:

Signature _____ Date _____

cc: Accounting

THE STUART HACK COMPANY

REGULAR ANNUAL ADMINISTRATION

MONEY PURCHASE, TARGET BENEFIT, PROFIT SHARING AND EMPLOYEE STOCK OWNERSHIP PLANS

1. Employee census and asset data request
2. Eligibility and vesting
3. Deposit calculation
4. Renewal computer run
5. Progress reports
6. Contribution Statement
7. 5500 forms
8. Summary Annual Report
9. Annual Statement

Please note:

1. Any work that must be redone because of incorrect data provided by the client is billed as a special item.
2. An extension request for late filing of the 5500 series form is billed as a special item. The fee for requesting this extension is $100.
3. Accounting work necessary to correct plan asset records or to create records is billed as a special item.

THE STUART HACK COMPANY

SPECIAL WORK ITEMS

1. Processing employee terminations
2. Balancing plan assets and/or reviewing asset reports prepared by your accountant or bank
3. Investment evaluation
4. Amendments to your plan
5. Technical questions requiring research and/or advice
6. Actuarial studies to attain changed goals
7. Plan loan advice or servicing
8. Deposit estimates
9. Calculating salary and deposit amounts based on total profit figure
10. Discussions with client, CPA, attorney or bank re:
    a. estimating plan deposit
    b. changing plan deposit
    c. estate planning
    d. year-end tax planning
    e. TEFRA
    f. other technical questions not related to regular annual administration
11. FASB 35 and 36 numbers for financial statements
12. IRS audits
13. Response to IRS questions regarding 5500 series forms
14. Special beneficiary designations
15. Calculation of maximum deferrals to a 401(k) plan

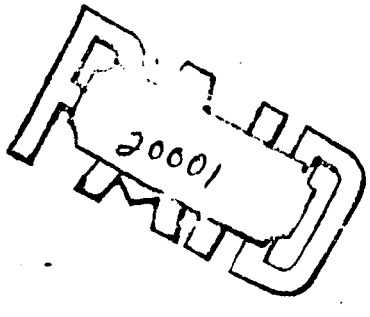
Invoice

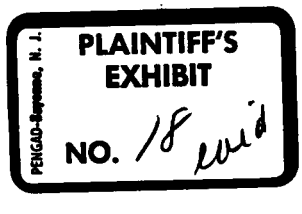
Ms. Pam Somers
Catalina Enterprises
5006 Liberty Heights Avenue
Baltimore, MD 21207

PROJECT # CGMES
INVOICE # 003654
09/25/84

Catalina Enterprises
Money Purchase Special Work

Discussion with client and types of plan loans. Bill for research to follow.	$360.00
Balance assets	63.00
Discussion regarding terminated participant	36.00
Employee termination work including discussion with terminated employee.	81.00
TOTAL	$540.00





TERMS:
NET 10 DAYS

THE STUART HACK COMPANY
Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

Invoice

Ms. Pam Somers
Catalina Enterprises
5006 Liberty Heights Avenue
Baltimore, MD 21207

PROJECT # CGMES
INVOICE # 004236
12/4/84

Catalina Enterprises
Money Purchase Special Wk

Research on loans from voluntary account.

20803
1-30-85

TOTAL $40.00

TERMS:
NET 10 DAYS

THE STUART HACK COMPANY
Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

THE STUART HACK COMPANY

Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

Writer's Direct Dial No.

March 11, 1985

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21215

RE: **TEFRA, TRA and REA Amendments**

Dear Mr. Shofer:

Hopefully this letter will clear up all the confusion regarding when amendments must be made to your defined benefit plan.

On March 4, 1985, the IRS announced new compliance dates for incorporating the changes required by TEFRA, TRA '84 and REA. Prior to the IRS announcements, TEFRA amendments had to be made (in the case of calendar year plans) by the due date of the tax return (including extensions) for the common year. Since the earliest possible effective date of TEFRA is for a calendar year plan, and since the TEFRA effective date for a calendar year plan is January 1, 1984, the earliest possible filing deadline is March 15, 1985. If the normal six month extension is obtained, the filing date becomes September 15, 1985. However, prior to the IRS announcement, if you did not apply for an extension for filing your tax return, TEFRA amendments had to be in your plan no later than March 15, 1985 or the plan would be disqualified.

For this reason, you may have received a letter requesting that you file for an extension for filing your tax return to extend the amendment period to September 15, 1985.

Now, here's the good news. The IRS has announced that the period for making TEFRA amendments will be extended as if you had applied for and received the automatic six month extension for filing your tax return, whether or not such an application for extension of time actually has been filed. Thus, for calendar year plans, we have until September 15, 1985.

Please ignore all previous correspondence, and I apologize for the confusion. Your restated plan will be sent to you as soon as possible, and certainly before the September 15, 1985 deadline.

Sincerely,

Charmaine B. Gordon, Esquire

CBG:dla

THE STUART HACK COMPANY

Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

Writer's Direct Dial No.

March 7, 1986

Dear Client:

The Small Business Council of America (over 1,000 members) and The Group (150 tax lawyers representing small businesses) have asked me to participate in a network to oppose more changes in the tax laws affecting retirement savings plans. Please help!

The proposed Tax Reform Bill of 1985, H.R. 3838, passed by the House of Representatives contains 122 pages of changes in the tax laws governing retirement savings plans.

As proposed, some retirement benefits will be taxed as high as 53% and the amounts of permitted savings for you and your employees reduced. This is ridiculous in light of the need to encourage savings.

It is also absurd for Congress to force more changes and costly amendments. The last three tax laws have required four changes since 1982.

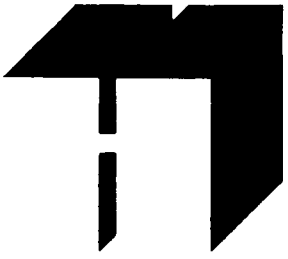
Please write, call and/or telegram your Senators and representatives and ask your employees to write as well. The more letters requesting no more changes to employee pensions and savings, the better. Suggested letters for you and your employees, plus names and addresses of the members of the House Ways and Means and Senate Finance Committees and a fact sheet, are enclosed.

We hope, through this nationwide effort and network in all 50 states, to create a ground swell of opposition to these changes. Please have as many letters as possible sent immediately in time to be considered by the Senate.

Cordially,

Stuart Hack

SH:mn
Enclosures



THE STUART HACK COMPANY

Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

Writer's Direct Dial No.

November 24, 1986

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: **Fee Agreement for the Catalina Enterprises Money Purchase Plan 1986 Administration**

Dear Mr. Shofer:

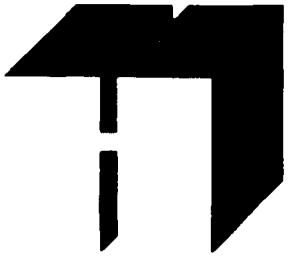
Paragraph I below describes the fee arrangement for annual administration we have had with you in the past. Some of our clients have indicated to us that they would prefer that the fee include phone calls, a deposit estimate at the end of the year, employee terminations, asset work, plan loan servicing, etc.--services that we normally bill monthly on a time-and-charges basis. In response to these requests, we have developed an alternative fee arrangement which is described in paragraph II below. At the end of the letter, we have asked you to indicate whether you wish to leave the fee agreement unchanged or whether you prefer the alternate fee agreement.

If you have questions or suggestions, please call.

I. Annual Administration

There are two types of work we do for you on an annual basis. The first type is "regular annual administration." The second is "special work." Special work includes procedures which we are unable to quantify in advance. Special work will be billed on an actual time basis unless we quote you a special additional fixed fee. A list of regular annual administration work and a list of some common special work items and out-of-pocket expenses is enclosed.

For the plan year 1/1/86 to 12/31/86, the fee for regular administration of the plan will be $1,210.00. One-half of the quoted fee is due with the signed engagement letter. One-fourth will be billed when we notify you of the plan deposit and the remaining one-fourth will be billed when we deliver your annual statement. Out-of-pocket expenses and charges for special work will be billed monthly as they are incurred.



II. Alternative Annual Administration Fee Arrangement (Optional)

If you wish, you may choose to pay a fee of $1,800.00 before any work begins for the year 1/1/86 to 12/31/86 that will cover all annual administration work including most tasks which are normally billed to you monthly on a time-and-charges basis (see enclosed list of work covered which is reproduced on blue paper).

The only work not covered by this fee would be major projects. We have enclosed a list of projects that could arise for some clients in the coming year. Such projects have always been and will continue to be outlined to you in a separate, detailed engagement letter. Examples include plan amendments and restatements, IRS audits, plan redesign, pro forma FASB 87 and 88 reports for your accountants and Tax Reform Act of 1986 reviews.

Please sign and return the enclosed copy of this letter as your authorization for us to proceed with the work.

Sincerely,

Alan Vandendriessche

AV:lcs
Enclosures

_____ (I) I wish to leave our fee agreement unchanged and have enclosed a check for $_____ for one-half of the base fee.

_____ (II) I prefer the alternate fee arrangement and have enclosed a check for $_____ to cover the next 12 month's administration work as outlined on the blue alternative fee arrangement list.

Authorized by:

Signature _____ Date _____

cc: Accounting

THE STUART HACK COMPANY

REGULAR ANNUAL ADMINISTRATION

MONEY PURCHASE, TARGET BENEFIT, PROFIT SHARING AND EMPLOYEE STOCK OWNERSHIP PLANS AND 401(K) PLANS

1. Employee census and asset data request
2. Eligibility and vesting
3. Deposit calculation
4. Renewal computer run
5. Progress reports (End of Year)
6. Contribution Statement
7. 5500 forms
8. Summary Annual Report
9. Annual Statement
10. Annual 1/3 - 2/3 Test for 401(k) Plans

Please note:

1. Any work that must be redone because of incorrect data provided by the client is billed as a special item.
2. An extension request for late filing of the 5500 series form is billed as a special item. The fee for requesting this extension is $100.
3. Accounting work necessary to correct plan asset records or to create records is billed as a special item.
4. Information requested by your attorney, accountant or other advisor is billed as a special item.

SPECIAL WORK ITEMS

1. Processing employee terminations

2. Balancing plan assets and/or reviewing asset reports prepared by your accountant or bank

3. Investment evaluation

4. Amendments to your plan

5. Technical questions requiring research and/or advice

6. Actuarial studies to attain changed goals

7. Plan loan advice or servicing

8. Deposit estimates

9. Calculating salary and deposit amounts based on total profit figure

10. Discussions with client, CPA, attorney or bank re:

    a. estimating plan deposit
    b. changing plan deposit
    c. estate planning
    d. year-end tax planning
    e. TEFRA
    f. other technical questions not related to regular annual administration

11. FASB 35 and 36 numbers for financial statements

12. IRS audits

13. Response to IRS questions regarding 5500 series forms

14. Special beneficiary designations or changes during the plan year

15. Followups of data request, contribution statements or other information necessary to complete the administration of the plan.

16. Produce participant statement of account on other than the valuation date of the plan.

OUT-OF-POCKET EXPENSES

1. Photocopies

2. Delivery Service Charges

3. Postage

ALTERNATIVE FEE ARRANGEMENT

ANNUAL ADMINISTRATION FEE

$1,800.00
FOR 1/1/86 TO 12/31/86

INCLUDES

1. Employee census and assets data request
2. Eligibility and vesting
3. Actuarial valuation based on first set of pay figures given to us
4. Actuary's review and statement of deductible deposit
5. Individual participants' progress reports
6. Contribution Statement
7. Schedule B
8. 5500 Forms
9. PBGC-1 Form, if required
10. Summary Annual Report
11. Annual Statement
12. Review for needed changes
13. Processing employee terminations
14. Balancing plan assets and/or reviewing assets reports prepared by your accountant or bank
15. Technical questions requiring research and/or advice_
16. Plan loan advice or servicing
17. One deposit estimate
18. Discussions with client, CPA, attorney or bank re:

    a. estimating plan deposit
    b. year-end tax planning

19. FASB 35 and 36 numbers for financial statements

20. Response to IRS questions regarding 5500 series forms

21. Special beneficiary designations or changes during the plan year

22. Follow-ups of data request, contribution statements or other information necessary to complete the administration of the plan

23. Out-of-Pocket Expenses

    1. Photocopies
    2. Delivery service charges
    3. Postage

SPECIAL WORK

These items are not included in the annual fee of $1,800.00.

1. Any work that must be redone because of incorrect data provided by the client is billed as a special item.

2. An extension request for late filing of the 5500 series form is billed as a special item. The fee for requesting this extension is $100.

3. FASB 87 and 88--pro forma or final

4. IRS audit

5. Meetings with you and/or your advisors

6. Actuarial studies to attain changed goals

7. More than one deposit estimate

8. Review or redesign of your plan in light of TRA '86

9. Plan amendments or restatements

10. Produce participant statement of account on other than the valuation date of the plan

11. Monthly monitoring of 401(k) plan accounts

12. Comparability projects

THE STUART HACK COMPANY

Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

Writer's Direct Dial No.

November 24, 1986

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: **Fee Agreement for the Catalina Enterprises Money Purchase Plan 1986 Administration**

Dear Mr. Shofer:

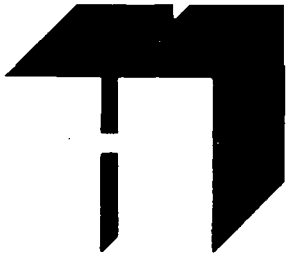
Paragraph I below describes the fee arrangement for annual administration we have had with you in the past. Some of our clients have indicated to us that they would prefer that the fee include phone calls, a deposit estimate at the end of the year, employee terminations, asset work, plan loan servicing, etc.--services that we normally bill monthly on a time-and-charges basis. In response to these requests, we have developed an alternative fee arrangement which is described in paragraph II below. At the end of the letter, we have asked you to indicate whether you wish to leave the fee agreement unchanged or whether you prefer the alternate fee agreement.

If you have questions or suggestions, please call.

I. Annual Administration

There are two types of work we do for you on an annual basis. The first type is "regular annual administration." The second is "special work." Special work includes procedures which we are unable to quantify in advance. Special work will be billed on an actual time basis unless we quote you a special additional fixed fee. A list of regular annual administration work and a list of some common special work items and out-of-pocket expenses is enclosed.

For the plan year 1/1/86 to 12/31/86, the fee for regular administration of the plan will be $1,210.00. One-half of the quoted fee is due with the signed engagement letter. One-fourth will be billed when we notify you of the plan deposit and the remaining one-fourth will be billed when we deliver your annual statement. Out-of-pocket expenses and charges for special work will be billed monthly as they are incurred.



II. Alternative Annual Administration Fee Arrangement (Optional)

If you wish, you may choose to pay a fee of $1,800.00 before any work begins for the year 1/1/86 to 12/31/86 that will cover all annual administration work including most tasks which are normally billed to you monthly on a time-and-charges basis (see enclosed list of work covered which is reproduced on blue paper).

The only work not covered by this fee would be major projects. We have enclosed a list of projects that could arise for some clients in the coming year. Such projects have always been and will continue to be outlined to you in a separate, detailed engagement letter. Examples include plan amendments and restatements, IRS audits, plan redesign, pro forma FASB 87 and 88 reports for your accountants and Tax Reform Act of 1986 reviews.

Please sign and return the enclosed copy of this letter as your authorization for us to proceed with the work.

Sincerely,

Alan Vandendriessche

AV:lcs
Enclosures

_____ (I) I wish to leave our fee agreement unchanged and have enclosed a check for $_____ for one-half of the base fee.

_____ (II) I prefer the alternate fee arrangement and have enclosed a check for $_____ to cover the next 12 month's administration work as outlined on the blue alternative fee arrangement list.

Authorized by:

Signature _____ Date _____

cc: Accounting

THE STUART HACK COMPANY
Consultants & Actuaries

October 13, 1987

Stuart Hack, J.D., C.L.U.
Maryanne Dubbs, M.Ed., M.B.A., J.D.
Alan Vandendriessche
Donna Barham Welsh

To Our Clients

RE: **PLAN DOCUMENT CHANGES REQUIRED BY THE TAX REFORM ACT OF 1986**

Dear Client:

The Tax Reform Act of 1986 requires massive changes to your qualified plan document. The good news is that the law does not require new documentation until 1989. The bad news is that your plan must be administered as if all the law changes were in the document as they each become effective.

Some changes occur in 1987, such as the IRC Section 415 limit reduction. Other changes occur by 1989. You could go to the expense of restating your plan now. But it is likely that IRS regulations and further legislation will change things by 1989, anyway.

Therefore, we recommend you delay incurring major expenses for TRA '86 documentation at this time. But, you must notify employees that the current plan document and summary plan description no longer reflect the rules under which your plan is operating. Please note: If you terminate your plan before 1989 you will have to amend the plan for TRA '86 upon its termination.

Enclosed is an employee notice which you should reproduce on your letterhead and distribute to all employees (whether or not they are participants on the plan). To make sure employees cannot later disclaim this notice, require each of them to sign the attached receipt and retain the receipt for your records. Also, require any employee hired from now on to read and sign the notice together with your summary plan description.

In addition we advise you to immediately take the following steps:

1. Do not make any advance corporate contributions to any plans for December 31, 1987 or 1988 fiscal year end if applicable. If you have, then please be aware, these amounts, including a fair amount of interest, may have to be withdrawn from the plan by your year end.

2. Do not make any voluntary contributions to any plan. If you have made personal voluntary contributions after December 31, 1987, please call your administrator in our office.

3. Do not assume last year's contribution and deduction will be similar to this year's. It may not be. Please contact us before completing any tax planning involving your qualified plan.

4. Before making any plan loans to participants, please contact us. The rules have changed!

We are providing this notice free of charge to you and urge you to distribute it immediately. This appears to be the most cost efficient way to currently comply with the new law and provide required notice of plan changes to your employees.

Cordially,

Stuart Hack

SH/ns

Enclosure

TO ALL EMPLOYEES:

The Tax Reform Act of 1986 (TRA '86) requires many changes to your retirement plan between now and the end of 1989. As a result benefits, features and provisions of your plan may be changed from what appears in Social Security Plan description or the plan. To comply with the law, we will be administering your plan under the TRA '86 rules.

A TRA '86 amendment will be executed by the last day of the plan year which begins after 12/31/88. After The Internal Revenue Service approves that amendment, a new summary plan description will be prepared and distributed to you. The delay in amending your plan for TRA '86 is the result of the IRS's refusal to accept all the needed TRA '86 amendments right now as well as the fact that the law is still being modified by IRS interpretation and additional Congressional legislation.

This notice is to let you know that the summary plan description you now have in your possession may not accurately reflect how your plan will be administered between now and the time the TRA '86 amendment is executed.

I acknowledge receipt of this TRA '86 plan change notice.

WITNESS	SIGNATURE	DATE

PRINT NAME

THE STUART HACK COMPANY
Consultants & Actuaries

Stuart Hack, J.D., C.L.U.
Maryanne Dubbs, M.Ed., M.B.A., J.D.
Alan Vandendriessche
Donna Barham Welsh

October 30, 1987

IMPORTANT NOTICE TO OUR CLIENTS

The wording of the Client Notification included in our 10/17/87 letter to you referencing plan document changes required by the tax reform act of 1986 was incorrect.

We have corrected and clarified the wording of the notification and request that you substitute the revised notice to all employees.

4623 Falls Road • Baltimore, Maryland 21209-4990 • (301) 366-8700 • Washington, D.C. 470-7435

REVISED EMPLOYEE NOTIFICATION

TO ALL EMPLOYEES:

The Tax Reform Act of 1986 (TRA '86) requires many changes to your retirement plan between now and the end of 1989. As a result, benefits, features, and provisions of your plan may be changed from what appears in your Summary Plan Description or the plan documents. To comply with the law, we will be administering your plan under the TRA '86 rules.

A TRA '86 amendment will be executed by the last day of the plan year which begins after 12/31/88. After The Internal Revenue Service approves that amendment, a new summary plan description will be prepared and distributed to you. The delay in amending your plan for TRA '86 is the result of the IRS's refusal to accept all the needed TRA '86 amendments right now as well as the fact that the law is still being modified by IRS interpretation and additional Congressional legislation.

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WITNESS	SIGNATURE	DATE

PRINT NAME

THE STUART HACK COMPANY
Consultants & Actuaries

October 13, 1987

Stuart Hack, J.D., C.L.U.
Maryanne Dubbs, M.Ed., M.B.A., J.D.
Alan Vandendriessche
Donna Barham Welsh

To Our Clients

RE: PLAN DOCUMENT CHANGES REQUIRED BY THE TAX REFORM ACT OF 1986

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Therefore, we recommend you delay incurring major expenses for TRA '86 documentation at this time. But, you must notify employees that the current plan document and summary plan description no longer reflect the rules under which your plan is operating. Please note: If you terminate your plan before 1989 you will have to amend the plan for TRA '86 upon its termination.

Enclosed is an employee notice which you should reproduce on your letterhead and distribute to all employees (whether or not they are participants on the plan). To make sure employees cannot later disclaim this notice, require each of them to sign the attached receipt and retain the receipt for your records. Also, require any employee hired from now on to read and sign the notice together with your summary plan description.

In addition we advise you to immediately take the following steps:

1. Do not make any advance corporate contributions to any plans for December 31, 1987 or 1988 fiscal year end if applicable. If you have, then please be aware, these amounts, including a fair amount of interest, may have to be withdrawn from the plan by your year end.

2. Do not make any voluntary contributions to any plan. If you have made personal voluntary contributions after December 31 1987, please call your administrator in our office.

3. Do not assume last year's contribution and deduction will be similar to this year's. It may not be. Please contact us before completing any tax planning involving your qualified plan.

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We are providing this notice free of charge to you and urge you to distribute it immediately. This appears to be the most cost efficient way to currently comply with the new law and provide required notice of plan changes to your employees.

Cordially,

Stuart Hack

SH/ns

Enclosure

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A TRA '86 amendment will be executed by the last day of the plan year which begins after 12/31/88. After The Internal Revenue Service approves that amendment, a new summary plan description will be prepared and distributed to you. The delay in amending your plan for TRA '86 is the result of the IRS's refusal to accept all the needed TRA '86 amendments right now as well as the fact that the law is still being modified by IRS interpretation and additional Congressional legislation.

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I acknowledge receipt of this TRA '86 plan change notice.

WITNESS	SIGNATURE	DATE

PRINT NAME

THE STUART HACK COMPANY

Consultants & Actuaries

Stuart Hack, J.D., C.L.U.
Maryanne Dubbs, M.Ed., M.B.A., J.D.
Alan Vandendriessche
Donna Barham Welsh

October 30, 1987

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TO ALL EMPLOYEES:

The Tax Reform Act of 1986 (TRA '86) requires many changes to your retirement plan between now and the end of 1989. As a result, benefits, features, and provisions of your plan may be changed from what appears in your Summary Plan Description or the plan documents. To comply with the law, we will be administering your plan under the TRA '86 rules.

A TRA '86 amendment will be executed by the last day of the plan year which begins after 12/31/88. After The Internal Revenue Service approves that amendment, a new summary plan description will be prepared and distributed to you. The delay in amending your plan for TRA '86 is the result of the IRS's refusal to accept all the needed TRA '86 amendments right now as well as the fact that the law is still being modified by IRS interpretation and additional Congressional legislation.

This notice is to let you know that the summary plan description you now have in your possession may not accurately reflect how your plan will be administered between now and the time the TRA '86 amendment is executed.

I acknowledge receipt of this TRA '86 plan change notice.

WITNESS	SIGNATURE	DATE

PRINT NAME

THE STUART HACK COMPANY
Consultants & Actuaries

REC. 12/28/87

Stuart Hack, J.D., C.L.U.
Maryanne Dubbs, M.Ed., M.B.A., J.D.
Alan Vandendriessche
Donna Barham Welsh

PENSION ALERT

Dear Client:

WE ASK THAT YOU GIVE THE FOLLOWING MATTERS YOUR IMMEDIATE ATTENTION

The changes brought about in the retirement benefit plan area due to the Tax Reform Act of 1986 have a significant impact on all pension and profit sharing plans. Although there are many areas of this new law that are still unclear, we do know that careful analysis of most plans must start now.

Beginning with plan years ending December 31, 1987, and all 1988 fiscal year ends, Defined Benefit and combination Defined Benefit-Defined Contribution limits have been reduced. As a result, some plans may have their contributions reduced, and in some cases eliminated completely. For those of you who are changing your fiscal year end to December, your plan will be affected as of the fiscal year ended December 31, 1987.

We want to advise you now to immediately take the following steps.

1. Do not make any additional advance contributions to your plan for the December 31, 1987 or 1988 fiscal year end if applicable. If you have, then please be aware that some of these amounts, including a fair amount of interest, may have to be withdrawn from the plan.

2. Loans - Do not take or make any more loans from your plan without contacting us in advance.

3. Voluntary Contributions - Do not make any more voluntary contributions to your plan without contacting us in advance.

4. Distributions - Do not make any payments to participants without contacting our office to properly handle the processing and the new tax penalties.

5. IRA's - Do not make contributions to your IRA before reviewing and understanding the new requirements.

In addition, we ask your understanding with respect to the following:

1. We will not be able to give you advance estimated contributions (without doing a study) as we have in previous years. All of the variables involved in the law changes make it impossible to make accurate guestimates.

2. We will do everything we can to supply you with contribution, redesign and amendment information as timely as possible. However, some studies may not be completed until the last legal moment.

3. You can help us by a) answering all communication from our office as soon as possible, and b) replying to all current and future requests for information as soon as possible.

4. We particularly ask your understanding between now and December 31, 1987, with respect to phone calls. We anticipate that we will be having many more than the normal number of client meetings and internal meetings, and more than the normal amount of concentrated computer work and desk work periods. This may result in our receptionist saying that the person you wish to speak to is "unavailable". Please leave a message and someone will get back to you as soon as possible. We thank you in advance for your understanding in this matter.

Enclosed with this letter is a memo addressed to all Sub-S Corporations. Please read it, if you are or will become a Sub-S Corporation. Also, for those of you that have fiscal year ends other than December 31, we have included additional important information that we would appreciate your attending to.

As always, we are striving to bring you the best possible pension services available. Thank you for your cooperation.

Sincerely,

THE STUART HACK COMPANY

Stuart Hack, President

Maryanne Dubbs, Vice President

Alan Vandendriessche, Vice President

Donna Barham Welsh, Vice President

SH/ees
Enclosures

cc: Your Attorney
Your Accountant

HARVEY M. NEWMAN, CPA
BARRY B. BONDROFF, CPA
PHILIP I. MATZ, CPA
NORMAN N. POLONSKY, CPA
KENNETH E. LARASH, CPA
ALLEN M. SCHIFF, CPA
MERRILL LEVY, CPA
ARTHUR G. BRONFEIN, CPA
ROBERT M. BERLINER, CPA

Grabush, Newman & Co., P.A.
Certified Public Accountants

July 9, 1987

Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

As per your request, we have analyzed our billing and time runs for your account relating to work done on the pension loan problem. Total billings for work done on this problem between November 1986 and June 1987 amounted to $2,273.60.

Very truly yours,

Kenneth E. Larash

Kenneth E. Larash

KEL/skr

PENGAD-Bayonne, N. J.
PLAINTIFF'S EXHIBIT NO. 24

HARVEY M. NEWMAN, CPA
BARRY B. BONDROFF, CPA
PHILIP I. MATZ, CPA
NORMAN N. POLONSKY, CPA
KENNETH E. LARASH, CPA
ALLEN M. SCHIFF, CPA
MERRILL LEVY, CPA
ARTHUR G. BRONFEIN, CPA
ROBERT M. BERLINER, CPA
MICHAEL J. AGETSTEIN, CPA
ALAN M. MARVEL, CPA

Grabush, Newman & Co., P.A.
Certified Public Accountants

January 21, 1988

Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

As per your request, we have analyzed our billing and time runs for your account relating to work done on the pension loan problem. Total billings for work done on this problem between July 1, 1987 and December 31, 1987 amounted to $2,229.40.

Very truly yours,

Ken

Kenneth E. Larash

KEL/skr
SKR: 7

Suite 350, The Quadrangle • The Village of Cross Keys • Baltimore, Maryland 21210 • 301-323-9300
MEMBER OF THE INTERNATIONAL GROUP OF ACCOUNTING FIRMS WITH OFFICES IN PRINCIPAL CITIES

HARVEY M. NEWMAN, CPA
GERALD L. GRABUSH, CPA
BARRY B. BONDROFF, CPA
PHILIP I. MATZ, CPA
NORMAN N. POLONSKY, CPA
KENNETH E. LARASH, CPA
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ROBERT M. BERLINER, CPA
MICHAEL J. AGETSTEIN, CPA
ALAN M. MARVEL, CPA

Grabush, Newman & Co., P.A.
Certified Public Accountants

February 6, 1989

Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

As per your request, we have analyzed our billing and time runs for your account relating to work done on the pension loan problem. Total billings for work done on this problem between January 1, 1988 and December 31, 1988 amounted to $2,462.60.

Sincerely,

Kenneth E. Larash

KEL/ds
DS:8

Suite 400, 515 Fairmount Avenue • Baltimore, Maryland 21204 • 301-296-6300 • FAX 301-821-8448

HARVEY M. NEWMAN, CPA
BARRY B. BONDROFF, CPA
PHILIP I. MATZ, CPA
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Grabush, Newman & Co., P.A.
Certified Public Accountants

July 9, 1987

Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

As per your request, we have analyzed our billing and time runs for your account relating to work done on the pension loan problem. Total billings for work done on this problem between November 1986 and June 1987 amounted to $2,273.60.

Very truly yours,

Kenneth E. Larash

Kenneth E. Larash

KEL/skr

PLAINTIFF'S EXHIBIT NO. 24

HARVEY M. NEWMAN, CPA
BARRY B. BONDROFF, CPA
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January 21, 1988

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Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

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Very truly yours,

Ken

Kenneth E. Larash

KEL/skr
SKR: 7

Suite 350, The Quadrangle • The Village of Cross Keys • Baltimore, Maryland 21210 • 301-323-9300
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Grabush, Newman & Co., P.A.
Certified Public Accountants

February 6, 1989

Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

As per your request, we have analyzed our billing and time runs for your account relating to work done on the pension loan problem. Total billings for work done on this problem between January 1, 1988 and December 31, 1988 amounted to $2,462.60.

Sincerely,

Kenneth E. Larash

KEL/ds
DS:8

Suite 400, 515 Fairmount Avenue • Baltimore, Maryland 21204 • 301-296-6300 • FAX 301-821-8448

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PHILIP I. MATZ, CPA
NORMAN N. POLONSKY, CPA
KENNETH E. LARASH, CPA
ALLEN M. SCHIFF, CPA
MERRILL LEVY, CPA
ARTHUR G. BRONFEIN, CPA
ROBERT M. BERLINER, CPA

Grabush, Newman & Co., P.A.
Certified Public Accountants

December 4, 1987

Richard Shofer
216 St. Dunstans Road
Baltimore, Maryland 21212

Dear Dick:

In order to give you a broader picture of your potential total tax liability connected with the filing of 1984 and 1985 amended federal and Maryland returns, we have calculated all of the interest and potential penalty charges.

A summary of our calculations is as follows:

Federal

Interest	1984 - $7,106	
	1985 - 5,813	
	Total federal interest	$12,919
Late payment penalty	1984 - $3,738	
	1985 - 3,484	
Late filing penalty	1985 - 7,839	
Underpayment estimated tax	1985 - 1,671	
	Total federal penalties	$16,732

Maryland

Interest	1984 - $1,670	
	1985 - 1,339	
	Total Maryland interest	$ 3,009
Late payment penalty	1984 - $1,437	
	1985 - 1,206	
Late filing penalty	1985 - 603	
Underpayment of estimated tax	1984 - 344	
	1985 - 671	
	Total Maryland penalties	$ 4,261

PLAINTIFF'S EXHIBIT NO. 25 EWD
PENGAD-Bayonne, N. J.

Grabush, Newman & Co., P.A.
Certified Public Accountants

It is not certain that any of the penalties will be assessed in this situation, so we have omitted them from the amended tax returns. However, there is no way to avoid being assessed interest charges on these returns. The total interest, both federal and Maryland for the two years is $15,928. This interest, now defined as consumer interest, is partially deductible in the year paid. The deductibility is being phased out over a five year period. Consequently, by paying the interest in 1987, rather than waiting until 1988, you will increase your interest deduction by 25% (or $3,982).

If you do wish to pay the interest when filing the return, you may designate your payment specifically as an interest payment. This is best done by attaching to the return a check for the exact amount of the interest. On the check specify it as interest and give the form number and years (e.g. interest, 1984 and 1985 Form 1040X). By paying the interest in 1987 you will preserve the greater interest deduction, 65%, rather than the 1988 rate of 40%.

We have calculated the interest and penalties through December 15, 1987.

Please call if you have any questions in connection with this matter.

Very truly yours,

Kenneth E. Larash

KEL/kab
KAB:DL-7
Enclosures

Fringe Benefit NEWSLETTER

September/October 1980

THE STUART HACK COMPANY
1501 West Mount Royal Avenue
Baltimore, Maryland 21217
Telephone (301) 669-8900

CASES AND RULINGS

Where Employer Is Succeeded... No Severance

Rev. Rul. 80-129 deals with a business which terminates, for whatever reason, and a successor employer is found to continue the business. The question is whether employees of the original entity who are employed by the successor are entitled to treat the pension plan distributions as made because of severance of employment from the original employer.

If so, they could get favorable lump sum tax treatment. IRS' answer is that they never terminated employment if they continued to work for the successor. The ruling stated that the form of business organization of the successor (i.e., partnership, corporation, etc.) does not change the result.

Taxation of Distribution Where Two Employers, One Trust

An employee participated in two pension plans, sponsored by two different employers. But, both plans were included under one trust. He terminated employment from one of the employers and wished to treat the distribution from that plan as a lump sum to obtain favorable tax treatment. He continued to participate under the other plan. In *Rev. Rul. 80-128*, IRS agreed to this.

Forfeiture for Cause Prior to 10 Years Service Upheld

A recent case held there was no violation of minimum vesting standards under ERISA where a plan provided complete benefit forfeiture if an employee, with less than ten years service, entered into competition with the employer. *David C. Hepple v. Roberts & Dybdahl, Inc. et al, U.S. Ct. of App., 8th Circ., No. 79-2052, 6-3-80.*

The specific provision of the plan divested a participant (with less than ten years service) if he committed fraud against the employer or competed within one year of separation.

COMMENT: The problem with a less than 10 years service "bad boy" clause is the ability to enforce it. For instance, a no compete clause must be spelled out fully and be reasonable as to territory and time. Proving fraud can be very difficult, if not time-consuming and costly. If you wish such a clause in your plan, please contact your tax advisor and our office.

Annuity Remainder Death Benefit is Estate Tax Exempt

It has been clear that under *IRS S.2039 (c)*, death benefits proceeds from a qualified retirement plan are not subject to federal estate taxes if the plan participant dies before retiring and if proceeds are not paid in lump sum.

In *Rev. Rul. 80-158* the question was raised where an annuity pay out was already being made and the annuitant/participant had the right to surrender the annuity contract for the remaining lump sum, but died before doing so. Upon his death, the remaining guaranteed installments were paid to the contingent beneficiary. IRS finds in this ruling that the remaining payments are **not** part of the decedent's taxable estate.

Requirements for Lump Sum Tax Treatment

A participant may elect to take all of his or her retirement plan proceeds in one lump sum and receive favorable tax treatment. The portion of his benefit earned after 1973 can be taxed under a 10 year income averaging rule. Pre-1974 accruals can be taxed either as a capital gain or under the 10 year averaging. Or, the tax on the distribution can be postponed by rolling the money into a "rollover IRA".

But, to be eligible, the distribution must meet certain requirements:

1. Payment is made either because of plan termination, severance of employment or reaching age 59½ or older, and
2. The person participated in the plan for at least five years, and
3. 100% of the benefit is paid in one calendar year.

A recent private ruling letter, *LR8025035, March 25, 1980*, deals with a pension plan that was terminated, but the trust remained alive to make subsequent distributions. The IRS refused to credit years of participation in the trust following plan termination toward the five year plan participation requirements.

CONTINUED ON PAGE 3

Information contained in this Newsletter is of a general nature only. If legal advice or accounting service is needed, the assistance of an attorney or accountant should be sought.

THINGS TO WATCH

President's Commission on Pension Policy

As a result of ERISA turmoil, continuing public complaints in the pension area and fears of a Social Security inadequacy, President Carter appointed a Commission to try to anticipate and examine future problems and needs for pension benefits. The Commission has been quite active, encouraging detailed input from the public, private industry and consultants. It recently published an interim report containing some viewpoints which may be of interest to you. For example, the Commission:

1. Endorsed tax credits to encourage individual retirement savings and employee contributions to pension plans.
2. Suggested that Social Security be taxed the same as other pension programs.
3. Endorsed stronger protection to surviving spouses.
4. Was in favor of faster vesting.
5. Was interested in **requiring** private industry to provide a minimum level of pension benefits, above and beyond Social Security.

Uninsured Medical Reimbursement

In the last issue of this Newsletter, we discussed executive medical reimbursement plans. Proposed regulations create possibilities to design a reimbursement plan that will **still qualify** for favorable tax treatment.

The plan may exclude employees with less than three years of service and who work less than 35 hours per week, and who are under age 25. Of those who remain, 30% can be excluded by classification.

It's possible to wind up with a group of employees for whom you wish to provide anyway. If you have 25 employees of whom 10 have less than 3 years service and 5 are under age 25, 10 employees are left as eligible for the plan. However, you may still eliminate another 3 of the remaining 10 employees, (30%) by a common classification, and thus cover only 7 people under the plan.

If you wish, we can help you and your advisors in doing these calculations and in the plan design.

Vesting Battle

IRS has twice published proposed new vesting regulations. Initial regulations made life impossible for large and small plans. So, IRS re-proposed on a basis that only small plans are affected. We, and professional associations in which we hold membership, have resisted.

One result is a proposal by Congress to make the current 4/40 vesting a "safe harbor". Meanwhile, IRS issued some new examples of how it would interpret its proposed regulations. The examples present no help for smaller plans. We will keep you posted further.

MISCELLANEOUS, BUT IMPORTANT

Unrelated Business Income (Or, When Does a Tax Exempt Trust Pay Taxes ?)

Normally, the trust fund created to fund benefits of a qualified retirement plan is tax exempt. That is, it pays no taxes on its own earnings. This is a tremendous advantage. The trust can reap unlimited earnings and pay no taxes. It is such an advantage that IRS will not allow trusts to compete unfairly against non-tax-exempt activities.

As a result, tax exempt trusts are pretty much limited to passive types of investment. A trust may, for example, own the stock of an incorporated gasoline station, receive dividends, and pay no taxes; however, if it were a partner in the gas station, it would have to pay taxes on **that** income. If a trust borrows money to reinvest, it pays taxes on its debt-financed income. *(See Elliot Knitwear Profit Sharing Plan, et al, v. Commr., U.S. Ct. App., 3rd, 1/28/80, No. 79-1965.)*

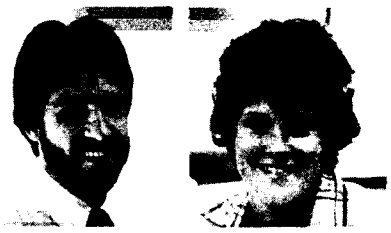
One major question then is how much tax does it pay on "unrelated business income"? The first $1,000 per year of such income is tax free. The balance is taxed as to an individual taxpayer not head of a house hold. So, on small amounts of such income (up to $10,000 or so) the tax is minimal.

Never Conformed Plan to ERISA?

For those plans that were not conformed to ERISA in a timely fashion, the IRS has announced a relief procedure. *Notice 80-7* spells out the requirements for relief and limitations on relief available.

Meet Two of Our Account Managers

Joseph W. Gebhardt was born in Warren, Pa. He graduated with a B.S. in Mathematics from Gannon University, Erie, PA in 1977. Joe's goal is to obtain his Certified Pension Consultant (CPC) and Certified Employee's Benefit Specialist (CEBS) designations. Joe has been with The Stuart Hack Company since October, 1978.



Both Donna and Joseph are service oriented and enthusiastic. Each possesses excellent communication skills, good common sense, and an ability to empathize with our clients, who appreciate clear, concise and well prepared reports.

Donna M. Barham is a graduate of University of Maryland with a Bachelor of Science in Business Administration. Donna's current goal is to obtain her MBA and Certified Pension Consultant (CPC) designation. Donna has been with The Stuart Hack Company since January, 1979. Her hobbies include skiing, tennis, traveling.

CONTINUED FROM PAGE 1

Cases and Rulings

Disability Distributions Tax Free ?

Under a recent IRS ruling, a disabled employee had the option of receiving a disability pension or a higher pension based on his age and service. When the employee took the higher pension based on his age and service, the IRS required that he include in his income only the difference between the higher age/service pension and the disability pension, as the disability pension was excluded from his gross income under IRC S105 — *Rev. Rul 80-44.*

Unfortunately, the ruling dealt with a situation that occurred before the passage of the 1976, 1977 and 1978 Reform Simplification and Revenues Acts. These Acts substantially changed the disability exclusion. The IRS issued proposed regulations on these changes in July of 1980.

Under the changes, only the first $100 per week of disability payments may be excluded from income and that is reduced dollar for dollar of adjusted gross income (including disability payments) in excess of $15,000 per year. If income exceeds $20,000, **none** of the disability income is tax free.

ERISA Pre-Empts State Law on Workers Comp. Offsets

The U.S. Court of Appeals, Third Circuit, has upheld using workers compensation benefits received, as an offset to pension benefits. The state law (New Jersey) had specifically prohibited such an offset. The employees

CONTINUED ON PAGE 4

COMMENT

TRIENNIAL REPORTING

IRS and DOL have issued final regulations on annual reporting requirements, switching to a new triennial reporting system. To Forms 5500 and 5500-C, now add a new form, 5500-R, for plan years beginning after 12/31/79. Plans with less than 100 participants must file a new and more comprehensive Form 5500-C every three years, with the new 5500-R, a much abbreviated form, now required for the intervening two years.

Unfortunately, the same information required to complete Form 5500-C must be produced in the two intervening years for other plan administration purposes.

Thus, despite overwhelming testimony that the 5500-R saves plan administrators absolutely no time, the government went ahead with the change, just the same.

BORROW THOSE CASH VALUES ?

We have often been asked whether life insurance policy loans create debt financed income. There are two private ruling letters on this **(PLR 7918095 and PLR 8028002).** They both find policy loans to produce taxable income. However, private ruling letters are not law and may not be relied upon by either the IRS or any party other than the one that requested and received the ruling.

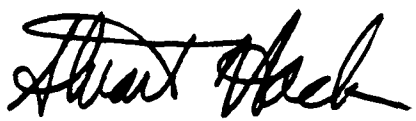
On balance, we believe the cash value loans are worth doing **if** three important elements exist:

1. You can obtain a guaranteed yield of at least 80% higher than the loan interest rate, and
2. The net yield (above the loan interest cost) is at least $1,500 per year, and
3. The life insurance policies are at least five years old (four full annual premiums have been paid). It is preferable that they be at least seven years old. This is to protect the income tax deduction on the loan interest.

IN THE MAINSTREAM

As employee benefits consultants, we feel a continuing obligation to expand our awareness of events which may affect the interests of our clients. Of particular concern are legislative changes which create undue administrative burdens and costs for complying with complex employee benefits laws. When warranted, we have taken the initiative of writing to appropriate leaders in Congress to voice our comments or objections to impending legislation. We often provide background material to their aides.

Recently the President's Commission on Pension Policy asked The American Society of Pension Actuaries to aid in a survey. Our firm was asked to provide data which the Commission will use to recommend possible changes in the pension area. Being involved at such an early stage will, we feel, give us an obvious advantage in influencing, interpreting and implementing forthcoming changes. We believe this, in turn, will help us to better serve our clients.



Stuart Hack

contended that the offset was prohibited under ERISA as a forfeiture under *S 203 (a)*. But the court held Congress intended to allow such offsets, as in Social Security, and that ERISA preempts state law. *Henry Buczynski, et al v. G.H., U.S. Ct. App., 3rd Cir., No. 79-1668, 2-28-80.*

Plan Loans to Parties-in-Interest

A lot of articles have been written recently on ways to use qualified plan assets for the personal benefit of plan sponsors or participants. Although the general rule is that such transactions are prohibited under law, there are two exceptions:

1. If the plan document so provides, **loans may be made to plan participants if:**
   a. All plan participants have equal borrowing rights.
   b. There is sufficient collateral
   c. The interest rate and other terms are "arm's length".
2. The Department of Labor may grant an exemption. It has granted individual, industry and universal exemptions. It has also turned down a lot of exemption requests. Typically, DOL has looked favorably on transactions that are fully collateralized, personally guaranteed, yield higher returns than the plan currently earns, are for the benefit of all plan participants, meet the fiduciary standards (including reasonable diversification of plan assets) and where participants and beneficiaries rights are strongly protected. It can take six months to a year to get DOL action on an exemption request.

Prohibited Transaction Exemptions

PT 80-18 Sale of real property to Party in Interest-Bradford Marine, Inc. P.S. Plan
PT 80-19 Sale of building to Pension Fund and lease back-Equitable Life Assurance Society of U.S.
PTE 80-27 Loan by Plan to Employer-Young Electric Sign Company
PTE 80-28 Loan by Plan to Employer-Aurora Casket Company
PT 80-29 Sale of property by Plan to Employer-Security National Bank of Sioux City, Iowa
PT 80-30 Sale of employer stock to employer and prior exchange of stock by Trustee who is employee/stockholder-Prevue Products, Inc.
PT 80-31 Assignment of lease and sale of building from Plan to Employer-Precision Wood of Hawaii, Inc.

Temporary Alimony Doesn't Violate ERISA Alienation Provisions

The Court held that Congressional intent was to protect dependents and that ERISA §206 *(d) (1)* does not prohibit assignment or alienation of pension plan benefits under an award of temporary alimony. *Central States, Southeast and Southwest et al v. Sherman Parr, et. al, U.D. Distr. Ct., Eastern Dist. of Mich., No. 9-70184, 12-12-79.*

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Fringe Benefit NEWSLETTER

IN THIS ISSUE

MARCH 1986

Employee Benefits NEWSLETTER

THE STUART HACK COMPANY
4623 Falls Road
Baltimore, Maryland 21209
Baltimore (301) 366-8700
Washington, D.C. (202) 621-4064

CASES AND RULINGS

Change To Independent Contractor Is Not Separation

A physician-shareholder-employee sold his stock in the employer, terminated his employment, and opened a separate independent office. But, he also entered into an agreement to provide services to the former employer. The court ruled he was not entitled to 10-year income average tax treatment on his lump sum distribution from the employer's qualified plan. Because he continued to provide services to his prior employer, he did **not** sever his employment relationship. *Jules Reinhardt and Marilyn D. Reinhardt vs. Cmmr. of Internal Revenue, U.S. Tax Court, DK4 14506-83, 85TC No. 29.*

No Partial Termination From Spin-Off

A manufacturing company spun off one of its products into a separate corporation and gave affected employees the option of being employed by the new corporation or terminating employment. There was a qualified profit sharing plan covering employees of the original corporation. As a result of the spin-off, 12.4% of covered employees left the plan; about 2 years later the profit sharing plan was terminated.

The employees who went to the new corporation contended they should be 100% vested because a partial termination occurred, followed by a full termination. The court held that 12.4% was not a "significant percentage" and no partial termination occurred. Further, the full termination was an unrelated, unforeseen event. *Babb, et al, vs. Olney Paint Company, et al, U.S. Court of App, Fourth Cir, No. 84-1985, June 3, 1985.*

Prior recent court holdings have been somewhat inconsistent in determining what facts must be present for a partial termination to occur. This area seems to be still unsettled, but leaning toward the employer's position.

Pension Benefit Not Part of Bankruptcy Estate in Illinois

Cases that deal with whether or not qualified plan benefits can be made part of the bankruptcy estate continue to proliferate. In one case, Illinois law enforced the anti-alienation provisions of a spendthrift trust. In addition, the court found that protection against claims of creditors, under the facts, was not against public policy. The fact that the employees had no power over plan assets was noted. *Harry Lee McLean, et al, vs. Central States, Southeast and Southwest Areas Pension Fund, U.S. Court of App., 4th Cir., Nos 84-1707 and 84-2217, May 24, 1985.*

Keogh Assets Exempt from Bankruptcy Estate

A debtor-in-bankruptcy was covered under Keogh plans in two states, Massachusetts and California. He has adopted both plans and was therefore both the creator and beneficiary. The court held that both states recognize spendthrift trusts and would enforce language prohibiting a transfer of assets. Further, legally, the creator and the trust are two separate entities. Finally, public policy favors protecting assets for one's old age. *Ervin B. Nachman, Trustee vs. Fernando G. Diaz, Debtor, U.S. Bankruptcy Court, Eastern District of VA., Case No. 84-00547-NN, June 18, 1985.*

Keogh Assets Not Exempt from Bankruptcy Estate

In the same jurisdictions as the prior case (Nachman), the court came to an opposite conclusion. Here the assets were held in Virginia and local state law did not protect the assets from the bankruptcy estate. Specifically, Virginia does not recognize the rights of a settlor to create a spendthrift trust to the detrement of his creditors. Further, no federal law helps the debtor, since Virginia has opted out of the Federal Bankruptcy Act Section 522(d) exemption provisions. *William G. Parkinson, Jr., Trustee vs. Bradford Trust Company of Boston, Trustee for Mary Tattersall O'Brien Profit Sharing Retirement Plan, et al., U.S. Bankruptcy Court, Eastern District of Virginia, No. 81-01038-R, May 1, 1985.*

RULES & REGULATIONS

Contributions In Kind—Prohibited if in Lieu of Cash Obligation

The Department of Labor issued an opinion letter to the Chief Counsel of the Internal Revenue Service dealing with circumstances under which a contribution in kind to a qualified plan is a prohibited transaction. The DOL position appears to be that in any case where the employer is *obligated* to make a cash contribution to the plan, an in kind contribution relieves the employer of its obligation and is therefore, prohibited. This does appear to bless contributions in kind to a discretionary profit sharing plan. *PWBP opinion letter, March 8, 1985.*

Deferred Compensation Payments Cannot Be Used for IRA Contribution

A private ruling letter, citing IRC Section 219(f)(1), concludes that deferred compensation is not earned income for purposes of being used to make a tax deductible IRA contribution. *Letter Ruling 8519051, February 13, 1985.*

CONTINUED ON PAGE 4

CASES AND RULINGS

Tax Free Treatment Denied on Disability Distribution

A fireman was disabled and received disability benefits at 75% of pay until he reached retirement age 55 with 22 years of service. Then the benefits were reduced to 50% of pay. The tax court held that benefits beginning at age 55 were not tax free disability benefits, but were pension proceeds, since the amount was based on age and years of service. *Ted L. Mabry, et al, vs. Cmmr. of Internal Revenue, U.S. Tax Court, DK 35769-33*

COMMENT: This case continues a line of decisions against treating benefits as tax free disability income and turning on whether or not the amount of payment is based on age and service. It raises the issue of whether it pays to even try to produce a tax free disability benefit through a qualified plan. It appears that to succeed, benefits must be based on the disability, but ***not*** *on age, service or pay.*

One possible way to do this is to define the disability benefit as being equal to the cumulative annual plan deposits, plus interest. Thus, benefits would not be based on longevity or pay.

Proposed Tax Reform

Excellent newspaper coverage of proposed tax reform legislation has probably kept you well informed. Having to wade through many different proposed bills over a period of more than 6 months could leave one a bit confused. Therefore, an overview may be helpful.

President Reagan is bent on "simplifying" the Federal Tax Code. He and his advisors feel that complicated tax laws and loopholes are encouraging people to move away from voluntary compliance with paying taxes. His solution is to lower the maximum tax rates, reduce the number of tax brackets, and plug the loopholes. The goal is a "revenue neutral" change in tax law to make taxation "fair".

Unfortunately, it isn't that simple. First of all, proposed legislation does away with socially beneficial programs such as tax-free medical coverage, tax-free 401(k) plan deposits for retirement, tax encouragement to rebuild the inner cities, etc. In addition, under proposed legislation, tax revenue will be lost in early years and may or may not be recovered in later years.

At the same time, this country is experiencing immense, unprecedented deficits, both in federal expenditures and foreign trade. So, while "Rome is burning," our legislators want to tax "shelters". They want to limit interest deductions, do away with the investment tax credit and further reduce pension and profit sharing plan benefits (Section 415 limits).

What to do? Make your feelings known. Write to your Congressmen and U.S. Senators. Write now, again next week and again next month. Tell them what issues you think are vital. Also, join the Small Business Council of America, Inc. They are the only group representing the tax interests of small business in an effective manner. Their address is: P.O. Box 1558, Columbus, Georgia 31902.

Please do something. You don't have to just "take it."

Appraised Value of ESOP Stock

An automobile agency adopted an ESOP, purchased stock from shareholders, and contributed stock to the ESOP. The IRS contended that the stock should be properly valued at book at a price of between $5.36 to $8.00 per share. Appraisers valued it at $61.35 per share based on historical earnings of the company, the nature of the industry, future earnings and dividend potential, the marketplace value of similar stock, corporate leadership, and sales of similar stock. The court was persuaded that the appraisers had taken into account all valid criteria and upheld the $61.35 per share value. *Las Vegas Dodge, Inc. et al., vs. United States of America, U.S. District Court, District of Nevada, CV LU 79-7, RDF, July 16, 1985*

Cost of Living Increase is an Accrued Benefit

A pension benefit formula included an adjustment to retirement benefits indexed to salary increases of the job position held by the retiree immediately prior to retirement. Union delegates voted to amend the pension plan to phase out the cost of living feature with no adjustments after 1984. The court agreed that this would be a reduction in accrued benefit—prohibited under ERISA. *Edward Shaw vs. Int. Assoc. of Machinists and Aerospace Workers Pension Plan, et al, U.S. Court of Appeals, 9th Cir., Nos 83-6443 and 83-6458, January 11, 1985.*

CONTINUED ON PAGE 4

PLAN ADMINISTRATION AT THE STUART HACK COMPANY is a "team" affair and encompasses all administrative functions, including annual updates of information, annual valuations and reports, preparation of tax forms and participants' statements, and the answering of clients' questions along the way.

Hack Co. clients are assigned to one of two plan administration "teams." One of these [illegible] Seated, (left to right) are Nancy Dalina, Cecilia Sampson, Don Reinsel, Katherine Goldsmith and Janelle Hardy. Standing are Marie Krull, Laureen Spioch and Patricia Howie. This team is under the supervision of Alan Vandendriessche, Vice President. Our other administrative team, headed by Marianne Dubbs, Vice President, will be shown in our next issue.

Comparable Plans Make Sense

We are finding more and more that comparable plans are an ideal method for maximizing retirement planning efficiency. Contrary to common belief, all employees need **not** be covered by the same qualified plan. Different types of plans can cover different groups of employees. Executives (or owners) **can** have defined benefit plans while other employees have a defined contribution plan, for example.

Top heavy minimum benefits can be provided under one plan while executives are covered under another plan. In fact, **each** executive can have his/her own plan providing the precise benefits he/she wants.

It is even possible for owners to be covered by **both**, the plan covering other employees **and** their own plan. The full IRC Section 415 overlapping plan benefit limits can be enjoyed by executives while all others receive benefits only from one plan.

How is this done? As long as benefits received by executives at retirement are actuarially not greater than retirement benefits for others, the executives' plans are deemed to be non-discriminatory. As an aid to determine whether the executive plans are comparable to the plans covering all the rest of the employees, **Revenue Ruling 81-202** describes in detail how to actuarially compare the plans. Example: a defined benefit plan with a retirement age 55 can be compared to a Section 401(k) plan.

Besides allowing a distinct plan for executives versus rank and file, comparable plans offer additional valuable results. Here is a partial list of opportunities offered by comparable plans:

I. To Maximize Key Employee Benefits at Minimum Non-Key Employee Cost:
   A. A 5% to 10% non-key plan cost can support a full Section 415 limit defined benefit for key employees.
   B. Can provide post-retirement medical, pre-retirement disability, and pre-retirement death benefits in key plan only.

II. Instead of Integration with Social Security:
   A. It often gets better results than integration.
   B. The value of Social Security benefits can be projected in several ways.
   C. Avoids complicated integration wording in a defined benefit plan.
   D. Avoids restrictions on benefits prior to retirement.

III. To Avoid the 25-Percent-of-Pay Limit on Employer Contributions Under Section 404(a)(7):
   A. See last two lines of Section 404(a)(7).
   B. Where no employee is a beneficiary under more than one plan, there is no 25-percent limit.
   C. Key employees are not eligible to participate in rank and file plan; non-key employees are not eligible to participate in the key employee plan.

IV. To Use Different Actuarial Approaches to Meet Specific Needs of Each Key Employee:
   A. Different retirement age
   B. Different funding method
   C. Different accrual rate
   D. Include post-retirement medical or pre-retirement disability benefits

V. To obtain Individual Investment Direction for Each Executive While Using a Defined Benefit Plan for Them

VI. To Provide Top Heavy Minimum Benefits

VII. To Provide Plan for Employees That They Will Understand and Appreciate

VIII. To Avoid Disclosure of Asset Information (SAR) to Employees on Owner's Plan

IX. To Avoid PBGC Premiums

401(k) Plan: Should We or Shouldn't We?

With highly publicized proposed legislation that will either gut or eliminate 401(k) plans, should a company continue an existing 401(k) plan? Should an employer even consider adopting a new one?

During my many years in the pension consulting business, legislative threats have been almost continuous. Rather than react emotionally, I think one should apply business judgement.

If you already have a 401(k) plan, there is no point in changing. For as long as the law remains favorable, take advantage of it. There is no way to know for certain what law changes may occur and no way to effectively react to possible changes at this time. Just sit back and enjoy your plan. When and if there is a law change, we will carefully evaluate it and make timely and creative suggestions to you.

If you are considering adopting a 401(k) plan, the issues are more complicated. You may not want to go to the expense of a new plan and tell your employees all about it, just to lose it or have to redo it in a short time. On the other hand, if a 401(k) does great things for you and your employees, why not do it while you still can? You may even wind up having a "grandfathered" plan that never has to be dropped or changed.

Those employers who adopted 401(k) plans primarily as a "state of the art" employee benefit will find that these plans will continue to satisfy employee and employer goals, even with the proposed law changes.

But, if dropping the 401(k) plan is necessary, how much trouble is it to change from a 401(k) to another plan? That depends on what you want to change to. In most cases, it may not be a lot of change. After all a 401(k) is really a qualified profit sharing plan with special 401(k) features. If the 401(k) features are eliminated you still have a very useful profit sharing plan left. A profit sharing plan will allow you even to continue employee contributions, with a company match. Employee contributions will be made out of after tax dollars, but the tax-free growth on their money will continue and employer contributions will remain tax free (tax deductible to the employer). This is only one of the possibilities for structuring a plan if 401(k) is changed.

Even if you get only one, two or a few excellent years out of the 401(k) plan, it may well be worth it. And the cost of changing (if ever necessary) may be reasonable when compared to the benefits derived.

Stuart Hack

Stuart Hack

CONTINUED FROM PAGE 1

Interest Deductible on Loan Made for IRA

A taxpayer intends to borrow money to make an IRA contribution and requested advice whether interest paid on the loan is tax deductible. The IRS answered that since the interest will be on indebtedness and not allocable to income that is exempt from Federal income tax, the interest is tax deductible. *Letter Ruling 8527082, April 12, 1985*

Prohibited Transaction Exemptions

PTE 85-69 Permits loans from qualified plans sponsored by San Francisco Photographers Supply, Inc. to the plan sponsor. The exemption lasts for 5 years and up to 25% of the plan's assets can be so loaned.

PTE 85-72 Gives retroactive exemption relief to a loan of $3,042,000 to the employer, Lone Star Company, and allows lease of new property by the plan to the employer.

PTE 85-73 Permits a loan to a party-in-interest to the plan.

PTE 85-110 Tom Shaw, Inc. Retirement Plan and Profit Sharing Plan may loan $88,500 and $26,700, respectively to Tom Shaw, Inc. for a ten-year period, subject to guarantee by Tom Shaw, personally.

PTE 85-118 Allows the sale and lease-back of real property between Central Orthopaedic Partnership and its qualified plans, including the assumption of debt by the plans.

PTE 95-74 Is of interest not only because it exempts a lease of real property between the qualified plans and the employer, Kerr Glass Manufacturing Corporation, but also because 3 employees filed written comments objecting to the exemption. Their questions were answered by the employer and the DOL overrode the objections.

CONTINUED FROM PAGE 2

Lease of Space to Plan Co-Sponsor Not Prohibited

A union pension plan purchased land for development with intention to construct and lease an office building to one of the participating unions. The DOL contended that the action violated the "exclusive purpose" and "prudence" rules, the "parties in interest" guidelines, and prohibitions against "self dealing" in ERISA. The court found that all of the trustees' decisions were, at the time they were made, reasonably expected to primarily benefit fund members. The yield was reasonable and prohibited transaction exemptions 76-1 and 77-10 permit the leasing of office space to a participating employee union. *Raymond J. Donovan, Secretary of Labor vs. Dennis Walton, et al, U.S. District Court, S. District of Florida, No. 81-6281-CIV, May 31, 1985.*

Reversion of Plan Surplus is Permitted Upon Termination

An employer, who maintained a defined benefit plan for 38 years, terminated the plan, paying out $61,000 in accrued benefits and taking back $138,997 in surplus. Employees contended they were entitled to receive the excess assets. The court held for the employer, stating that ERISA favored reversion of excess assets in order to encourage full funding of plans to protect accrued employee benefits. *James Bryant, et al., vs International Fruit Products Company, Inc., U.S. District Court, Southern District of Ohio, Western Division, No. C-1-84-45, January 22, 1985*

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Employee Benefits NEWSLETTER

MARCH 1986

IN THIS ISSUE

Fringe Benefit
NEWSLETTER

THE STUART HACK COMPANY
4623 Falls Road
Baltimore, Maryland 21209
Baltimore (301) 366-8700
Washington, D.C. (202) 621-4064

TRA '86 CRITICAL ISSUES

401 (K) PLANS

Three major rule changes affect all 401 (k) plans:

1. The new discrimination test rules, effective for plan years beginning after 12/31/86.
2. The $7,000 calendar year elective deferral limit, effective for individual tax years after 12/31/86.
3. The maximum eligibility requirements are: age is 21 and *1* year of service, effective for plan years beginning after 12/31/88.

For many firms, executives will not be able to reach the $30,000 maximum deferral in 1987 without significant changes. The $7,000 salary reduction limit is the first line culprit. To defer $30,000, $23,000 of it must be a *mandatory* deferral.

This means the employer must contribute enough for all executives, without their election, to hit the $23,000 amount. Assuming a top-heavy plan (over 60% of account balances belong to key employees), the maximum usable pay rate is $200,000. Thus an employer contribution of 11.5% of pay is needed to credit $23,000 to an executive. Beginning in 1989, all plans, whether top-heavy or not, will be subject to the $200,000 pay lid.

If the employer contributes 11.5% of pay for executives, it must do the same for all other eligible employees or it will discriminate against non-highly-compensated employees. What do we do about this? Do we absorb the 11.5% employee cost? Do all executives lose their option to defer the other $23,000 or not?

Some solutions:

1. **Integration with Social Security**
An employer can contribute up to 5.7% of pay in excess of the Social Security-covered wage base. For a $200,00 pay rate executive, that provides an $8,903 addition to account. Then $30,000 - $8,903 = $21,097 is still needed to reach $30,000. Subtracting the optional $7,000 elective deferral, $14,097 is needed as an employer contribution. This equals 7.05% of pay for a $200,000 rate executive.

But, we still have the ADP discrimination test to meet. With a 7.05% non-highly-compensated group average deferral rate (because the employer is supplying the contribution), this allows a 9.05% highly-compensated deferral rate. The 9.05% must cover the $7,000 elective deferral *and* the 7.05% employer contribution and that has to total $21,097 ($14,097 + 7,000 elective). Obviously, 9.05% of $200,000 = $18,100, which is $2,997 short!

We need an average non-highly-compensated deferral rate high enough to support a highly-compensated group deferral rate of $10.55 % ($21,097 ÷ 200,000 = 10.55%). Since the ADP for the HC group can be 125% of the ADP for the NHC group, we need an NHC group deferral rate of 10.55% ÷ 1.25 = 8.44%. Thus the contribution for employees can be reduced from 11.5% of pay to 8.44% of pay.

2. **Target Benefit Plan**
This is a hybrid of defined benefit and defined contribution plans. Deposits for plan participants are calculated using defined benefit rules. A benefit formula determines the "expected or targeted" annual pension at retirement and the level annual fund deposit necessary to accumulate the retirement resources is determined. The older a participant, the higher the deposit because of there being fewer years to fund the benefit.

A target plan can be integrated with social security to produce relatively higher benefits for higher paid employees. Once the deposit is determined for each participant, it goes into a separate bookkeeping account which can even be investment-directed by the participant. Where the principals (owners) are older and more highly compensated than the employees, a target plan produces a full $30,000 contribution for owners at an employee cost usually much lower than 11.5% of pay (often no more than the 3% top-heavy contribution).

Contributions to a target plan are fixed, so that participants have no election, year-to-year, on the amount that will be contributed on their behalf.

3. **Combination Target and 401 (k)**
To add flexibility to deposits, a target plan can be used with a 401 (k) plan. The target plan can be designed to produce a $23,000 per year deferral for owners with an elective $7,000 deferral through the 401 (k) plan.

Other combinations are available, such as a $15,000 fixed deferral through a target plan plus a $7,000 participant elective deferral through a 401 (k) plan, plus an employer elective contribution under the 401 (k) plan for all participants.

DEFINED BENEFIT PLANS

1. **Separate Comparable Plans**
Under pre TRA '86, rules each owner could have his or her own individually-designed plan as long as it was actuarially comparable to the plan(s) covering employees. For plan years beginning after 12/31/88, each employer-sponsored plan must cover the lesser of 40% of employees (who meet the statutory service and/or age requirements) to remain qualified.

How to react? Obviously a plan that won't meet the coverage must either be terminated or changed to meet the test. This raises the questions of:

A. *Should* any more contributions be made to such a plan?

B. *Must* any more contributions be made to such a plan?

C. Should the plan be terminated now or wait until 1989?

D. What are the economics of changing the plan to cover enough employees?

E. What happens if the plan is overfunded?

F. What happens to the existing benefit accruals?

G. Can the covered participant join another plan?

2. **Overstated Liabilities and Non-Deductible Contributions**
Contributions to a defined benefit plan are calculated based on assumptions as to expected yield of plan assets, reserves required to pay projected benefits, employee turnover, projected average pay, etc.

If the assumptions are conservative, required plan funding is higher than if the assumptions are liberal. For instance, the actuary can assume a 5% average investment yield on plan assets, pay increases of 4% per year,

no turnover and long life expectancy at retirement, all conservative assumptions. Contrasting liberal assumptions might be 10% investment yield, high turnover, no pay increases and short life expectancy.

Now under TRA '86, IRS has the right to assert what it thinks the assumptions should be. If its assumptions are more liberal than those used to determine plan deposits, employer tax deductions can be disallowed plus excise taxes assessed. The excise taxes are charged on the difference between the tax deduction taken and the tax deduction IRS approves. In addition there is a 10% excise tax on any non-deductible contribution. This excise tax was aimed at stopping purposefully made non-deductible contributions that grow tax-deferred inside the plan.

How to react? For the actuary it is a real dilemma. If he or she uses conservative assumptions, the plan (and the actuary) is protected from being underfunded. The employer need not worry about PBGC liability; PBGC needn't worry about taking over an underfunded plan; and the employees can count on the promised benefit.

If liberal assumptions are used, the actuary could be liable if the plan is underfunded, and the employer needs to think out its contingent liability. PBGC may some day have to bail out the plan and employees are back where they had been pre-ERISA, with benefits not fully guaranteed. Only the IRS has no liability here.

What do we recommend? Try to strike a middle ground where the assumptions are defendable on all counts. Not easy!

INTEGRATION RULES
(Defined Benefit Plans)

For plan years beginning after 12/31/88 integration rules change dramatically. 1989 is one year away. Now is the time to find out how this affects your plan, so you can be in a planning mode rather than a reactive position. From studies we have done, the problem areas appear to be:

1. A full 35 years of plan participation is needed to earn the maximum integrated benefit. This contrasts to 15 years of *employment* to earn a full benefit under pre-TRA '86 law.
2. Employees can no longer wind up with a zero benefit. Excess-only plans aren't permitted after 1988. In an offset plan, the minimum benefit is 50% of the benefit the participant would have received if there were no offset.
3. Lower paid employee benefits will likely increase and high paid employee benefits may decrease (unless the total benefit formula is increased for all participants).

REDUCED 415 LIMITS
(Defined Benefit Plans)

Retirement age 55 plans are most dramatically affected. Replacing the $75,000 per year benefit maximum is an actuarially reduced benefit that could be anywhere from $33,000 to $42,000 per year. Most existing age 55 plans will be fully funded under these new limits. Aggressive planning pays off once again, because those who fully accrued their age 55 benefits by 1986 get to keep them *and* to finish funding them on a tax deductible basis.

But, even retirement age 65 plans are affected. To earn the full $90,000 per year benefit, retirement must be at your Social Security retirement age. Those born before 1938 have a 65 retirement age; before 1954 have a 66 retirement age and after 1954 have an age 67 retirement. If the plan retains the age 65 normal retirement provision, those who have 66 and 67 Social Security retirement ages are limited to the actuarial-reduced equivalent of $90,000 at 65.

Should you amend your plan to use the individual social security retirement age?

Advantage—the accrual costs for younger non-owners will be significantly reduced.

Disadvantage—you add confusion to the plan, because employees will have different retirement ages.

FASB 87, 88 COSTS

The Financial Accounting Standards Board (FASB) released Statement 88 to change financial reporting for events such as plant closings, and the termination—reversion of excess assets—re-establishment of the defined benefit plan.

FASB 88 doesn't change the rules in the more typical situation for small to medium-size companies: if the DB plan terminates and is not re-established, the full surplus reversion to the employer is recorded as an immediate gain, as under current rules.

The FASB issued Statement 87 to standardize pension accounting for employers who have DB plans. The new rules will completely change the reporting of pension obligations; the earnings statement and balance sheet of companies will be affected. Previously a company could use the same number for its pension expense (reported in the financial statement) that it contributed to the plan (pension funding). FASB 87 mandates that pension expense be calculated in a specific manner, but it does not restrict or change the rules for pension funding.

FASB chose the projected unit credit cost method to be the one acceptable way to determine pension expense. Although given new names, the two main components are a normal cost and an amortization of the current unfunded accrued liability, each with interest to the end of the year.

There are several new aspects of the pension expense: mainly, the Section 415 limits must be projected by an assumed CPI to retirement date, and the sponsoring company of the plan has the final decision as to each actuarial assumption. Each assumption must be the best long-term guess of the employer, not the actuary.

What does all that mean? *Pension expense as reported on the employer's financial statements will change dramatically.* Relatively well-funded plans may even experience *pension income* on their financials, while others may have a pension expense much larger than the actual company contribution. This points out the radical divergence of expense and contribution, and highlights the need to have the actuary prepare the numbers as soon as is necessary.

When is compliance necessary? For plans with 100 or more participants, it is the fiscal years beginning after 12/15/86 (2 years later for smaller plans). Compliance is only *necessary* when using audited or certified financial statements.

ALTERNATIVES TO QUALIFIED PLANS

Without doubt, the legislative and judicial atmosphere is becoming hostile to qualified plans. Constant law changes add to the professional fee costs for plan amendments, plan administration, law change evaluations, actuarial studies and increased liability on all parties involved. It is reasonable to ask whether qualified plans still make sense and, if not, what substitutes are available.

Do they make sense?

If you want to accumulate significant capital on a current tax-deductible basis with investment yield compound-

ing tax-deferred, qualified plans are "the only game in town". They are also the only vehicle to provide employees with deferred income not subject to constructive receipt when fully vested, deferrable through rollover IRAs, and safe from creditors of the employer and employee (in most states).

But, establishing and maintaining a qualified plan is becoming increasingly expensive. And, because of the reduced 415 limits, many plans are fully funded and many owners of businesses can accrue no more benefits. So, let's look at alternatives.

Non-Qualified Deferred Compensation

This is a promise from an employer to an employee to pay compensation at a later time. It is unfunded in that even if assets are set aside they must be subject to the creditors of the employer.

The benefit must be subject to a risk of forfeiture or it will be currently taxed to the covered executive. The employer does not get a tax deduction until the benefit becomes taxable compensation to the executive. Investment earnings on the reserves set aside are subject to current taxation (you can't even use deferred annuities anymore to avoid taxation on earnings).

You can pick and choose who gets benefits, but to avoid having the plan subject to most qualified plan rules, only highly-compensated employees or management may be covered.

Major advantages to the employer:

1. Control over who, when, and how benefits are paid
2. Funding can be deferred
3. Minimal government reporting and regulation

(Continued on Page 4)

TRA '86 RESPONSIBILITIES

TRA '86 is the most complicated of all pension legislation ever; even more than ERISA. It touches virtually every qualified plan in existence, but in different ways. In fact, the real problem is identifying and evaluating every issue that affects a particular plan.

With much of the legislation effective in 1989, and amendments not required until the end of the 1989 plan year, one could be drawn into the false (dangerous) comfort of delaying the TRA '86 effects analysis until "later". This could be quite risky. Here is a sampling of issues that demand your immediate attention:

1. A qualified plan is a contract between the plan sponsor and the covered employees. Although a law change may require plan benefit changes (or other entitlements under the plan), the contract remains in force.

   The change in normal retirement age to the social security retirement age to earn the full $90,000 per year maximum benefit under a defined benefit plan could result in the plan calling for accruing toward a $90,000 per year pension at age 65, while the social security retirement age is 67. The plan violates the IRC 415 limits if it provides $90,000 per year at age 65 when the Social Security retirement age is 67. But the present value of a benefit beginning at age 67 is less than one beginning at age 65.
2. Employees covered under a 401 (k) plan may have already elected salary reduction deposits that exceed $7,000 for the calendar year 1987. The employee is counting on this. But, the law limits the salary reduction to $7,000.
3. Key employees may be expecting to defer $7,000 through the 401 (k) plan, but the new discrimination test rules may not permit that much.
4. A plan covering less than 50 employees or 40% of the employees doesn't have to be terminated until the day before the plan year beginning in 1989. But, every contribution made from now until then could be overfunding the value of accrued benefit(s) and the excess (if any) would be distributed and be subject to tax in 1989. What will the income tax rate be in 1989? Does it even pay to contribute money in 1987 to have it taxable in 1988 or 1989?

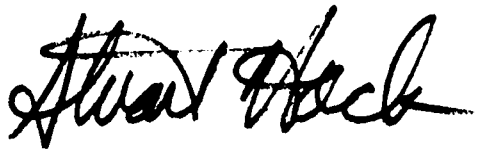
And this is only a *partial list.* As consultants actuaries, and plan administrators, we are concerned that critical issues can be overlooked or not even examined. We strongly recommend that you have a complete, detailed TRA '86 analysis done as soon as possible.

As actuaries, we are concerned about TRA '86 provisions that allow the IRS to determine, after the fact, that pension plan liabilities have been overstated. The potential penalty tax is as high as 40%! This law change probably applies to contributions made which affect *any* tax returns filed after October 22, 1986. There are no regulations, rules or sense of Congress on how the IRS will make its determination.

How do you respond to this? Representative William Clay has sponsored a bill, HR 3594, that will remove this TRA '86 provision. We urge you to write to your congressman NOW and ask him to cosponsor this bill.

We suggest you join the Small Business Council of America, the only organization actively representing small business on tax legislation issues. A membership application is available by calling our office.

Lastly, please understand that we take our responsibilities to you quite seriously. TRA '86 has added significantly to our professional burden. This has required us to re-train our employees, redesign forms and systems, and embark on a voluminous amount of computer reprograming. We have geared up to respond to TRA '86 changes and welcome your inquiries.



Stuart Hack

Major advantages to the executive:

1. Income is deferred
2. Retirement benefits are in addition to the qualified plan

In our next Newsletter, we will discuss leveraged executive compensation, split dollar pension plans, and excess group life pension plans.

TAXATION OF QUALIFIED PLAN DISTRIBUTIONS

TRA '86 made two significant changes in the tax treatment of qualified plan benefits. First, 10 year income averaging of lump sum distributions has been changed to 5 year averaging. If you attained age 50 by 12-31-85, you can elect 10 year averaging using the 1986 tax rates or 5 year averaging using the tax rates in the year of distribution. Here is a table comparing tax results based on 1986-1988 rates:

Amount of Distribution	1986 10-year	1987 5-year	1988 5-year
$1,000,000	$382,210	$354,820	$282,273
	38.22%	35.48%	28.23%
500,000	143,680	162,320	142,610
	28.75%	32.46%	28.52%
250,000	50,770	66,700	60,110
	20.30%	26.68%	24.04%
100,000	14,470	16,720	16,450
	14.47%	16.72%	16.45%
50,000	5,870	6,540	6,900
	11.75%	13.08%	13.8%

The second major change is a 15% excise tax on excess plan distributions. This is pretty complicated. Excess distributions are periodic amounts in excess of $112,500 adjusted for CPI or $150,000 without a CPI adjustment. For lump sum distributions, amounts in excess of $562,500 adjusted for CPI or $750,000 are subject to the excise tax. All qualified plan amounts for a participant are added together for purposes of determining excess distributions. This includes IRAs, TSAs qualified defined contribution and defined benefit plans from all employers of the recipient.

If you had total qualified plan accruals of $562,500 or greater on 8/1/86, you can elect on your 1988 return to "grandfather" (exclude) your 8/1/86 accruals from the excise tax. But, all growth and additions to your accruals after 8/1/86 are subject to the excise tax.

What to do?

1. If your accruals are less than $750,000 on 8/1/86, it probably doesn't pay to elect the grandfather.
2. Consider taking distributions up to $150,000 per year between ages 65 and 70 to reduce the amount you must take at age 70½ (unless you have a 242 (b) election on your accruals and don't expect to retire).
3. Check out the tables below to see how CPI increases and investment earnings rates on your accruals will affect the likelihood of paying an excise tax. The younger you are now, the more you can accumulate without an excise tax.

PRESENT VALUE OF $150,000 PER YEAR INCOME

AVERAGE YIELD ON ASSETS	FOR JOINT LIVES WITH 15 YEAR LIFE EXPECTANCY	FOR JOINT LIVES WITH 20 YEAR LIFE EXPECTANCY
7%	1,366,187	1,589,102
8%	1,283,922	1,472,722
10%	1,140,912	1,277,035

COST OF LIVING EFFECT ON $112,500 PER YEAR AND $562,500 LUMP SUM DISTRIBUTIONS (Assuming 4% per year CPI)

YEARS TO RETIREMENT	ANNUAL DISTRIBUTION LIMIT	LUMP SUM LIMIT (ASSUMING 15 YEAR LEX AND 8% YIELD)
10	142,730	1,221,694
15	202,606	1,798,073
20	246,501	2,187,631

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Employee Benefits NEWSLETTER

January 1988

IN THIS ISSUE

SPECIAL EDITION

TRA '86 CRITICAL ISSUES

Fringe Benefit
NEWSLETTER

THE STUART HACK COMPANY
4623 Falls Road
Baltimore, Maryland 21209
Baltimore (301) 366-8700
Washington, D.C. (202) 621-4064

TARGET BENEFIT PLANS

A Target Plan is a hybrid of Defined Benefit and Defined Contribution. These Plans have been around for a long time. They have served different needs from time to time. Now, they are fantastic as a positive replacement for Defined Benefit Plans, and as a way to allow highly paid people to reach the $30,000 maximum deferral limits at the lowest possible employee cost.

Target Benefit Plans have the following attributes:

1. Each participant can be permitted to investment-direct his account (within the range of investments permitted in the Plan).
2. The older the participant is when he earns his target benefit, the higher the contribution for him.
3. There is no limit on the amount of accumulation at retirement.
4. There is a limit on the annual contribution (or addition to account) for each participant. It is governed by Defined Contribution Plan rules and is the lesser of 25% of pay or $30,000.
5. Benefits are not subject to coverage under the Pension Benefit Guarantee Corporation. Therefore, no PBGC premiums are payable and the employer has no liability to the Plan other than to make annual contributions as long as the Plan remains in force.
6. There is no unfunded liability.
7. There are no excess plan assets.
8. There is no full funding limit under OBRA.
9. Investment risk/gain is passed to participants.
10. Fiduciary liability for investments can be avoided.

What are the Issues to Watch?

1. The annual contribution is a fixed commitment until the Plan is terminated.
2. Unless there is heavy employee turnover, the annual deposit will likely increase due to pay increases generating benefit increases.
3. OBRA appears to require quarterly funding by the employer.

How does a Target Benefit Plan Replace a Defined Benefit Plan? ...Why Consider This Now?

Many employers want to drop their Defined Benefit Plans (DBP) to avoid all of the adverse law changes. These include penalties for overfunding; penalties for underfunding; risk of losing excess assets; 100% liability for an unknown benefit reserve; change in integration rules, increased actuarial and administration fees, employee non-understanding of benefits, etc.

But, they are concerned about real and perceived negative effects on their covered employees, such as:

1. Older employees will get much lower ultimate benefits than if the DBP were continued.
2. The benefit is no longer guaranteed.
3. Investment risk in a DCP is too high for employees to bear.

The Target Plan answers all of these problems. It favors older employees because contributions are very much age driven.

The annual employer contribution is fixed and required.

A 5% to 6% investment yield assumption is used to calculate the target benefit. Guaranteed investments are available at higher rates. Thus, the employee not only bears little investment risk, he has a virtually built in investment gain.

OMNIBUS BUDGET RECONCILIATION ACT OF 1987 (OBRA)

You have received an alert from us on current OBRA changes that may affect the operations and deposits to a Defined Benefit Plan. In addition, there are OBRA provisions that have a phased in or delayed effect.

More Rapid Funding for Underfunded Plans

This very complicated provision of the Act requires higher minimum funding standards for Defined Benefit Plans that have an unfunded current liability in any plan year. *Act Section 9309, IRS Section 402(l)(1).*

Defined Benefit Plans with 100 or fewer participants are exempt. Those with over 100, but not more than 150 participants, have a phase-in ratio factor that decreases the additional funding requirement by 2% for each participant less than 151. *Act Section 9303(a)(1) and (b)(1), IRC Section 412(l)(6). Effective for plan years beginning after 1988.*

Quarterly Contributions

For single-employer plans that are subject to minimum funding requirements, funding must be made on a quarterly basis. This requirement is phased-in over the years 1988 through 1992 when 25% of the funding must be made every three months during the plan year. This is enforced by a statutory tax lien and interest assessments, as well as the requirement to notify employees if a quarterly installment is missed. *Act Section 9304(b), IRC Section 412(m), Act Section 9304(e), IRC Section 412(n).*

STAFF TRAINING—Because legislation and regulations affecting fringe benefits is subject to change so frequently, continuing education and updating of staff is an on-going process at The Stuart Hack Company. Above: Some of our staff photographed during a recent study session.

Amortization of Gains/Losses

Actuarial gains and losses, must be amortized over five years. They previously were amortized over fifteen years. This will result in wider fluctuations in annual plan deposits. *Effective for gains and losses arising in plan years beginning after 12/31/87.*

PBGC Insurance Premiums

Effective for plan years beginning after 1987, the single-employer premium rate is increased from $8.50 to $16.00 per participant. An additional premium is charged for underfunded plans at the rate of $6.00 for each $1,000 of unfunded vested benefits as of the end of the preceding plan year. The maximum premium rate is $50 per participant. *Act Section 933(a)(b)(f)(1).*

Also, the employer is responsible for 100% of plan underfunding upon plan termination. *Act Section 9312(a).*

(Continued on Page 7)

SELECTIVE PENSION PLAN

Under this plan, an amount of annual tax deductible deposit is selected for each executive or owner. It could be the amount previously contributed to a qualified plan before recent law changes forced a cessation or reduction.

The key is that a corporate employer can make tax deductible payments on behalf of the owner or executive to replace lost qualified plan benefits or private supplemental pension benefits.

Although the executive must report the deposit as taxable income, he/she has no out-of-pocket outlay. The employer pays the taxes, and, the remainder goes into a tax exempt investment vehicle. This vehicle provides the following favorable results under current law:

1. Tax free pension income.
2. Higher before-tax and after-tax accumulation than if executive invested the contributions or if the employer invested the contributions.
3. Larger income-tax-free survivors' benefit pre and post retirement.

Here is an example of such a plan

SHAREHOLDER/EXECUTIVE SELECTIVE PENSION PLAN

Before Tax Bonus	=	$30,000
After Tax Annual Investment	=	$20,000 per year
Age	=	40
Interest Assumption	=	8%
Personal Tax Rate	=	33%

	RESULTS WITHOUT THE PLAN	RESULTS WITH THE PLAN
Cash at Age 65	$1,003,312	$1,618,693
Initial Survivor Benefit	$ 20,000	$ 931,138
Survivor Benefit At Age 65	$1,003,312	$3,485,023
Annual After Tax Pension For 20 Years	$ 82,984	$ 100,000
Survivor Benefit At Age 85	$ 0	$4,159,529

COMMENT

THE PRESENT AND FUTURE OF EMPLOYEE BENEFIT PLANS

It has become perfectly obvious that the operation of employee benefit plans is complicated, is subject to everchanging laws, and has spawned enormous growth in the benefit consulting industry.

At the same time, TRA '86 and OBRA are forcing many qualified plans to be terminated. These are mainly overfunded Defined Benefit Plans and Plans that cover less than 40% of an employee group.

In addition, there is a strong movement to change from a Defined Benefit Plan to a Defined Contribution Plan. This is to avoid overfunding penalties, underfunding liability and penalties, full funding limits, employees not understanding their benefits, frozen excess asset reversions and a very hostile legislative environment.

But, that is not all. Our legislators have been hard at work. All Health and Welfare Plans must meet new complicated and difficult non-discrimination tests, beginning in 1989. The penalty for failure to comply is taxation of benefits to highly paid employees and key employees.

IS THERE ANY GOOD NEWS?

Yes. For instance, Target Benefit Plans can replace Defined Benefit Plans and improve employee perception of their Plans. Target Benefit Plans are like Defined Benefit Plans without all of the risks and penalties. Even more important, employees understand their benefits and, therefore, better appreciate them.

Employee Stock Ownership Plans keep getting better and better. They can be used to pay estate taxes. Owners can cash in 30% or more of their stock, invest 100% of the proceeds and delay or avoid income taxation of the proceeds.

All qualified retirement plans enjoy very favored tax treatment. Contributions are a 100% current tax deduction. Assets grow on a tax deferred basis. Distributions can be deferred until age 70½ (longer if you made an IRC Section 242(b) election) and 5 year income averaging can be used when taken as a lump sum.

Cafeteria (IRC Section 125) Plans are still available. These Plans save employers up to 10% in payroll taxes and save employees large amounts of income tax.

Maryland and other states have enacted laws that protect qualified plan assets from creditors.

But, most important, the voluntary employee benefit system is still in tact. You can provide benefits, using still favorable tax results by following the law. You can elect not to provide benefits, on a benefit selective basis.

No question, the cost of keeping Plans in conformance has increased quite a bit. But, we all have that cost. There is no selection against industry or form of business. It is a "level playing field". And, it sure beats the alternatives of no choices or all bad choices.

Stuart Hack

PENSION FUNDS KEPT STOCK AFTER '87 DECLINE

Employee Benefit Research Institute (EBRI) reported in its "Quarterly Pension Investment Report" that pension funds sold only about 1% of their stock holdings after the 1987 "crash". For the entire 1987 calendar year, stock holdings of these funds showed an 8.7% positive return.

401(k) ATTRACTION FOR EMPLOYEES

A Government Accounting Office report on 1986 plan year statistics gives us helpful 401(k) design input. Significantly, more employees participated in 401(k) Plans that had matching employer contributions, emergency withdrawals and indiscriminate elective deferral amount changes.

Features such as investment direction and non-deductible contributions had an insignificant effect on Plan participation.

The report is based on a survey of 5,000 corporations, with a 70% response rate.

NO PARTIAL TERMINATION IF VOLUNTARY SEVERANCE

An employer terminated its Pension and Profit Sharing Plans shortly after a substantial number of employees voluntarily terminated employment. The terminated employees filed suit to have the Plan treated as partially terminated as a result of the employee terminations. This would trigger 100% vesting for the terminees.

The Court held that a substantial reduction in Plan participants must be attributable to involuntary exclusion or employee terminations from the Plan for a partial termination to result. It further stated that voluntary employee decisions to leave an employer, not connected with a significant corporate event, are not employee terminations that trigger a partial termination. Also, a substantial reduction in the number of covered employees did not automatically constitute a partial termination. The reduction has to be considered along with other facts and circumstances. *Harold Sage et al v. Automation Incorporated Pension Plan and Trust et al, U.S. Court Appeals, Tenth Circuit, Nos. 85-2036 and 85-2136, April, 28, 1988.*

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continued from page 4

EXCESS GROUP LIFE PENSION PLANS

Where an employer provides more than $50,000 in group life insurance for key employees, executives, and/or owner employees, the economics on the excess coverage can be improved dramatically.

The insured must declare as income, Schedule I designated cost of group life insurance in excess of $50,000. In most cases, the actual cost of the coverage is less than the Schedule I amount. No tax basis is earned by paying the tax on the reportable income. In other words, the insured executive is overpaying on taxes and never recovers the taxes he/she pays. When the executive retires, he either loses his insurance or is permitted to convert it to an expensive ordinary life policy.

Enter "Super Insurance". The employer continues to pay the same group term premium. But:

1. The executive reports less income.
2. The executive acquires usable tax basis.
3. Before the executive reaches age 65, the employer's premium levels off, reducing the total employer outlay when compared to term insurance.
4. The executive contributes a relatively small amount to the policy.
5. The executive has a paid-up policy at age 65.
6. The executive receives significant annual income beginning at retirement age. First, he recovers his tax basis and then, under current law, he continues to receive tax free funds via policy loans.

Information contained in this Newsletter is of a general nature only. If legal advice or accounting service is needed, the assistance of an attorney or accountant should be sought.

Want more information?

Just fill in this card and mail it to us for a prompt reply.

Please send me more information on:

- ☐ Target Benefit Plans
- ☐ Tax Planning For Qualified Plan Distributions
- ☐ Effectively Investing Plan Assets
- ☐ Excess Group Life Pension Plan
- ☐ Selective Pension Plan
- ☐ Pension Recovery Trusts

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October, 1988

Fringe Benefit NEWSLETTER

IN THIS ISSUE

THE STUART HACK COMPANY
4623 Falls Road
Baltimore, Maryland 21209
Baltimore (301) 366-8700
Washington, D.C. (202) 621-4064

FEBRUARY 1987

Employee Benefits NEWSLETTER

Tax Act—What Now?

The speculation is over. We really do have tax reform legislation enacted by the Congress and signed by the President. Now what? Will we survive? How changed will our lives be?

One commentator hails tax reform as a positive competitive move to attract the most creative business minds and capital to the U.S. The thinking is that we now have by far the lowest tax rates in the industrial world and that people and businesses will move here because they keep a much higher percentage of their profits net after tax here.

Other theorists have us losing out competitively to the rest of the world because we lack tax incentives to make capital expendi tures. Some expect total dislocation of the construction industry. Backers of the new law believe that in the long run, better economic decisions will be made because tax implications are now neutral.

As the law affects employee benefits, it means plan redesign, some plan terminations and continued generally tax-favored treatment. Qualified retirement plans continue to be a most favored capital accumulation vehicle. Plan contributions are tax deductible and accumulate earnings tax free until distributions are made. Distributions are virtually fully taxable, but at a much lower general tax rate, because of the TRA '86 tax rate reductions.

Cafeteria plans are still available, and they present a win, win opportunity. Employers can save on payroll taxes while employees save on both income tax and social security tax. It also can afford important options to employees to tailor their benefits to their own needs. Through a cafeteria plan, employees can elect to reduce their taxable compensation to pay for various health and welfare benefits on a tax free basis. These plans can also be designed to present employees with a fixed budget of employer contributions, with employees electing among optional benefits (including cash).

Nondiscrimination rules in health and welfare plans will primarily impact very large companies that sponsor different plans for various categories of their work force. For small employers, the major cost effect will be on dependent medical costs. Either the employer will have to pay for dependent coverage for most employees or key employees will have to pay for their own dependents.

Disability salary continuance plans are not affected by TRA '86. You can continue to provide significant benefits for selected individuals on a tax deductible basis.

TRA '86 most dramatically affects those who have been funding defined benefit plans with retirement age prior to 65. Many of these plans will become fully funded in their 1987 plan year, with no further contributions permitted. Some will be substantially overfunded. Should these plans be terminated? Factors to consider include:

1. Taxes on overfunded amount if the plan is terminated.
2. The advantage of continued full control over a tax exempt trust fund.
3. The desirability of avoiding becoming overfunded by rolling into an IRA or other qualified plan.

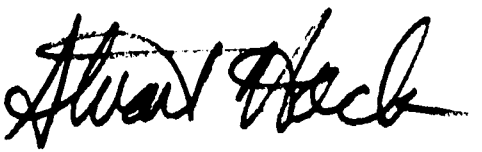
The Two Year Window

For plan years beginning in 1986, 1987 and possibly 1988, opportunity exists to maximize funding and tax deductions. Certainly, 1986 and 1987 tax rates will be higher than the rates applicable to 1988 and subsequent years (unless we get more tax legislation). Therefore, tax planning opportunities exist to make deductible contributions *now*, exploiting these higher tax rates and taking distribution in the future at lower rates.

The Best Strategy

TRA '86 will not bring about an end to the world. A reasonable strategy is to take advantage of tax incentives and business opportunities. Maximize investment yield on qualified plan assets, taking full advantage of the tax free growth.

Congratulate yourself for aggressively utilizing the tax benefits of prior law. Continue to do the most with what is available. We will try to help you through sound but aggressive qualified plan design. In addition, our new CIM investment advisory service is available to you to help maximize the investment results of your plan assets.



Stuart Hack

ELIGIBILITY AND COVERAGE

For plan years beginning after 1988, a whole new set of rules exist. Each plan of the employer must cover at least the lesser of 50 employees or 40% of the statutorily eligible employees. Those eligible by statute are employees who work at least 1000 hours during a plan year, are at least age 21, and have 2 years or more of service. Separate lines of business and collectively bargained units are exempt from the basic coverage requirements, but must meet the coverage tests within their own units.

One of the three new discrimination in coverage tests must be met:

1. 70% of the non-highly-compensated employees who are statutorily eligible must be covered, or
2. The percentage of non-highly-compensated employees covered must equal at least 70% of the percentage of highly-compensated employees covered, or
3. All statutorily non-highly-compensated eligible employees must be covered under a plan (or plans) that provide benefits equal to at least 70% of benefits provided for highly-compensated employees.

INTEGRATION WITH SOCIAL SECURITY

Effective for plan years beginning after 12/31/88, entirely new integration rules apply.

For defined contribution plans, up to 5.7% of pay in excess of the Social Security covered wage base may be allocated *if* at least the same percentage of total pay is also allocated to all covered employees.

For defined benefit plans, the new rules are quite complicated. Up to 3/4% of pay per year of service to a maximum of 35 years of service can be provided for compensation in excess of the average Social Security covered pay level for each participant, provided a benefit equal to the same percentage of total pay is also provided. The same years of service used for deposits must be used for accrual and all other purposes.

Instead of the step rate approach, an offset plan is available. In fact, Social Security is no longer a factor. Instead, the rules deal exclusively with permitted disparity in plan contributions or benefits. The rules are quite complicated and appear to be less advantageous than step rate. However, plan to plan offsets may well work. There are problems with such offsets, as follows:

1. Defined contribution floor plans which are used to offset defined benefit plans and which result in no net benefits for non-highly-compensated employees are *not* permitted.
2. Each plan must meet the minimum coverage tests.

VESTING

For plan years beginning after 1988, all plans must adopt one of two new more rapid vesting schedules. One choice is a 5 year cliff, that is 100% vesting at 5 years of service. The other schedule is 20% per year graded from 3 years of service through 7 years of service. Plans that are over 60% top heavy must still adhere to the top heavy minimum vesting choices of either a 3 year cliff or 20% per year after two years of service through 6 years of service.

BENEFIT AND CONTRIBUTION LIMITS

Defined Contribution Plans:
Limits on tax deductible contributions per individual to defined contribution plans remain the same, the lesser of 25% of pay or $30,000. The major change is that these limits will not increase for cost of living adjustments until the defined benefit limits rise from the current $90,000 per year to $120,000 per year. Employer tax deductions are changed in the following ways:

1. Combined contributions to money purchase and defined benefit plans covering the same employees are limited to 25% of covered payroll.
2. Profit sharing plan contributions are limited to 15% of covered payroll, with no carry over to future years for years when less than 15% was contributed (except any carryover accumulated through 1986 is grandfathered).
3. Forfeitures in money purchase plans can now be reallocated to participants.

Defined Benefit Plans
The standard normal retirement age is now based on the social security retirement age. A maximum benefit of $90,000 per year can be provided at the normal retirement age, with benefits prior to that reduced substantially. For instance, if the retirement age is 55, the maximum benefit available will be $35,000 per year to $40,000 (depending on birthdate) as contrasted to $75,000 per year under prior law. Benefit limits continue to enjoy an actuarial increase for retirement ages later than the Social Security derived normal retirement age. The above rule changes are effective for plan years beginning in 1987.

SEPARATE COMPARABLE PLANS

Comparable plans that do not meet the new coverage tests (50 employees or 40% of employees) must either be terminated or be merged into a plan that does meet the coverage tests by the first day of the plan year which begins in 1989. Plans in existence on 8/16/86 are exempt from the 10% reversion tax. But, plan liabilities for owner/employees must be valued using 120% of the PBGC interest rate. This will result in smaller liabilities and greater overfunding in most cases.

The plan actuarial assumption can be used to value liabilities if there is a plan merger or a transfer of assets to or from the plan. Any reversion from overfunding will be subject to a 10% excise tax.

401(K) PLANS

The discrimination tests and the maximum voluntary salary deferral amount have been changed. Instead of a 1/3-2/3 test, a new category of "highly-compensated employee" is created and its rate of deferral is compared to the rate of deferral of the non-highly-compensated participants. (Please see topic heading "Highly-Compensated Employee"). The new discrimination test limits the deferral for the highly-compensated group to the greater of:

1. 125% of the non-highly-compensated employee group, or
2. The lesser of
   a. 200% of the non-highly-compensated employee group, deferral rate, or
   b. Non-highly-compensated deferral rate plus 2%

The maximum employee voluntary salary deferral is $7,000 per *calendar year.*

The maximum total deferral (including employer-provided contributions) is still the lesser of 25% of pay or $30,000. All of these new rules are effective with the plan year beginning in 1987. A one year maximum eligibility requirement is effective in the plan year beginning in 1989. Also in 1989, all family members of a highly-compensated employee must be combined to determine the maximum $7,000 deferral limit and for discrimination test purposes.

HEALTH AND WELFARE PLANS

TRA '86 imposes new eligibility requirements and discrimination rules on:

1. Group life insurance
2. Accident and health plans
   a. Insured and self insured
   b. Individual and family benefits

Disability income benefits are exempt and the following benefits are optionally includable, if they help the various tests:

1. Tuition reduction
2. Educational assistance
3. Group legal (benefit will expire after 12/31/87)
4. Dependent care

The new rules are quite complicated. Fortunately, they do not become effective until the later of 3 months after IRS publishes final regulations explaining the new law or after 1988.

CAFETERIA PLANS

Employee expenditures for health and welfare benefits can be converted into salary reductions not subject to state or federal income taxes by using the cafeteria plan arrangement. It allows employees to choose between a variety of benefits to meet their individual needs, and to convert taxable compensation to tax free compensation, which will result in an increase in cash compensation, as well as save payroll taxes for employer and employee.

The same rules generally apply to cafeteria plans as they do to health and welfare benefits. However, key employees are limited, collectively, to 25% of the cumulative benefits.

The benefits of a cafeteria plan may include, medical, hospital, dental, vision, child care, legal fees, life and disability insurance.

A "Vanilla" or "Wrap" plan is one which includes only the existing group insurance plan. It converts employee contributions to tax-free salary *reduction* (instead of a taxable salary deduction). The employer saves the FICA on employee contributions and employees save FICA, plus state and Federal income taxes. Very little administration is required: only a payroll system to handle salary reductions, 5500 forms and summary plan descriptions.

A self-insured plan does the following:

A. Covers uninsured benefits, such as dental, vision, deductible, coinsurance psychiatric and child care.
B. Requires claims administration
C. Requires employee to select salary reduction in advance to fund benefit—"use it or lose it"
D. Maximizes employee choices
E. Maximizes employee and employer tax savings

The requirements of a cafeteria plan are a written plan document, summary plan description, annual 5500 filing, and record keeping for self-insured benefits.

DOES IT STILL PAY TO HAVE A QUALIFIED PLAN?

The chart below compares the results of accumulating wealth over the next 10 years with after-tax-dollars (no plan) versus using before-tax-dollars through a qualified plan. It compares these results under pre TRA '86 law (left side) versus under TRA '86 (right side).

TEN YEAR RESULTS QUALIFIED PLAN VS. NO PLAN

Amount available to defer—$60,000/year

Tax rates:	1986	1987	1988
Federal	50%	38%	28%
Net State	4	5	6
Total	54%	43%	34%

Expected Gross Annual Investment Yield—10%

	1986 Tax Rates			TRA '86 Tax Rates	
	No Plan	With Plan		No Plan	With Plan
Net after tax available to invest	$ 27,600/yr.	$ 60,000	1986	$ 27,600	$ 60,000
			1987	34,200	
			1988 thru 1995	39,600	
10 year accumulation	$340,737	$956,245		$511,642	$956,245
Taxes	-0-	516,372		-0-	325,123
Net after taxes	$340,737	$439,873		$511,642	$631,122

Lifetime income assuming 10% yield and no invasion of principal

Gross Income	$ 34,074	$ 95,624	$ 51,164	$ 95,624
Taxes	18,400	50,637	17,558	31,556
Net Income	$ 15,674/yr.	$ 44,987/yr.	$ 33,606/yr.	$ 64,068/yr.

HIGHLY COMPENSATED EMPLOYEES

Replacing the key employee category is a new grouping called "highly compensated". The new designation is used to determine discrimination for plan years beginning in 1989, except that it is effective 1/1/87 for 401(k) plans. A highly-compensated employee is:

1. A 5% owner, or
2. Compensated in excess of $75,000, or
3. Compensated in excess of $50,000, and is in top 20% of all employees, or
4. An officer with compensation greater than $45,000.

$200,000 PAY LID

For plan years beginning after 12/31/88, all highly-compensated employees' pay is limited to $200,000 for *all* qualified plan purposes. This rule is not limited to top heavy plans, but applies to all plans.

NO MORE 10 YEAR INCOME AVERAGE

Lump sum distributions taken after 12/31/86 cannot use 10 year income average. However, if you are at least age 50 before 1/1/86, you can elect the 10 year average rule, applying 1986 tax rates to the distribution. Also, if you separated from service during 1986 and receive a lump sum distribution before March 16, 1987, you can elect to treat the lump sum distribution as if it were received in 1986.

Lump sum distributions made after 12/31/86 can be taxed under a 5 year averaging rule. This is a one time election available only after age 59½.

VOLUNTARY CONTRIBUTIONS

Non-deductible voluntary contributions count 100% against the IRC Section 415 limits. In addition, distributions are deemed to be proportional between principal and income. However, voluntary contributions made through 12/31/86 will be taxed as a distribution of capital first, until fully recovered, provided the plan document allowed distributions of principal from voluntary accounts as of May 5, 1986.

PENALTY AND EXCISE TAXES

Premature distributions (ones made before the earlier of age 59½ or the plan's retirement age) are subject to a 10% penalty tax. In addition, reversions from plan terminations occurring after 12/31/85 are subject to a 10% excise tax. Distributions in excess of $150,000 per year or lump sums in excess of $750,000 are subject to a 15% excise tax. *But,* there is a "grandfather" available for existing benefit accruals if they are worth at least $562,000.

Death benefits are subject to a 15% estate tax on the excess amounts. Contributions to plans in excess of the stated limits are subject to 10% penalty tax, unless withdrawn within stated periods of time. Overstated plan liabilities resulting in excessive tax deduction claims are subject to a penalty tax based on the table listed below:

Amount of Overstatement of Plan Liabilities	Amount of Penalty
150% to 200%	10% of underpayment
Over 200% to 250%	20% of underpayment
Over 250%	30% of underpayment

ESOPS

Once again ESOPS get favored tax treatment. An owner's estate may elect to sell stock to an ESOP, and the estate may deduct 50% of the sale proceeds from the estate for estate tax purposes.

Information contained in this Newsletter is of a general nature only. If legal advice or accounting service is needed, the assistance of an attorney or accountant should be sought.

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Mr. Richard Shofer
Catalina Enterprises
5006 Liberty Heights Avenue
Baltimore, MD 21207

FEBRUARY 1987

Employee Benefits NEWSLETTER

SPECIAL ISSUE

IN THIS ISSUE

Tax Reform Act of 1986

LAW OFFICES

Prusky & Giampetro, P. C.

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PLEASE REPLY TO:

Towson

April 30, 1987

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Personal & Confidential

Dear Dick:

You have asked us to render an opinion regarding various loan transactions between yourself and Catalina Enterprises Pension Plan, voluntary account.

We are basing this opinion on information which was supplied to us by you and/or your advisors. We were advised that the following is a schedule of non-deductible voluntary contributions which you made to the Pension Plan for the years indicated:

1975	$26,700
1976	$ 6,500
1977	$11,200
1978 thru 1981	-0-
1982	$ 9,100
1983	$ 9,100
1984	$14,000
1985 & 1986	-0-
Total	$76,600

We were further advised that you borrowed $200,000 from the voluntary account in 1984 and $80,000 from the voluntary account in 1985.

Section 72(p) of the Internal Revenue Code provides that loans from qualified retirement plans are treated as distributions from the plan. It further provides an exception to the general rule that if the amount of the loan is not greater than the lesser of $50,000 or one-half of the vested accrued benefit, the loan will not be treated as a distribution. This rule is applicable for

loans made after August 13, 1982, but these loans are aggregated with loans made on or before August 13, 1982. We are enclosing a copy of the applicable section of the Internal Revenue Code. The foregoing was the law in effect in 1984 and 1985, but has since been changed as a result of the Tax Reform Act of 1986; however, the changes are effective for transactions entered into after December 31, 1986.

Loans in excess of non-taxable limits are not prohibited, merely taxable and, hence, their taxability does not excuse lack of repayment. All taxable plan loans are subject to tax as other income. Repayment of taxable loan distributions establishes a basis equivalent to the amounts repaid so that when a regular plan distribution is made, these amounts will not be subject to taxation again.

This law treats loans in excess of the above limits as distributions, the tax treatment of which is dependent in part on whether a participant's interest in the plan included non-deductible employee contributions recoverable as non-taxable distributions. The Senate explanation to the Bill which resulted in this law provides that loans will be deemed made first from non-deductible employee contributions to the extent available. Hence, the loans in the amount of $280,000 would be non-taxable to the extent of $76,600 and, hence, taxable to the extent that the loans exceed your basis in the voluntary account.

In addition, it is our opinion that this taxable distribution will result in non-deductible excise tax in the amount of 10% of the distributions accrued prior to your attaining age 59 1/2.

Should you require any further information, please don't hesitate to contact me.

Sincerely yours,
PRUSKY & GIAMPETRO, P.C.

By: _____
Nicholas J. Giampetro

NJG/laf
enclosure

59

MARYLAND NATIONAL BANK
P. O. Box 987
Baltimore, Maryland 21203
(301) 637-4227

October 11, 1988

Mr. Richard Shofer
Catalina Enterprises
t/a Crown Motors
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

At this time Maryland National Bank has decided to turn down your request for $100,000. This decision is based on the purpose of the loan, the financial information we have at this time and the amount we have out to other entities in which you are personally liable.

We hope that you think of Maryland National Bank for any future requests you might have and I look forward to working with you and your other businesses. I am sorry we are unable to help you at this time, however, I hope you understand the Bank's decision.

Very truly yours,

Timothy M. Krause
Assistant Vice President

TMK/km

55.

MARYLAND NATIONAL BANK
P. O. Box 987
Baltimore, Maryland 21203
(301) 637-4227

June 14, 1989

Mr. Richard Shofer
Catalina Enterprises, Inc.
5000 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

Please be informed that this letter will serve as written notice that the Bank will not cover overdrafts any longer on any of the Catalina Enterprises, Inc.-Pension Trust, Catalina Enterprises, Inc. T/A Crown Motors or Shofer related family of accounts.

All checks presented to Maryland National Bank after June 19, 1989, which do not have available collected funds to cover the presented check, will be returned for insufficient funds. Please note that checks will be returned on June 20, 1989.

Very truly yours,

Timothy M. Krause
Assistant Vice President

TMK/ka

PROFESSIONALS' FEES AND BILLINGS

interest rate		17.78% of average balance	Expense Analysis - Shofer expenses				Run Date		05/19/97	05:34 PM	
	Six month	88	89	90	91	92	93	94	95	96	97
Year Ended	06/30/87	06/30/88	06/30/89	06/30/90	06/30/91	06/30/92	06/30/93	06/30/94	06/30/95	06/30/96	06/30/97
Auch, Karl					1,170.00	1,656.00	2,443.00	2,106.00	1,852.00	2,281.00	1,000.00
Blum Yumkas			2,000.00								
Bornhorst, Thomas								2,000.00			
Giampetro, Nicholas	5,863.00	5,683.00	5,863.00	5,683.00	5,683.00	5,683.00	2,584.00	5,382.00	1,108.00	681.00	1,943.00
Grabush Newman	4,503.00	2,463.00	3,487.00	3,487.00	3,487.00						
Hack, Stuart	1,435.00										
Kabala, Edward		374.00	971.00	1,465.00			65.00				
Martucci Associates							1,524.00	2,288.00	1,190.00	1,732.00	222.00
Miscellaneous	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	300.00
Schwait, Allen					1,476.00	215.00					
Taylor, Douglas										2,000.00	
Expenses for Year	12,301.00	9,020.00	12,821.00	11,135.00	12,316.00	8,054.00	7,116.00	12,276.00	4,650.00	7,194.00	3,465.00
Interest For Year	547.65	3,397.74	6,180.20	9,722.88	13,907.48	18,668.64	23,730.06	30,251.52	37,804.77	46,487.02	56,445.36
Total Expenses	12,301.00	21,321.00	34,142.00	45,277.00	57,593.00	65,647.00	72,763.00	85,039.00	89,689.00	96,883.00	100,348.00
Total Interest	547.65	3,945.39	10,125.59	19,848.46	33,755.94	52,424.58	76,154.64	106,406.17	144,210.93	190,697.93	247,143.24

PROFESSIONAL AND OTHER EXPENSES RELATED TO DETERMINING AND CORRECTING "HACK CAUSED" PROHIBITED TRANSACTIONS & TAX LIABILITIES FOR PERIODS FROM NOVEMBER 1986 THROUGH JUNE 1997.

1. Karl Auch - 10% of fees paid to R.S.'s internal accountant relate to providing various services and relevant to "Hack caused" income tax issues & undoing prohibited transactions.

2. Blum Yumkas - In 1989 Blum Yumkas negotiated an agreement with Grabush Newman so that they would continue working for Shofer in areas vital to undoing prohibited transactions and resume earnest assistance in resolving Hack related income tax issues. This is a conservative estimate of related cost to Richard Shofer for that agreement only.

3. T. Bornhorst. In 1984 and 1985 Mr. Bornhorst represented RS directly with both the Labor Dept. and the IRS. He initiated a "defusing" of an overheating situation with the IRS by going to Wash D.C. by himself and discussing the Hack issue with the Labor Dept.. During 1994 and 1995 he participated in numerous meetings with both the IRS and Labor Dept This is a conservitave estimate of compensation to Mr. Bornhorst related to this matter.

4 N. Giampetro- Charges by Mr. Giampetro that he himself assigned to "Hack caused" issues. Later, in the years 1993- to April 1997 these expenses are conservitavely estimated and primarily involved meetings, negotiations, and preparation of agreements in untangling "Hack caused" issues with the IRS and Labor Dept.

5. Grabush Newman- Includes Grabush's own estimated costs as well as a one third fraction of IRS audit expenses paid to Grabush and stemming from "Hack advice".

6. Stuart Hack charges for "loan advice" and "research".

7. Edward Kabala 20% of Mr. Kabala's total billing. This is a conservative estimated amount for the portion of his services related to providing information to Blum Yumkas on the legal and tax aspects of undoing prohibited transactions and excludes the far greater portion of costs related to Mr. Kabala's use by Blum Yumkas as an expert witness.

8. Martucci & Associates - 15% of total fees paid to this accounting firm (successors to Grabush Newman) is a conservitave estimate assumed related to "Hack caused" tax issues and undoing prohibited transactions. This estimate is a proportionally small fraction compared with documentedcharges by Richard Shofer's former accountants, Grabush Newman.

9. Miscellaneous - Very conservative annual estimates of expenses related to undoing prohibited transactions and Hack related income tax matters. Copying costs $100, heavy postage $100, parking fees $100, telephone expense (including long distance) $100, transportation including gasoline $100. Total per year = $500.00.

10.Allen Schwait - 60% of billings relate directly to his assistance in representing me in the subject matter "Hack caused" income tax issue limited to income tax on interest not paid timely.

11 Douglas Taylor - In the last half of 1996 Mr Taylor negotiated directly with the IRS to stop seizure proceedings on RS property. Additionally he provided services related to acquiring a loan in order to prevent the sale of already seized property.

MAILED TO HACK 10/18/85

Form **5500-C**

Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefit Programs

Pension Benefit Guaranty Corporation

Return/Report of Employee Benefit Plan

(With fewer than 100 participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6057(b) and 6058(a) of the Internal Revenue Code, referred to as the Code.

OMB No. 1210-0016

1984

This Form is Open to Public Inspection

For the calendar plan year 1984 or fiscal plan year beginning 1/1, 1984, and ending 12/31, 1984.

Type or print in ink all entries on the form, schedules, and attachments. If an item does not apply, enter "N/A." File the originals.

This return/report is: (i) ☐ the return/report filed for the plan's first plan year; (ii) ☐ an amended return/report; or (iii) ☐ the final return/report filed for the plan.

▶ **Caution:** A penalty of $25 a day for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.
▶ Welfare benefit plans required to file this form do not complete items 7(b), 12, and 24 through 30. Certain welfare benefit plans are not required to file this form—see instructions.
▶ Keogh (HR 10) plans must check the box in item 5(a)(iii).
▶ Check here ▶ ☐ and do NOT complete items 6(c)(iv), 8(b) and (d); 9(c), 12, 13, 17, 18, 20, 21, 22, 23, 27, and 30 if this return/report is for a pension benefit plan that covers only an individual who wholly owns a trade or business, whether incorporated or unincorporated.
▶ If you have been granted an extension of time to file this form, you must attach a copy of the approved extension to this form.

Use IRS label. Otherwise, please print or type.

1 (a) Name of plan sponsor (employer, if for a single employer plan): Catalina Enterprises, Inc.

1 (b) Employer identification number: 52 0820445

Address (number and street): 5006 Liberty Heights Avenue

1 (c) Telephone number of sponsor: (301) 466-3337

City or town, State and ZIP code: Baltimore, Maryland 21207

1 (d) If plan year changed since last return/report, check here ▶ ☐

2 (a) Name of plan administrator (if same as plan sponsor enter "Same"): Same

1 (e) Business code number

Address (number and street)

2 (b) Administrator's employer identification no.

City or town, State and ZIP code

2 (c) Telephone number of administrator ( )

3 Is the name, address and identification number of plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan? ☒ Yes ☐ No. If "No," enter the information from the last return/report in (a) and/or (b).

(a) Sponsor ▶ N/A EIN

(b) Administrator ▶ N/A EIN

(c) If (a) indicates a change in the sponsor's name and EIN, is this a change in sponsorship only? (See specific instructions for definition of sponsorship.) ☐ Yes ☐ No

4 Check box to indicate the type of plan entity (check only one box):

(a) ☒ Single-employer plan
(b) ☐ Plan of controlled group of corporations or common control employers
(c) ☐ Multiemployer plan
(d) ☐ Multiple-employer-collectively-bargained plan
(e) ☐ Multiple-employer plan (other)

5 (a) (i) Name of plan ▶ Catalina Enterprises, Inc. Pension Plan

5 (b) Effective date of plan 12/28/71

(ii) ☐ Check if name of plan changed since the last return/report.
(iii) ☐ Check this box if this is a Keogh (HR10) plan.

5 (c) Enter three-digit plan number ▶ 001

6 Check at least one item in (a) or (b) and applicable items in (c): **(a)** Welfare benefit plan (Plan numbers 501 through 999):

(i) ☐ Health insurance (ii) ☐ Life insurance (iii) ☐ Supplemental unemployment
(iv) ☐ Other (specify) ▶

(b) Pension benefit plan (Plan numbers 001 through 500): (i) Defined benefit plan—(indicate type of defined benefit plan below):

(A) ☐ Fixed benefit (B) ☐ Unit benefit (C) ☐ Flat benefit (D) ☐ Other (specify) ▶

(ii) Defined contribution plan—(Indicate type of defined contribution plan below):

(A) ☐ Profit-sharing (B) ☐ Stock bonus (C) ☐ Target benefit (D) ☐ Other money purchase
(E) ☐ Other (specify) ▶

(iii) ☐ Defined benefit plan with benefits based partly on balance of separate account of participant (Code section 414(k))
(iv) ☐ Annuity arrangement of a certain exempt organization (Code section 403(b)(1))
(v) ☐ Custodial account for regulated investment company stock (Code section 403(b)(7))
(vi) ☐ Pension plan utilizing individual retirement accounts or annuities (described in Code section 408) as the sole funding vehicle for providing benefits
(vii) ☐ Other (specify) ▶

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ 10/18/85 Signature of employer/plan sponsor ▶ [signature]

Date ▶ Signature of plan administrator ▶

PENGAD-Bayonne, N. J.
PLAINTIFF'S EXHIBIT NO. 32

6 (c) Other plan features: (i) ☐ Thrift-savings (ii) ☐ Participant-directed account plan
(iii) ☐ Pension plan maintained outside the United States (see instructions) (iv) ☐ Master trust (see instructions) ▶

		Yes	No
(d)	Single employer plans enter the tax year end of the employer in which this plan year ends ▶ Month 12 Day 31 Year 84		
(e)	Is this a pension plan of an affiliated service group?		X
(f)	Does this plan contain a cash or deferred arrangement described in Code section 401(k)?		X
7 (a)	Total participants (i) Beginning of plan year ▶ 10 (ii) End of plan year ▶ 9		
(b) (i)	Was any pension benefit plan participant(s) separated from service with a deferred vested benefit for which a Schedule SSA (Form 5500) is required to be attached?		X
(ii)	If "Yes," enter the number of separated participants required to be reported ▶ N/A		
8	Plan amendment information (welfare plans do NOT complete (b)(ii)):		
(a)	Were any plan amendments to this plan adopted since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X
(b)	If "Yes," (i) And if any amendments have resulted in a change in the information contained in a summary plan description or previously furnished summary description of modifications:		
	(A) Have summary descriptions of the changes been sent to participants?	N/A	
	(B) Have summary descriptions of the changes been filed with DOL?	N/A	
(ii)	Does any such amendment result in the reduction of the accrued benefit of any participant under the plan?	N/A	
(c)	Enter the date the most recent amendment was adopted ▶ Month ____ Day N/A Year ____		
(d) (i)	Has a summary plan description been filed with DOL for this plan?	X	
(ii)	If (i) is "Yes," what was the employer identification number and the plan number used to identify it? Employer identification number ▶ 52-0820445 Plan number ▶ 001		
9	Plan termination information:		
(a)	Was this plan terminated during this plan year or any prior plan year? If "Yes," enter year ▶		X
(b)	If "Yes," were all trust assets either distributed to participants or beneficiaries, transferred to another plan or brought under the control of PBGC?	N/A	
(c)	If (a) is "Yes," and the plan is covered by PBGC, is the plan continuing to file a PBGC Form 1 and pay premiums until the end of the plan year in which assets are distributed or brought under the control of PBGC?	N/A	
10 (a)	Was this plan merged or consolidated into another plan, or were assets or liabilities transferred to another plan since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X

If "Yes," identify the other plan(s):

(b) Name of plan(s) ▶	(c) Employer identification number(s)	(d) Plan number(s)
N/A	N/A	N/A

(e) Has Form 5310 been filed? N/A ☐ Yes ☐ No

11 Indicate funding arrangement:
(a) ☒ Trust (b) ☐ Fully insured (c) ☐ Combination (d) ☐ Other (specify) ▶
(e) If (b) or (c) is checked, enter the number of Schedules A (Form 5500) which are attached ▶

12 (a) Is the plan covered under the Pension Benefit Guaranty Corporation termination insurance program? ☐ Yes ☒ No ☐ Not determined
(b) If (a) is "Yes," or "Not determined," enter the employer identification number and the plan number used to identify it.
Employer identification number ▶ N/A Plan number ▶ N/A

		Yes	No
13	Complete both (a) and (b):		
(a)	Is the plan insured by a fidelity bond? TO BE PURCHASED		X
(i)	If "Yes," enter name of surety company ▶		
(ii)	Amount of bond coverage ▶		
(b)	Was any loss discovered since the last return/report Form 5500, 5500-C or 5500-K was filed for this plan (or during this plan year if this is the initial return/report)?		X
14 (a)	If this is a defined benefit plan, is it subject to the minimum funding standards for this plan year? If "Yes," attach Schedule B (Form 5500).		X
(b)	If this is a defined contribution plan, i.e., money purchase or target benefit, is it subject to the minimum funding standards (if a waiver was granted, see instructions)?		X

If "Yes," complete (i), (ii) and (iii) below:

(i)	Amount of employer contribution required for the plan year	$ 42,903.12
(ii)	Amount of contribution paid by the employer for the plan year	$ 42,903.12
	Enter date of last payment by employer ▶ Month 9 Day 13 Year 85	
(iii)	If (i) is greater than (ii) subtract (ii) from (i) and enter the funding deficiency here. Otherwise enter zero. (If you have a funding deficiency, file Form 5330.)	$ -0-

15 Plan assets and liabilities at the beginning and end of the current plan year (list all assets and liabilities at current value). A fully insured welfare plan or a pension plan with no trust and which is funded entirely by allocated insurance contracts which fully guarantee the amount of benefit payments should check the box and not complete the rest of this item ▶ ☐

Note: *Include all plan assets and liabilities of a trust or separately maintained fund. If more than one trust/fund, report on a combined basis. Include all insurance values except for the value of that portion of an allocated insurance contract which fully guarantees the amount of benefit payments. Round off amounts to nearest dollar. If you have no assets to report enter "-0-" on line 15(f).*

	a. Beginning of year	b. End of year
Assets		
(a) Cash— (i) Interest bearing		
(ii) Non-interest bearing	11,224.24	12,386.48
(iii) Total cash	11,224.24	12,386.48
(b) Receivables	29,934.28	401,661.49
(c) Investments—		
(i) Government securities		
(ii) Pooled funds/mutual funds		
(iii) Corporate (debt and equity instruments)	8,000.28	8,000.28
(iv) Value of interest in master trust		
(v) Real estate and mortgages		
(vi) Other	1,228,180.75	574,024.75
(vii) Total investments	812,000.00	884,000.00
(d) Building and other depreciable property used in plan operation		
(e) Unallocated insurance contracts		
(f) Other assets	4,178.64	
(g) Total assets (add (a)(iii); (b); (c)(vii); (d); (e) and (f))	2,143,518.19	1,880,239.22
Liabilities and Net Assets		
(h) Payables	282,080.99	358,308.13
(i) Acquisition indebtedness	614,078.43	157,775.01
(j) Other liabilities	207,340.77	81,357.94
(k) Total liabilities (add (h) through (j))	1,103,500.19	597,441.08
(l) Net assets (subtract (k) from (g))	1,040,018.00	1,282,798.14

16 Plan income, expenses and changes in net assets during the plan year. Include all income and expenses of a trust(s) or separately maintained fund(s), including any payments made for allocated insurance contracts. Round off amounts to nearest dollar.

	a. Amount	b. Total
(a) Contributions received or receivable in cash from:		
(i) Employer(s) (including contributions on behalf of self-employed individuals)	43,603.05	
(ii) Employees		43,603.05
(iii) Others		
(b) Noncash contributions		
(c) Earnings from investments (interest, dividends, rents, royalties)		259,873.90
(d) Net realized gain (loss) on sale or exchange of assets		
(e) Other income (specify) ▶ MISC INC, NOTE REDEEMED		39,175.34
(f) Total income (add (a) through (e))		342,652.29
(g) Distribution of benefits and payments to provide benefits:		
(i) Directly to participants or their beneficiaries	18,185.25	
(ii) To insurance carrier or similar organization for provision of benefits (including prepaid medical plans)		
(iii) To other organizations or individuals providing welfare benefits		18,185.25
(h) Interest expense		88,927.41
(i) Administrative expenses (salaries, fees, commissions, insurance premiums)		
(j) Other expenses (specify) ▶ R.E. Expenses, Taxes, Misc Expenses		62,959.49
(k) Total expenses (add (g) through (j))		170,786.14
(l) Net income (subtract (k) from (f))		
(m) Changes in net assets: (i) Unrealized appreciation (depreciation) of assets	72,000.	
(ii) Net investment gain (or loss) from all master trust investment accounts		72,000.00
(iii) Other changes (specify) ▶		
(n) Net increase (decrease) in net assets for the year (add (l) and (m))		242,780.14
(o) Net assets at beginning of year (line 15(k), column a)		1,040,018.00
(p) Net assets at end of year (add (n) and (o)) (equals line 15(k), column b)		1,282,798.14

17 As of the end of the plan year.

(a)	What percentage of plan assets are loaned to a party-in-interest?	0 %
(b)	What percentage of plan assets are invested in securities issued by a party-in-interest?	0 %
(c)	What percentage of plan assets are invested in real estate which is leased by a party-in-interest?	0 %

		Yes	No
18	Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report):		
(a)	Has there been a termination in the appointment of any trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager or custodian?		X
	If "Yes," explain and include the name, position, address and telephone number of the person whose appointment has been terminated ▶ N/A		
(b)	Has the plan used the services of a contract administrator?	X	
	If "Yes," enter the contract administrator's name and employer identification number (see instructions) ▶ The Stuart Hack Company 52-0747494		
(c)	Indicate the amount of the plan's administrative expenses for the: (i) Preceding year ▶ $ 0 (ii) Second preceding year ▶ $ 0		
(d)	Have any insurance policies or annuities been replaced?		N/A
(e)	Was the plan funded with: (i) ☐ Individual policies or annuities (ii) ☐ Group policies or annuities (iii) ☐ Both		
19	Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report):		
(a)	Other than transactions described in the exceptions outlined in the instructions, were there any transactions, directly or indirectly, between the plan and a party-in-interest? If "Yes," see specific instructions.		X
(b)	Has the plan granted an extension on any loan for which, before the granting of an extension, it has not received all the principal and interest payments due under the terms of the loan?		X
(c)	Has the plan granted an extension of time or renewal for the payment of any obligation owed to it which amounts to more than 10% of the plan assets?		X
20	As of the end of any plan year since the end of the plan year covered by the last return/report, Form 5500, 5500-C or 5500-K which was filed for this plan (or as of the end of this plan year if this is the initial return/report):		
(a)	Did the plan have investments of the type reportable under item 15(c)(vii) or (ix) which in the aggregate in either category exceeded 15% of plan assets?		X
(b)	Did the plan have loans outstanding or investments in a single enterprise (other than the United States Government) which exceeded 15% of plan assets?		X
21	During the plan year covered by this return:		
(a)	Did the plan acquire any qualifying employer security or qualifying employer real property, when immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the plan assets?		X
(b)	Did the plan acquire any qualifying employer security or qualifying employer real property, when immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the plan assets?		X
(c)	Has any plan fiduciary had either a financial interest worth more than $1,000 in any party providing services to the plan or received anything of value from any party providing services to the plan?		X
(d)	Has any employer owed the plan contributions which were more than three months past due under the terms of the plan?		X
(e)	Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year, or classified as uncollectable?		X
(f)	Were any leases to which the plan was a party in default or classified as uncollectable?		X
22	Who is the plan's designated agent for legal process? ▶ Mr. Richard Shafer		
23	Give the name and address of each fiduciary (including trustees) to the plan ▶ Mr. Richard Shafer c/o Catalina Enterprises, Inc. 5006 Liberty Heights Avenue Baltimore, MD 21207		
24	Is this plan an adoption of any of the plans below? (If "Yes," check appropriate box and enter IRS serial number): (a) ☐ Master/prototype, (b) ☐ Field prototype, (c) ☐ Pattern, (d) ☐ Model plan, or (e) ☐ Bond purchase plan? Enter the four or eight-digit IRS serial number (see instructions) ▶ N/A		
25 (a)	Is this plan integrated with social security?		X
(b)	Is it intended that this plan qualify under Code section 401(a) or 405?	X	
(c)	If (b) is "Yes," have you received a determination letter from the IRS for this plan?		X
(d)	Does the employer/sponsor listed in item 1(a) of this form maintain other qualified pension benefit plans? If "Yes," list the number of plans including this plan ▶ 2	X	

		Yes	No
26	Information about employees of employer at end of the plan year. **(a)** Does the plan satisfy the percentage tests of Code section 410(b)(1)(A)? If "No," complete only (b) below and see Specific Instructions	X	
(b)	Total number of employees	10	
(c)	Number of employees excluded under the plan because of: *(i)* Minimum age or years of service	3	
	(ii) Employees on whose behalf retirement benefits were the subject of collective bargaining	0	
	(iii) Nonresident aliens who receive no earned income from United States sources	0	
	(iv) Total excluded (add (i), (ii) and (iii))	3	
(d)	Total number of employees not excluded (subtract (c)(iv) from (b))	7	
(e)	Employees ineligible (specify reason) ▶		
		0	
(f)	Employees eligible to participate (subtract (e) from (d))	7	
(g)	Employees eligible but not participating	0	
(h)	Employees participating (subtract (g) from (f))	7	

27	Vesting (check only one box to indicate the vesting provisions of the plan):	
(a)	Full and immediate vesting, or full vesting within 3 years	
(b)	No vesting in years 1 through 9, and full vesting after the 10th year of service	
(c)	For each year of employment, beginning with the 4th year, vesting equal to 40% after 4 years of service, 5% additional for the next 2 years, and 10% additional for each of the next 5 years	
(d)	100% vesting within 5 years after contributions are made (class year plan only)	
(e)	Other vesting	X

		Yes	No
28 (a)	Did the employer receive plan assets (including a return of contributions) since the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X
(b)	If this is a defined benefit plan which provides for annual, automatic increases in the maximum dollar limitations under Code section 415, does the plan provide that any such increase is effective no earlier than the calendar year for which IRS determines that increase under Code section 415(d)?	N/A	
(c)	Is this a plan with Employee Stock Ownership (ESOP) features?		X
	(i) If "Yes," was a current appraisal of the value of the stock made immediately before any contribution of stock or purchase of the stock by the trust for the plan year covered by this return/report?	N/A	
	(ii) If (i) is "Yes," was the appraisal made by an unrelated third party?	N/A	
29	Have any individuals performed services as a leased employee for this employer or for any other employer who is aggregated with this employer under section 414(b), (c), or (m)? If "Yes," see instructions for completing item 26.		X
30 (a)	Is this plan a top heavy plan within the meaning of Code section 416 for this plan year?	X	
(b)	If (a) is "Yes," complete (i), (ii) and (iii) below:		
	(i) Has the plan complied with the vesting requirements of Code section 416(b)?	X	
	(ii) Has the plan complied with the minimum benefit requirements of Code section 416(c)?	X	
	(iii) Has the plan complied with the limitation on compensation of Code section 416(d)?	X	

If additional space is required for any item, attach additional sheets the same size as this form.

SCHEDULE P
(Form 5500)
Department of the Treasury
Internal Revenue Service

Annual Return of Fiduciary of Employee Benefit Trust

▶ File as an attachment to Form 5500, 5500-C, or 5500-R.

OMB No. 1210-0016

1984

For trust calendar year 1984 or fiscal year beginning 1/1, 1984, and ending 12/31, 1984.

Please type or print

1 (a) Name of trustee or custodian
Mr. Richard Shofer

(b) Address (number and street)
5006 Liberty Heights Avenue

(c) City or town, State and ZIP code
Baltimore, Maryland 21207

2 Name of trust
Catalina Enterprises, Inc. Pension Plan

3 Name of plan if different from name of trust
Same

4 Have you furnished the participating employee benefit plan(s) with the trust financial information required to be reported by the plan(s) on their Forms 5500, or 5500-C? ☒ Yes ☐ No

5 Enter the plan sponsor's employer identification number as shown on the form to which this schedule is attached ▶ 52 0820445

Under penalties of perjury I declare that I have examined this schedule, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ 10/18/85 Signature of fiduciary ▶ Richard Shofer

Instructions

(Section references are to the Internal Revenue Code.)

A. Purpose of Form

You may use this schedule to satisfy the requirements under section 6033(a) for an annual information return from every section 401(a) organization exempt from tax under section 501(a).

The filing of this form will also start the running of the statute of limitations under section 6501(a) for any trust described in section 401(a) which is exempt from tax under section 501(a).

B. Who May File

(1) Every trustee of a trust described in section 401(a) which was created as part of an employee benefit plan.

(2) Every custodian of a custodial account described in section 401(f).

C. How to File

File Schedule P (Form 5500) for the trust year ending with or within any participating plan's plan year as an attachment to the Form 5500, 5500-C, or 5500-R filed by the plan for that plan year.

Schedule P (Form 5500) may be filed only as an attachment to a Form 5500, 5500-C, or 5500-R. A separately filed Schedule P (Form 5500) will not be accepted

If the trust or custodial account is used by more than one plan, file only one Schedule P (Form 5500). It must be filed as an attachment to one of the participating plan's returns/reports. If a plan uses more than one trust or custodial account for its funds, file one Schedule P (Form 5500) for each trust or custodial account.

D. Signature

The fiduciary (trustee or custodian) must sign this schedule. If there is more than one fiduciary, one of them, authorized by the others, may sign.

E. Other Returns and Forms that May be Required

(1) Form 990-T.—For trusts described in section 401(a), a tax is imposed on income derived from business that is unrelated to the purpose for which the trust received a tax exemption. Report such income and tax on Form 990-T, Exempt Organization Business Income Tax Return. (See sections 511 through 514 and related regulations.)

(2) Forms W-2P and 1099-R.—If you made payments or distributions to individual beneficiaries of a plan, report these payments on Forms W-2P or 1099-R. (See sections 6041 and 6047 and related regulations.)

(3) Forms 941 or 941E.—If you made payments of distributions to individual beneficiaries of a plan, you are required to withhold income tax from those payments, unless the payee elects not to have the tax withheld. Report this withholding on Form 941 or 941E. (See Forms 941 or 941E and Circular E, Publication 15.)

Form **5558**
(Rev. October 1982)
Department of the Treasury
Internal Revenue Service

Application for Extension of Time to File Certain Employee Plan Returns

▶ For Paperwork Reduction Act Notice, see Instructions on back

Expires 8-31-85

File With IRS Only

File in DUPLICATE by the due date for filing the return. (See general instructions 2 and 3.)

Name of taxpayer or plan sponsor (see instructions)
Catalina Enterprises, Inc.

Address (Number and street)
5006 Liberty Heights Avenue

City or town, State, and ZIP code
Baltimore, MD 21207

Check applicable box and enter number (see specific instructions)

☒ Employer identification number
▶ 52 - 0820445 OR

☐ Social security number
▶

1 I request an extension of time until (see specific instruction 1) ▶ 10/15/85 (check appropriate block(s)):

(a) ☐ To file Form 5500, Annual Return/Report of Employee Benefit Plan (with related schedules).

(b) ☒ To file Form 5500-C, Return/Report of Employee Benefit Plan (with related schedules).

(c) ☐ To file Form 5500-K, Return/Report of Employee Pension Benefit Plan (with related schedules).

(d) ☐ To file Form 5500-G, Annual Return/Report of Employee Benefit Plan.

(e) ☐ To file Form 5500-R, Registration Statement of Employee Benefit Plan (with related schedules).

(f) ☐ To file Form 5330, Return of Initial Excise Taxes Related to Pension and Profit-sharing Plans for tax year beginning ▶ ..... and ending ▶ .....

(g) If you checked (f) above, are you electing to be taxed under ERISA section 2003(c)(1)(B)? . . . . . ☐ Yes ☐ No

2 Complete the following for the plan covered by this application (see general instruction 2):

Plan name	Plan number	Plan year ending Month	Day	Year
CATALINA ENTERPRISES, INC. PENSION PLAN	001	12	31	84

3 (a) Has an extension of time to file the designated return(s) been previously granted for this tax year? . . . . ☐ Yes ☒ No

(b) If "Yes," show the date(s) to which the extension was granted . . . . . ▶ n/a

4 Attach a detailed statement of why you need the extension (see specific instruction 4). PLEASE SEE ATTACHED

5 If the extension is for Form 5330, enter the amount of tax estimated to be due on Form 5330. Pay this amount with this application . . . . . ▶

Caution: *Interest on late payment of tax accrues at the rate established under section 6621 of the Internal Revenue Code from the regular due date of the return until paid. (For the penalty for late payment of tax, see specific Instruction 5.)*

Under penalties of perjury, I declare that to the best of my knowledge and belief the statements made on this form are true, correct, and complete and that I am authorized to prepare this application.

Signature ▶ Charmaine B. Ford Date ▶ 7/15/85

Note: *The person who signs this form may be an employer or plan administrator filing Form 5500, 5500-C, 5500-K, 5500-G, 5500-R or 5330; a disqualified person filing Form 5330; an attorney or certified public accountant qualified to practice before the IRS; a person enrolled to practice before the IRS; or a person holding a power of attorney.*

Notice to Applicant.—THE INTERNAL REVENUE SERVICE WILL INDICATE BELOW WHETHER THE EXTENSION IS GRANTED OR DENIED AND WILL RETURN THE ORIGINAL OF THE APPLICATION

☒ The application IS approved to ▶ 10-15-85 (You MUST attach a copy of this form to each return you file for which an extension is granted.)

RECEIVED
JUL 19 1985
PSC PHILA, PA.
14

☐ The application IS NOT approved. (You MUST attach a copy of this form to each return you file for which a grace period is granted.) However, in view of your reasons stated in the application, a 10-day grace period is granted from the date shown below or due date of the return, whichever is later. This 10-day grace period constitutes a valid extension of time for purposes of elections otherwise required to be made on timely filed returns.

☐ The application IS NOT approved.

After consideration of the reasons stated in your application, we have determined the extension is not warranted. (The 10-day grace period is not granted.)

☐ The application cannot be considered, since you filed it after the due date of the return.

☐ Other ▶

Donald Spignuolo

(Date) (Director) By: RECEIVED

AUG 5 1985

THE STERLING DRUG COMPANY

363-479-2

BALANCE SHEET — INCOME & EXPENSE — CATALINA PENSION TRUST

				83	12-31-84
CURRENT & FIXED ASSETS:			INCOME:		
Cash	235.10	166.22	Contributions	42,084.[illegible]	[illegible]03.03
Accounts Receivable	[illegible]	574,024.75	Interest Earned	3,546.26	184,45[illegible]
Due From [illegible]		159,758.[illegible]	[illegible]	3,528.25	73,3[illegible]
Tax Escrow & Security Dep[illegible]	[illegible]	16,366.46	[illegible]	547.50	[illegible]
Notes Receivable, Participant	0.00	200,000.00	Secured Note	40,000.[illegible]	35,000.00
Acc'd Interest, Participant Loan	0.00	0.00			
Security Deposit - Bond	8,000.28	8,000.28	TOTAL INCOME	307,555.29	340,652.99
Deferred Commission Expense	4,176.[illegible]	[illegible]			
Secured Note Receivable	35,000.[illegible]	[illegible]	[illegible]		
[illegible]	[illegible]	46,[illegible]			
Rent Receivable	0.00	0.00	Interest Expense:		
			1st Mtge	8,994.51	7,457.42
TOTAL CURRENT ASSETS	1,331,518.19	996,239.22	2nd Mtge & Secured Loan	61,811.44	74,394.71
			3rd Mtge	0.00	7,185.[illegible]
[illegible] Land	63,[illegible]	63,481.8[illegible]	Legal & Accounting	[illegible]	[illegible]
R.E. - [illegible]ldings	241,[illegible]	241,[illegible]	R.E. Expenses	38,[illegible]	[illegible]
R.E. - Improvements	11,679.21	11,679.21	Federal Taxes	31,000.00	29,241.78
R.E. - Change in Value	576,224.48	655,821.48	Miscellaneous Expenses	69.13	2,048.24
Less Accumulated Depreciation	(80,470.69)	(88,067.69)	Vested Interest Paid	0.00	18,185.25
			Loss on Sales	0.00	0.00
[illegible]	[illegible]	[illegible]			
			TOTAL EXPENSES	184,447.81	168,[illegible]
TOTAL CURRENT & FIXED ASSETS	2,143,518.19	1,840,239.22			
			APPRECIATION/DEPRECIATION OF ASSET		
[illegible] & NET WORTH			R.E. - Chg in Appraised Value	4,[illegible]	75,[illegible]
			R.E. - Depreciation	7,597.00	7,597.00
[illegible]					
Federal Taxes Payable	65,720.00	42,745.00	NET CHANGES IN ASSETS	(11,795.00)	72,000.00
Note Payable, P/S Plan	20,500.00	20,500.00			
1st Mortgage	96,338.56	77,534.88	NET INCOME	171,413.58	242,780.14
[illegible] Mortgage	[illegible]	[illegible]			
3rd Mortgage	0.00	[illegible]			
[illegible]	[illegible]	[illegible]	[illegible]		
Miscellaneous Payables	5,813.77	6,563.98	Assets Yr Begin	868,604.32	1,040,018.00
Reserve due Crown	78,356.28	0.00	Assets Yr End	1,040,018.00	1,282,798.14
Security Deposits	15,352.38	12,964.27			
[illegible]	[illegible]	[illegible]			
DEFERRED INCOME:					
Unearned Income — Install. Sls	207,340.77	81,257.94			
TOTAL DEFERRED INCOME	207,340.77	81,257.94			
NET WORTH:					
Participants' Interest	1,040,018.00	1,282,798.14			
TOTAL NET WORTH	1,040,018.00	1,282,798.14			
	[illegible]	[illegible]			

- Catalina Enterprises, Inc.
Pension Plan

TRUST FUND STATEMENT

FOR THE PERIOD 1/1/84 TO 12/31/84

OPENING MARKET VALUE		$1,040,018.0
RECEIPTS:		
Contributions	$ 43,603.05	
~~Interest~~ Earnings	299,049.21	
~~Dividends~~		
~~Realized Gain (Loss) on Sales~~		
Unrealized Gain (Loss) in Market Value	72,000.00	
~~Increase in Cash Surrender Values~~		
		412,652.2
DISBURSEMENTS:		
Paid Participants	$(18,185.25)	
~~Insurance Premiums~~ Interest Expense	(88,917.41)	
~~Administration Fees~~		
~~Bank Fees~~ Other Expenses	(62,769.49)	
~~PBGC Fees~~		
		(169,872.1
CLOSING MARKET VALUE		$1,282,798.1

EXHIBIT H-22 8/18/89 L.S
PENGAD-Bayonne, N. J.

PLAINTIFF'S EXHIBIT NO. 33 ID
PENGAD-Bayonne, N. J.

498
12-18-85

Joe -

Here are Catalina's assets "interpreted" by me. I Couldn't get a hold of the woman to send another copy.

If any questions - see me.

Janelle

BALANCE SHEETS — INCOME & EXPENSE — CATALINA PENSION [illegible]

	12-31-83	12-31-84
[illegible]	[illegible]	[illegible]
Accounts Receivable	1,226,180.75	574,024.75
Due from Crown	0.00	[illegible]
Tax Escrow & Security Deposits	[illegible]	12,[illegible]
[illegible] Participant	[illegible]	800,000.00
[illegible] Participant Loan	[illegible]	[illegible]
Security Deposit - Bond	8,000.28	8,000.28
Deferred [illegible]	[illegible]	[illegible]
Escrow [illegible]	15,[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible] Receivable	0.00	0.00
TOTAL CURRENT ASSETS	1,331,518.19	795,239.22
R.E. - Land	[illegible]	[illegible]
R.E. - Buildings	[illegible]	[illegible]
[illegible] Improvements	11,679.21	11,679.21
[illegible] Change in Value	576,224.48	653,821.48
Less Accumulated Depreciation	(80,470.69)	(88,067.69)
BOOK VALUE OF FIXED ASSETS	[illegible]	[illegible]
TOTAL CURRENT & FIXED ASSETS	2,157,518.19	1,380,239.22
LIABILITIES & NET WORTH		
CURRENT LIABILITIES		
Accounts/Taxes Payable	65,720.00	42,745.00
Note Payable, [illegible]	20,[illegible]	[illegible]
1st Mortgage	55,332.56	77,534.88
2nd [illegible]	[illegible]	[illegible]
3rd Mortgage	[illegible]	[illegible]
Notes Payable, [illegible]	[illegible]	[illegible]
Miscellaneous Payables	5,813.77	4,561.93
Reserve for Crown	78,356.28	0.00
Security Deposits	15,352.38	12,[illegible]
TOTAL CURRENT [illegible]	[illegible]	[illegible]
DEFERRED INCOME		
Unearned Income — Installments	207,340.77	51,257.94
TOTAL DEFERRED [illegible]	[illegible]	[illegible]
[illegible]		
Participants' Interest	1,040,018.00	1,282,738.[illegible]
TOTAL NET WORTH	[illegible]	[illegible]

	12-31-83	12-31-84
Interest Earned	192,546.26	185,431.65
Rental Income	112,520.25	73,388.25
Miscellaneous Income	247.50	4,175.34
[illegible]	[illegible]	[illegible]
TOTAL INCOME	[illegible]	[illegible]
EXPENSES:		
Interest Expense		
1st Mtge	[illegible]	7,367.[illegible]
2nd Mtge & Secured Loan	61,611.44	74,396.[illegible]
3rd Mtge	0.00	7,[illegible]
Legal & Accounting	0.00	0.00
R.E. Expenses	22,572.53	31,463.47
Property Taxes	[illegible]	[illegible]
Miscellaneous Expenses	[illegible]	[illegible]
[illegible] Interest Paid	[illegible]	[illegible]
Loss on Sales	0.00	0.00
TOTAL EXPENSES	124,447.61	185,372.15
APPRECIATION/DEPRECIATION OF ASSET		
R.E. - [illegible] Value	(4,158.00)	73,537.00
R.E. - Depreciation	(7,597.00)	(7,597.00)
NET CHANGE IN ASSETS	(11,755.00)	72,600.00
NET INCOME	171,413.68	242,730.14
[illegible]		
Assets Yr Begin	868,604.32	1,040,018.00
Assets Yr End	1,040,018.00	1,282,738.14

Janelle — the $12,000 + is to be taken out of allocations

	12/31/83	12/31/84
Income:		
Contributions	42,034.28	43,603.05
Int. Earned	192,546.26	184,441.65
Rental Income	112,528.25	73,382.25
Misc. Inc.	547.50	4175.34
Secured Note	(40,000)	35,000
TAL Income	307,656.29	340,652.29
Expenses:		
Int. Expenses		
st Mort	8994.51	7457.42
2nd Mort + Sec. Loan	61,811.44	74,394.71
3rd Mort.	0	7,065.28
egal + Acctng	0	0
. Expenses	22,572.53	31,49.47
ed Taxes	31,000	29,241.78
isc. Exp	69.13	2,048.24
sted Int. Pd.	0	18,1 525
ss on Sales	0	0
TAL Expenses	124,447.61	169,872.15
Prec/DEPREC of ASSET		
E - Chg in App. Value	(4198)	79,597
E - Dep	(7597)	(7597)
ET Δ in ASSETS	(11795)	72,000
ET INCOME	171413.68	242,780.14

ixed Assets	12/31/83	12/31/84
ash	235.10	1666.22
/R	1,228,180.75	574,024.75 ✓
e from Comm	0	158,758.44 ✓
Escrow + Sec Dep	10989.14	12,386.48 ✓
tes Rec, participant	0	200,000 ✓
c'd Int, partic loan	0	0
c. Dep - Bond	8000.28	8000.28 ✓
ferred Comm. Exp.	4178.64	0 ✓
c. Note Rec.	35,000	0 ✓
ntrib. Rec.	44934.28	42903.05 ✓
nt Rec.	0	0
tal Current Assets	1,331,518.19	996,239.22
.E. - Land	63,491.80	63491.80 ✓
.E. - Bldgs	241,075.20	241,075.20 ✓
.E. - Improvements	11,679.21	11679.21 ✓
E. - Δ in Value	574,224.48	655,821.48 ✓
ss: Accum Dep	(80,470.69)	(88067.69) ✓
ok Value Fixed Assets	812,000	884,000
tal Current + Fixed Assets	2,143,518.19	1,880,239.22

Liabilities + Net Worth	12/31/83	12/31/84
Current Liabilitiess		
Fed. Taxes Payable	65,720	42,745 ✓
Note Payable, P/S Plan	20,500	20,500 ✓
1st Mort	96,338.56	77,534.88 ✓
2nd "	200,000	100,000 ✓
3rd "	0	200,000 ✓
Notes Payable, No Nat'l	414,078.43	57,775.01 ✓
Misc. Payables	5813.77	4563.98 ✓
Reserve due Crown	78,356.28	0 ✓
Security Dep	15,352.38	12,964.27 ✓
tal Current liab.	896,159.42	516,083.14
ferred Income:		
Unearned Inc.	207,340.77	81,357.94
tal Def. Inc.	207,340.77	81,357.94
t Worth:		
Participants Int.	1,040,018	1,282,798.14
TAL NET WORTH	1,040,018	1,282,798.14
TAL Liabilities & Net Worth	2,143,518.19	1,880,239.22

$1,282,798.14
(12,386.48) Escrow
(699.93) 85 adv contrib
$1,269,711.73

Beg Bal	$1,027,428.35
Contrib	51,622.76
Forf	(7793.64)
DISTRIB	(18185.15)
earnings	216,639.41
Partic Accts	1,269,711.73
Escrow	12,386.48
85 adv	699.93
	~~1,269,711.73~~
	1282798.14

THE STUART HACK COMPANY

Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 470-7435

Writer's Direct Dial No.

December 16, 1986

PERSONAL AND CONFIDENTIAL

Mr. Alan Marvel
Graybush, Newman & Company
Suite 350
Village of Cross Keys
Baltimore, MD 21210

Re: Catalina Enterprises -- Loans from Voluntary Accounts

Dear Mr. Marvel:

Enclosed please find a memorandum and supporting information regarding the loan from the above listed plan.

Should you have any questions, please contact me.

Sincerely yours,

Judith E. Reed

Judith E. Reed, Esquire

JER/cps
Enclosures

PLAINTIFF'S EXHIBIT NO. 34

EXHIBIT 6

MEMORANDUM

TO: Alan Marvel

FROM: Judith E. Reed

DATE: December 16, 1986

RE: Richard Shofer's Loans from his Voluntary Account

We do not have exact information regarding the dates Richard Shofer borrowed money from his voluntary accounts. Revenue Ruling 82-202 (attached) provides that loans made on or before August 13, 1982, will not be considered distributions under section 72(p) of the Code. However, all outstanding loans, regardless of whether or not they were made before August 13, 1982, are taken into account for purposes of determining whether the dollar or percentage limit of section 72(p) is exceeded. Revenue Ruling 82-22.

Out best information indicates that Richard Shofer had a $200,000 loan from his voluntary account on August 13, 1982, and has since borrowed an additional $80,000. However, Alan Marvel stated that Shofer had a $205,000 loan before August 13, 1982 and a $75,000 loan in 1985. As a result, the entire $80,000 or $75,000 is considered to be a distribution since $200,000 is above the $50,000 limit.

Revenue Ruling 82-22 provides that any distribution as a result of a loan will be taxed only to the extent it exceeds the participant's investments in the contract. Section 1.72-11(d) of the regulations states that any amount received shall be included in gross income to the extent that, when added to amounts previously received under the contract, and which were excludable from gross income of the recipient under the law applicable at the time of receipt, exceeds the aggregate of premiums or the consideration paid.

An argument can be made that since the loan of $200,000 was not a distribution under the law applicable at the time of the loan, it is not considered as an amount received for purposes of determining the amount of investment excluded under section 1.72-11(d) of the regulations.

Richard Shofer's deposits to his voluntary account through 1985 total $76,000 according to our records. As a result, only $3,400, or none at all, would constitute taxable income.

Richard Shofer had the following amounts credited to his voluntary account for the following years:

YEAR	CUMULATIVE DEPOSITS	ACCOUNT BALANCE
12/31/75	$26,700.00	$ 26,700.00
12/31/76	33,200.00	34,254.44
12/31/77	44,400.00	62,235.52
12/31/78	0.00	38,514.64
12/31/79	0.00	24,162.85
12/31/80	0.00	107,502.00
12/31/81	53,500.00	119,177.45
12/31/82	62,600.00	157,175.46
12/31/83	76,600.00	209,415.95
12/31/84	0.00	254,718.03
12/31/85	0.00	

It thus appears that as of 12/31/85, Richard Shofer did not have $200,000 in his voluntary account. He had $157,175.46. How could he borrow $200,000 (or $205,000) from his voluntary account?

In addition, if Richard Shofer has borrowed a total of $208,000, he has exceeded the balance in his voluntary account by $25,281.97, according to our records.

It should be noted that our records may not be accurate because the information supplied to us has not always been consistent. Nevertheless, it does appear that Richard Shofer should only be liable for income tax on a very small sum by a literal reading of the regulations.

GROBUSH, NEWMAN + Co., P.A. - HACK + HACK RELATED Expenses

07/09/87	(11-86 TO 6-87)	2,273.60
01/21/88	(7-87 TO 12-87)	2,229.40
02/06/89	(1-88 TO 12-88)	2,462.60

* 1989-90 - Billing Analysis ~~Time~~ PAGE 1 OF 2 - LINE 8
1519.-

* 1989-90 " " " 1 OF 2 LINE 10
1869

* 1989-90 " " PAGE 2 OF 2 LINE 8
13,926

* 1989-90 " " PAGE 2 OF 2 LINE 10
2,222

* 1990-91 " " PAGE 1 LINE 10
11,844

1/3 = 31,380 — 10,460.00

17,425.60

* ALL GROBUSH, NEWMAN FEES RELATED TO IRS AUDIT Expenses =
$31,380. 1/3 = 10,460.00 RELATED TO HACK ISSUES
$20,920 NOT RELATED TO HACK ISSUES.

PLAINTIFF'S EXHIBIT NO. 35 ID
PENGAD-Bayonne, N. J.

	Initials	Date
Prepared By		
Approved By		

	1	2	3	4	5	6
3	CORPORATE AUDIT	1-16-89 TO 10-91				27289
5	PENSION AUDIT	1-16-89 TO 10-91				4091
6						31380

Prepared By:	Ka	11/15
Reviewed By:		

CATALINA / SHOPER
BILLING ANALYSIS
1985 / 1990

Page 1 / 2

	DATE BILLED / AMOUNT	1-16-85 950 –	3-6-85 1800 –	4-24-85 4850 –	5-11-85 1400 –	6-7-85 850 –	8-10-85 1800 –	7-10-85 500 –	8-7-85 600 –	9-11-85 3200 –	10-7-85 2400 –	11-13-85 3100 –	1-16-90 2200 –	TOTAL
1984 –	DEPRECIATION – BOOKS + 1120		357	1105	10		113		35	2998	1968	1255		7841
1984 –	PENSION – BOOKS + 5307		6	1609		599	1654		13			295		4176
1984 –	INDIVIDUAL – 1040			1645	1390	57					401			3493
	IRS AUDIT – CORP. 1987											775	744	1519
	IRS AUDIT – PENSION – 1986	044	195	341					434			775		1815
	AVA, INC. – 1120							500						500
	Computer Assistance w/ Gen. Ledger System	256	91	58		175	6		24		31		6	647
	HACH Consult		1019	91										1110
	OTHER ITEMS:													
	– Research Re: Payroll vs Subcontractor	535												535
	– New Law Re: Investment Sales Accounting for T/R		113											113
	– Various Misc. Costs	2	24	6		17	38		16					103
	– Interim 4/85 Work Cost								78					78
	– Individual Tax Return for 1985									200				200
	– Interim 9/85 Work Cost												1300	1300
	– Meeting with Shaper												150	150
	TOTAL	950	1800	4850	1400	850	1800	500	600	3200	2400	3100	2200	23650

	Initials	Date
Prepared By	BA	8/9/90
Approved By		

CATALINA / SHEER — PAGE 2/2

BILLING ANALYSIS

1585 / 90

		Date Billed	2-12-90	3-12-90	4-24-90	5-14-90	5-21-90	6-25-90	7-18-90	7-31-90	TOTAL
		Amount	4326 -	3766 -	720 -	3960 -	2786 -	3543 -	2787 -	3229 -	
19	85 -	CORPORATION - BOOKS + 1120			720	3315 Ⓧ	326	1485 Ⓧ		98	1144
											4804
1987 -		PENSION - BOOKS + 990T							1873		1873
1988 -		INDIVIDUAL - 1040				645		511			1156
		IRS - AUDIT - CORP. 1987	4326	1544			2464	1547	914	3131	13926
		IRS AUDIT - PENSION 1986		2222							2222
		Ⓧ MY RECORDS DO NOT DETAIL TIME SPLIT BETWEEN CORP + PENSION FOR 1985 WORK.									
		TOTAL	4326	3766	720	3960	2786	3543	2787	3229	25117

KW 11/6/91

CATALINA / SHOFER

BILLING ANALYSIS

1990 / 1991

			1990		1991					
DATE BILLED	1-11-90	10-11-90	11-30-90	12-11-90	1-15-91	4-30-91	6-12-91	8-9-91	10-91	
AMOUNT	3525 -	1770 -	6350 -	1643 -	410	396 -	949	720	1918	
1989 CORPORATION 1120 + BOOKS - CATALINA	1720	181	-	-				181		
1989 CORPORATION 1120 + BOOKS - AMI	503	-	-	-						
1989 INDIVIDUAL 1040	352	661	-	-						
IRS TAX AUDIT - 1987	280	689	6025	1643	395	396	949	539	1449	NPHV
NEW COMPUTER SOFTWARE SET UP	-	330	325	-						
NECK LAWSUIT - CALCULATION OF 1985 INCOME TAXES	-	131	-	-						
PENSION PLAN - 1989 - WORK NEEDED BY CONSULTANT	-	-	254	-						
CATALINA (CORP) ACCOUNTING QUESTIONS	-	-	-	-	15					
PENSION PLAN - 1990 ACCOUNTING WORK	-	-							974	
TOTAL	3525	1770	6350	1643	410	396	949	720	1918	

Graybush Newman
Summary of Payments
1985 to 1990

Date of Check	Amount of Check	
01/30/85	600.00	
08/27/85	1800.00	
09/27/85	1500.00	
11/26/85	3300.00	7,200.00
09/26/86	3750.00	
10/29/86	4350.00	8100.00
01/30/87	2950.00	
02/25/87	2600.00	
06/30/87	3000.00	
07/29/87	3000.00	
09/15/87	3450.00	
10/29/87	335.00	
11/30/87	510.00	15,845.00
01/28/88	1710.00	
02/28/88	2225.00	
05/26/88	2225.00	
06/29/88	1750.00	
10/25/88	3790.00	11,700.00
01/31/89	2500.00	
01/31/89	2500.00	
02/24/89	3970.00	
02/24/89	3970.00	
03/24/89	3595.00	
05/26/89	4850.00	
05/26/89	4850.00	

Graybush Newman
Summary of Payments
1985 to 1990

Date of Check	Amount of Check	
07/26/89	850.00	
07/26/89	1400.00	
08/25/89	1100.00	
09/27/89	600.00	
10/30/89	3200.00	
11/29/89	2400.00	35,785.00
02/23/90	4326.00	
03/12/90	5966.00 — H	10,292.00
*** Total ***	88922.00	

1985 - 7,200.00
1986 - 8,100.00
1987 - 15,845.00
1988 - 11,700.00
1989 - 35,785.00
1990 - 10,292.00

8092.00
work done + Billed
in 1990

	Initials	Date
Prepared By	KL	2/9/90
Approved By		

CATALINA / SHOFER
BILLING ANALYSIS
1989 - 90

(1) EMPLOYEE	(2)	(3) TERM START	(4) TERM STOP	(5) HOURLY RATE NORMAL	(6) HOURLY RATE * PREMIUM	(7)
LARASH AGETSTEIN MARVEL		1-1-89 10-1-89	9-30-89 TO DATE	$ 130 140	$ 155 155	
YUDKOWSKY		1-1-89 6-1-89 9-1-89	5-31-89 8-31-89 TO DATE	45 60 63		
SECRETARYS				$ 35-40		
VARIOUS SENIOR ACCOUNTANTS IN TAX DEPARTMENT				$ 65-100		

* WE CHARGE A PREMIUM RATE WHEN THE JOB REQUIRES A HIGHER LEVEL OF EXPERTISE, IS MORE DEMANDING OR COMPLEX -
THIS WOULD INCLUDE:
- MEETINGS
- IRS TAX AUDITS

LAW OFFICES

Prusky & Giampetro, P. C.

A PROFESSIONAL CORPORATION

THE DULANEY CENTER
SUITE 108
849 FAIRMOUNT AVENUE
TOWSON, MD 21204
(301) 339-7466

BYRON R. PRUSKY
D.C., PA AND N.J. BARS ONLY
NICHOLAS J. GIAMPETRO
N.J., PA AND D.C. BARS ALSO
FRANS M. DE NIE
N.J., PA AND D.C. BARS ALSO
DAVID M. TRALINS

PHILADELPHIA OFFICE
TWO PENN CENTER PLAZA
SUITE 1919
PHILADELPHIA, PA 19102
(215) 564-1991

WASHINGTON OFFICE
8201 CORPORATE DRIVE
SUITE 1250
LANDOVER, MD 20785
(202) 872-1818

PLEASE REPLY TO:

Towson

April 30, 1987

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Personal & Confidential

Dear Dick:

You have asked us to render an opinion regarding various loan transactions between yourself and Catalina Enterprises Pension Plan, voluntary account.

We are basing this opinion on information which was supplied to us by you and/or your advisors. We were advised that the following is a schedule of non-deductible voluntary contributions which you made to the Pension Plan for the years indicated:

1975	$26,700
1976	$ 6,500
1977	$11,200
1978 thru 1981	-0-
1982	$ 9,100
1983	$ 9,100
1984	$14,000
1985 & 1986	-0-
Total	$76,600

We were further advised that you borrowed $200,000 from the voluntary account in 1984 and $80,000 from the voluntary account in 1985.

Section 72(p) of the Internal Revenue Code provides that loans from qualified retirement plans are treated as distributions from the plan. It further provides an exception to the general rule that if the amount of the loan is not greater than the lesser of $50,000 or one-half of the vested accrued benefit, the loan will not be treated as a distribution. This rule is applicable for

loans made after August 13, 1982, but these loans are aggregated with loans made on or before August 13, 1982. We are enclosing a copy of the applicable section of the Internal Revenue Code. The foregoing was the law in effect in 1984 and 1985, but has since been changed as a result of the Tax Reform Act of 1986; however, the changes are effective for transactions entered into after December 31, 1986.

Loans in excess of non-taxable limits are not prohibited, merely taxable and, hence, their taxability does not excuse lack of repayment. All taxable plan loans are subject to tax as other income. Repayment of taxable loan distributions establishes a basis equivalent to the amounts repaid so that when a regular plan distribution is made, these amounts will not be subject to taxation again.

This law treats loans in excess of the above limits as distributions, the tax treatment of which is dependent in part on whether a participant's interest in the plan included non-deductible employee contributions recoverable as non-taxable distributions. The Senate explanation to the Bill which resulted in this law provides that loans will be deemed made first from non-deductible employee contributions to the extent available. Hence, the loans in the amount of $280,000 would be non-taxable to the extent of $76,600 and, hence, taxable to the extent that the loans exceed your basis in the voluntary account.

In addition, it is our opinion that this taxable distribution will result in non-deductible excise tax in the amount of 10% of the distributions accrued prior to your attaining age 59 1/2.

Should you require any further information, please don't hesitate to contact me.

Sincerely yours,
PRUSKY & GIAMPETRO, P.C.

By: Nicholas J. Giampetro

NJG/laf
enclosure

- ORIGINAL FAX -

Giampetro & Tralins, P.C.

NICHOLAS J. GIAMPETRO
D.C., P.A., AND N.J. BARS ALSO

DAVID M. TRALINS

ATTORNEYS AT LAW
920 PROVIDENCE ROAD
SUITE 407
TOWSON, MARYLAND 21286
(410) 339-7466
TELECOPIER (410) 339-7621

2

61

March 19, 1993

Thomas H. Bornhorst, Esquire
c/o Crown Motors
5000 Liberty Heights Avenue
Baltimore, Maryland 21207

Personal & Confidential
VIA FACSIMILE TRANSMISSION

RE: Professional Fees/Shofer v. Hack

Dear Mr. Bornhorst:

My billing records reflect a total of $29,316.25 billed for my professional services in all respects concerning the services in Shofer v. Hack. Of that total, $10,336.25 is related to excise tax issues concerning pension loans and related prohibited transactions.

Total billing to date for all services from this office is $59,955.00. Please advise if you require further information.

Sincerely,
GIAMPETRO & TRALINS, P.C.

Nicholas J. Giampetro

NJG/laf

PLAINTIFF'S EXHIBIT NO. 39 mld

PENGAD-Bayonne, N.J.

WEINBERG & GREEN LLC

ATTORNEYS AT LAW
100 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201-2773

TELEPHONE 410/332 8600
WASHINGTON AREA 301/470 7400
FACSIMILE 410/332 8862

10480 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3506
410/740 8500

BARRY D. BERMAN
410/332 8809

FILE NUMBER
23577.1

July 20, 1995

Mr. Richard Shofer
President
Catalina Enterprises, Inc.
5000 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Mr. Shofer:

This is in response to your letter of June 23, 1995.

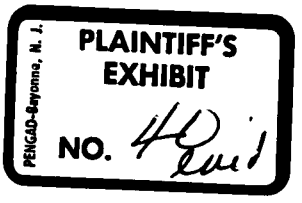
You should not be surprised to hear that I have no recollection of a conversation which, if it occurred at all, occurred some eleven years ago. Therefore, it would have to be said that whether or not I discussed with Stuart the applicability of the IRC §72(p) $50,000 tax limit to a loan from a voluntary profit sharing plan account, and, if so, whether the discussion was simply a casual one between professional friends or a formal request for advice regarding an actual situation (and, if I actually gave any advice, what that advice was), would be pure speculation. Further, if my recollection is correct, I believe that a search of our files in response to an inquiry from Stuart in the early stages of your litigation did not uncover any references to the alleged conversation and/or advice. In other words, I have no basis to shed any meaningful light on your inquiry.

Sincerely,

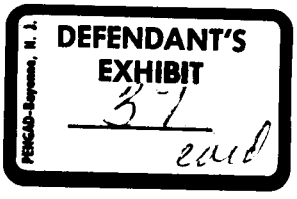
Barry D. Berman

29378:DS13:mo2_1/0059/pak

cc: Stuart Hack, CLU



- Federal Tax Regulations
  - § 10.0 Circ. 230: Scope of part.
  + § 10.1 Circ. 230: Director of Practice.
  + § 10.2 Circ. 230: Definitions.
  + § 10.3 Circ. 230: Who may practice.
  + § 10.4 Circ. 230: Eligibility for enrollment.
  + § 10.5 Circ. 230: Application for enrollment.
  + § 10.6 Circ. 230: Enrollment.
  + § 10.7 Circ. 230: Limited practice; special appearances; return preparation and furnishing information.
  - § 10.8 Circ. 230: Customhouse brokers.
  + § 10.20 Circ. 230: Information to be furnished.
  - § 10.21 Circ. 230: Knowledge of client's omission.
  - § 10.22 Circ. 230: Diligence as to accuracy.
  - § 10.23 Circ. 230: Prompt disposition of pending matters.
  - § 10.24 Circ. 230: Assistance from disbarred or suspended persons and former Internal Revenue Service employees.
  - § 10.25 Circ. 230: Practice by partners of Government employees.
  + § 10.26 Circ. 230: Practice by former Government employees, their partners and their associates.
  - § 10.27 Circ. 230: Notaries.
  + § 10.28 Circ. 230: Fees.
  - § 10.29 Circ. 230: Conflicting interests.
  + § 10.30 Circ. 230: Solicitation.
  - § 10.31 Circ. 230: Negotiation of taxpayer refund checks.
  - § 10.32 Circ. 230: Practice of law.
  + § 10.33 Circ. 230: Tax shelter opinions.
  + § 10.34 Circ. 230: Standards for advising with respect to tax return positions and for preparing or signing returns.
  - § 10.50 Circ. 230: Authority to disbar or suspend.
  + § 10.51 Circ. 230: Disreputable conduct.
  + § 10.52 Circ. 230: Violation of regulations.
  - § 10.53 Circ. 230: Receipt of information concerning attorneys, certified public accountants and enrolled agents.
  - § 10.54 Circ. 230: Institution of proceeding.
  + § 10.55 Circ. 230: Conferences.
  + § 10.56 Circ. 230: Contents of complaint.
  + § 10.57 Circ. 230: Service of complaint and other papers.
  + § 10.58 Circ. 230: Answer.
  - § 10.59 Circ. 230: Supplemental charges.
  - § 10.60 Circ. 230: Reply to answer.
  - § 10.61 Circ. 230: Proof; variance; amendment of pleadings.
  - § 10.62 Circ. 230: Motions and requests.
  - § 10.63 Circ. 230: Representation.
  + § 10.64 Circ. 230: Administrative Law Judge.
  + § 10.65 Circ. 230: Hearings.
  + § 10.66 Circ. 230: Evidence.
  - § 10.67 Circ. 230: Depositions.
  - § 10.68 Circ. 230: Transcript.
  - § 10.69 Circ. 230: Proposed findings and conclusions.
  - § 10.70 Circ. 230: Decision of the Administrative Law Judge.
  - § 10.71 Circ. 230: Appeal to the Secretary.
  - § 10.72 Circ. 230: Decision of the Secretary.
  - § 10.73 Circ. 230: Effect of disbarment or suspension; surrender of card.
  - § 10.74 Circ. 230: Notice of disbarment or suspension.
  - § 10.75 Circ. 230: Petition for reinstatement.
  + § 10.76 Circ. 230: Expedited suspension upon criminal conviction or loss of license for cause.
  + § 10.77 Circ. 230: Authority to disqualify; effect of disqualification.
  + § 10.78 Circ. 230: Institution of proceeding.
  + § 10.79 Circ. 230: Contents of complaint.
  + § 10.80 Circ. 230: Service of complaint and other papers.
  + § 10.81 Circ. 230: Answer.
  - § 10.82 Circ. 230: Supplemental charges.
  - § 10.83 Circ. 230: Reply to answer.
  - § 10.84 Circ. 230: Proof, variance, amendment of pleadings.
  - § 10.85 Circ. 230: Motions and requests.
  - § 10.86 Circ. 230: Representation.



+ § 10.87 Circ. 230: Administrative Law Judge.
+ § 10.88 Circ. 230: Hearings.
+ § 10.89 Circ. 230: Evidence.
§ 10.90 Circ. 230: Depositions.
§ 10.91 Circ. 230: Transcript.
§ 10.92 Circ. 230: Proposed findings and conclusions.
§ 10.93 Circ. 230: Decision of the Administrative Law Judge.
§ 10.94 Circ. 230: Appeal to the Secretary.
§ 10.95 Circ. 230: Decision of the Secretary.
§ 10.96 Circ. 230: Final order.
§ 10.97 Circ. 230: Petition for reinstatement.
+ § 10.98 Circ. 230: Records.
§ 10.100 Circ. 230: Saving clause.
§ 10.101 Circ. 230: Special orders.

§ 10.0 Circ. 230: Scope of part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing clients before the Internal Revenue Service. Subpart A of this part sets forth rules relating to authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice; subpart C of this part contains rules relating to disciplinary proceedings; subpart D of this part contains rules applicable to disqualification of appraisers; and Subpart E of this part contains general provisions, including provisions relating to the availability of official records.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977; 57 F.R. 41095, Sept. 9, 1992] T.D. 8545, 6/15/94.

§ 10.1 Circ. 230: Director of Practice.

(a) Establishment of office.

There is established in the Office of the Secretary of the Treasury the office of Director of Practice. The Director of Practice shall be appointed by the Secretary of the Treasury.

(b) Duties.

The Director of Practice shall act upon applications for enrollment to practice before the Internal Revenue Service; institute and provide for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers; make inquiries with respect to matters under his jurisdiction; and perform such other duties as are necessary or appropriate to carry out his functions under this part or as are prescribed by the Secretary of the Treasury.

(c) Acting Director.

The Secretary of the Treasury will designate an officer or employee of the Treasury Department to act as Director of Practice in the event of the absence of the director or of a vacancy in that office.

[31 FR 10773, Aug. 13, 1966, as amended at 51 FR 2878, Jan.

22, 1986]

§ 10.2 Circ. 230: Definitions.

As used in this part, except where the context clearly indicates otherwise:

(a)

Attorney means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia.

(b)

Certified Public Accountant means any person who is duly qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth, or the District of Columbia.

(c)

Commissioner refers to the Commissioner of Internal Revenue.

(d)

Director refers to the Director of Practice.

(e)

Practice before the Internal Revenue Service comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a client's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include preparing and filing necessary documents, corresponding and communicating with the Internal Revenue Service, and representing a client at conferences, hearings, and meetings.

(f)

Practitioner means any individual described in §10.3(a), (b), (c), or (d) of this part.

(g)

A *return* includes an amended return and a claim for refund.

(h)

Service means the Internal Revenue Service.

[31 F.R. 10773, Aug. 13, 1966, as amended at 37 F.R. 1017, Jan. 21 1972; 42 F.R. 38350, July 28, 1977; 49 F.R. 6722, Feb.

23, 1984] T.D. 8545, 6/15/94.

§ 10.3 Circ. 230: Who may practice.

(a) Attorneys.

Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Service upon filing with the Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the particular party on whose behalf he or she acts.

(b) Certified public accountants.

Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Service upon filing with the Service a written declaration that he or she is currently qualified as a certified public accountant and is authorized to represent the particular party on whose behalf he or she acts.

(c) Enrolled agents.

Any person enrolled as an agent pursuant to this part may practice before the Internal Revenue Service.

(d) Enrolled Actuaries.

(1)
Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 may practice before the Internal Revenue Service upon filing with the Service a written declaration that he/she is currently qualified as an enrolled actuary and is authorized to represent the particular party on whose behalf he/she acts. Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions.
Internal Revenue Code (Title 26 U.S.C.) sections: 401 (qualification of employee plans), 403(a) (relating to whether an annuity plan meets the requirements of section 404(a)(2)), 404 (deductibility of employer contributions), 405 (qualification of bond purchase plans), 412 (funding requirements for certain employee plans), 413 (application of qualification requirements to collectively bargained plans and to plans maintained by more than one employer), 414 (containing definitions and special rules relating to the employee plan area), 4971 (relating to excise taxes payable as a result of an accumulated funding

deficiency under section 412), 6057 (annual registration of plans), 6058 (information required in connection with certain plans of deferred compensation), 6059 (periodic report of actuary), 6652(e) (failure to file annual registration and other notifications by pension plan), 6652(f) (failure to file information required in connection with certain plans of deferred compensation), 6692 (failure to file actuarial report), 7805(b) (relating to the extent, if any, to which an Internal Revenue Service ruling or determination letter coming under the herein listed statutory provisions shall be applied without retroactive effect); and 29 U.S.C. 1083 (relating to waiver of funding for nonqualified plans).

(2)
An individual who practices before the Internal Revenue Service pursuant to this subsection shall be subject to the provisions of this part in the same manner as attorneys, certified public accountants and enrolled agents.

(e) Others.

Any individual qualifying under §10.5(c) or §10.7 is eligible to practice before the Internal Revenue Service to the extent provided in those sections.

(f) Government officers and employees, and others.

An individual, including an officer or employee of the executive, legislative, or judicial branch of the United States Government; officer or employee of the District of Columbia; Member of Congress; or Resident Commissioner, may not practice before the Service if such practice would violate 18 U.S.C. 203 or 205.

(g) State officers and employees.

No officer or employee of any State, or subdivision thereof, whose duties require him to pass upon, investigate, or deal with tax matters of such State or subdivision, may practice before the service, if such State employment may disclose facts or information applicable to Federal tax matters.

[31 F.R. 10773, Aug. 13, 1966, as amended at 35 F.R. 13205, Aug. 19, 1970; 36 F.R. 8671, May 11, 1971; 44 F.R. 4946, Jan. 24, 1979] T.D. 8545, 6/15/94.

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§ 10.4 Circ. 230: Eligibility for enrollment.

(a) Enrollment upon examination.

The Director of Practice may grant enrollment to an applicant who demonstrates special competence in tax matters by written examination administered by the Internal Revenue Service and who has not engaged in any conduct which would justify the suspension or disbarment of any attorney, certified public accountant, or enrolled agent under the provisions of this part.

(b) Enrollment of former Internal Revenue Service employees.

The Director of Practice may grant enrollment to an applicant who has not engaged in any conduct which would justify the suspension or disbarment of any attorney, certified public accountant, or enrolled agent under the provisions of this part and who, by virtue of his past service and technical experience in the Internal Revenue Service has qualified for such enrollment, as follows:

(1)
Application for enrollment on account of former employment in the Internal Revenue Service shall be made to the Director of Practice. Each applicant will be supplied a form by the Director of Practice, which shall indicate the information required respecting the applicant's qualifications. In addition to the applicant's name, address, citizenship, age, educational experience, etc., such information shall specifically include a detailed account of the applicant's employment in the Internal Revenue Service, which account shall show (i) positions held, (ii) date of each appointment and termination thereof, (iii) nature of services rendered in each position, with particular reference to the degree of technical experience involved, and (iv) name of supervisor in such positions, together with such other information regarding the experience and training of the applicant as may be relevant.

(2)
Upon receipt of each such application, it shall be transmitted to the appropriate officer of the Internal Revenue Service with the request that a detailed report of the nature and rating of the applicant's services in the Internal Revenue Service, accompanied by the recommendation of the superior officer in the particular unit or division of the Internal Revenue Service that such employment does or does not qualify the applicant technically or otherwise for the desired authorization, be furnished to the Director of Practice.

(3)
In examining the qualification of an applicant for enrollment on account of employment in the Internal Revenue Service, the Director of Practice will be governed by the following

policies:

(i) Enrollment on account of such employment may be of unlimited scope or may be limited to permit the presentation of matters only of the particular class or only before the particular unit or division of the Internal Revenue Service for which his former employment in the Internal Revenue Service has qualified the applicant.

(ii) Application for enrollment on account of employment in the Internal Revenue Service must be made within 3 years from the date of separation from such employment.

(iii) It shall be requisite for enrollment on account of such employment that the applicant shall have had a minimum of 5 years continuous employment in the Service during which he shall have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations thereunder relating to income, estate, gift, employment, or excise taxes.

(iv) For the purposes of paragraph (b)(3)(iii) of this section an aggregate of 10 or more years of employment, at least 3 of which occurred within the 5 years preceding the date of application, shall be deemed the equivalent of 5 years continuous employment.

(c) Natural persons.

Enrollment to practice may be granted only to natural persons.

[31 FAR 10773, Aug. 13, 1966, as amended at 35 FR 13205, Aug. 19, 1970; 42 FR 38352, July 28, 1977; 51 FR 2878, Jan. 22, 1986] T.D. 8545, 6/15/94.

§ 10.5 Circ. 230: Application for enrollment.

(a) Form; fee.

An applicant for enrollment shall file with the Director of Practice of Internal Revenue an application on Form 23, properly executed under oath or affirmation. Such application shall be accompanied by a check or money order in the amount set forth on Form 23, payable to the Internal Revenue Service, which amount shall constitute a fee which shall be charged to each applicant for enrollment. The fee shall be retained by the United States whether or not the applicant is granted enrollment.

(b) Additional information; examination.

The Director of Practice, as a condition to consideration of an application for enrollment, may require the applicant to file additional information and to submit to any written or oral examination under oath or otherwise. The Director of Practice shall, upon written request, afford an applicant the opportunity to be heard with respect to his application for enrollment.

(c) Temporary recognition.

Upon receipt of a properly executed application, the Director of Practice may grant the applicant temporary recognition to practice pending a determination as to whether enrollment to practice should be granted. Such temporary recognition shall not be granted if the application is not regular on its face; if the information stated therein, if true, is not sufficient to warrant enrollment to practice; if there is any information before the Director of Practice which indicates that the statements in the application are untrue; or which indicates that the applicant would not otherwise qualify for enrollment. Issuance of temporary recognition shall not constitute enrollment to practice or a finding of eligibility for enrollment, and the temporary recognition may be withdrawn at any time by the Director of Practice.

(d) Appeal from denial of application.

The Director of Practice, in denying an application for enrollment, shall inform the applicant as to the reason(s) therefor. The applicant may, within 30 days after receipt of the notice of denial, file a written appeal therefrom, together with his/her reasons in support thereof, to the Secretary of the Treasury. A decision on the appeal will be rendered by the Secretary of the Treasury as soon as practicable.

(Sec. 501, Pub. L. 82-137, 65 Stat. 290; 31 U.S.C. 483a) [31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38352, July 28, 1977; 51 FR 2878 Jan. 22, 1986]

§ 10.6 Circ. 230: Enrollment.

(a) Roster.

The Director of Practice shall maintain rosters of all individuals:

(1)
Who have been granted active enrollment to practice before the Internal Revenue Service;

(2)
Whose enrollment has been placed in an inactive status for failure to meet the requirements for renewal of enrollment;

(3)
Whose enrollment has been placed in an inactive retirement status;

(4)
Who have been disbarred or suspended from practice before the Internal Revenue Service;

(5)
Whose offer of consent to resignation from enrollment to practice before the Internal Revenue Service has been accepted by the Director of Practice under §10.55 of this part; and

(6)
Whose application for enrollment has been denied.

(b) Enrollment card.

The Director of Practice will issue an enrollment card to each individual whose application for enrollment to practice before the Internal Revenue Service is approved after the effective date of this regulation. Each such enrollment card will be valid for the period stated thereon. Enrollment cards issued individuals before February 1, 1987 shall become invalid after March 31, 1987. An individual having an invalid enrollment card is not eligible to practice before the Internal Revenue Service.

(c) Term of enrollment.

Active enrollment to practice before the Internal Revenue Service is accorded each individual enrolled, so long as renewal of enrollment is effected as provided in this part.

(d) Renewal of enrollment.

To maintain active enrollment to practice before the Internal Revenue Service, each individual

enrolled is required to have his/her enrollment renewed as set forth herein. Failure by an individual to receive notification from the Director of Practice of the renewal requirement will not be justification for circumvention of such requirement.

(1)
All individuals enrolled to practice before the Internal Revenue Service before November 1, 1986 shall apply for renewal of enrollment during the period between November 1, 1986 and January 31, 1987. Those who receive initial enrollment between November 1, 1986 and January 31, 1987 shall apply for renewal of enrollment by March 1, 1987. The first effective date of renewal will be April 1, 1987.

(2)
Thereafter, applications for renewal will be required between November 1, 1989 and January 31, 1990, and between November 1 and January 31 of every third year subsequent thereto. Those who receive initial enrollment during the renewal application period shall apply for renewal of enrollment by March 1 of the renewal year. The effective date of renewed enrollment will be April 1, 1990, and April 1 of every third year subsequent thereto.

(3)
The Director of Practice will notify the individual of renewal of enrollment and will issue a card evidencing such renewal.

(4)
A reasonable nonrefundable fee may be charged for each application for renewal of enrollment filed with the Director of Practice.

(5)
Forms required for renewal may be obtained from the Director of Practice, Internal Revenue Service, Washington, DC 20224.

(e) Condition for renewal: Continuing Professional Education.

In order to qualify for renewal of enrollment, an individual enrolled to practice before the Internal Revenue Service must certify, on the application for renewal form prescribed by the Director of Practice, that he/she has satisfied the following continuing professional education requirements.

(1)
For renewed enrollment effective April 1, 1987.

(i) A minimum of 24 hours of continuing education credit must be completed between January 1, 1986 and January 31, 1987.

(ii) An individual who receives initial enrollment between January 1, 1986 and January 31, 1987 is exempt from the continuing education requirement for the renewal of enrollment effective April 1, 1987, but is required to file a timely application for renewal of enrollment.

(2)

For renewed enrollment effective April 1, 1990 and every third year thereafter.

(i) A minimum of 72 hours of continuing education credit must be completed between February 1, 1987 and January 31, 1990, and during each three year period subsequent thereto. Each such three year period is known as an enrollment cycle.

(ii) A minimum of 16 hours of continuing education credit must be completed in each year of an enrollment cycle.

(iii) An individual who receives initial enrollment during an enrollment cycle must complete two (2) hours of qualifying continuing education credit for each month enrolled during such enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(f) Qualifying continuing education.

(1)

General. To qualify for continuing education credit, a course of learning must:

(i) Be a qualifying program designed to enhance the professional knowledge of an individual in Federal taxation or Federal tax related matters, i.e. programs comprised of current subject matter in Federal taxation or Federal tax related matters to include accounting, financial management, business computer science and taxation; and

(ii) Be conducted by a qualifying sponsor.

***(2)* Qualifying Programs.**

(i) Formal programs. Formal programs qualify as continuing education programs if they:

(A) Require attendance;

(B) Require that the program be conducted by a qualified instructor, discussion leader or speaker, i.e. a person whose background, training, education and/or experience is appropriate for instructing or leading a discussion on the subject matter of the particular program; and

(C) Require a written outline and/or textbook and certificate of attendance provided by the sponsor, all of which must be retained by the attendee for a three year period following renewal of enrollment.

(ii) Correspondence or individual study programs (including taped programs). Qualifying continuing education programs include correspondence or individual study programs completed on an individual basis by the enrolled individual and conducted by qualifying sponsors. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs if they:

(A) Require registration of the participants by the sponsor;

(B) Provide a means for measuring completion by the participants (e.g., written examination); and

(C) Require a written outline and/or textbook and certificate of completion provided by the sponsor which must be retained by the participant for a three year period following renewal of enrollment.

(iii) Serving as an instructor, discussion leader or speaker.

(A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader or speaker at an educational program which meets the continuing education requirements of this part.

(B) Two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader or speaker at such programs. It will be the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum credit for instruction and preparation may not exceed 50% of the continuing education requirement for an enrollment cycle.

(D) Presentation of the same subject matter in an instructor, discussion leader or speaker capacity more than one time during an enrollment cycle will not qualify for continuing education credit.

(iv) Credit for published articles, books, etc.

(A) Continuing education credit will be awarded for publications on Federal taxation or

Federal tax related matters to include accounting, financial management, business computer science, and taxation, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual enrolled to practice before the Internal Revenue Service.

(B) The credit allowed will be on the basis of one hour credit for each hour of preparation time for the material. It will be the responsibility of the person claiming the credit to maintain records to verify preparation time.

(C) The maximum credit for publications may not exceed 25% of the continuing education requirement of any enrollment cycle.

(3) Periodic examination. Individuals may establish eligibility for renewal of enrollment for any enrollment cycle by:

(i) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(ii) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(g) Sponsors.

(1)
Sponsors are those responsible for presenting programs.

(2)
To qualify as a sponsor, a program presenter must:

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, possession, territory, Commonwealth, or the District of Columbia responsible for the issuance of a license in the field of accounting or law;

(iii) Be recognized by the Director of Practice as a professional organization or society whose programs include offering continuing professional education opportunities in subject matter within the scope of this part; or

(iv) File a sponsor agreement with the Director of Practice to obtain approval of the program as a qualified continuing education program.

(3)

A qualifying sponsor must ensure the program complies with the following requirements:

(i) Programs must be developed by individual(s) qualified in the subject matter;

(ii) Program subject matter must be current;

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(iv) Programs must include some means for evaluation of technical content and presentation;

(v) Certificates of completion must be provided those who have successfully completed the program; and

(vi) Records must be maintained by the sponsor to verify completion of the program and attendance by each participant. Such records must be retained for a period of three years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(4)
Professional organizations or societies wishing to be considered as qualified sponsors shall request such status of the Director of Practice and furnish information in support of the request together with any further information deemed necessary by the Director of Practice.

(5)
Sponsor agreements and qualified professional organization or society sponsors approved by the Director of Practice shall remain in effect for one enrollment cycle. The names of such sponsors will be published on a periodic basis.

(h) Measurement of continuing education coursework.

(1)
All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2)
A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, i.e. 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as one contact hour.

(3)
Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4)
For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(i) Recordkeeping requirements.

(1)
Each individual applying for renewal shall retain for a period of three years following the date of renewal of enrollment the information required with regard to qualifying continuing professional education credit hours. Such information shall include:

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content e.g., course sylibi and/or textbook;

(iv) The dates attended;

(v) The credit hours claimed;

(vi) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(vii) The certificate of completion and/or signed statement of the hours of attendance obtained from the sponsor.

(2)
To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of three years following the date of renewal of enrollment:

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content;

(iv) The dates of the program; and

(v) The credit hours claimed.

(3)
To receive continuing education credit for publications, the following information must be maintained for a period of three years following the date of renewal of enrollment:

(i) The publisher;

(ii) The title of the publication;

(iii) A copy of the publication; and

(iv) The date of publication.

(j) Waivers.

(1)
Waiver from the continuing education requirements for a given period may be granted by the Director of Practice for the following reasons:

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2)
A request for waiver must be accompanied by appropriate documentation. The individual will be required to furnish any additional documentation or explanation deemed necessary by the Director of Practice. Examples of appropriate documentation could be a medical certificate, military orders, etc.

(3)
A request for waiver must be filed no later than the last day of the renewal application period.

(4)
If a request for waiver is not approved, the individual will be so notified by the Director of Practice and placed on a roster of inactive enrolled individuals.

(5)
If a request for waiver is approved, the individual will be so notified and issued a card evidencing such renewal.

(6)
Those who are granted waivers are required to file timely applications for renewal of enrollment.

(k) Failure to comply.

(1)
Compliance by an individual with the requirements of this part shall be determined by the Director of Practice. An individual who fails to meet the requirements of eligibility for renewal of enrollment will be notified by the Director of Practice at his/her last known address by first class mail. The notice will state the basis for the non-compliance and will provide the individual an opportunity to furnish in writing information relating to the matter within 60 days of the date of the notice. Such information will be considered by the Director of Practice in making a final determination as to eligibility for renewal of enrollment.

(2)
The Director of Practice may require any individual, by first class mail to his/her last known mailing address, to provide copies of any records required to be maintained under this part. The Director of Practice may disallow any continuing professional education hours claimed if the individual concerned fails to comply with such requirement.

(3)
An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of non-compliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals for a period of three years. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4)
During inactive enrollment status or at any other time an individual is ineligible to practice before the Internal Revenue Service, such individual shall not in any manner, directly or

indirectly, indicate he or she is enrolled to practice before the Internal Revenue Service, or use the term "enrolled agent," the designation "E. A.," other form of reference to eligibility to practice before the Internal Revenue Service.

(5)
An individual placed in an inactive status may satisfy the requirements for renewal of enrollment during his/her period of inactive enrollment. If such satisfaction includes completing the continuing education requirement, a minimum of 16 hours of qualifying continuing education hours must be completed in the 12 month period preceding the date on which the renewal application is filed. Continuing education credit under this subsection may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roster.

(6)
An individual placed in an inactive status must file an application for renewal of enrollment and satisfy the requirements for renewal as set forth in this section within three years of being placed in an inactive status. The name of such individual otherwise will be removed from the inactive enrollment roster and his/her enrollment will terminate. Eligibility for enrollment must then be reestablished by the individual as provided in this part.

(7)
Inactive enrollment status is not available to an individual who is the subject of a discipline matter in the Office of Director of Practice.

(l) Inactive retirement status.

An individual who no longer practices before the Internal Revenue Service may request being placed in an inactive status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. Such individual must file a timely application for renewal of enrollment at each applicable renewal or enrollment as provided in this part. An individual who is placed in an inactive retirement status may be reinstated to an active enrollment status upon filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional education hours for the enrollment cycle. Inactive retirement status is not available to an individual who is the subject to a discipline matter in the Office of Director of Practice.

(m) Renewal while under suspension or disbarment.

An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action is required to meet the requirements for renewal of enrollment during the

period of ineligibility.

(n) Verification.

The Director of Practice may review the continuing education records of an enrolled individual and/or qualified sponsor in a manner deemed appropriate to determine compliance with the requirements and standards for renewal of enrollment as provided in this part.

(Approved by the Office of Management and Budget under control number 1545-0946) [51 FR 2878, Jan. 22, 1986]

§ 10.7 Circ. 230: Limited practice; special appearances; return preparation and furnishing information.

(a) Representing oneself.

Individuals may appear on their own behalf before the Internal Revenue Service provided they present satisfactory identification.

(b) Participating in rulemaking.

Individuals may participate in rulemaking as provided by the Administrative Procedure Act. See 5 U.S.C. 553.

(c) Limited practice.

***(1)* In general.**

Subject to the limitations in paragraph (c)(2) of this section, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service in the circumstances described in this paragraph (c)(1), even if the taxpayer is not present, provided the individual presents satisfactory identification and proof of his or her authority to represent the taxpayer. The circumstances described in this paragraph (c)(1) are as follows:

(i) An individual may represent a member of his or her immediate family.

(ii) A regular full-time employee of an individual employer may represent the employer.

(iii) A general partner or a regular full-time employee of a partnership may represent the partnership.

(iv) A bona fide officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(v) A trustee, receiver, guardian, personal representative, administrator, executor, or regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(vi) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(vii) An individual may represent any individual or entity before personnel of the Internal Revenue Service who are outside of the United States.

(viii) An individual who prepares and signs a taxpayer's return as the preparer, or who prepares a return but is not required (by the instructions to the return or regulations) to sign the return, may represent the taxpayer before officers and employees of the Examination Division of the Internal Revenue Service with respect to the tax liability of the taxpayer for the taxable year or period covered by that return.

***(2)* Limitations.**

(i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Service under §10.7(c)(1).

(ii) The Director, after notice and opportunity for a conference, may deny eligibility to engage in limited practice before the Internal Revenue Service under §10.7(c)(1) to any individual who has engaged in conduct that would justify suspending or disbarring a practitioner from practice before the Service.

(iii) An individual who represents a taxpayer under the authority of §10.7(c)(1)(viii) is subject to such rules of general applicability regarding standards of conduct, the extent of his or her authority, and other matters as the Director prescribes.

(d) Special appearances.

The Director, subject to such conditions as he or she deems appropriate, may authorize an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter.

(e) Preparing tax returns and furnishing information.

An individual may prepare a tax return, appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Service or any of its officers or employees.

[31 F.R. 10773, Aug. 13, 1966, as amended at 35 F.R. 13205, Aug. 19, 1970; 49 F.R. 6722, Feb. 23, 1984; 51 F.R. 2878, Jan. 22, 1985] T.D. 8545, 6/15/94.

§ 10.8 Circ. 230: Customhouse brokers.

Nothing contained in the regulations in this part shall be deemed to affect or limit the right of a customhouse broker, licensed as such by the Commissioner of Customs in accordance with the regulations prescribed therefor, in any customs district in which he is so licensed, at the office of the District Director of Internal Revenue or before the National Office of the Internal Revenue Service, to act as a representative in respect to any matters relating specifically to the importation or exportation of merchandise under the customs or internal revenue laws, for any person for whom he has acted as a customhouse broker.

§ 10.20 Circ. 230: Information to be furnished.

(a) To the Internal Revenue Service.

No attorney, certified public accountant, enrolled agent, or enrolled actuary shall neglect or refuse promptly to submit records or information in any matter before the Internal Revenue Service, upon proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, or shall interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service or its officers or employees to obtain any such record or information, unless he believes in good faith and on reasonable grounds that such record or information is privileged or that the request for, or effort to obtain, such record or information is of doubtful legality.

(b) To the Director of Practice.

It shall be the duty of an attorney or certified public accountant, who practices before the Internal Revenue Service, or enrolled agent, when requested by the Director of Practice, to provide the Director with any information he may have concerning violation of the regulations in this part by any person, and to testify thereto in any proceeding instituted under this part for the disbarment or suspension of an attorney, certified public accountant, enrolled agent, or enrolled actuary, unless he believes in good faith and on reasonable grounds that such information is privileged or that the request therefor is of doubtful legality.

[57 F.R. 41095, Sept. 9, 1992]

§ 10.21 Circ. 230: Knowledge of client's omission.

Each attorney, certified public accountant, enrolled agent, or enrolled actuary, who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client is required by the revenue laws of the United States to execute, shall advise the client promptly of the fact of such noncompliance, error, or omission.

[35 F.R. 13205, Aug. 19, 1970, as amended at 42 F.R. 38350, July 28, 1977; 57 F.R. 41095, Sept. 9, 1992]

§ 10.22 Circ. 230: Diligence as to accuracy.

Each attorney, certified public accountant, enrolled agent, or enrolled actuary, shall exercise due diligence:

a In preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;b

In determining the correctness of oral or written representations made by him to the Department of the Treasury; andc

In determining the correctness of oral or written representations made by him to clients with reference to any matter administered by the Internal Revenue Service.

[35 F.R. 13205, Aug. 19, 1970, as amended at 42 F.R. 38352,

July 28, 1977; 57 F.R. 41095, Sept. 9, 1992]

§ 10.23 Circ. 230: Prompt disposition of pending matters.

No attorney, certified public accountant, enrolled agent, or enrolled actuary shall unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

[57 F.R. 41095, Sept. 9, 1992]

§ 10.24 Circ. 230: Assistance from disbarred or suspended persons and former Internal Revenue Service employees.

No attorney, certified public accountant, enrolled agent, or enrolled actuary shall in any Internal Revenue Service matter knowingly and directly or indirectly:

a Employ or accept assistance from any person who is under disbarment or suspension from practice before the Internal Revenue Service.b

Accept employment as associate, correspondent, or subagent from, or share fees with, any such person.c

Accept assistance from any former government employee where the provisions of §10.26 of these regulations or any Federal law would be violated.

[31 F.R. 10773, Aug. 13, 1966, as amended at 35 F.R. 13205, Aug. 19, 1970; 44 F.R. 4943, Jan. 24, 1979; 57 F.R. 41095, Sept. 9, 1992]

§ 10.25 Circ. 230: Practice by partners of Government employees.

No partner of an officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, shall represent anyone in any matter administered by the Internal Revenue Service in which such officer or employee of the Government participates or has participated personally and substantially as a Government employee or which is the subject of his official responsibility.

[31 F.R. 10773, Aug. 13, 1966, as amended at 35 F.R. 13205, Aug. 19, 1970]

§ 10.26 Circ. 230: Practice by former Government employees, their partners and their associates.

(a) Definitions.

For purposes of §10.26.

(1)
"Assist" means to act in such a way as to advise, furnish information to or otherwise aid another person, directly or indirectly.

(2)
"Government employee" is an officer or employee of the United States or any agency of the United States, including a "special government employee" as defined in 18 U.S.C. 202(a), or of the District of Columbia, or of any state, or a member of Congress or of any state legislature.

(3)
"Member of a firm" is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent non-Government parties.

(4)
"Practitioner" includes any individual described in §10.3(e).

(5)
"Official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action, with or without knowledge of the action.

(6)
"Participate" or "participation" means substantial involvement as a Government employee by making decisions, or preparing or reviewing documents with or without the right to exercise a judgment of approval or disapproval, or participating in conferences or investigations, or rendering advice of a substantial nature.

(7)
"Rule" includes Treasury Regulations, whether issued or under preparation for issuance as Notices of Proposed Rule Making or as Treasury Decisions, and revenue rulings and revenue procedures published in the Internal Revenue Bulletin. "Rule" shall not include a "transaction" as defined in paragraph (a)(9) of this section.

(8)
"Transaction" means any decision, determination, finding, letter ruling, technical advice, contract or approval or disapproval thereof, relating to a particular factual situation or situations involving a specific party or parties whose rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service, or other legal rights, are determined or immediately affected therein and to which the United States is a party or in which it has a direct and substantial interest, whether or not the same taxable periods are involved. "Transaction" does not include "rule" as defined in paragraph (a)(7) of this section.

(b) General rules.

(1)
No former Government employee shall, subsequent to his Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate 18 U.S.C. 207(a) or (b) or any other laws of the United States.

(2)
No former Government employee who participated in a transaction shall, subsequent to his Government employment, represent or knowingly assist, in that transaction, any person who is or was a specific party to that transaction.

(3)
No former Government employee who within a period of one year prior to the termination of his Government employment had official responsibility for a transaction shall, within one year after his Government employment is ended, represent or knowingly assist in that transaction any person who is or was a specific party to that transaction.

(4)
No former Government employee shall, within one year after his Government employment is ended, appear before any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule in the development of which the former Government employee participated or for which, within a period of one year prior to the termination of his Government employment, he had

official responsibility. However, this subparagraph does not preclude such former employee from appearing on his own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a transaction involving the application or interpretation of such a rule with respect to that transaction: *Provided*, That such former employee shall not utilize or disclose any confidential information acquired by the former employee in the development of the rule, and shall not contend that the rule is invalid or illegal. In addition, this subparagraph does not preclude such former employee from otherwise advising or acting for any person.

(c) Firm representation.

(1)

No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any transaction with respect to which the restrictions of paragraph (b)(1) (other than 18 U.S.C. 207(b)) or (b)(2) of this section apply to the former Government employee, in that transaction, unless:

(i) No member of the firm who had knowledge of the participation by the Government employee in the transaction initiated discussions with the Government employee concerning his becoming a member of the firm until his Government employment is ended or six months after the termination of his participation in the transaction, whichever is earlier;

(ii) The former Government employee did not initiate any discussions concerning become a member of the firm while participating in the transaction or, if such discussions were initiated, they conformed with the requirements of 18 U.S.C. 208(b); and

(iii) The firm isolates the former Government employee in such a way that he does not assist in the representation.

(2)

No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any transaction with respect to which the restrictions of paragraph (b)(3) of this section apply to the former employee, in that transaction unless the firm isolates the former Government employee in such a way that he does not assist in the representation.

(3)

When isolation of the former Government employee is required under paragraphs (c)(1) or (c)(2) of this section, a statement affirming the fact of such isolation shall be executed under oath by the former Government employee and by a member of the firm acting on behalf of the firm, and shall be filed with the Director of Practice and in such other place

and in the manner prescribed by regulation. This statement shall clearly identify the firm, the former Government employee, and the transaction or transactions requiring such isolation.

(d) Pending representation.

Practice by former Government employees, their partners and associates with respect to representation in specific matters where actual representation commenced before publication of this regulation is governed by the regulations set forth in the June 1972 amendments to the regulations of this part (published at 37 FR 11676): *Provided,* That the burden of showing that representation commenced before publication is with the former Government employees, their partners and associates.

[31 F.R. 10773, Aug. 13, 1966, as amended at 35 F.R. 13205, Aug. 19, 1970; 42 F.R. 38350, July 28, 1977; 57 F.R. 41095, Sept. 9, 1992] T.D. 8545, 6/15/94.

§ 10.27 Circ. 230: Notaries.

No attorney, certified public accountant, enrolled agent, or enrolled actuary as notary public shall with respect to any matter administered by the Internal Revenue Service take acknowledgments, administer oaths, certify papers, or perform any official act in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before the Internal Revenue Service (26 Op. Atty. Gen. 236).

[57 F.R. 41095, Sept. 9, 1992]

§ 10.28 Circ. 230: Fees.

(a) Generally.

A practitioner may not charge an unconscionable fee for representing a client in a matter before the Internal Revenue Service.

(b) Contingent fees for return preparation.

A practitioner may not charge a contingent fee for preparing an original return. A practitioner may charge a contingent fee for preparing an amended return or a claim for refund (other than a claim for refund made on an original return) if the practitioner reasonably anticipates at the time the fee arrangement is entered into that the amended return or claim will receive substantive review by the Service. A contingent fee includes a fee that is based on a percentage of the refund shown on a return or a percentage of the taxes saved, or that otherwise depends on the specific result attained.

[57 F.R. 41095, Sept. 9, 1992] T.D. 8545, 6/15/94.

§ 10.29 Circ. 230: Conflicting interests.

No attorney, certified public accountant, enrolled agent, or enrolled actuary shall represent conflicting interests in his practice before the Internal Revenue Service, except by express consent of all directly interested parties after full disclosure has been made.

[57 F.R. 41095, Sept. 9, 1992]

§ 10.30 Circ. 230: Solicitation.

(a) Advertising and Solicitation restrictions.

(1)
No attorney, certified public accountant, enrolled agent, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication containing (i) A false, fraudulent, unduly influencing, coercive, or unfair statement or claim; or (ii) a misleading or deceptive statement or claim. Enrolled agents, in describing their professional designation, may not utilize the term of art "certified" or indicate an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service, and "admitted to practice before the Internal Revenue Service." Enrolled agents and enrolled actuaries may abbreviate such designation to either EA or E.A.

(2)
No attorney, certified public accountant, enrolled agent, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall make, directly or

indirectly, an uninvited solicitation of employment in matters related to the Internal Revenue Service. Solicitation includes, but is not limited to, in-person contacts and telephone communications. This restriction does not apply to (i) Seeking new business from an existing or former client in a related matter; (ii) communications with family members; (iii) making the availability of professional services known to other practitioners, so long as the person or firm contacted is not a potential client; (iv) solicitation by mailings; or (v) non-coercive in-person solicitation by those eligible to practice before the Internal Revenue Service while acting as an employee, member, or officer of an exempt organization listed in sections 501(c)(3) or (4) of the Internal Revenue Code of 1954 (26 U.S.C.).

Any targeted direct mail solicitation, i.e. a mailing to those whose unique circumstances are the basis for the solicitation, distributed by or on behalf of an attorney, certified public accountant, enrolled agency, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall be clearly marked as such in capital letters on the envelope and at the top of the first page of such mailing. In addition, all such solicitations must clearly identify the source of the information used in choosing the recipient.

(b) Fee Information.

(1)

Attorney, certified public accountant, enrolled agent, or enrolled actuary and other individuals eligible to practice before the Internal Revenue Service may disseminate the following fee information:

(i) Fixed fees for specific routine services.

(ii) Hourly rates.

(iii) Range of fees for particular services.

(iv) Fee charged for an initial consultation.

Any statement of fee information concerning matters in which costs may be incurred shall include a statement disclosing whether clients will be responsible for such costs.

(2)

Attorney, certified public accountant, enrolled agent, or enrolled actuary and other individuals eligible to practice before the Internal Revenue Service may also publish the availability of a written schedule of fees.

(3)

Attorney, certified public accountant, enrolled agent, or enrolled actuary and other individuals eligible to practice before the Internal Revenue Service shall be bound to charge the hourly rate, the fixed fee for specific routine services, the range of fees for

particular services, or the fee for an initial consultation published for a reasonable period of time, but no less than thirty days from the last publication of such hourly rate or fees.

(c) Communications.

Comunication, including fee information, may include professional lists, telephone directories, print media, mailings, radio and television, and any other method: *Provided,* that the method chosen does not cause the communication to become untruthful, deceptive, unduly influencing or otherwise in violation of these regulations. It shall be construed as a violation of these regulations for a practitioner to persist in attempting to contact a prospective client, if such client has made known to the practitioner a desire not to be solicited. In the case of radio and television broadcasting, the broadcast shall be prerecorded and the practitioner shall retain a recording of the actual audio transmission. In the case of direct mail communications, the practitioner shall retain a copy of the actual mailing, along with a list or other description of persons to whom the communication was mailed or otherwise distributed. Such copy shall be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

(d) Improper Associations.

An attorney, certified public accountant, enrolled agent, or enrolled actuary may, in matters related to the Internal Revenue Service, employ or accept employment or assistance as an associate, correspondent, or subagent from, or share fees with, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section: *Provided,* That a practitioner does not, directly or indirectly, act or hold himself out as an Internal Revenue Service practitioner in connection with that relationship. Nothing herein shall prohibit an attorney, certified public accountant, or enrolled agent from practice before the Internal Revenue Service in a capacity other than that described above.

[35 F.R. 13205, Aug. 19, 1970, as amended at 42 F.R. 38350, July 28, 1977; 44 F.R. 4943, Jan. 24, 1979; 57 F.R. 41095, Sept. 9, 1992]

§ 10.31 Circ. 230: Negotiation of taxpayer refund checks.

No attorney, certified public accountant, enrolled agent, or enrolled actuary who is an income tax return preparer shall endorse or otherwise negotiate any check made in respect of income taxes which is issued to a taxpayer other than the attorney, certified public accountant or enrolled agent.

[42 F.R. 38350, July 28, 1977; 57 F.R. 41095, Sept. 9, 1992]

§ 10.32 Circ. 230: Practice of law.

Nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law.

[31 F.R. 10773, Aug. 13, 1966. Redesignated at 42 F.R. 38350, July 28, 1977]

§ 10.33 Circ. 230: Tax shelter opinions.

(a) Tax shelter opinions and offering materials.

A practitioner who provides a tax shelter opinion analyzing the Federal tax effects of a tax shelter investment shall comply with each of the following requirements:

(1)
Factual matters.

(i) The practitioner must make inquiry as to all relevant facts, be satisfied that the material facts are accurately and completely described in the offering materials, and assure that any representations as to future activities are clearly identified, reasonable and complete.

(ii) A practitioner may not accept as true asserted facts pertaining to the tax shelter which he/she should not, based on his/her background and knowledge, reasonably believe to be true. However, a practitioner need not conduct an audit or independent verification of the asserted facts, or assume that a client's statement of the facts cannot be relied upon, unless he/she has reason to believe that any relevant facts asserted to him/her are untrue.

(iii) If the fair market value of property or the expected financial performance of an investment is relevant to the tax shelter, a practitioner may not accept an appraisal or financial projection as support for the matters claimed therein unless:

(A) The appraisal or financial projection makes sense on its face;

(B) The practitioner reasonably believes that the person making the appraisal or financial projection is competent to do so and is not of dubious reputation; and

(C) The appraisal is based on the definition of fair market value prescribed under the relevant Federal tax provisions.

(iv) If the fair market value of purchased property is to be established by reference to its stated purchase price, the practitioner must examine the terms and conditions upon which the property was (or is to be) purchased to determine whether the stated purchase price reasonably may be considered to be its fair market value.

(2)

Relate law to facts. The practitioner must relate the law to the actual facts and, when addressing issues based on future activities, clearly identify what facts are assumed.

(3)

Identification of material issues. The practitioner must ascertain that all material Federal tax issues have been considered, and that all of those issues which involve the reasonable possibility of a challenge by the Internal Revenue Service have been fully and fairly addressed in the offering materials.

(4)

Opinion on each material issue. Where possible, the practitioner must provide an opinion whether it is more likely than not that an investor will prevail on the merits of each material tax issue presented by the offering which involves a reasonable possibility of a challenge by the Internal Revenue Service. Where such an opinion cannot be given with respect to any material tax issue, the opinion should fully describe the reasons for the practitioner's inability to opine as to the likely outcome.

(5)

Overall evaluation.

(i) Where possible, the practitioner must provide an overall evaluation whether the material tax benefits in the aggregate more likely than not will be realized. Where such an overall evaluation cannot be given, the opinion should fully describe the reasons for the practitioner's inability to make an overall evaluation. Opinions concluding that an overall evaluation cannot be provided will be given special scrutiny to determine if the stated reasons are adequate.

(ii) A favorable overall evaluation may not be rendered unless it is based on a conclusion that substantially more than half of the material tax benefits, in terms of their financial impact on a typical investor, more likely than not will be realized if

challenged by the Internal Revenue Service.

(iii) If it is not possible to give an overall evaluation, or if the overall evaluation is that the material tax benefits in the aggregate will not be realized, the fact that the practitioner's opinion does not constitute a favorable overall evaluation, or that it is an unfavorable overall evaluation, must be clearly and prominently disclosed in the offering materials.

(iv) The following examples illustrate the principles of this paragraph:

Example (1). A limited partnership acquires real property in a sale-leaseback transaction. The principal tax benefits offered to investing partners consist of depreciation and interest deductions. Lesser tax benefits are offered to investors by reason of several deductions under Internal Revenue Code section 162 (ordinary and necessary business expenses). If a practitioner concludes that it is more likely than not that the partnership will not be treated as the owner of the property for tax purposes (which is required to allow the interest and depreciation deductions), then he/she may not opine to the effect that it is more likely than not that the material tax benefits in the aggregate will be realized, regardless of whether favorable opinions may be given with respect to the deductions claimed under Code section 162.

Example (2). A corporation electing under subchapter S of the Internal Revenue Code is formed to engage in research and development activities. The offering materials forecast that deductions for research and experimental expenditures equal to 75% of the total investment in the corporation will be available during the first two years of the corporation's operations, other expenses will account for another 15% of the total investment, and that little or no gross income will be received by the corporation during this period. The practitioner concludes that it is more likely than not that deductions for research and experimental expenditures will be allowable. The practitioner may render an opinion to the effect that based on this conclusion, it is more likely than not that the material tax benefits in the aggregate will be realized, regardless of whether he/she can opine that it is more likely than not that any of the other tax benefits will be achieved.

Example (3). An investment program is established to acquire offsetting positions in commodities contracts. The objective of the program is to close the loss positions in year one and to close the profit positions in year two. The principal tax benefit offered by the program is a loss in the first year, coupled with the deferral of offsetting gain until the following year. The practitioner concludes that the losses will not be deductible in year one. Accordingly, he/she may not render an opinion to the effect that it is more likely than not that the material tax benefits in the aggregate will be realized, regardless of the fact that he/she is of the opinion that losses not allowable in year one will be allowable in year two, because the principal tax benefit offered is a one-year deferral of income.

Example (4). A limited partnership is formed to acquire, own and operate residential rental real estate. The offering material forecasts gross income of $2,000,000 and total deductions of $10,000,000, resulting in net losses of $8,000,000 over the first six taxable years. Of the total deductions, depreciation and interest are projected to be $7,000,000, and other deductions $3,000,000. The practitioner concludes that it is more likely than not that all of the depreciation and interest deductions will be allowable, and that it is more likely than not that the other deductions will not be allowed. The practitioner may render

an opinion to the effect that it is more likely than not that the material tax benefits in the aggregate will be realized.

(6)
Description of opinion. The practitioner must assure that the offering materials correctly and fairly represent the nature and extent of the tax shelter opinion.

(b) Reliance on other opinions.

***(1)* In general.**

A practitioner may provide an opinion on less than all of the material tax issues only if:

(i) At least one other competent practitioner provides an opinion on the likely outcome with respect to all of the other material tax issues which involve a reasonable possibility of challenge by the Internal Revenue Service, and an overall evaluation whether the material tax benefits in the aggregate more likely than not will be realized, which is disseminated in the same manner as the practitioner's opinion; and

(ii) The practitioner, upon reviewing such other opinions and any offering materials, has no reason to believe that the standards of paragraph (a) of this section have not been complied with.

Notwithstanding the foregoing, a practitioner who has not been retained to provide an overall evaluation whether the material tax benefits in the aggregate more likely than not will be realized may issue an opinion on less than all the material tax issues only if he/she has no reason to believe, based on his/her knowledge and experience, that the overall evaluation given by the practitioner who furnishes the overall evaluation is incorrect on its face.

***(2)* Forecasts and projections.**

A practitioner who is associated with forecasts or projections relating to or based upon the tax consequences of the tax shelter offering that are included in the offering materials, or are disseminated to potential investors other than the practitioner's clients, may rely on the opinion of another practitioner as to any or all material tax issues, provided that the practitioner who desires to rely on the other opinion has no reason to believe that the standards of paragraph (a) of this section have not been complied with by the practitioner rendering such other opinion, and the requirements of paragraph (b)(1) of this section are

satisfied. The practitioner's report shall disclose any material tax issue not covered by, or incorrectly opined upon, by the other opinion, and shall set forth his/her opinion with respect to each such issue in a manner that satisfies the requirements of paragraph (a) of this section.

(c) Definitions.

For purposes of this section:

(1)
'Practitioner' includes any individual described in §10.3(e).

(2)
A 'tax shelter,' as the term is used in this section, is an investment which has as a significant and intended feature for Federal income or excise tax purposes either of the following attributes:

(i) Deductions in excess of income from the investment being available in any year to reduce income from other sources in that year, or

(ii) Credits in excess of the tax attributable to the income from the investment being available in any year to offset taxes on income from other sources in that year. Excluded from the term are municipal bonds; annuities; family trusts (but not including schemes or arrangements that are marketed to the public other than in a direct practitioner-client relationship); qualified retirement plans; individual retirement accounts; stock option plans; securities issued in a corporate reorganization; mineral development ventures, if the only tax benefit would be percentage depletion; and real estate where it is anticipated that in no year is it likely that deductions will exceed gross income from the investment in that year, or that tax credits will exceed the tax attributable to gross income from the investment in that year. Whether an investment is intended to have tax shelter features depends on the objective facts and circumstances of each case. Significant weight will be given to the features described in the offering materials to determine whether the investment is a tax shelter.

(3)
A 'tax shelter opinion,' as the term is used in this section, is advice by a practitioner concerning the Federal tax aspects of a tax shelter either appearing or referred to in the offering materials, or used or referred to in connection with sales promotion efforts, and directed to persons other than the client who engaged the practitioner to give the advice. The term includes the tax aspects or tax risks portion of the offering materials prepared by

or at the direction of a practitioner, whether or not a separate opinion letter is issued or whether or not the practitioner's name is referred to in the offering materials or in connection with the sales promotion efforts. In addition, a financial forecast or projection prepared by a practitioner is a tax shelter opinion if it is predicated on assumptions regarding Federal tax aspects of the investment, and it meets the other requirements of the first sentence of this subparagraph. The term does not, however, include rendering advice solely to the offeror or reviewing parts of the offering materials, so long as neither the name of the practitioner, nor the fact that a practitioner has rendered advice concerning the tax aspects, is referred to in the offering materials or in connection with the sales promotion efforts.

(4)
A 'material' tax issue as the term is used in this section is

(i) Any Federal income or excise tax issue relating to a tax shelter that would make a significant contribution toward sheltering from Federal taxes income from other sources by providing deductions in excess of the income from the tax shelter investment in any year, or tax credits available to offset tax liabilities in excess of the tax attributable to the tax shelter investment in any year;

(ii) Any other Federal income or excise tax issue relating to a tax shelter that could have a significant impact (either beneficial or adverse) on a tax shelter investor under any reasonably foreseeable circumstances (e.g., depreciation or investment tax credit recapture, availability of long-term capital gain treatment, or realization of taxable income in excess of cash flow, upon sale or other disposition of the tax shelter investment); and

(iii) The potential applicability of penalties, additions to tax, or interest charges that reasonably could be asserted against a tax shelter investor by the Internal Revenue Service with respect to the tax shelter. The determination of what is material is to be made in good faith by the practitioner, based on information available at the time the offering materials are circulated.

(d) Advisory committee.

For purposes of advising the Director of Practice whether an individual may have violated §10.33, the Director of Practice is authorized to establish an Advisory Committee, composed of at least five individuals authorized to practice before the Internal Revenue Service. Under procedures established by the Director of Practice, such Advisory Committee shall, at the request of the Director of Practice, review and make recommendations with regard to alleged violations of §10.33.

[49 F.R. 6722, Feb. 23, 1984; 49 F.R. 7116, Feb. 27, 1984] T.D.

8545, 6/15/94.

§ 10.34 Circ. 230: Standards for advising with respect to tax return positions and for preparing or signing returns.

(a) Standards of conduct.

***(1)* Realistic possibility standard.**

A practitioner may not sign a return as a preparer if the practitioner determines that the return contains a position that does not have a realistic possibility of being sustained on its merits (the realistic possibility standard) unless the position is not frivolous and is adequately disclosed to the Service. A practitioner may not advise a client to take a position on a return, or prepare the portion of a return on which a position is taken, unless --

(i) The practitioner determines that the position satisfies the realistic possibility standard; or

(ii) The position is not frivolous and the practitioner advises the client of any opportunity to avoid the accuracy-related penalty in section 6662 of the Internal Revenue Code of 1986 by adequately disclosing the position and of the requirements for adequate disclosure.

***(2)* Advising clients on potential penalties.**

A practitioner advising a client to take a position on a return, or preparing or signing a return as a preparer, must inform the client of the penalties reasonably likely to apply to the client with respect to the position advised, prepared, or reported. The practitioner also must inform the client of any opportunity to avoid any such penalty by disclosure, if relevant, and of the requirements for adequate disclosure. This paragraph (a)(2) applies even if the practitioner is not subject to a penalty with respect to the position.

***(3)* Relying on information furnished by clients.**

A practitioner advising a client to take a position on a return, or preparing or signing a return as a preparer, generally may rely in good faith without verification upon information furnished

by the client. However, the practitioner may not ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent, or incomplete.

***(4)* Definitions.**

For purposes of this section:

(i) Realistic possibility. A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well-informed analysis by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. The authorities described in 26 CFR 1.6662-4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations may be taken into account for purposes of this analysis. The possibility that a position will not be challenged by the Service (e.g., because the taxpayer's return may not be audited or because the issue may not be raised on audit) may not be taken into account.

(ii) Frivolous. A position is frivolous if it is patently improper.

(b) Standard of discipline.

As provided in §10.52, only violations of this section that are willful, reckless, or a result of gross incompetence will subject a practitioner to suspension or disbarment from practice before the Service.

T.D. 8545, 6/15/94.

§ 10.50 Circ. 230: Authority to disbar or suspend.

Pursuant to 31 U.S.C. 330(b), the Secretary of the Treasury after notice and an opportunity for a proceeding, may suspend or disbar any practitioner from practice before the Internal Revenue Service. The Secretary may take such action against any practitioner who is shown to be incompetent or disreputable, who refuses to comply with any regulation in this part, or who, with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client.

[31 F.R. 10773, Aug. 13, 1966, as amended at 35 F.R. 13205,

Aug. 19, 1970; 57 F.R. 41095, Sept. 9, 1992] T.D. 8545, 6/15/94.

§ 10.51 Circ. 230: Disreputable conduct.

Disreputable conduct for which an attorney, certified public accountant, enrolled agent, or enrolled actuary may be disbarred or suspended from practice before the Internal Revenue Service includes, but is not limited to:

(a)

Conviction of any criminal offense under the revenue laws of the United States, or of any offense involving dishonesty, or breach of trust.

(b)

Giving false or misleading information, or participating in any way in the giving of false or misleading information, to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term "information."

(c)

Solicitation of employment as prohibited under §10.30 of this part, the use of false or misleading representations with intent to deceive a client or a prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(d)

Willfully failing to make Federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any Federal tax or payment thereof, knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof, or concealing assets of himself or another to evade Federal taxes or payment thereof.

(e)

Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(f)

Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of

threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor or thing of value.

(g)

Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, possession, territory, Commonwealth, the District of Columbia, any Federal court of record, or any Federal agency, body or board.

(h)

Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person. Maintaining a partnership for the practice of law, accountancy, or other related professional service with a person who is under disbarment from practice before the Service shall be presumed to be a violation of this provision.

(i)

Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations and statements knowing them to be false, or circulating or publishing malicious or libelous matter.

(j)

Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph include those which reflect or result from a knowing misstatement of fact or law; from an assertion of a position known to be unwarranted under existing law; from counseling or assisting in conduct known to be illegal or fraudulent; from concealment of matters required by law to be revealed; or from conscious disregard of information indicating that material facts expressed in the tax opinion or offering material are false or misleading. For purposes of this paragraph, reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

[31 F.R. 10773, Aug. 13, 1966, as amended at 35 F.R. 13205, Aug. 19, 1970; 42 F.R. 38350, July 28, 1977; 44 F.R. 4946, Jan. 24, 1979; 49 F.R. 6723, Feb. 23, 1984; 57 F.R. 41095, Sept. 9, 1992] T.D. 8545, 6/15/94.

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§ 10.52 Circ. 230: Violation of regulations.

A practitioner may be disbarred or suspended from practice before the Internal Revenue Service for any of the following:

(a)

Willfully violating any of the regulations contained in this part.

(b)

Recklessly or through gross incompetence (within the meaning of §10.51(j)) violating §10.33 or §10.34 of this part.

[31 F.R. 10773, Aug. 13, 1966, as amended at 49 F.R. 6724, Feb. 23, 1984; 57 F.R. 41095, Sept. 9, 1992] T.D. 8545, 6/15/94.

§ 10.53 Circ. 230: Receipt of information concerning attorneys, certified public accountants and enrolled agents.

If an officer or employee of the Internal Revenue Service has reason to believe that an attorney, certified public accountant, enrolled agent, or enrolled actuary has violated any provision of this part, or if any such officer or employee receives information to that effect, he shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Director of Practice. If any other person has information of such violations, he may make a report thereof to the Director of Practice or to any officer or employee of the Internal Revenue Service.

[57 F.R. 41095, Sept. 9, 1992]

§ 10.54 Circ. 230: Institution of proceeding.

Whenever the Director of Practice has reason to believe that any attorney, certified public accountant, enrolled agent, or enrolled actuary has violated any provision of the laws or regulations governing practice before the Internal Revenue Service, he may reprimand such person or institute a proceeding for disbarment or suspension of such person. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director of

Practice and filed in his office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a proceeding will not be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he has been accorded opportunity to demonstrate or achieve compliance with all lawful requirements.

[57 F.R. 41095, Sept. 9, 1992]

§ 10.55 Circ. 230: Conferences.

(a) In general.

The Director of Practice may confer with an attorney, certified public accountant, enrolled agent, or enrolled actuary concerning allegations of misconduct irrespective of whether a proceeding for disbarment or suspension has been instituted against him. If such conference results in a stipulation in connection with a proceeding in which such person is the respondent, the stipulation may be entered in the record at the instance of either party to the proceeding.

(b) Resignation or voluntary suspension.

An attorney, certified public accountant, enrolled agent, or enrolled actuary in order to avoid the institution or conclusion of a disbarment or suspension proceeding, may offer his consent to suspension from practice before the Internal Revenue Service. An enrolled agent may also offer his resignation. The Director of Practice, in his discretion, may accept the offered resignation of an enrolled agent and may suspend an attorney, certified public accountant, or enrolled agent in accordance with the consent offered.

[31 F.R. 10773, Aug. 13, 1966, as amended at 35 F.R. 13206, Aug. 19, 1970; 57 F.R. 41095, Sept. 9, 1992]

§ 10.56 Circ. 230: Contents of complaint.

(a) Charges.

A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the

respondent of the charges against him so that he is able to prepare his defense.

(b) Demand for answer.

In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default may be rendered against the respondent in the event he fails to file his answer as required.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.57 Circ. 230: Service of complaint and other papers.

(a) Complaint.

The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided; by delivering it to the respondent or his attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent; or in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified matter is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him by first-class mail, addressed to him at the address under which he is enrolled or at the last address known to the Director of Practice. If service is made upon the respondent or his attorney or agent of record in person or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the certified return by the person making service, setting forth the manner of service, shall be proof of such service.

(b) Service of papers other than complaint.

Any paper other than the complaint may be served upon an attorney, certified public accountant, or enrolled agent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director of Practice, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his attorney or agent of record by telegraph.

(c) Filing of papers.

Whenever the filing of a paper is required or permitted in connection with a disbarment or suspension proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the Director of Practice, Treasury Department, Washington, D.C. 20220. All papers shall be filed in duplicate.

[Dept. Circ. 230, Rev., 31 F.R. 10773, Aug. 13, 1966, as amended at 31 F.R. 13992, Nov. 2, 1966; 42 F.R. 38350, July 28, 1977]

§ 10.58 Circ. 230: Answer.

(a) Filing.

The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director of Practice or the Administrative Law Judge. The answer shall be filed in duplicate with the Director of Practice.

(b) Contents.

The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he knows to be true, or state that he is without sufficient information to form a belief when in fact he possesses such information. The respondent may also state affirmatively special matters of defense.

(c) Failure to deny or answer allegations in the complaint.

Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director of Practice or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make his decision by default without a hearing or further procedure.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.59 Circ. 230: Supplemental charges.

If it appears that the respondent in his answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief, when he in fact possesses such information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his disbarment or suspension, the Director of Practice may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare a defense thereto.

§ 10.60 Circ. 230: Reply to answer.

No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Director of Practice may file a reply in his discretion or at the request of the Administrative Law Judge.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.61 Circ. 230: Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence: Provided, That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.62 Circ. 230: Motions and requests.

Motions and requests may be filed with the Director of Practice or with the Administrative Law Judge.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.63 Circ. 230: Representation.

A respondent or proposed respondent may appear in person or he may be represented by counsel or other representative who need not be enrolled to practice before the Internal Revenue Service. The Director may be represented by an attorney or other employee of the Internal Revenue Service.

§ 10.64 Circ. 230: Administrative Law Judge.

(a) Appointment.

An Administrative Law Judge, appointed as provided by 5 U.S.C. 3105 (1966), shall conduct proceedings upon complaints for the disbarment or suspension of attorneys, certified public accountants, or enrolled agents.

(b) Powers of Examiner.

Among other powers, the Examiner shall have authority, in connection with any disbarment or suspension proceeding assigned or referred to him, to do the following:

(1)
Administer oaths and affirmations;

(2)
Make rulings upon motions and requests, which rulings may not be appealed from prior to

the close of a hearing except, at the discretion of the Administrative Law Judge, in extraordinary circumstances;

(3)
Determine the time and place of hearing and regulate its course and conduct;

(4)
Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5)
Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6)
Take or authorize the taking of depositions;

(7)
Receive and consider oral or written argument on facts or law;

(8)
Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9)
Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10)
Make initial decisions.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

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§ 10.65 Circ. 230: Hearings.

(a) In general.

An Administrative Law Judge will preside at the hearing on a complaint furnished under §10.54 for the disbarment or suspension of a practitioner. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556. A hearing in a proceeding requested under §10.76(g) will be conducted *de novo* .

(b) Failure to appear.

If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him, he shall be deemed to have waived the right to a hearing and the Administrative Law Judge may make his decision against the absent party by default.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977] T.D. 8545, 6/15/94.

§ 10.66 Circ. 230: Evidence.

(a) In general.

The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the disbarment or suspension of attorneys, certified public accountants, and enrolled agents. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) Depositions.

The deposition of any witness taken pursuant to §10.67 may be admitted.

(c) Proof of documents.

Official documents, records, and papers of the Internal Revenue Service and the Office of Director of Practice shall be admissible in evidence without the p; roduction of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(d) Exhibits.

If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he deems proper.

(e) Objections.

Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

[31 F.R. 10773, Aug. 13, 1966, as amended at 35 F.R. 13206, Aug. 19, 1970; 42 F.R. 38350, July 28, 1977]

§ 10.67 Circ. 230: Depositions.

Depositions for use at a hearing may, with the written approval of the Administrative Law Judges, be taken by either the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 dayswritten notice to the other party before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days'notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written inetrrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.68 Circ. 230: Transcript.

In cases where the hearing is stenographically reported by a Government contract reported, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy thereof will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking or depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a))

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.69 Circ. 230: Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge, prior to making his decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.70 Circ. 230: Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of disbarment, suspension, or reprimand or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Director of Practice and shall transmit a copy thereof to the respondent or his attorney of record. In the absence of an appeal to the Secretary of the Treasury, or review of the decision upon motion of the Secretary, the decision of the Administrative Law Judge shall without further proceedings before the decisions of the Secretary of the Treasury

30 days from the date of the Administrative Law Judge's decision.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.71 Circ. 230: Appeal to the Secretary.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Secretary of the Treasury. The appeal shall be filed with the Director of Practice in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the Director of Practice, he shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director, he shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director of Practice shall transmit the entire record to the Secretary of the Treasury.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.72 Circ. 230: Decision of the Secretary.

On appeal from or review of the initial decision of the Administrative Law Judge, the Secretary of the Treasury will make the agency decision. In making his decision the Secretary of the Treasury will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the Secretary's decision shall be transmitted to the respondent by the Director of Practice.

[31 F.R. 10773, Aug. 13, 1966, as amended at 42 F.R. 38350, July 28, 1977]

§ 10.73 Circ. 230: Effect of disbarment or suspension; surrender of card.

In case the final order against the respondent is for disbarment, the respondent shall not thereafter be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Director of Practice pursuant to §10.75. In case the final order

against the respondent is for suspension, the respondent shall not thereafter be permitted to practice before the Internal Revenue Service during the period of suspension. If an enrolled agent is disbarred or suspended, he shall surrender his enrollment card to the Director of Practice for cancellation, in the case of disbarment, or for retention during the period of suspension.

§ 10.74 Circ. 230: Notice of disbarment or suspension.

Upon the issuance of a final order disbarring or suspending an attorney, certified public accountant, or enrolled agent, the Director of Practice shall give notice thereof to appropriate officers and employees of the Internal Revenue Service and to interested departments and agencies of the Federal Government. Notice in such manner as the Director of Practice may determine may be given to the proper authorities of the State by which the disbarred or suspended person was licensed to practice as an attorney or accountant.

§ 10.75 Circ. 230: Petition for reinstatement.

The Director of Practice may entertain a petition for reinstatement from any person disbarred from practice before the Internal Revenue Service after the expiration of 5 years following such disbarment. Reinstatement may not be granted unless the Director of Practice is satisfied that the petitioner, thereafter, is not likely to conduct himself contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

[31 F.R. 10773, Aug. 13, 1966, as amended at 35 F.R. 13206, Aug. 19, 1970]

§ 10.76 Circ. 230: Expedited suspension upon criminal conviction or loss of license for cause.

(a) When applicable.

Whenever the Director has reason to believe that a practitioner is described in paragraph (b) of this section, the Director may institute a proceeding under this section to suspend the practitioner from practice before the Service.

(b) To whom applicable.

This section applies to any practitioner who, within 5 years of the date a complaint instituting a proceeding under this section is served --

(1)
Has had his or her license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including a failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in §10.51(g); or

(2)
Has been convicted of any crime under title 26 of the United States Code, or a felony under title 18 of the United States Code involving dishonesty or breach of trust.

(c) Instituting a proceeding.

A proceeding under this section will be instituted by a complaint that names the respondent, is signed by the Director, is filed in the Director's office, and is served according to the rules set forth in §10.57(a). The complaint must give a plain and concise description of the allegations that constitute the basis for the proceeding. The complaint, or a separate paper attached to the complaint, must notify the respondent --

(1)
Of the place and due date for filing an answer;

(2)
That a decision by default may be rendered if the respondent fails to file an answer as required;

(3)
That the respondent may request a conference with the Director to address the merits of the complaint and that any such request must be made in the answer; and

(4)
That the respondent may be suspended either immediately following the expiration of the period by which an answer must be filed or, if a conference is requested, immediately following the conference.

(d) Answer.

The answer to a complaint described in this section must be filed no later than 30 calendar days following the date the complaint is served, unless the Director extends the time for filing. The answer must be filed in accordance with the rules set forth in §10.58, except as otherwise provided in this section. A respondent is entitled to a conference with the Director only if the conference is requested in a timely filed answer. If a request for a conference is not made in the answer or the answer is not timely filed, the respondent will be deemed to have waived his or her right to a conference and the Director may suspend such respondent at any time following the date on which the answer was due.

(e) Conference.

The Director or his or her designee will preside at a conference described in this section. The conference will be held at a place and time selected by the Director, but no sooner than 14 calendar days after the date by which the answer must be filed with the Director, unless the respondent agrees to an earlier date. An authorized representative may represent the respondent at the conference. Following the conference, upon a finding that the respondent is described in paragraph (b) of this section, or upon the respondent's failure to appear at the conference either personally or through an authorized representative, the Director may immediately suspend the respondent from practice before the Service.

(f) Duration of suspension.

A suspension under this section will commence on the date that written notice of the suspension is issued. A practitioner's suspension will remain effective until the earlier of the following --

(1)
The Director lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(2)
The suspension is lifted by an Administrative Law Judge or the Secretary of the Treasury in a proceeding referred to in paragraph (g) of this section and instituted under §10.54.

(g) Proceeding instituted under §10.54.

If the Director suspends a practitioner under this §10.76, the practitioner may ask the Director to issue a complaint under §10.54. The request must be made in writing within 2 years from the date on which the practitioner's suspension commences. The Director must issue a complaint requested under this paragraph within 30 calendar days of receiving the request.

[49 F.R. 6724, Feb. 23, 1984] T.D. 8545, 6/15/94.

§ 10.77 Circ. 230: Authority to disqualify; effect of disqualification.

(a) Authority to disqualify.

Pursuant to section 156 of the Deficit Reduction Act of 1984, 98 Stat. 695, amending 31 U.S.C. 330, the Secretary of the Treasury, after due notice and opportunity for hearing may disqualify any appraiser with respect to whom a penalty has been assessed after July 18, 1984, under section 6701(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 6701(a)).

(b) Effect of disqualification.

If any appraiser is disqualified pursuant to 31 U.S.C. 330 and this Subpart:

(1)
Appraisals by such appraiser shall not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service; and

(2)
Such appraiser shall be barred from presenting evidence or testimony in any such administrative proceeding. Paragraph (b)(1) shall apply to appraisals made by such appraiser after the effective date of disqualification, but shall not apply to appraisals made by the appraiser on or before such date. Notwithstanding the forgoing sentence, an appraisal otherwise barred from admission into evidence pursuant to paragraph (b)(1) may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal. Paragraph (b)(2) shall apply to the presentation of testimony or evidence in any administrative proceeding after the date of such disqualification, regardless of whether such testimony or evidence would pertain to an appraisal made prior to such date.

§ 10.78 Circ. 230: Institution of proceeding.

(a) In general.

Whenever the Director of Practice is advised or becomes aware that a penalty has been assessed against an appraiser under 26 U.S.C. 6701(a), he/she may reprimand such person or institute a proceeding for disqualification of such appraiser through the filing of a complaint. Irrespective of whether a proceeding for disqualification has been instituted against an appraiser, the Director of Practice may confer with an appraiser against whom such a penalty has been assessed concerning such penalty.

(b) Voluntary disqualification.

In order to avoid the initiation or conclusion of a disqualification proceeding, an appraiser may offer his/her consent to disqualification. The Director of Practice, in his/her discretion, may disqualify an appraiser in accordance with the consent offered.

§ 10.79 Circ. 230: Contents of complaint.

(a) Charges.

A proceeding for disqualification of an appraiser shall be instituted through the filing of a complaint, which shall give a plain and concise description of the allegations that constitute the basis for the proceeding. A complaint shall be deemed sufficient if it refers to the penalty previously imposed on the respondent under section 6701(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 6701(a)), and advises him/her of the institution of the proceeding.

(b) Demand for answer.

In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default may be rendered against the respondent in the event there is failure to file an answer.

§ 10.80 Circ. 230: Service of complaint and other papers.

(a) Complaint.

The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided, by delivering it to the respondent or his/her attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent, or in any other manner that has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified mail is not claimed or accepted by the respondent and is returned undelivered, complete service may be made by mailing the complaint to the respondent by first-class mail, addressed to the respondent at the last address known to the Director of Practice. If service is made upon the respondent in person or by leaving the complaint at the office or place of business of the respondent, the verified return by the person making service, setting forth the manner of service, shall be proof of such service.

(b) Service of papers other than complaint.

Any paper other than the complaint may be served as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director of Practice, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his/her attorney or agent of record by telegraph.

(c) Filing of papers.

Whenever the filing of a paper is required or permitted in connection with a disqualification proceeding under this Subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the Director of Practice, Treasury Department, Internal Revenue Service, Washington, D.C. 20224. All papers shall be filed in duplicate.

§ 10.81 Circ. 230: Answer.

(a) Filing.

The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director of Practice or the Administrative Law Judge. The answer shall be filed in duplicate with the Director of Practice.

(b) Contents.

The answer shall contain a statement of facts that constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint that he/she knows to be true, or state that he/she is without sufficient information to form a belief when in fact he/she possesses such information.

(c) Failure to deny or answer allegations in the complaint.

Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director of Practice or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make his/her decision by default without a bearing or further procedure.

§ 10.82 Circ. 230: Supplemental charges.

If it appears that the respondent in his/her answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief, when he/she in fact possesses such information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his/her disqualification, the Director of Practice may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare a defense thereto.

§ 10.83 Circ. 230: Reply to answer.

No reply to the respondent's answer shall be required, and any new matter in the answer shall be deemed to be denied, but the Director of Practice may file a reply in his/her discretion or at the request of the Administrative Law Judge.

§ 10.84 Circ. 230: Proof, variance, amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence; provided, that the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended, and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

§ 10.85 Circ. 230: Motions and requests.

Motions and requests may be filed with the Director of Practice or with the Administrative Law Judge.

§ 10.86 Circ. 230: Representation.

A respondent may appear in person or may be represented by counsel or other representative. The Director of Practice may be represented by an attorney or other employee of the Department of the Treasury.

§ 10.87 Circ. 230: Administrative Law Judge.

(a) Appointment.

An Administrative Law Judge appointed as provided by 5 U.S.C. 3105, shall conduct proceedings upon complaints for the disqualification of appraisers.

(b) Powers of Administrative Law Judge.

Among other powers, the Administrative Law Judge shall have authority, in connection with any disqualification proceeding assigned or referred to him/her to do the following:

(1)
Administer oaths and affirmations;

(2)
Make rulings upon motions and requests which rulings may not be appealed from prior to the close of a hearing except at the discretion of the Administrative Law Judge, in extraordinary circumstances;

(3)
Determine the time and place of hearing and regulate its course and conduct;

(4)
Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5)
Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6)
Take or authorize the taking of depositions;

(7)
Receive and consider oral or written argument on facts or law;

(8)
Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9)
Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10)
Make initial decisions.

§ 10.88 Circ. 230: Hearings.

(a) In general.

The Administrative Law Judge shall preside at the hearing on a complaint for the disqualification of an appraiser. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556.

(b) Failure to appear.

If either party to the proceeding fails to appear at the hearing after due notice thereof has been sent to him/her, the right to a hearing shall be deemed to have been waived and the administrative Law Judge may make a decision by default against the absent party.

§ 10.89 Circ. 230: Evidence.

(a) In general.

The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the disqualification of appraisers. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) Depositions.

The deposition of any witness taken pursuant to 10.90 may be admitted.

(c) Proof of documents.

Official documents, records, and papers of the Internal Revenue Service of the Department of the Treasury shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Department of the Treasury, as the case may be.

(d) Exhibits.

If any document, record, or other paper is introduced in evidence as an exhibit, the

Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he/she deems proper.

(e) Objections.

Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 10.90 Circ. 230: Depositions.

Depositions for use at a hearing may, with the written approval of the Administrative Law Judge, be taken either by the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 dayswritten notice to the other party before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 daysnotice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 10.91 Circ. 230: Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where a hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy thereof will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a)).

§ 10.92 Circ. 230: Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge, prior to making a decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 10.93 Circ. 230: Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of disqualification or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Director of Practice and shall transmit a copy thereof to the respondent of his attorney of record. In the absence of an appeal to the Secretary of the Treasury, or review of the decision upon motion of the Secretary, the decision of the Administrative Law Judge shall without further proceedings become the decision of the Secretary of the Treasury 30 days from the date of the Administrative Law Judge's decision.

§ 10.94 Circ. 230: Appeal to the Secretary.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal such decision to the Secretary of the Treasury. If an appeal is by the respondent, the appeal shall be filed with the Director of Practice in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the Director of Practice, a copy thereof shall be transmitted to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director, a copy shall be transmitted to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director of Practice shall transmit the entire record to the Secretary of the Treasury.

§ 10.95 Circ. 230: Decision of the Secretary.

On appeal from or review of the initial decision of the Administrative Law Judge, the Secretary of the Treasury shall make the agency decision. In making such decision, the Secretary of the Treasury will review the record or such portions thereof as may be cited by the parties. A copy of the Secretary's decision shall be transmitted to the respondent by the Director of Practice.

§ 10.96 Circ. 230: Final order.

Upon the issuance of a final order disqualifying an appraiser, the Director of Practice shall give notice thereof to appropriate officers and employees of the Internal Revenue Service and to interested departments and agencies of the Federal Government.

§ 10.97 Circ. 230: Petition for reinstatement.

The director of Practice may entertain a petition for reinstatement from any disqualified appraiser after the expiration of 5 years following such disqualification. Reinstatement may not be granted unless the Director of Practice is satisfied that the petitioner, thereafter, is not likely to conduct himself/herself contrary to 26 U.S.C. 6701(a), and that granting such reinstatement would not be contrary to the public interest.

§ 10.98 Circ. 230: Records.

(a) Availability.

There are made available to public inspection at the Office of Director of Practice the roster of all persons enrolled to practice, the roster of all persons disbarred or suspended from practice, and the roster of all disqualified appraisers. Other records may be disclosed upon specific request, in accordance with the disclosure regulations of the Internal Revenue Service and the Treasury Department.

(b) Disciplinary procedures.

A request by a practitioner that a hearing in a disciplinary proceeding concerning him be public, and that the record thereof be made available for inspection by interested persons may be granted if agreement is reached by stipulation in advance to protect from disclosure tax information which is confidential, in accordance with the applicable statutes and regulations.

[31 F.R. 10773, Aug. 13, 1966. Redesignated at 50 F.R. 42016, Oct. 17, 1985, and amended at 50 F.R. 42018, Oct. 17, 1985]

§ 10.100 Circ. 230: Saving clause.

Any proceeding for the disbarment or suspension of an attorney, certified public accountant, or enrolled agent, instituted but not closed prior to the effective date of these revised regulations, shall not be affected by such regulations. Any proceeding under this part based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date.

[50 F.R. 42019, Oct. 17, 1985]

§ 10.101 Circ. 230: Special orders.

The Secretary of the Treasury reserves the power to issue such special orders as he may deem proper in any cases within the purview of this part.

[31 F.R. 10773, Aug. 13, 1966. Redesignated at 50 F.R. 42016, Oct. 17, 1985] Robert M. Kimmitt, *General Counsel* . Sept. 23, **1985.**

THE STUART JACK COMPANY
Consultants & Actuaries
4622 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington D.C. 621-4064

December 22, 1983

PERSONAL AND CONFIDENTIAL

Ms. Pam Somers
Catalina Enterprises
5006 Liberty Heights Avenue
Baltimore, MD 21207

RE: **Fee Agreement for**
Catalina Enterprises, Inc. Pension Plan

Dear Pam:

There are two types of work we do for you on an annual basis. The first type is "regular annual administration." The second is "special work." Special work includes procedures which we are unable to predict or quantify in advance, and will be billed on an actual time basis unless we quote you a special additional fixed fee. A list of regular annual administration work and special work for your plan is enclosed.

Although there may be additional changes as a result of regulations issued in regard to TEFRA this year, we can quote you a fee for the regular annual administration. For the plan year 12/31/83, the fee for regular annual administration of the plan will be $900.00, plus any out-of-pocket expenses (out-of-pocket expenses include photocopies, delivery service charges, postage, and the like). One-half of the quoted fee is due with the renewal data for your plan. One-fourth will be billed when we notify you of the plan deposit and the remaining one-fourth will be billed when we deliver your annual statement. Out-of-pocket expenses and any charges for special work will be billed monthly as they are incurred.

Please sign and return the enclosed copy of this letter as your authorization for us to proceed with the work.

Sincerely,

Alan Vandendriessche
Account Executive

AV:rcd
Enclosures

Authorized by:

Signature _____ Date _____

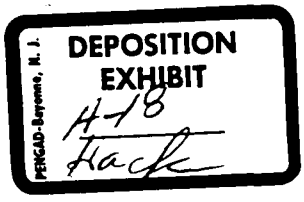
cc: Accounting

THE STUART HACK COMPANY

REGULAR ANNUAL ADMINISTRATION

MONEY PURCHASE, TARGET BENEFIT, PROFIT SHARING
AND EMPLOYEE STOCK OWNERSHIP PLANS

1. Employee census and asset data request
2. Review asset reports prepared by your accountant or bank
3. Eligibility and vesting
4. Deposit calculation
5. Renewal computer run
6. Progress reports
7. Contribution Statement
8. 5500 forms
9. Summary Annual Report
10. Annual Statement



SPECIAL WORK ITEMS

1. Processing employee terminations
2. Balancing plan assets
3. Investment evaluation
4. Amendments to your plan
5. Technical questions requiring research and/or advice
6. Actuarial studies to attain changed goals
7. Plan loan advice or servicing
8. Deposit estimates
9. Calculating salary and deposit amounts based on total profit figure
10. Discussions with client, CPA, attorney or bank re:
    a. estimating plan deposit
    b. changing plan deposit
    c. estate planning
    d. year-end tax planning
    e. TEFRA
    f. other technical questions not related to regular annual administration
11. FASB 35 and 36 numbers for financial statements.
12. IRS audits
13. Response to IRS questions regarding 5500s
14. Special beneficiary designations

Invoice

PROJECT # CGMBS
INVOICE # 000718
08/12/83

Ms. Pam Sommers
Catalina Enterprises
5006 Liberty Heights Avenue
Baltimore, MD 21207

Catalina Enterprises
Profit Sharing Special Wk

GOVERNMENT FORMS

TOTAL $28.00

SECOND REQUEST
9/23/83

PENGAD-Bayonne, N. J.
DEFENDANT'S EXHIBIT
2
mid

TERMS:
NET 10 DAYS

THE STUART HACK COMPANY
Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

PHONE 466-3333

RECEIVED
1982

CROWN MOTORS

WE'RE NICE TO DEAL WITH

5000 LIBERTY HEIGHTS AVENUE
BALTIMORE, MD. 21207

February 24, 1982

Mr. Barry Blumberg
Maryland National Bank
Rutherford Plaza
7133 Rutherford Road
Baltimore, Maryland 21207

Dear Barry:

The purpose of this letter is to set forth the picture as we see it to exist at this time and to come forth with a proposal that, if acceptable, may serve to resolve the present unstable situation.

Maryland National has made proposals and suggestions regarding operations at Crown Motors for the year 1982. Catalina has done worksheets and projections in order to determine the probable outcome of working along the lines suggested by Maryland National. Catalina believes that it would not be possible to operate our company profitably (or perhaps at all) following those guidelines. Catalina is enclosing copies of the worksheets along with this letter for review in order to illustrate our belief that we must find another solution.

Initially, Catalina went to Maryland National with a proposal that, if accepted, would have provided Catalina with the necessary working capital. However, our plan was not acceptable to Maryland National and during the time period that ensued, the situation has deteriorated even further.

Simply put, the problem is that Crown Motors needs a supply of working capital in excess of what is presently available. However, Crown Motors does understand that looking at it from the viewpoint of Maryland National, the bank just wants to lower its exposure by reducing the debt level and at the same time create more favorable ratios. Crown understands this.

Since the inception of Catalina Enterprises, Inc. Pension Trust, and until this point, the two entities (the Pension Trust and Crown Motors) have had no transactions between themselves other than the annual contribution made to the Trust. It has long been the assumption of the Trust that there should be no money traveling back and forth between these related parties. However, it came to the attention of Crown Motors last year that the government had made certain temporary exceptions to this party-in-interest rule. More

specifically, the government has decided that for a trial period, and under certain very stringent "arms-length" rules, a Pension Trust would be allowed to finance the receivables of a parent company's customers. However, even despite this ruling, Crown Motors chose not to do such a thing because we did not want to create any "gray" areas. Aside from that reason, another reason was that the Pension Trust was desiring to rent a vacant building, and wanted to conserve any cash available for broker commissions or improvements to the building that might be necessary to tailor a deal for any prospective tenant.

Catalina still has reservations about party-in-interest transactions. However, it now appears that if the Pension Trust does not do something to support Crown Motors, Crown Motors may become a very poor parent to the Pension Trust. After all, the purpose of the Pension Trust is to provide security for the employees of Crown Motors. But, the most insecure thing that can happen to the employees of Crown Motors is to have Crown deteriorate from lack of adequate working capital.

The principal assets of the Pension Trust are two buildings. These buildings together are probably worth close to $300,000 less a current first mortgage of approximately $125,000. With this in mind, the following proposal might be of value in resolving the present situation.

Catalina Enterprises, Inc. Pension Trust acquires a second mortgage for $300,000. This mortgage would be for a relatively short term, say, four or five years, with a fluctuating interest rate tied to the prime. Instead of amortizing on a monthly basis, the mortgage would be payable via a balloon payment at the end of that four or five year period. However, initially, only $150,000 would be advanced to the Pension Trust on the second mortgage. The rest would be available in increments as needed. The Pension Trust would then use this initial $150,000 along with cash that it already has, to finance the accounts receivable of the parent company -- Crown Motors.

The amount of cash then available to the Pension Trust would be enough to finance more than $250,000 of Crown Motors' receivables, using a formula of a 60% advance of gross balance. When the Pension Trust reaches the point where it has acquired $200,000 in receivables, the Pension Trust would then use these receivables as collateral for a loan of another $100,000. The second $100,000, along with amortization of the original group of paper would provide enough availability to the Pension Trust to buy another $200,000 or more in paper. Using this system, the initial $150,000 advance on the second

mortgage will have been enough to start the process whereby the Pension Trust acquires the paper to use as collateral to borrow on a 50% basis. It may be that the Pension Trust never has to call on much more of that second mortgage money available to it. However, the funds will be there as a reserve available especially for the slow part of Crown's cycle -- November through February. During those periods of time, it is conceivable that part of the extra availability on the second mortgage will suffice to keep the account in margin at all times.

For perhaps the balance of the first year of the inception of this plan, the Pension Trust will do all of the financing for Crown Motors. The Pension Trust is a separate entity, completely apart from Crown Motors, and it has a very strong balance sheet. It would appear that the Pension Trust would be a very creditworthy entity.

If the Pension Trust does all of the financing for Crown Motors for a period of perhaps ten months, this will allow Crown Motors to reduce its indebtedness to Maryland National Bank by approximately $400,000 during that period of time.

TAX CONSEQUENCES TO THE TRUST

The Trust understands that it will be subject to income tax at corporate rates on net finance income derived from financing the accounts receivable of Crown. This is one of the areas that the Trust has sought to avoid, but it becomes necessary at this time.

TAX CONSEQUENCES TO CROWN

There would, however, come a period of time when Crown Motors must again start financing some of its own receivables.

Crown Motors now has total deferred income in excess of $900,000. As Crown Motors starts selling receivables to the Pension Trust instead of financing the accounts itself, it follows that Crown's gross accounts receivable balances will drop and so will deferred income. As deferred income drops, earned income picks up. Consequently, it is vital that Crown Motors maintain an adequate level of accounts receivable itself so that taxable earned income from the reduction of deferred income does not become a major problem for the company. We have prepared a chart to illustrate how this might work. What would probably be ideal is to have the Pension Trust finance Crown Motors's receivables until Crown reduces total debt to Maryland National to the $450 - $500,000 level and to then have Crown start financing its own accounts again, using as funds to do so the reserves that will have

been building up within the Pension Trust. At the point where Crown produces enough paper to be at a margin level agreeable to Maryland National, Crown might then continue with financing its own accounts and consequently maintaining an agreeable level of deferred income.

The chart below will illustrate how Crown Motors' total debt to Maryland National may reduce as debt within the Pension Trust increases:

End Of	Crown Motors	Pension Trust	Pension Assets:Liab*
February	930,000		
March	843,523	154,560	4.06:1
April	772,436	290,728	3.36:1
May	729,374	387,918	3.07:1
June	688,405	457,458	2.97:1
July	658,959	521,490	2.92:1
August	621,063	557,934	2.94:1
September	584,667	581,886	2.99:1
October	559,909	610,392	3.03:1
November	525,459	642,956	3.09:1
December	494,309	662,552	3.15:1

* These ratios also include the first mortgage on the real estate.

1. In implementing this proposal, Pension Trust assets would always remain approximately 3:1 or better against liabilities.

2. Crown Motors' debt at Maryland National would be reduced by perhaps $400,000 by year-end.

3. Cash flow to operate Crown Motors would all come from downpayments and selling accounts receivable to the Pension Trust at a 60% advance.

4. Crown Motors would do the collection of the accounts receivable for the Pension Trust at no expense to the Pension Trust.

5. In effect, the cash flow provided by this arrangement would provide Crown Motors with the capability of remaining profitable and remaining.

6. By springtime of 1983 (Crown's busy season), Crown will probably have reached a point where debt to Maryland National is reduced to a point that Crown may build enough receivables to be at a margin requirement acceptable to Maryland National, then Crown may resume

financing their own accounts receivable.

7. The Pension Trust may then play a smaller role in complementing Crown's future financial needs, but may still be available if necessary.

8. The Pension Trust will at the same time make additional gains from rental income and a modest appreciation of real property.

9. As Crown gains the ability to resume its own financing, the Pension Trust will reduce its debt.

To us, this plan appears workable. However, there is still another problem. If the plan were implemented at this time, Crown may still not have sufficient inventory available to produce accounts receivable at the rate projected. It is likely that Crown's sales would pick up somewhat at this time of year even with limited inventory. Much of the cash flow in the next month or so must be used to catch up on overdue accounts payable. Therefore, while implementation of this plan would probably ensure the continued operational ability of Crown Motors, it would take some special availability of additional funds for financing inventory (if even for a short time -- 90 to 120 days) to allow Crown to produce sales optimally.

Cordially,

Richard Shofer

RS;pes

Enclosures: Worksheet
Financial Statement
Material from Stuart Hack Company
Appraisal from William Currie Associates

Copy: Bernard Denick, Esq.
Louis Omansky, Esq., Stuart Hack Co.

$ 150,000.00 — 8/23 — 1984

after date I promise to pay to the order of CATALINA ENTERPRISES INC. PENSION TRUST

ONE HUNDRED FIFTY THOUSAND — Dollars

at 500 CLIENTS MTS INC. - AT A RATE OF 12% PER YEAR

Value received

No. Due on Demand

$ 50,000.00 — 9/5/ — 1984

after date I promise to pay to the order of CATALINA ENTERPRISES INC. PENSION TRUST

FIFTY THOUSAND — Dollars

at 500 CLIENTS MTS INC. - AT RATE OF 12% PER YEAR

Value received

No. Due on Demand

$ 75,000.00 — FEB 21, — 1985

after date I promise to pay to the order of CATALINA ENTERPRISES INC. PENSION TRUST

THIRTY-FIVE THOUSAND AND 00/100 — Dollars

at 12% INTEREST PER YEAR

Value received

No. Due on Demand

$ 3000.00/100 — 2/25/ — 1985

after date I promise to pay to the order of CATALINA ENTERPRISES INC. PENSION TRUST

THREE THOUSAND AND 00/100 — Dollars

at 12% INTEREST

Value received

No. Due on Demand

$ 10,000 — 7/30/ — 1985

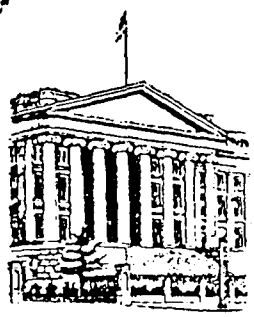
after date I promise to pay to the order of CATALINA ENTERPRISES INC, PENSION TRUST

TWELVE THOUSAND AND 00/100 Dollars

at 12% PER ANNUM INTEREST

Value received with interest at 12% percent per annum

No. — Due ON DEMAND



$ 25,000 00/100 — 8/13/ — 1985

after date I promise to pay

to the order of CATALINA ENTERPRISES INC, PENSION TRUST

TWENTY FIVE THOUSAND Dollars

at 12% PER YEAR INTEREST RATE

Value received.

No. — Due ON DEMAND

$ 5,000.00/100 — 8/21/ — 1985

after date I promise to pay

to the order of CATALINA ENTERPRISES INC, PENSION TRUST

FIVE THOUSAND AND 00/100 Dollars

at 12% ANNUAL INTEREST

Value received.

No. — Due ON DEMAND

$ 35,000 — SEPT. 30, — 1986

after date I promise to pay to

the order of CATALINA ENTERPRISES INC, PENSION TRUST

THIRTY-FIVE THOUSAND AND 00/100 Dollars

at

Value received with interest at 12% percent per annum

No. — Due ON DEMAND

2ND
REQUEST
2/13/85

November 23, 1984

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: **Catalina Enterprises, Inc. Pension Plan**

Dear Richard:

The annual valuation of your plan is due as of 12/31/84. Before the work can begin we shall need certain information from you for the plan year beginning 1/1/84 and ending 12/31/84.

Enclosed are instructions and work sheets covering plan assets, transactions, corporate information and employee census data. Please read each section of this request carefully. It is important that you give us accurate information so that we can prepare your annual statement and government reports correctly.

Please sign and return the completed forms to my attention. Forms that are not applicable should be marked "N/A" and returned with completed forms. Please be sure to sign all places where indicated.

If you have any questions, please give me a call.

Cordially,

Alan Vandendriessche
Account Executive

AV:lcs
Enclosures

cc: Harvey M. Newman, CPA

DEFENDANT'S EXHIBIT 5 ID'd

FINAL
REQUEST
5/7/85

November 23, 1984

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: **Catalina Enterprises, Inc. Pension Plan**

Dear Richard:

The annual valuation of your plan is due as of 12/31/84. Before the work can begin we shall need certain information from you for the plan year beginning 1/1/84 and ending 12/31/84.

Enclosed are instructions and work sheets covering plan assets, transactions, corporate information and employee census data. Please read each section of this request carefully. It is important that you give us accurate information so that we can prepare your annual statement and government reports correctly.

Please sign and return the completed forms to my attention. Forms that are not applicable should be marked "N/A" and returned with completed forms. Please be sure to sign all places where indicated.

If you have any questions, please give me a call.

Cordially,

Alan Vandendriessche
Account Executive

AV:lcs
Enclosures

cc: Harvey M. Newman, CPA

September 26, 1985

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: **Catalina Enterprises, Inc. Profit Sharing Plan**

Dear Richard:

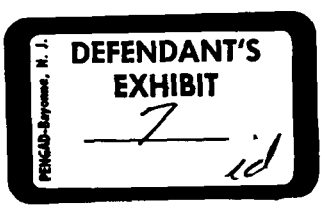
You asked that I check to see if we are waiting for any data to finish up the 1984 work. Our records show we are still waiting for the asset data and the contribution statement. The 5500 form is due at the IRS at 10/15/85 so it is important we receive this data very soon.

We would be delighted to work with you to terminate the profit sharing plan. It too is under a time constraint with regard to TEFRA required amendments. The law is that for a plan to retain its qualified status it must be amended to include TEFRA wording and submitted to the IRS by 11/1/85. The next step after amending the profit sharing plan is to terminate it.

The fees for amending and terminating are as follows:

Amend profit sharing plan and submitt to IRS	$ 750
Terminate profit sharing plan and submitt to IRS	$2,000

Please note that 5500 forms must be filed for the profit sharing trust for as long as the trust holds assets. Also, the above termination fee does not include preparation of distribution packages for participants. That work is done on a time and expense basis.



As you are aware the Stuart Hack Company has not serviced the profit sharing plan for several years. It is likely we will need updated account balances and 5500's for those years we did not work on the plan.

One final note, the profit sharing plan amendment must be received by the IRS not later than 11/1/85. It is important we move with reasonable speed to get the amendment filed by 11/1 and the 5500 for the money purchase plan filed by 10/15/85.

Please sign and return a copy of this letter along with a $1,000 retainer as your authorization for us to begin this work.

Sincerely,

Alan Vandendriessche

AV:lcs

cc: Marc Reader

Signature:_____ Date:_____

TO Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Ave.
Baltimore, MD 21207

THE STUART HACK COMPANY
Consultants & Actuaries
4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C.
621-4064

SUBJECT Catalina Enterprises, Inc. Pension Plan | DATE 10/11/85 | MESSAGE

Dear Mr. Shofer:

Enclosed are the 1984 government forms due 10/15/85 for the Catalina Enterprises, Inc. Pension Plan. As we have never received asset data OR a completed contribution statement for the plan year ending 12/31/84 we were unable to complete questions 14(b)(ii) and (iii) and 15. Also we have no record of a surety bond and were therefore unable to complete question 13(a)(i) and (ii). Please fill in these questions and send us a copy of the completed form for our records. Please call with any questions.

SIGNED Janelle Hardy

TO | DATE | REPLY

SIGNED _____

DETACH AND FILE FOR FOLLOW-UP

DEFENDANT'S EXHIBIT 8 Evid

PENGAD-Bayonne, N.J.

000768

MAILED TO HOCK 10/18/85

Form 5500-C

Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefit Programs

Pension Benefit Guaranty Corporation

Return/Report of Employee Benefit Plan

(With fewer than 100 participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6057(b) and 6058(a) of the Internal Revenue Code, referred to as the Code.

OMB No. 1210-0016

1984

This Form is Open to Public Inspection

For the calendar plan year 1984 or fiscal plan year beginning 1/1, 1984, and ending 12/31, 1984.

Type or print in ink all entries on the form, schedules, and attachments. If an item does not apply, enter "N/A." File the originals.

This return/report is: (i) ☐ the return/report filed for the plan's first plan year; (ii) ☐ an amended return/report; or (iii) ☐ the final return/report filed for the plan.

▶ **Caution:** A penalty of $25 a day for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.

▶ Welfare benefit plans required to file this form do not complete items 7(b), 12, and 24 through 30. Certain welfare benefit plans are not required to file this form—see instructions.

▶ Keogh (HR 10) plans must check the box in item 5(a)(iii).

▶ Check here ▶ ☐ and do NOT complete items 6(c)(iv), 8(b) and (d); 9(c), 12, 13, 17, 18, 20, 21, 22, 23, 27, and 30 if this return/report is for a pension benefit plan that covers only an individual who wholly owns a trade or business, whether incorporated or unincorporated.

▶ If you have been granted an extension of time to file this form, you must attach a copy of the approved extension to this form.

Use IRS label. Otherwise, please print or type.

1 (a) Name of plan sponsor (employer, if for a single employer plan): Catalina Enterprises, Inc.

1 (b) Employer identification number: 52 0820445

Address (number and street): 5006 Liberty Heights Avenue

1 (c) Telephone number of sponsor: (301) 466-3337

City or town, State and ZIP code: Baltimore, Maryland 21207

1 (d) If plan year changed since last return/report, check here ▶ ☐

2 (a) Name of plan administrator (if same as plan sponsor enter "Same"): Same

1 (e) Business code number

Address (number and street)

2 (b) Administrator's employer identification no.

City or town, State and ZIP code

2 (c) Telephone number of administrator: ( )

3 Is the name, address and identification number of plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan? ☒ Yes ☐ No. If "No," enter the information from the last return/report in (a) and/or (b).

(a) Sponsor ▶ N/A EIN

(b) Administrator ▶ N/A EIN

(c) If (a) indicates a change in the sponsor's name and EIN, is this a change in sponsorship only? (See specific instructions for definition of sponsorship.) ☐ Yes ☐ No

4 Check box to indicate the type of plan entity (check only one box):

(a) ☒ Single-employer plan
(b) ☐ Plan of controlled group of corporations or common control employers
(c) ☐ Multiemployer plan
(d) ☐ Multiple-employer-collectively-bargained plan
(e) ☐ Multiple-employer plan (other)

5 (a) (i) Name of plan ▶ Catalina Enterprises, Inc. Pension Plan

5 (b) Effective date of plan 12/28/71

(ii) ☐ Check if name of plan changed since the last return/report.

(iii) ☐ Check this box if this is a Keogh (HR10) plan.

5 (c) Enter three-digit plan number ▶ 001

6 Check at least one item in (a) or (b) and applicable items in (c): (a) Welfare benefit plan (Plan numbers 501 through 999):

(i) ☐ Health insurance (ii) ☐ Life insurance (iii) ☐ Supplemental unemployment
(iv) ☐ Other (specify) ▶

(b) Pension benefit plan (Plan numbers 001 through 500): (i) Defined benefit plan—(indicate type of defined benefit plan below):

(A) ☐ Fixed benefit (B) ☐ Unit benefit (C) ☐ Flat benefit (D) ☐ Other (specify) ▶

(ii) Defined contribution plan—(Indicate type of defined contribution plan below):

(A) ☐ Profit-sharing (B) ☐ Stock bonus (C) ☐ Target benefit (D) ☐ Other money purchase
(E) ☐ Other (specify) ▶

(iii) ☐ Defined benefit plan with benefits based partly on balance of separate account of participant (Code section 414(k))

(iv) ☐ Annuity arrangement of a certain exempt organization (Code section 403(b)(1))

(v) ☐ Custodial account for regulated investment company stock (Code section 403(b)(7))

(vi) ☐ Pension plan utilizing individual retirement accounts or annuities (described in Code section 408) as the sole funding vehicle for providing benefits

(vii) ☐ Other (specify) ▶

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ 10/14/85 Signature of employer/plan sponsor ▶ /Nicholas Sbarra

Date ▶ Signature of plan administrator ▶

DEFENDANT'S EXHIBIT 9 id

PENGAD-Bayonne, N. J.

For Paperwork Reduction Act Notice, see page 1 of the Instructions.

Form 5500-C (1984)

6 (c) Other plan features: (i) ☐ Thrift-savings (ii) ☐ Participant-directed account plan
(iii) ☐ Pension plan maintained outside the United States (see instructions) (iv) ☐ Master trust (see instructions) ▶

		Yes	No
(d)	Single employer plans enter the tax year end of the employer in which this plan year ends ▶ Month 12 Day 31 Year 84		
(e)	Is this a pension plan of an affiliated service group?		X
(f)	Does this plan contain a cash or deferred arrangement described in Code section 401(k)?		X
7 (a)	Total participants (i) Beginning of plan year ▶ 10 (ii) End of plan year ▶ 9		
(b) (i)	Was any pension benefit plan participant(s) separated from service with a deferred vested benefit for which a Schedule SSA (Form 5500) is required to be attached?		X
(ii)	If "Yes," enter the number of separated participants required to be reported ▶ N/A		
8	Plan amendment information (welfare plans do NOT complete (b)(ii)):		
(a)	Were any plan amendments to this plan adopted since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X
(b)	If "Yes," (i) And if any amendments have resulted in a change in the information contained in a summary plan description or previously furnished summary description of modifications:		
	(A) Have summary descriptions of the changes been sent to participants?	N/A	
	(B) Have summary descriptions of the changes been filed with DOL?	N/A	
	(ii) Does any such amendment result in the reduction of the accrued benefit of any participant under the plan?	N/A	
(c)	Enter the date the most recent amendment was adopted ▶ Month ____ Day N/A Year ____		X
(d) (i)	Has a summary plan description been filed with DOL for this plan?		X
(ii)	If (i) is "Yes," what was the employer identification number and the plan number used to identify it? Employer identification number ▶ 52-0820445 Plan number ▶ 001		
9	Plan termination information:		
(a)	Was this plan terminated during this plan year or any prior plan year? If "Yes," enter year ▶		X
(b)	If "Yes," were all trust assets either distributed to participants or beneficiaries, transferred to another plan or brought under the control of PBGC?	N/A	
(c)	If (a) is "Yes," and the plan is covered by PBGC, is the plan continuing to file a PBGC Form 1 and pay premiums until the end of the plan year in which assets are distributed or brought under the control of PBGC?	N/A	
10 (a)	Was this plan merged or consolidated into another plan, or were assets or liabilities transferred to another plan since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X

If "Yes," identify the other plan(s):

(b) Name of plan(s) ▶	(c) Employer identification number(s)	(d) Plan number(s)
N/A	N/A	N/A

(e) Has Form 5310 been filed? N/A ☐ Yes ☐ No

11 Indicate funding arrangement:
(a) ☒ Trust (b) ☐ Fully insured (c) ☐ Combination (d) ☐ Other (specify) ▶
(e) If (b) or (c) is checked, enter the number of Schedules A (Form 5500) which are attached ▶

12 (a) Is the plan covered under the Pension Benefit Guaranty Corporation termination insurance program? ☐ Yes ☒ No ☐ Not determined
(b) If (a) is "Yes," or "Not determined," enter the employer identification number and the plan number used to identify it.
Employer identification number ▶ N/A Plan number ▶ N/A

		Yes	No
13	Complete both (a) and (b):		
(a)	Is the plan insured by a fidelity bond? TO BE PURCHASED		X
(i)	If "Yes," enter name of surety company ▶		
(ii)	Amount of bond coverage ▶		
(b)	Was any loss discovered since the last return/report Form 5500, 5500-C or 5500-K was filed for this plan (or during this plan year if this is the initial return/report)?		X
14 (a)	If this is a defined benefit plan, is it subject to the minimum funding standards for this plan year? If "Yes," attach Schedule B (Form 5500).		X
(b)	If this is a defined contribution plan, i.e., money purchase or target benefit, is it subject to the minimum funding standards (if a waiver was granted, see instructions)?		X
	If "Yes," complete (i), (ii) and (iii) below:		
(i)	Amount of employer contribution required for the plan year	$ 42,903.12	
(ii)	Amount of contribution paid by the employer for the plan year	$ 42,903.12	
	Enter date of last payment by employer ▶ Month 9 Day 13 Year 85		
(iii)	If (i) is greater than (ii) subtract (ii) from (i) and enter the funding deficiency here. Otherwise enter zero. (If you have a funding deficiency, file Form 5330.)	$ -0-	

15 Plan assets and liabilities at the beginning and end of the current plan year (list all assets and liabilities at current value). A fully insured welfare plan or a pension plan with no trust and which is funded entirely by allocated insurance contracts which fully guarantee the amount of benefit payments should check the box and not complete the rest of this item ▶ ☐

Note: *Include all plan assets and liabilities of a trust or separately maintained fund. If more than one trust/fund, report on a combined basis. Include all insurance values except for the value of that portion of an allocated insurance contract which fully guarantees the amount of benefit payments. Round off amounts to nearest dollar. If you have no assets to report enter "-0-" on line 15(f).*

Assets	a. Beginning of year	b. End of year
(a) Cash— *(i)* Interest bearing		
(ii) Non-interest bearing	11,224.24	12,386.48
(iii) Total cash	11,224.24	12,386.48
(b) Receivables	29,934.28	401,661.44
(c) Investments—		
(i) Government securities		
(ii) Pooled funds/mutual funds		
(iii) Corporate (debt and equity instruments)	1,000.28	8,000.28
(iv) Value of interest in master trust		
(v) Real estate and mortgages		
(vi) Other	1,228,180.75	574,074.75
(vii) Total investments		
(d) Building and other depreciable property used in plan operation	812,100.00	884,000.00
(e) Unallocated insurance contracts		
(f) Other assets	4,178.64	
(g) Total assets (add (a)(iii); (b); (c)(vii); (d); (e) and (f))	2,143,518.19	1,880,239.22
Liabilities and Net Assets		
(h) Payables	282,080.99	358,308.13
(i) Acquisition indebtedness	614,028.43	159,775.91
(j) Other liabilities	207,340.77	81,357.94
(k) Total liabilities (add (h) through (j))	1,103,500.19	547,441.08
(l) Net assets (subtract (k) from (g))	1,040,018.00	1,282,798.14

16 Plan income, expenses and changes in net assets during the plan year. Include all income and expenses of a trust(s) or separately maintained fund(s), including any payments made for allocated insurance contracts. Round off amounts to nearest dollar.

	a. Amount	b. Total
(a) Contributions received or receivable in cash from:		
(i) Employer(s) (including contributions on behalf of self-employed individuals)	43,603.05	
(ii) Employees		
(iii) Others		43,603.05
(b) Noncash contributions		
(c) Earnings from investments (interest, dividends, rents, royalties)		257,873.90
(d) Net realized gain (loss) on sale or exchange of assets		
(e) Other income (specify) ▶ Misc. Inc, Note Redeemed		99,175.34
(f) Total income (add (a) through (e))		340,652.29
(g) Distribution of benefits and payments to provide benefits:		
(i) Directly to participants or their beneficiaries	16,185.25	
(ii) To insurance carrier or similar organization for provision of benefits (including prepaid medical plans)		
(iii) To other organizations or individuals providing welfare benefits		16,185.25
(h) Interest expense		88,427.41
(i) Administrative expenses (salaries, fees, commissions, insurance premiums)		
(j) Other expenses (specify) ▶ R.E. Expenses, Taxes, Misc. Expenses		62,939.49
(k) Total expenses (add (g) through (j))		167,552.15
(l) Net income (subtract (k) from (f))		173,100.14
(m) Changes in net assets: (i) Unrealized appreciation (depreciation) of assets	72,100.	
(ii) Net investment gain (or loss) from all master trust investment accounts		
(iii) Other changes (specify) ▶		72,000.00
(n) Net increase (decrease) in net assets for the year (add (l) and (m))		245,780.14
(o) Net assets at beginning of year (line 15(k), column a)		1,040,018.00
(p) Net assets at end of year (add (n) and (o)) (equals line 15(k), column b)		1,282,798.14

17 As of the end of the plan year:

(a)	What percentage of plan assets are loaned to a party-in-interest?	0 %
(b)	What percentage of plan assets are invested in securities issued by a party-in-interest?	0 %
(c)	What percentage of plan assets are invested in real estate which is leased by a party-in-interest?	0 %

		Yes	No
18	Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report):		
(a)	Has there been a termination in the appointment of any trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager or custodian?		X
	If "Yes," explain and include the name, position, address and telephone number of the person whose appointment has been terminated ▶ N/A		
(b)	Has the plan used the services of a contract administrator?	X	
	If "Yes," enter the contract administrator's name and employer identification number (see instructions) ▶ The Stuart Hack Company 52-0747494		
(c)	Indicate the amount of the plan's administrative expenses for the: (i) Preceding year ▶ $ 0 (ii) Second preceding year ▶ $ 0		
(d)	Have any insurance policies or annuities been replaced?		N/A
(e)	Was the plan funded with: (i) ☐ Individual policies or annuities (ii) ☐ Group policies or annuities (iii) ☐ Both		
19	Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report):		
(a)	Other than transactions described in the exceptions outlined in the instructions, were there any transactions, directly or indirectly, between the plan and a party-in-interest? If "Yes," see specific instructions.		X
(b)	Has the plan granted an extension on any loan for which, before the granting of an extension, it has not received all the principal and interest payments due under the terms of the loan?		X
(c)	Has the plan granted an extension of time or renewal for the payment of any obligation owed to it which amounts to more than 10% of the plan assets?		X
20	As of the end of any plan year since the end of the plan year covered by the last return/report, Form 5500, 5500-C or 5500-K which was filed for this plan (or as of the end of this plan year if this is the initial return/report):		
(a)	Did the plan have investments of the type reportable under item 15(c)(vii) or (ix) which in the aggregate in either category exceeded 15% of plan assets?		X
(b)	Did the plan have loans outstanding or investments in a single enterprise (other than the United States Government) which exceeded 15% of plan assets?		X
21	During the plan year covered by this return:		
(a)	Did the plan acquire any qualifying employer security or qualifying employer real property, when immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the plan assets?		X
(b)	Did the plan acquire any qualifying employer security or qualifying employer real property, when immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the plan assets?		X
(c)	Has any plan fiduciary had either a financial interest worth more than $1,000 in any party providing services to the plan or received anything of value from any party providing services to the plan?		X
(d)	Has any employer owed the plan contributions which were more than three months past due under the terms of the plan?		X
(e)	Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year, or classified as uncollectable?		X
(f)	Were any leases to which the plan was a party in default or classified as uncollectable?		X
22	Who is the plan's designated agent for legal process? ▶ Mr. Richard Shafer		
23	Give the name and address of each fiduciary (including trustees) to the plan ▶ Mr. Richard Shafer c/o Catalina Enterprises, Inc. 5001e Liberty Heights Avenue Baltimore, MD 21207		
24	Is this plan an adoption of any of the plans below? (If "Yes," check appropriate box and enter IRS serial number): (a) ☐ Master/prototype, (b) ☐ Field prototype, (c) ☐ Pattern, (d) ☐ Model plan, or (e) ☐ Bond purchase plan? Enter the four or eight-digit IRS serial number (see instructions) ▶ N/A		
25 (a)	Is this plan integrated with social security?		X
(b)	Is it intended that this plan qualify under Code section 401(a) or 405?	X	
(c)	If (b) is "Yes," have you received a determination letter from the IRS for this plan?	X	
(d)	Does the employer/sponsor listed in item 1(a) of this form maintain other qualified pension benefit plans? If "Yes," list the number of plans including this plan ▶ 2	X	

		Yes	No
26	Information about employees of employer at end of the plan year. (a) Does the plan satisfy the percentage tests of Code section 410(b)(1)(A)? If "No," complete only (b) below and see Specific Instructions	X	
	(b) Total number of employees	10	
	(c) Number of employees excluded under the plan because of: *(i)* Minimum age or years of service	3	
	(ii) Employees on whose behalf retirement benefits were the subject of collective bargaining	0	
	(iii) Nonresident aliens who receive no earned income from United States sources	0	
	(iv) Total excluded (add (i), (ii) and (iii))	3	
	(d) Total number of employees not excluded (subtract (c)(iv) from (b))	7	
	(e) Employees ineligible (specify reason) ▶	0	
	(f) Employees eligible to participate (subtract (e) from (d))	7	
	(g) Employees eligible but not participating	0	
	(h) Employees participating (subtract (g) from (f))	7	

27	Vesting (check only one box to indicate the vesting provisions of the plan):		
	(a) Full and immediate vesting, or full vesting within 3 years		
	(b) No vesting in years 1 through 9, and full vesting after the 10th year of service		
	(c) For each year of employment, beginning with the 4th year, vesting equal to 40% after 4 years of service, 5% additional for the next 2 years, and 10% additional for each of the next 5 years		
	(d) 100% vesting within 5 years after contributions are made (class year plan only)		
	(e) Other vesting		X

		Yes	No
28	(a) Did the employer receive plan assets (including a return of contributions) since the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X
	(b) If this is a defined benefit plan which provides for annual, automatic increases in the maximum dollar limitations under Code section 415, does the plan provide that any such increase is effective no earlier than the calendar year for which IRS determines that increase under Code section 415(d)?	N/A	
	(c) Is this a plan with Employee Stock Ownership (ESOP) features?		X
	(i) If "Yes," was a current appraisal of the value of the stock made immediately before any contribution of stock or purchase of the stock by the trust for the plan year covered by this return/report?	N/A	
	(ii) If (i) is "Yes," was the appraisal made by an unrelated third party?	N/A	
29	Have any individuals performed services as a leased employee for this employer or for any other employer who is aggregated with this employer under section 414(b), (c), or (m)? If "Yes," see instructions for completing item 26.		X
30	(a) Is this plan a top heavy plan within the meaning of Code section 416 for this plan year?	X	
	(b) If (a) is "Yes," complete (i), (ii) and (iii) below:		
	(i) Has the plan complied with the vesting requirements of Code section 416(b)?	X	
	(ii) Has the plan complied with the minimum benefit requirements of Code section 416(c)?	X	
	(iii) Has the plan complied with the limitation on compensation of Code section 416(d)?	X	

If additional space is required for any item, attach additional sheets the same size as this form.

SCHEDULE P
(Form 5500)
Department of the Treasury
Internal Revenue Service

Annual Return of Fiduciary of Employee Benefit Trust

▶ File as an attachment to Form 5500, 5500-C, or 5500-R.

OMB No. 1210-0016

1984

For trust calendar year 1984 or fiscal year beginning 1/1, 1984, and ending 12/31, 1984.

Please type or print

1 (a) Name of trustee or custodian
Mr. Richard Shofer

(b) Address (number and street)
5006 Liberty Heights Avenue

(c) City or town, State and ZIP code
Baltimore, Maryland 21207

2 Name of trust
Catalina Enterprises, Inc. Pension Plan

3 Name of plan if different from name of trust
Same

4 Have you furnished the participating employee benefit plan(s) with the trust financial information required to be reported by the plan(s) on their Forms 5500, or 5500-C? ☒ Yes ☐ No

5 Enter the plan sponsor's employer identification number as shown on the form to which this schedule is attached ▶ 52 0820445

Under penalties of perjury, I declare that I have examined this schedule, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ 10/18/85 Signature of fiduciary ▶ Richard Shofer

Instructions

(Section references are to the Internal Revenue Code.)

A. Purpose of Form

You may use this schedule to satisfy the requirements under section 6033(a) for an annual information return from every section 401(a) organization exempt from tax under section 501(a).

The filing of this form will also start the running of the statute of limitations under section 6501(a) for any trust described in section 401(a) which is exempt from tax under section 501(a).

B. Who May File

(1) Every trustee of a trust described in section 401(a) which was created as part of an employee benefit plan.

(2) Every custodian of a custodial account described in section 401(f).

C. How to File

File Schedule P (Form 5500) for the trust year ending with or within any participating plan's plan year as an attachment to the Form 5500, 5500-C, or 5500-R filed by the plan for that plan year.

Schedule P (Form 5500) may be filed only as an attachment to a Form 5500, 5500-C, or 5500-R. A separately filed Schedule P (Form 5500) will not be accepted.

If the trust or custodial account is used by more than one plan, file only one Schedule P (Form 5500). It must be filed as an attachment to one of the participating plan's returns/reports. If a plan uses more than one trust or custodial account for its funds, file one Schedule P (Form 5500) for each trust or custodial account.

D. Signature

The fiduciary (trustee or custodian) must sign this schedule. If there is more than one fiduciary, one of them, authorized by the others, may sign.

E. Other Returns and Forms that May be Required

(1) Form 990-T.—For trusts described in section 401(a), a tax is imposed on income derived from business that is unrelated to the purpose for which the trust received a tax exemption. Report such income and tax on Form 990-T, Exempt Organization Business Income Tax Return. (See sections 511 through 514 and related regulations.)

(2) Forms W-2P and 1099-R.—If you made payments or distributions to individual beneficiaries of a plan, report these payments on Forms W-2P or 1099-R. (See sections 6041 and 6047 and related regulations.)

(3) Forms 941 or 941E.—If you made payments of distributions to individual beneficiaries of a plan, you are required to withhold income tax from those payments, unless the payee elects not to have the tax withheld. Report this withholding on Form 941 or 941E. (See Forms 941 or 941E and Circular E, Publication 15.)

Department of the Treasury
Internal Revenue Service

to File Certain Employee Plan Returns

▶ For Paperwork Reduction Act Notice, see instructions on back

File With IRS Only

File in DUPLICATE by the due date for filing the return. (See general instructions 2 and 3.)

Name of taxpayer or plan sponsor (see instructions)
Catalina Enterprises, Inc

Address (Number and street)
5006 Liberty Heights Avenue

City or town, State, and ZIP code
Baltimore, MD 21207

Check applicable box and enter number (see specific instructions)

☒ Employer identification number
▶ 52-0820445 OR

☐ Social security number
▶

1 I request an extension of time until (see specific instruction 1) ▶ 10/15/85 (check appropriate block(s)):

(a) ☐ To file Form 5500, Annual Return/Report of Employee Benefit Plan (with related schedules).

(b) ☒ To file Form 5500-C, Return/Report of Employee Benefit Plan (with related schedules).

(c) ☐ To file Form 5500-K, Return/Report of Employee Pension Benefit Plan (with related schedules).

(d) ☐ To file Form 5500-G, Annual Return/Report of Employee Benefit Plan.

(e) ☐ To file Form 5500-R, Registration Statement of Employee Benefit Plan (with related schedules).

(f) ☐ To file Form 5330, Return of Initial Excise Taxes Related to Pension and Profit-sharing Plans for tax year beginning ▶ ..... and ending ▶ .....

(g) If you checked (f) above, are you electing to be taxed under ERISA section 2003(c)(1)(B)? . . . . . ☐ Yes ☐ No

2 Complete the following for the plan covered by this application (see general instruction 2):

Plan name	Plan number	Plan year ending Month	Day	Year
CATALINA ENTERPRISES, INC. PENSION PLAN	001	12	31	84

3 (a) Has an extension of time to file the designated return(s) been previously granted for this tax year? . . . ☐ Yes ☒ No

(b) If "Yes," show the date(s) to which the extension was granted . . . . . ▶ n/a

4 Attach a detailed statement of why you need the extension (see specific instruction 4). PLEASE SEE ATTACHED

5 If the extension is for Form 5330, enter the amount of tax estimated to be due on Form 5330. Pay this amount with this application . . . . . ▶

Caution: *Interest on late payment of tax accrues at the rate established under section 6621 of the Internal Revenue Code from the regular due date of the return until paid. (For the penalty for late payment of tax, see specific instruction 5.)*

Under penalties of perjury, I declare that to the best of my knowledge and belief the statements made on this form are true, correct, and complete and that I am authorized to prepare this application.

Signature ▶ Charmaine B. Jordan Date ▶ 7/15/85

Note: *The person who signs this form may be an employer or plan administrator filing Form 5500, 5500-C, 5500-K, 5500-G, 5500-R or 5330; a disqualified person filing Form 5330; an attorney or certified public accountant qualified to practice before the IRS; a person enrolled to practice before the IRS; or a person holding a power of attorney.*

Notice to Applicant.—THE INTERNAL REVENUE SERVICE WILL INDICATE BELOW WHETHER THE EXTENSION IS GRANTED OR DENIED AND WILL RETURN THE ORIGINAL OF THE APPLICATION

☒ The application IS approved to ▶ 10-15-85 (You MUST attach a copy of this form to each return you file for which an extension is granted.)

RECEIVED
JUL 19 1985
PSC PHILA, PA
14

☐ The application IS NOT approved. (You MUST attach a copy of this form to each return you file for which a grace period is granted.) However, in view of your reasons stated in the application, a 10-day grace period is granted from the date shown below or due date of the return, whichever is later. This 10-day grace period constitutes a valid extension of time for purposes of elections otherwise required to be made on timely filed returns.

☐ The application IS NOT approved.

After consideration of the reasons stated in your application, we have determined the extension is not warranted. (The 10-day grace period is not granted.)

☐ The application cannot be considered, since you filed it after the due date of the return.

☐ Other ▶

Donald Applegate

(Date) (Director) By: RECEIVED

AUG 5 1985

THE STUART MAIL COMPANY

363-479-2

THE STUART ACK COMPANY

November 7, 1986

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
T/A Crown Motors
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Mr. Shofer:

Attached are copies of the 1984 and 1985 asset sheets that we received from Pamela Somers.

As we discussed, the contributions for 1984 do not match up. I have circled the problem. Number 1 indicates the different contribution amounts. Number 2 indicates a different total income. Number 3 indicates different year end assets. I have reviewed our files carefully and see no indication as to what the difference might be. (I apologize for the quality of the copy, but the copy we were sent was barely decipherable.)

Please have the assets reviewed and send us an explanation of the correct amount so that we can complete the annual statement for 12/31/85.

If you have any questions, please call.

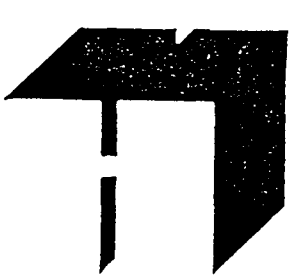
Sincerely,

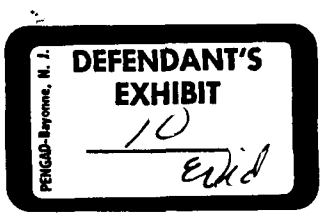
Katherine Goldsmith

Katherine Goldsmith
Pension Administrator

KG:lcs
Enclosures

cc: Pamela Somers
Harvey M. Newman, CPA





	12-31-84	12-31-85	
INCOME:			
Contributions	55,022.46	61,721.96	
Interest Earned	184,491.65	29,943.97	B
Rental Income	73,382.25	118,754.00	B
Miscellaneous Income	4,175.34	5,140.55	B
A/R Interest Earned		57,003.81	B
Secured Note	35,000.00	0.00	
TOTAL INCOME	352,071.70	272,584.69	
EXPENSES:			
Interest Expense:			
1st Mtge	7,467.42	6,219.50	B
2nd Mtge & Secured Loan	74,394.71	5,023.08	B
3rd Mtge	7,065.28	24,136.40	B
Legal & Accounting	0.00	0.00	
R.E. Expenses	31,469.47	30,625.38	B
Federal Taxes	29,241.78	1,215.00	B
Miscellaneous Expenses	2,048.24	50.30	
Vested Interest Paid	18,185.25	0.00	
Loss on Sales	0.00	0.00	
TOTAL EXPENSES	169,872.15	[illegible]	B
APPRECIATION/DEPRECIATION OF ASS			
R.E. - Chg in Appraised Val	79,597.00	43,000.00	B
R.E. - Depreciation	(7,597.00)	0.00	
NET CHANGES IN ASSETS	72,000.00	43,000.00	
NET INCOME	254,199.55	248,284.93	
Assets Yr Begin	1,040,018.00	1,294,217.55	
Assets Yr End	1,294,217.55	1,542,502.48	

BALANCE SHEETS — INCOME & EXPENSE — CATALINA PENSION TRUST

BALANCE SHEETS

	12-31-83	12-31-84
[illegible]	[illegible]235.[illegible]	[illegible]166.23
Accounts Receivable	1,226,130.75	574,024.75
Due from Coman	0.00	152,758.44
Tax Escrow & Security Deposits	[illegible],555.15	12,338.46
[illegible] Receivable, Participant	[illegible].00	800,000.00
[illegible] Interest, Participant Loan	0.00	0.00
Security Deposit – [illegible]	8,000.28	8,000.28
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
Rent Receivable	0.00	0.00
TOTAL CURRENT ASSETS	1,331,518.19	795,235.28
R.E. Land	[illegible]	[illegible]
R.E. Buildings	[illegible]	[illegible]
R.E. Improvements	11,579.21	11,579.21
R.E. Change in Value	575,224.48	553,321.48
Less Accumulated Depreciation	(60,470.69)	(86,067.59)
[illegible]	[illegible]	[illegible]
TOTAL CURRENT & FIXED ASSETS	2,142,518.19	1,540,239.22
[illegible]		
Federal Taxes Payable	65,720.05	42,745.00
Note Payable, [illegible]	20,500.00	11,500.00
1st Mortgage	55,332.55	77,324.86
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
Miscellaneous Payables	5,313.77	4,553.93
Reserve [illegible]	78,355.25	0.00
Security Deposits	15,352.38	12,554.27
[illegible]	[illegible]	[illegible]
DEFERRED INCOME		
Unearned Income – Installment	207,340.77	51,257.94
[illegible]	[illegible]	[illegible]
Participants' Interest	1,040,018.00	1,282,738.14
TOTAL [illegible]	[illegible]	[illegible]

INCOME & EXPENSE

	12-31-83	12-31-84
Contributions	[illegible]	[illegible]
Interest Earned	132,546.26	186,451.65
Rental Income	112,528.25	72,332.25
Miscellaneous Income	247.50	4,175.34
Secured Note [illegible]	(240,000.00)	35,000.00
TOTAL INCOME	205,656.29	340,652.29
EXPENSES:		
Interest Expenses:		
1st Mtge	8,994.51	17,357.42
2nd Mtge & Secured Loan	51,61[illegible]	74,394.71
3rd Mtge	0.00	7,255.22
Legal & Accounting	0.00	0.00
R.E. Expenses	22,372.53	31,153.47
Federal Taxes	37,000.00	29,231.75
Miscellaneous Expenses	[illegible]69.13	2,043.24
Vested Interest Paid	0.00	18,185.25
Loss on Sales	0.00	0.00
TOTAL EXPENSES	124,447.61	155,373.13
APPRECIATION/DEPRECIATION OF ASSET		
R.E. – Change in Appraised Value	(4,155.00)	75,557.00
R.E. – Depreciation	(7,597.00)	(7,597.00)
NET CHANGES IN ASSETS	(11,795.00)	72,000.04
NET INCOME	71,413.68	242,720.14
Assets Yr Begin	968,604.32	1,040,018.00
Assets Yr End	1,040,018.00	1,282,738.14

→ 43603.05 #1

→ 340652.29 #2

#3

Jenelle — the $12,000 + is to be held out of [illegible]

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington District Office
1730 K Street N.W., Suite 556
Washington, D.C. 20006
(202) 254-7013 Fax: (202) 254-3378

February 18, 1994

Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

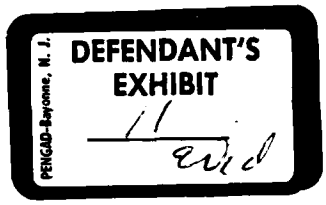
Dear Mr. Shofer:

The Department of Labor (the Department) has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans such as the Catalina Enterprises, Inc. Pension Plan (the Plan).

This office has concluded its investigation of the Plan and of your activities as its trustee. Based on the facts gathered in this investigation, and subject to the possibility that additional information may lead us to revise our views, it appears that, as trustee, you may have violated several provisions of ERISA. The purpose of this letter is to advise you of our findings and to give you an opportunity to comment before the Department determines what, if any, action to take.

As we understand the facts, many of which were provided by you to this Office during the course of our investigation, Catalina Enterprises, Inc., doing business as Crown Motors (the Sponsor), sells used cars, and finances these purchases. The Sponsor receives between 20-28% interest on these notes. The Plan purchases 50% of the note value of virtually all of these customer notes. The agreement between the Plan and the Sponsor provides that the Plan will earn "an interest rate of 12%, or a commercially reasonable interest rate, whichever is the higher". The Plan has earned between 11-12.75% on its investment. You have stated that the Sponsor receives the extra interest of between 9-17% because the Sponsor takes all the risks (see next paragraph), and does all the paperwork involved.

The agreement between the Plan and the Sponsor states that the Sponsor will repay any loan which is in default. This is done at the end of the year in an annual cash-out. The default ratio (those notes which were over 60 days past due) has been about 15%. Robert Murphy acts as a Trustee in connection with the



customer notes; however he has only generally approved of the transactions, reviews the notes sporadically, and makes no written report.

As of December 31, 1991, the Plan had $2,950,138 invested in customer notes, including defaulted notes from a prior financing arrangement which the Sponsor owes the Plan. This amount constituted 72.2% of total Plan assets.

It is our view that these transactions violate Title I of ERISA, sections 404(a)(1)(A), (B), (C), & (D); 406(a)(1)(A), (B), & (D); and 406(b)(1) & (2). Copies of these sections are enclosed for your information. Although there is a Class Exemption (PTE 85-68, also enclosed) which allows the purchase of customer notes by the Plan, we feel that the requirements under the exemption are not being met. Specifically, we believe that the transactions are not on terms at least as favorable to the plan as an arm's length transaction with an unrelated party would be, the Plan's continuing rights are not being adequately monitored, more than 50 percent of the current value of plan assets are invested in customer notes, and the employer is not providing immediate repayment of notes more than 60 days in arrears.

In addition, our investigation has disclosed that you have borrowed $375,000 from the Plan. Nine loans were issued between August 9, 1984 and September 30, 1986. These loans were demand notes, with no security provided. In addition, you borrowed $75,000 from the Plan on February 22, 1985. This note was secured by property in the Virgin Islands, and was issued for four years. Although payments have been made on all loans, as of December 31, 1991, you still owed the Plan $184,388. It is our view that these loans violate Title I of ERISA, sections 404(a)(1)(A), (B), & (D); 406(a)(1)(B) & (D); and 406(b)(1) & (2).

Also, our investigation disclosed that you guaranteed notes given by the Plan to Maryland National Bank. On August 31, 1987, you signed a General Guaranty. On September 17, 1987, you guaranteed a consolidated note in the amount of $700,000. On August 29, 1988, you again guaranteed a consolidated note (including the $700,000 note) in the amount of $900,000. We believe that these transactions violate Title 1 of ERISA, section 406(a)(1)(B).

In our view, for the reasons cited above, you are in violation of ERISA and will remain so as long as the loan in question remains outstanding. Therefore, we invite you to discuss with us immediately how these violations may be corrected and the losses restored to the Plan.

We have provided the foregoing statement of our views to help you evaluate your obligations as a fiduciary within the meaning of ERISA. Your failure to correct the violations and restore losses

may result in the referral of this matter to the Office of the Solicitor of Labor for possible legal action.

In addition to any possible legal action by the Department, you should also be aware that the Secretary, pursuant to section 504(a) of ERISA, is authorized to furnish information to "any person. . .actually affected by any matter which is the subject" of an ERISA investigation. Further, even if the Secretary decided not to take any legal action in this matter, you would nonetheless remain subject to suit by other parties including plan fiduciaries and plan participants or their beneficiaries.

If you take proper corrective action the Department will not bring a law suit with regard to these issues. However, ERISA section 502(l) requires the Secretary of Labor to assess a civil penalty against a fiduciary who breaches a fiduciary responsibility under, or commits any other violation of, part 4 of Title I of ERISA or any other person who knowingly participates in such breach or violation. The penalty under section 502(l) is equal to 20 percent of the "applicable recovery amount", a term which means any amount recovered from a fiduciary or other person with respect to a breach or violation either pursuant to a settlement agreement with the Secretary or ordered by a court to be paid in a judicial proceeding instituted by the Secretary.[1/] Further, you should understand that the Department is speaking only for itself and only with regard to the issues discussed above; the Department has no authority to restrain any third party or any other governmental agency from taking any action it may deem appropriate.

We hope this letter will be helpful to you in the execution of your fiduciary duties, and that, with respect to the specific

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[1/] The Department may, in its sole discretion, waive or reduce the penalty if it determines in writing that the fiduciary or knowing participant in the breach acted reasonably and in good faith, or it is reasonable to expect that the fiduciary or knowing participant will not be able to restore all losses to the plan without severe financial hardship unless such waiver or reduction is granted. The Department may, in its sole discretion, agree to such a waiver or reduction in conjunction with entering into a settlement agreement. The procedure for applying for a waiver or reduction of the civil penalty is set forth in an interim regulation promulgated by the Department at 29 C.F.R. 2570.80 to 2570.88. A petition for a waiver or reduction of the civil penalty should be directed to the Philadelphia Area Office. The Department has also issued a proposed regulation regarding implementation of the civil penalty at 29 C.F.R. 2560.5021-1.

matters discussed, you will promptly discuss with us how these violations may be corrected and the losses restored to the Plan. Please advise me, in writing, within 10 days of your receipt of this letter what action you propose to take with respect to the specific matters discussed.

Sincerely,

Gerard Gumpertz
Area Director
Philadelphia Area Office

Enclosures

cc: Nicholas Giampetro, Esq.
Thomas H. Bornhorst, Esq.

Title I of ERISA provides that:

Section 404(a)(1) ...a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and--

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

Section 406(a), except as provided in Section 408:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect--

(A) sale or exchange, or leasing, of any property between the plan and a party-in-interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of, a party-in-interest, of any assets of the plan;

Section 406(b), A fiduciary with respect to a plan shall not --

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries....

include machinery sold by equipment distributors such as, but not limited to, earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications, but shall not include such equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be expected to be resold in the ordinary course of the equipment distributor's business.

(2) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term shall in no event event exceed 48 months. For purposes of this exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation.

(3) Where the note is secured by tangible personal property other than heavy equipment or motor vehicles described in paragraph (g)(1) and (2) of this section, the terms shall in no event exceed 36 months.

(h) All records, information and data required to be maintained which relate to plan investments in customer notes covered by this exemption shall be unconditionally available at their customary location for examination during normal business hours by:

(1) The Department of Labor,

(2) The Internal Revenue Service,

(3) Plan participants and beneficiaries, or

(4) Any duly authorized employee or representative of a person described in subparagraph (1) through (3) above.

Signed at Washington, D.C., this 3d day of August, 1984.

Alan D. Lebowitz,

Deputy Administrator for Program Operations, Office of Pension and Welfare Benefit Programs.

[FR Doc. 84-21326 Filed 8-9-84; 8:45 am]

BILLING CODE 4510-29-M

PTE 85-68
Permanent Exemption
50 Fed. Reg. 13293 (Apr. 3, 1985)

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-68; Application File No. D-5258]

Permanent Class Exemption To Permit Employee Benefit Plans to Invest in Customer Notes of Employers

AGENCY: Office of Pension and Welfare Benefit Programs, Department of Labor.

ACTION: Grant of Class Exemption.

SUMMARY: This document contains a class exemption to permit employee benefit plans to purchase and hold customer notes of employers. [Replaces Prohibited Transaction Exemption 79-9]. The exemption affects participants, beneficiaries and fiduciaries of plans investing in customer notes, and employers of the plan participants.

EFFECTIVE DATE: July 1, 1984. A condition requiring independent fiduciary oversight will be effective with respect to transactions entered into after 30 days after the date of this Federal Register.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Office of Regulations and Interpretations, Office of Pension

and Welfare Benefit Programs, U.S. Department of Labor, (202) 523-7901. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On August 10, 1984, notice was published in the **Federal Register** (49 FR 32127) of the pendency before the Department of a proposed class exemption to allow an employee benefit plan to purchase and hold customer notes from an employer of employees covered by the plan. A temporary class exemption, Prohibited Transaction Exemption (PTE) 79-9 (44 FR 17819, March 23, 1979), permitting transactions of this kind expired on June 30, 1984. The exemption provided relief from the prohibited transaction restrictions of sections 406(a), 406(b) (1) and (2) and 407(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code.

In order to establish a record on which to base a determination as to whether permanent relief should be granted for plan investments in customer notes, the Department contacted a number of plans that had relied on PTE 79-9 seeking information concerning their experience with the temporary class exemption. The Department also solicited the views of the Associated Equipment Distributors (AED), an association of several hundred small businesses engaged primarily in the sale of construction equipment. Responses to the Department's inquiries and to a survey conducted by the AED among its member companies indicated that PTE 79-9 had provided good investment opportunities to the participating plans which afforded them relatively favorable yields with a high degree of safety. At the urging of plans that have relied on PTE 79-9 and the AED, the Department proposed the new permanent class exemption on its own motion under section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and section 3.01 of ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The notice gave interested persons an opportunity to comment and to request a hearing on the proposal. Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1.

1. Description of the Exemption

The class exemption granted pursuant to this notice permits a plan to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. The new exemption incorporates many of the same conditions or limitations imposed under PTE 79-9, which were intended as safeguards to ensure the protection of the plan assets involved in the transactions. These conditions include a written guarantee by the employer to immediately repurchase a note if it becomes more than 60 days delinquent. A plan may not invest more than 50 percent of its assets in customer notes and over 10 percent in the notes of a single customer. Each customer note sold to a plan must be secured by a perfected security interest in the property financed by the note and the collateral must be insured. Also, maximum terms ranging up to five years are imposed on the notes, depending on the type of property being financed.

A condition of PTE 79-9 that required a plan to notify the Department annually in writing if it relied on the exemption is not retained in the new exemption for reasons discussed in the preamble to the proposal.[2] On the other hand, a new requirement for independent fiduciary oversight in regard to plan investments

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

[2] See 49 FR at 32129.

in customer notes has been included in the exemption. Under this new condition, a plan fiduciary who is independent of the employer must approve in advance any acquisition of customer notes by a plan and must monitor the plan's ongoing rights with respect to the customer notes held in its portfolio.

2. Discussion of Comments Received

The Department received nine letters commenting on various aspects of the proposed class exemption. The comment letters in general urged that the class exemption be adopted and stated that an exemption of this kind is in the best interests of the participants and beneficiaries of plans.

Four comment letters objected to the requirement proposed in the exemption that a fiduciary, who is independent of the employer, approve in advance any sales of customer notes to a plan and

monitor the ongoing plan investments in these notes. The letters asserted that the available evidence indicates that the temporary exemption worked well without an independent fiduciary requirement and that sufficient safeguards already are present in the proposed new exemption. The commenters maintain that the requirement for an independent fiduciary would add an unnecessary expense to a plan's operation which would reduce the plan's net investment return. Some of the letters further indicated that certain financial institutions either would be reluctant to serve in the capacity defined in the exemption or would demand a broader fiduciary role. The commenters noted that many employers relying on the exemption are smaller companies that traditionally have not utilized independent fiduciaries.

As stated in the preamble to the proposed exemption, the Department believes, based on its experience with both class exemptions and individual exemptions, that independent fiduciary oversight is an important method of protecting the plan assets involved in an exempt transaction and avoiding a potential conflict of interest situation where, for example, the employer, who is typically a fiduciary, engages in transactions with the plan. The Department recognizes that PTE 79-9 appears to have operated well with the safeguards incorporated in the temporary exemption and that this new requirement may impose some added expense on the part of plans utilizing the exemption. The Department is not convinced, however, that the marginal savings to a plan in cost or effort from eliminating this condition outweigh the added protection of having any covered transaction subject to the prior approval and monitoring of a fiduciary independent of the employer. For this reason and the reasons previously outlined in the preamble to the proposed exemption, condition III(b) is being retained in the final exemption.

Two comment letters recommended, without further explanation, that the scope of the exemption be expanded to permit sales of customer notes to a plan by affiliates of the sponsoring employer as well as by the employer itself. Section II of the proposal states, in part, that the exemption provides relief for the "acquisition from an employer with respect to a plan * * * of customer notes." Under the definition of customer notes in Section I, such a note must be accepted in connection with the employer's primary business activity as a seller of the tangible personal property being financed by the note. The commenters point out that an individual exemption (PTE 82-48, 47 FR 10924) was granted on March 12, 1982 on a temporary basis to the retirement plans of the Bale Chevrolet affiliated group. The exemption covers transactions similar to those described in PTE 79-9 except that the customer notes are purchased from Bale Finance Company (Bale Finance) which finances automobile sales for customers of the Bale Chevrolet Company (Bale Chevrolet). Bale Chevrolet and Bale Finance are the sole members of a

controlled group as defined in section 1563(a) of the Code. The Department stated in the preamble to the notice of pendency that the exemption was proposed to be in effect only through June 30, 1984 to coincide with the expiration date of PTE 79–9, so that the Department could make a determination at that time in regard to future relief for the applicant.

The Department does not believe that a sufficient showing has been made that the problems associated with the scope of the exemption are commonplace and, consequently, has determined not to modify the definition of customer notes in the exemption. However, the Department continues to be prepared to consider individual exemptive relief for transactions of the type described in PTE 82–48 if the requisite findings under section 408(a) of ERISA can be made.

The Associated Equipment Distributors submitted a letter of comment concerning condition III(d) of the proposed exemption. Under that condition, an employer is required to repurchase a customer note from a plan in the event the note becomes over 60 days in arrears. As noted in the preamble to the proposal, the AED had stated in a letter to the Department dated April 5, 1984 that business customers sometimes experience seasonal or temporary cash-flow problems not reflective of their basic financial condition. As a result, the 60-day default period has occasionally caused good notes with favorable yields to be removed from a plan. At that time the AED recommended that the default period be extended from 60 to 90 days. The Department tentatively rejected that earlier recommendation for reasons discussed in the preamble to the proposed exemption.

In its most recent comment letter, the AED urged the Department to reconsider this matter and reiterated its view that such an extension would be in the best interests of plan participants. According to the AED, an employer, such as an equipment dealer, knows its customers well and therefore usually knows whether a customer is in a sound financial position despite occasional seasonal difficulties.

The AED recommended that the proposed exemption be modified to state that, while a note would still be considered to be in default if it was 60 days in arrears, the employer would have another 30 days to repurchase the note or to see that payments on the note are made timely. Alternatively, the AED recommended that, in cases of a 60-day delinquency, the employer could petition the independent fiduciary referred to in section III(b) of the proposed exemption to grant a 30-day extension.

After consultation with the employer, the independent fiduciary would have the discretion to grant or deny the requested extension based on his or her judgment as to the soundness of the note and the likelihood of its becoming current.

Upon consideration of the arguments put forth by the AED, the Department has decided to accept the second alternative suggested in the comment letter and has modified section III(d) of the exemption accordingly. In all other respects, the proposed exemption is being adopted without change.

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 ERISA and 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 ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; 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) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations:

(i) The class exemption set forth herein is administratively feasible,

(ii) It is in the interests of plans and of their participants and beneficiaries, and

(iii) It is protective of the rights of the participants and beneficiaries of plans;

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(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The class exemption is supplemental to, and not in derogation of, any other provisions of ERISA and 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.

Exemption

Accordingly, the following class exemption is hereby granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I. Definition of Customer Notes. For purposes of this exemption, a customer note is a two-party instrument, executed along with a security agreement for tangible personal property, which is accepted in connection with, and in the normal course of, an employer's primary business activity as a seller of such property. A two-party instrument is a promissory instrument used in connection with the extension of credit in which one party (the maker) promises to pay a second party (the payee) a sum of money.

Section II. Transactions Covered. Effective July 1, 1984, if the conditions of section III of this exemption are satisfied, the prohibitions of sections 406(a), 406(b) (1) and (2) and 407(a) of ERISA and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the acquisition from an employer with respect to a plan and holding by the plan of customer notes (which, pursuant to section III(d), are guaranteed by the employer), or the repurchase of those notes by the employer.

Section III. Conditions. The following conditions must be met in the case of each plan which engages in covered transactions in reliance on the exemption:

(a) The transaction is on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be.

(b) Effective with respect to customer notes sold after May 3, 1985—

(1) Prior to the consummation of a transaction described in section II of this exemption, the transaction is approved on behalf of the plan by a fiduciary who is independent of the employer, upon a determination made by such fiduciary that the (other) conditions of this exemption will be satisfied. The independent fiduciary shall acknowledge his or her plan fiduciary status in writing with respect to the transaction. For purposes of this paragraph, a person is independent of an employer even though he or she was selected by the employer (or by a person with an interest in the employer) if he or she has no other interest in the transaction for which an exemption is sought that might affect his or her best judgment as a fiduciary;

(2) The plan's continuing rights under the terms and conditions of the acquired customer note(s) and under this exemption shall be monitored and enforced on behalf of the plan by the same or another plan fiduciary who is independent of the employer and who has acknowledged his or her fiduciary status and liability as described in paragraph (b)(1) of this section. The independent fiduciary shall be

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responsible for taking all appropriate actions necessary to protect the plan's rights with regard to the safety and collection of the notes purchased by the plan. These actions shall include, but not be limited to, ascertaining that payments are received timely, diligently pursuing the receipt of delinquent payments and enforcing the employer's guarantee to repurchase delinquent notes, with accrued interest, as described in paragraph (d) of this section.

(c) The acquisition of a customer note from the employer shall not cause a plan to hold immediately following the acquisition (i) more than 50 percent of the current value (as defined in section 3(26) of ERISA) of plan assets in customer notes of the employer or (ii) more than 10 percent of the current value of plan assets in the notes of any one customer.

(d) The employer guarantees in writing the immediate repayment of the outstanding balance of the notes and accrued interest in the event the note is more than 60 days in arrears or if other events occur that, in the opinion of the independent fiduciary referred to in paragraph (b) of this section, impair the safety of the note as a plan investment. The independent fiduciary may at his or her discretion grant an additional 30-day extension before repurchase of the note by the employer is necessary upon a petition by the employer, if the fiduciary determines, after consultation with the employer, that such an extension is in the best interests of the participants and beneficiaries of the plan. The other events (of impairment) referred to above include, but are not limited to, the following:

(1) The obligor on the note fails to comply with any terms or conditions of the note.

(2) The obligor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors or a liquidating agent, offers a composition or extension to creditors or make a bulk sale.

(3) Any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation or dissolution is begun by or against the obligor.

(4) A receiver of any property of the obligor is appointed under any jurisdiction at law or in equity.

(5) The obligor fails to take proper care of or abandons the property being financed by the note.

(e) The plan receives adequate security for the note. For purposes of this exemption, the term adequate security means that the note is secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security is such that it may reasonably be anticipated that loss of principal or interest will not result. In no event shall adequate security mean an interest in intangible personal property, such as, but not limited to, accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

(f) Insurance against loss or damage to the collateral from fire or other hazards will be procured and maintained by the obligor until the note is repaid or repurchased by the employer, and the proceeds from such insurance will be assigned to the plan.

(g) Repayment must be provided for in the following manner:

(1) Where the note is secured by heavy equipment, the term shall in no event exceed 60 months. For purposes of this exemption, heavy equipment shall include machinery sold by equipment distributors such as, but not limited to, earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications, but shall not include such equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be expected to be resold in the ordinary

course of the equipment distributor's business.

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(2) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term shall in no event exceed 48 months. For purposes of this exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation.

(3) Where the note is secured by tangible personal property other than heavy equipment or motor vehicles described in paragraph (g) (1) and (2) of this section, the term shall in no event exceed 36 months.

(h) All records, information and data required to be maintained which relates to plan investments in customer notes covered by this exemption shall be unconditionally available at their customary location for examination during normal business hours by:

(1) The Department of Labor,

(2) The Internal Revenue Service,

(3) Plan participants and beneficiaries, or

(4) Any duly authorized employee or representative of a person described in subparagraph (1) through (3) above.

Signed at Washington, D.C., this 28th day of March 1985.

Alan D. Lebowitz,

Acting Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 85-7901 Filed 4-2-85; 8:45 am]

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CATALINA ENTERPRISES, INC. PENSION TRUST BALANCE SHEE

	12-31-84	12-31-85
CURRENT & FIXED ASSETS:		
Cash - Md. Nat'l	166.22	10,264.28
- C.D.	0.00	50,058.38
- in transit	0.00	157,041.47
Accounts Receivable	574,024.75	120,264.97
Due from Crown	158,758.44	259,213.10
Tax Escrow & Security Deposits	12,386.48	19,843.34
Notes Receivable, Participant	200,000.00	205,000.00
2nd Mortgage - MR	0.00	75,000.00
Security Deposit - Bond	8,000.28	3,350.00
Deferred Commission Expense	0.00	0.00
Secured Note Receivable	0.00	0.00
Contributions Receivable	54,322.46	61,721.96
Rent Receivable	0.00	0.00
TOTAL CURRENT ASSETS	1,007,658.63	961,957.50
R.E. - Land	63,491.80	63,491.80
R.E. - Buildings	241,075.20	241,075.20
R.E. - Improvements	11,679.21	11,679.21
R.E. - Change in Value	655,821.48	698,821.48
Less Accumulated Depreciation	(86,067.69)	(68,067.69)
BOOK VALUE OF FIXED ASSETS	884,000.00	927,000.00
TOTAL CURRENT & FIXED ASSETS	1,891,658.63	1,888,957.50
LIABILITIES & NET WORTH		
CURRENT LIABILITIES:		
Federal Taxes Payable	42,745.00	32,717.00
Note Payable, P/S Plan	20,500.00	20,500.00
1st Mortgage	77,534.88	57,069.24
2nd Mortgage	100,000.00	0.00
3rd Mortgage	200,000.00	195,000.00
Notes Payable, Md. Nat'l	57,775.01	0.00
Miscellaneous Payables	4,563.98	2,320.90
Reserve due Crown	0.00	0.00
Security Deposits	12,964.27	14,493.75
TOTAL CURRENT LIABILITIES	516,083.14	322,100.89
DEFERRED INCOME:		
Unearned Income -- Instal. Sls	81,357.94	24,354.13
TOTAL DEFERRED INCOME	81,357.94	24,354.13
NET WORTH:		
Participants' Interest	1,294,217.55	1,542,502.48
TOTAL NET WORTH	1,294,217.55	1,542,502.48
TOTAL LIABILITIES & NET WORTH	1,891,658.63	1,888,957.50

Richard Shotan — KA — 7/29

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(11) Interest Exp

		Business Investment Interest Limitation
[redacted]		
Mortgage - Patterson	120 - ✓	-
1st Mort - ✓	3869.49) K	-
✓ - Dunsians	13368.16)	-
Points - Settlement Sheet - Dunsians	1428 - ✓	-
Increase in principal - Dunsians	- (?)	< CAN WE DEDUCT ANYTHING HERE? -
2nd Mort - Dunsians	4108.39 K	- no
Personal loan for Pension Plan	11,030.86)	-
✓ ✓ from Chemical	1,719 -)	-
Dunsians ✓ - -	25781 - ✓	25781 -
personal loan - Gerri Shafer	2599.41 ✓	(interest on old refinancing) -
Interest property Taxes	23.74)	-
✓	23.74)	-
	16.19	-
Master Card	311.10 ✓	-
	64,399.08	25781
	+1836 gain. POC ✓	

other clients - Schedule

(12) Contributions - See Schedule

(13) Misc -

Wall St Journal $185 -

Value Line 37 -

HARVEY M. NEWMAN, CPA
GERALD L. GRABUSH, CPA
BARRY B. BONDROFF, CPA
PHILIP I. MATZ, CPA
NORMAN N. POLONSKY, CPA
KENNETH E. LARASH, CPA
ALLEN M. SCHIFF, CPA

Grabush, Newman & Co., P.A.
Certified Public Accountants

February 20, 1987

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights
Baltimore, Maryland 21207

Dear Dick:

It has come to our attention, during the preparation of you corporation and individual income tax returns for 1985, that your individual income tax return, Form 1040 should be amended for the year ended December 31, 1984.

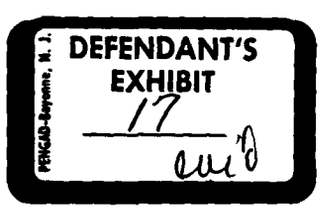
The amendment would be in the form of additional income of approximately $150,000 which is the amount that was drawn out of the pension in 1984, in the form of loans, that was in excess of the allowable loan amount of $50,000. The changing of the character of these items from loans to withdraws and consequently income to you, would also effect the interest deduction claimed that year.

If you have any questions on this letter, or want us to proceed with making the amendment as noted, please call me.

Very truly yours,

Kenneth E. Larash

KEL/njj



(26)

November 7, 1986

Mr. Richard Shofer
c/o Catalina Enterprises
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

We covered so much in our meeting of November 4 regarding the affects of the new tax act on your personal, corporation and pension position that I thought I would use this letter to summarize the new tax laws you will be operating under.

1. Installments sales - Effective for all sales after February 28, 1986 the deferred gain will be recognized in your income faster than normal based on a ratio of total debt divided by total assets mutiplied by total installment sales receivables for that period.

2. Allowance for doubtful accounts - The allowances are being phased out effective January 1, 1987 by taking the balance in the allowance account as of that date and recognizing 25% of it in income over the next four years. In addition to that for 1987 and future years you will have to switch to the direct write-off method.

3. Real Estate Rental Losses - Although the interest expense regarding the first and second mortgages on your two condos are deductible on Schedule E as a rental expense, the actual loss on Schedule E that is carried forward to page 1 of your 1040 will be limited, and it is our conclusion that for 1987 and future years the loss allowable to you will be zero.

4. Interest expense deductible as an itemized deduction - Any interest that you pay for financing the purchase of personal items will be limited in future years. The deduction will be limited to a percentage of your total personal interest expense as follows: 1987 65%, 1988 40%, 1989 20%, 1990 10%, 1991 0%. The interest we consider investment or business interest is limited to the first $25,000 to be deductible, however, that has the same phase out period and same percentages as above.

5. Home Mortgage Interest - The interest on your home mortgage will be fully deductible on your individual as long as the total mortgage does not exceed your basis in the property. Return

6. Borrowing from Pension Plan - It is our conclusion that you can only borrow from your Pension Plan to the extent of the voluntary contributions plus any additional $50,000. These loans need to be draw up in such a way that they

366-6700

~~will be~~ paid back in a five year period. Loans taken out in excess of that will be considered income on your personal return at the date the money has been withdrawn. ~~and~~ In order to ~~lower~~ lessen the effect of the disallowed interest expense on your personal return, we have suggested that you show the loans against your voluntary account as withdrawals of the voluntary account.

7. Prohibited Transactions with the Pension Plan - We believe that due to the late payment of contributions and the accumulation of bad debts that have not been reimbursed by Crown that these items shown as receivable on the Pension Plan have to be disclosed separately on your Form 5500 which is prepared by Stu Hack.

Insert 3

8. October 15 Deadline for filing Form 5500 for the Pension Plan - When the Form 5500 is not filed by October 15 you are technically exposing the Pension Plan to a late filing penalty of $25 a day for every day it is late after October 15.

9. Taxes Due in Future Years on Form 990T - Since we are again contemplating having taxable transactions due to acquisition indebtness in the Pension Plan the Internal Revenue Service now requires that estimate payments be made each quarter to cover the tax instead of making one payment as of when the tax return is due.

Insert 4

The above was just intended as a brief summary of the many things we discussed during our meeting. If you have any questions on the above, please give me a call.

Very truly yours,

Kenneth E. Larash

KEL/ss

10. You are going to sell prior to December 31, 1986 part of your stock back to Catalina Enterprises Inc. You will sell back to the company stock which you originally paid $270,000 for at a price of $342,000. You will then use the $342,000 to reduce your loan balance to Catalina Enterprises Inc.

Insert 4

On November 5, 1986 you called me and asked my opinion of the following transactions.

(1.) You will go to the bank and borrow $500,000 and secure this loan with your common stock.

(2) You will purchase $500,000 of preferred stock from the company which will pay 10 percent per year.

(3) The company will use the $500,000 to pay off loans to the bank.

(4) You will be able to deduct the interest on the loan to the bank because you will have dividend income.

This plan will not work. Since the company does not have any accumulated retained earnings it can not pay dividends, Therefore, the interest on the loan from the bank would be non deductable.

Although the changes in the installement sales provisions are going to create additional income to the corporation, this is not the end of the world. However, you do have problems that could cause a major financial crisis. These are the late due 5500's, past due individual income tax returns, and prohibited transactions with the pension plan. It is these problems that need your immediate attention if you expect to stay in business and out of jail.

I feel that it is imperative that you take the following steps immediately

(A). File all late Form 5500's (see #8)

(B) File your 1965 individual income tax return

(C) Sell common stock to the corporation and make a payment on your loan to the corporation (see #10)

(D.) Sell your condominiums pay off the $75,000 second mortgage to the pension plan and use any proceeds to make a payment on your loan to the corporation.

(E) Sell your land on Park Heights Avenue and use the proceeds to make a payment on your loan to the corporation

(F) Have the corporation take the money it receives from #4 and #5 above make a payment on the money it owes the pension plan

MEMO TO : SFJ

FROM : EJK

DATE : JULY 12, 1988

RE : ATTORNEY THOMAS BOWDEN

Susan, I got a call on July 1 from Tom Bowden from I believe Baltimore.

He has a malpractice action against Stewart Hack & Company.

Apparently, Hack advised a client of theirs that he could withdraw his voluntary contribution account.

Allegedly, Hack did not give any tax advice, or if he did he gave the wrong tax advice. I think it was probably the former.

In any event, the individual took out the money and assumed that it was not taxable. This is somewhat ludicrous, but I would have to see exactly what was said.

I would also have to see the documentation.

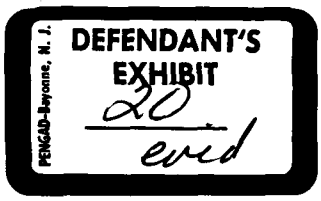
Right now, he is looking for us to be expert witnesses. He says he has a local lawyer who is a pension lawyer and contends that it is malpractice.

I told him I'd look at the case on an hourly basis and give him an analysis, both as to whether Hack gave the wrong advice or failed to give him advice and whether we think Hack has any responsibility to give him tax advice. I told him I didn't think that most of the actuaries I know would specifically give tax advice.

I also believe that it would be unusual for someone to assume that money would not be taxable.

In any event, we can take a look at it and see what the guy has.

I told him, specifically, that we could not spend any time preparing or assisting in depositions, etc., until the fall.



LAW OFFICES

Prusky & Giampetro, P. C.

A PROFESSIONAL CORPORATION

THE DULANEY CENTER

SUITE 108

849 FAIRMOUNT AVENUE

TOWSON, MD 21204

(301) 339 7466

BYRON R. PRUSKY
D.C., PA. AND N.J. BARS ONLY

NICHOLAS J. GIAMPETRO
N.J., PA. AND D.C. BARS ALSO

FRANS M. DE NIE
N.J., PA. AND D.C. BARS ALSO

DAVID M. TRALINS

PHILADELPHIA OFFICE
TWO PENN CENTER PLAZA
SUITE 1919
PHILADELPHIA, PA 19102
(215) 564-1991

WASHINGTON OFFICE
8201 CORPORATE DRIVE
SUITE 1250
LANDOVER, MD 20785
(202) 872-1818

PLEASE REPLY TO:

Towson

November 3, 1987

Mr. Richard Shofer
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Personal & Confidential

Dear Dick:

The purpose of this letter is to outline what we discussed in our conversation on October 30, 1987.

In 1984 it is my understanding that you withdrew $200,000 from your voluntary account. The treatment is as follows:

1. Approximate amount of $76,000 which represents your basis in the voluntary account. You can treat this withdrawal as a loan or as a withdrawal. If it is treated as a loan, then interest is due thereon. If it is not treated as a loan or if it is treated as a withdrawal it is not taxable to you.

2. The next $50,000 is treated as a loan; however, it is not taxable subject to the rules under the Tax Equity and Fiscal Responsibility Act of 1982.

3. The balance is a loan which will be considered as taxable to you.

Your withdrawal of $74,000 in 1985 is a loan with interest due thereon. This loan is treated as a taxable distribution.

It would further appear that you may withdraw, if the plan provides, part or all of your voluntary contributions, and the

earnings thereon at any time, even while you are an active participant in the plan (Alan, see Rev. Rul. 69-277). Hence, you may elect to treat any "loan" from your voluntary account as an actual distribution and terminate its loan status. However, to the extent that the loan was not taxable (i.e., the second $50,000), upon treating it as a withdrawal it would become taxable.

Should you have any further questions about our conversation, do not hesitate to contact me. It is always a pleasure to be of service to you.

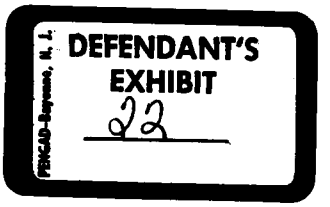
Sincerely yours,
PRUSKY & GIAMPETRO, P.C.

By: _____
Nicholas J. Giampetro

NJG/laf

cc: Alan Marvel, C.P.A.

bcc: Dennis



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TWO PENN CENTER PLAZA
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(215) 564-1991

WASHINGTON OFFICE
8201 CORPORATE DRIVE
SUITE 1250
LANDOVER, MD 20785
(202) 872-1818

PLEASE REPLY TO:

Towson

April 11, 1988

Thomas A. Bowden, Esquire
Blum, Yumkas, Mailman, Gutman & Denick, P.A.
1200 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201-2914

Personal & Confidential

Dear Mr. Bowden:

You have asked us to express an opinion regarding the contents of a letter dated August 9, 1984 by the Stuart Hack Company addressed to Richard Shofer and signed by Stuart Hack. The focus of this letter will be on the issue of borrowing money from a voluntary account and its attendant tax consequences.

The last paragraph of the Hack letter provides "the TEFRA provisions on the limits on loans apply only to employer accounts and specifically do not apply to employee voluntary accounts. It is my opinion, you can use your voluntary account as collateral for a loan or you can borrow up to 100% of your voluntary account."

Section 72(p) of the Internal Revenue Code provides that loans from qualified retirement plans are treated as distributions from the plan. That section further provides an exception to the general rule that if the amount of the loan is not greater than the lesser of $50,000 or one-half of the vested accrued benefit of the participant, the loan will not be treated as a distribution. This rule is applicable for loans made after August 13, 1982, but loans made after August 13, 1982 are aggregated with loans made on or before August 13, 1982. We are enclosing a copy of the applicable section of the Internal Revenue Code. The foregoing was the law in effect in 1984 and 1985, but has since been changed as a result of the Tax Reform Act of 1986; however, the changes are effective for transactions entered into after December 31, 1986.

Loans in excess of non-taxable limits are not prohibited, merely taxable and, hence, their taxability does not excuse lack of repayment. All taxable plan loans are subject to tax as other income. Repayment of taxable loan distributions establishes a basis equivalent to the amounts repaid so that when a regular plan distribution is made, these amounts will not be subject to taxation again.

The law treats loans in excess of the above limits as distributions, the tax treatment of which is dependent in part on whether a participant's interest in the plan included non-deductible employee contributions recoverable as non-taxable distributions. The Senate explanation to the bill which was enacted into law provides that loans will be deemed made first from non-deductible employee contributions to the extent available. Hence, loans from a voluntary account to the extent of the employee's contributions thereto would be non-taxable. Loans in excess of the employees contribution to the voluntary account are subject to the rule that to the extent the loan is greater than the lesser of $50,000 or one-half of the vested accrued benefit the loan will be treated as a taxable distribution.

It is our further opinion that a taxable distribution will result in a non-deductible excise tax in the amount of 10% of distributions occurring before the participant attains the age of 59 1/2.

Should you require further information, feel free to contact us.

Sincerely yours,
PRUSKY & GIAMPETRO, P.C.

Nicholas J. Giampetro

NJG/laf

April 21, 1988

Nicholas J. Giampetro, Esquire
Prusky & Giampetro, P.C.
The Dulaney Center
Suite 108
849 Fairmount Avenue
Towson, Maryland 21204

Re: Richard Shofer, Catalina Enterprises, Inc.
Catalina Enterprises, Inc. Pension Plan

Dear Mr. Giampetro:

Thank you for your letter dated April 11, 1988, concerning Stuart Hack's August 9, 1984 letter. It is clear from that letter that Hack's suggestion as to borrowing from Shofer's voluntary account had serious tax consequences that were not mentioned in Hack's letter.

Now, I would appreciate your expanding the scope of your letter to support other allegations set forth in the Complaint filed in the case. A copy of that Complaint is enclosed.

To the extent that you can do so, I would like you to opine as to the following:

1. Whether Hack's August 9, 1984, advice was correct with regard to using voluntary accounts as collateral;

2. Whether following Hack's advice with regard to collateralizing a voluntary account would have had any tax consequences;

3. Whether following Hack's advice with regard to collateralizing a voluntary account would have been illegal, and

4. Whether the omission in Hack's letter of any mention of tax consequences by either collateralizing or borrowing from voluntary accounts constituted a failure to observe the standard of care of a reasonably prudent and competent actuary and pension consultant.

I look forward to your response to these questions at your earliest convenience.

Very truly yours,

Thomas A. Bowden

TAB/aes
15WD13C:L60-L60.1

cc: Mr. Richard Shofer

LAW OFFICES

Prusky & Giampetro, P. C.

A PROFESSIONAL CORPORATION

THE DULANEY CENTER
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(215) 564-1991

WASHINGTON OFFICE
8201 CORPORATE DRIVE
SUITE 620
LANDOVER, MD 20785
(202) 872-1818

PLEASE REPLY TO:

Towson

June 16, 1988

Thomas A. Bowden, Esquire
Blum, Yumkas, Mailman, Gutman & Denick, P.A.
1200 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

Personal & Confidential

RE: Richard Shofer v. The Stuart Hack Company, et al.
Case No: 88102069/CL79993

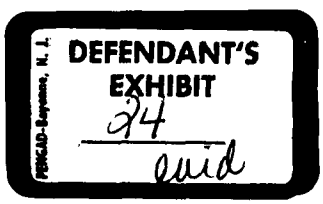
Dear Mr. Bowden:

The purpose of this letter is to respond to your letter dated April 21, 1988, whereby you asked me to clarify and expound upon certain facets of a letter received by Richard Shofer from Stuart Hack on August 9, 1984.

Pivotol to the answer to your questions contained in your letter of April 21, 1988 is that the Internal Revenue Code Section 72(p)(1)(B) states:

> (B) Assignments or Pledges. - If during any taxable year a participant or beneficiary assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.

Hence, loans and assignments or pledges are treated the same for purposes of determining whether said loan or assignment is a distribution under Section 72 of the Internal Revenue Code.



There does not appear to be any mention of the tax consequences of pledging or assigning amounts in a voluntary account to the extent that they exceed one's after-tax contribution. The advice contained in Mr. Hack's letter and the ommission from Mr. Hack's letter of the tax consequences of borrowing from the voluntary account in excess of one's after-tax employee contributions does not constitute an illegal act.

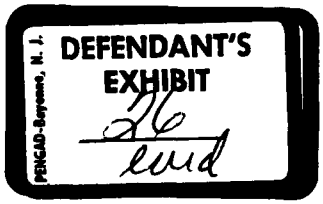
Should you desire further information, do not hesitate to contact us.

Sincerely yours,
PRUSKY & GIAMPETRO, P.C.

Nicholas J. Giampetro

NJG/laf

1501 West Mount Royal Avenue
Baltimore, Maryland 21217
(301) 669-8300
Washington D.C. 621-1933



August 14, 1980

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Ave.
Baltimore, MD 21207

Re: Catalina Enterprises, Inc.
Pension and Profit Sharing Plans
Forms 5500-C and Prohibited Transaction

Dear Mr. Shofer:

Enclosed you will find the annual reporting forms for both Pension and Profit Sharing Plans which must be filed with the Internal Revenue Service by 10/15/80. The 5500-C forms with their attachments should be filed according to the instruction sheet. As you file the form I would appreciate it, if you would return the postcard to us indicating the date you filed the form.

Since the pension plan borrowed $4,300 from the profit sharing plan in 1978, we believe this is a prohibited transaction and we have answered "yes"to question 21 (a) on page 3 of the 5500 form. Also, we have prepared an attachment to the 5500 form outlining the little information we have about the transaction. This attachment is required as a part of the filing.

You will also note that we have partially prepared a Return of Initial Excises Tax Related to Pension and Profit Sharing Plan (Form 5330.) Recently, we have noticed that both the Internal Revenue Service and the Department of Labor are taking a much more active role in reviewing plans to insure that they do not enter into any transactions that are prohibited under the law. Because of the stepped up enforcement taken by the government in this area, we think that it is advisable, in order to protect the plan, to advise all of our

clients to strictly follow the law concerning prohibited transactions and report and pay the tax on any transactions that we discover during the year. Thus, I would strongly suggest that you complete parts III, IV and VI of the Form 5330 and pay any tax that is due. We were unable to compute the tax because we do not have enough information on the transaction. Basically, the "amount involved in prohibited transaction" that must be filled in, in part III, item 13 column c., is not the amount of the loan, but is actually the greater of either the actual amount charged for the use of the money during the 1979 plan year. What this means is that the tax is computed on the interest the plan actually paid or should have paid if the fair market rate of interest was greater than actually paid by the plan. The tax is equal to 5% of the amount involved.

To give you an example, suppose the plan was to pay $800 interest on the loan during 1979. The tax would be 5% of $800 or $40.

You may wish to contact your accountant for additional information on how to compute the tax on this particular prohibited transaction.

I want you to understand that because of the stepped up enforcement action by the government, we think it is advisable that all plans strictly follow the law when it comes to prohibited transactions. Whether or not you actually pay the tax or file Form 5330, it is, of course, entirely up to you, but we do recommend that you comply with with the rules regarding prohibited transactions. For your own information, the excise tax of 5% is imposed each year until the prohibited transaction is entirely corrected, in this case meaning the loan is entirely paid off. Also, the Internal Revenue Service can give you a 90 day "correction period" in order to correct a transaction.

Once the I.R.S. formally notifies you that they are imposing the 90 day correction period, if the transaction is not corrected within that 90 day period then the Service has the right to impose an excise tax equal to 100% of the amount involved in the transaction. Finally, the Department of Labor can file suite against the plan fiduciaries requiring that the transaction be corrected. In short, the Internal Revenue Service can turn this loan into a 90 day demand note.

If you do decide to pay the excise tax and file Form 5330, I would appreciate it if you would send us a copy of the form as it is filed with the Internal Revenue Service.

Finally, we are not expressing any opinion on whether the 1973 interplan loan of $16,500 and the 1974 loan of $4,000 are prohibited transactions. They may not have been prohibited when entered into, but they may now be prohibited because of the lack of payments.

Very truly yours,

John W. Molino
Manager
Plan Administration

JWM/mr
Enclosures

cc: Harvey Newman, CPA

Amm & perm. at file.

CLIENT TELEPHONE CONTACT SHEET

DATE 8/3/84

TIME CALL STARTED ____________

CLIENT NAME Crown Motors (Castellini Enterprises)

PLAN: [X] PENSION [X] PROFIT SHARING [ ] ____________

INSURANCE: [ ] PENSION [ ] GROUP [ ] DISABILITY

[ ] MAJOR MEDICAL [ ] ____________

PARTY: [ ] CALLING

[ ] CALLED Dick Schafer

PHONE NO. ____________

DATE: ____________ [ ] 2D FOLLOW UP [ ] 3D FOLLOW UP

REASON ① Use vol. acct. as collateral for loan)
a. Principal only 2.
b. Are vol. accts protected from creditors? - prob. No.
② could he lim loans to vol. acct & amend to plan? - could be discriminatory.
③ 1 Per. loans be collateralized a vol. acct can be collateral.

Per B. Bannon:
1. Yes, no consent auth.
Must agree not to w/draw vol. accts
2.

TIME CALL FINISHED ____________

INITIALS [illegible]

DEFENDANT'S EXHIBIT 27 evid
PENGAD-Bayonne, N.J.

000800

CLIENT TELEPHONE CONTACT SHEET

DATE 8/1/84

TIME CALL STARTED _____

CLIENT NAME Cadillac Ord. (Carl Hubbs)

PLAN: ☐ PENSION ☐ PROFIT SHARING ☐ _____

INSURANCE: ☐ PENSION ☐ GROUP ☐ DISABILITY
☐ MAJOR MEDICAL ☐ _____

PARTY: ☐ CALLING
☐ CALLED Dick Shafer

PHONE NO. _____

DATE: _____ ☐ 2D FOLLOW UP ☐ 3D FOLLOW UP

REASON: ① Needs K for can borrow from Vol. acct. up to max for collateral up to 100% Vol. acct.
② Can borrow up to 50,000 from (1) but must be collateralized Vol. acct. Still be collateral.
③ Vol acct can be put up a collateral for loan from a bank.
④ Acct will continue paying in plan earnings.

TIME CALL FINISHED _____

INITIALS _____

DEFENDANT'S EXHIBIT 28 mid

PENGAD-Bayonne, N. J.

000740

THE STUART HACK COMPANY
Consultants & Actuaries
4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

Writer's Direct Dial No.

August 9, 1984

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Crown Motors
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Dick:

You questioned whether assets of your money purchase pension plan and profit sharing plans can be used as collateral for loans, whether you can borrow against these plans and whether there is any special treatment for your voluntary account under these plans.

First of all, let's distinguish between the voluntary account and the employer account. The employer account cannot be put up as collateral for a loan, and loans to participants against their employer account are limited to a total of $50,000 for all plans for up to a maximum of five years (for a longer period of time if used for the purchase or substantial improvement to a primary residence). Further, we would recommend that any loans against an employer account should be fully collateralized (this means collateral in addition to the value of the account itself).

There is an entirely different treatment for voluntary accounts. First, there is no limit on the amount that can be borrowed against the account or the length of time for which it can be outstanding. Also, the account, itself, can stand as collateral for the loan against the voluntary account. Further, the voluntary account can be put up as collateral for a loan from a bank or other source. The loan agreement will have to include a provision that you cannot withdraw money from your voluntary account, and thus dissapate the collateral, however.

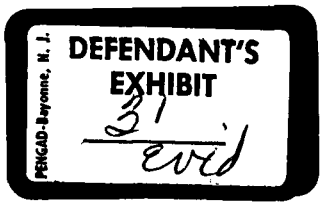
The law is pretty clear on the inability to use employer account values as collateral for a loan. There is no law on restrictions of using voluntary account money for collateral for a loan. The TEFRA provisions on the limits on loans apply only to employer accounts and specifically do not apply to employee voluntary accounts. In my opinion, you can use your voluntary account as collateral for a loan or you can borrow up to 100% of your voluntary account. The terms of the loan must be reasonable as to the interest rate and pay back period.

Cordially,

Stuart Hack

SH:mn

DEFENDANT'S EXHIBIT 24



Edward E. Burrows
Consulting Actuary
151 Tremont Street Suite 25-F
Boston, MA 02111-1123

Phone: 617/542-1023
Fax: 617/542-1034

RÉSUMÉ

Currently

Mr. Burrows is an independent consulting actuary active in all areas of employee benefits.

Besides providing direct employee benefit consulting and litigation support, Mr. Burrows is founder and serves as Manager of the Benefit Consultants' Consortium. Membership in the Consortium comprises small and midsized employee benefit consulting and actuarial firms. The Consortium furnishes research and training support to its member firms.

Previously

Mr. Burrows co-founded and served for its first 18 years as President of The Pentad Corporation, an independent consulting actuarial firm providing services related to pensions and other employee benefit plans.

Formal Education

A.B. 1954, The University of Michigan

Professional Credentials

Member, American Academy of Actuaries (The Academy)

Fellow, Conference of Consulting Actuaries

Member, American Society of Pension Actuaries (ASPA)

Enrolled Actuary under the Employee Retirement Income Security Act

Licensed Insurance Advisor for Life, Accident and Health, under Massachusetts Law

Employment History

1954-1960	The Travelers Insurance Company
1960-1962	The David C. Rothman Company
1962-1974	The Connell Company
1974-1993	The Pentad Corporation
1994-1995	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Other Activities

Past President, ASPA

Past Member, Actuarial Standards Board

Member, Academy Pension Committee

Member, Academy Social Insurance Committee

Member, Academy Pension Practice Council

Member (and founder), Inter Sector Discussion Group

Member (and Past Chairman), ASPA Government Affairs Committee

Past Member, ASPA National Retirement Income Policy Committee

Member, Pension Curriculum Advisory Board, Bentley College

Trustee, Quantitative Group of Mutual Funds

1995 Winner of the ASPA Harry T. Eidson Founder's Award

Has testified before congressional committees and regulatory agencies on employee benefit matters

Has lectured at Boston University, Bentley College, Colby College, the Federal Tax Institute, and meetings sponsored by various professional bodies

Has written extensively, with articles published in various professional journals

Recent assignments include on-site assistance in Poland related to establishment of employee retirement plans for privatized enterprises.

Richard A. Intner
117 Water Street, Suite 800
Baltimore, Maryland 21202
(410) 539-1303

CURRICULUM VITAE

Education

Undergraduate degrees in business administration from the Wharton School, University of Pennsylvania (1969) and in accounting from Adelphi University (1972).

Professional Licensing and Designations

Certified Public Accountant - State of New York, 1975
Certified Public Accountant - State of Maryland, 1976
Certified Insolvency and Reorganization Accountant, 1993
Certificate of Educational Achievement in Business Valuations, AICPA, 1994
Certified Valuation Analyst, 1994
Certified Fraud Examiner, 1995

Professional Affiliations

American Institute of Certified Public Accountants
Maryland Association of Certified Public Accountants
New York State Society of Certified Public Accountants
Association of Insolvency Accountants
National Association of Certified Valuation Analysts
Association of Certified Fraud Examiners
American Bankruptcy Institute
Baltimore Association of Tax Counsel
Baltimore Estate Planning Council

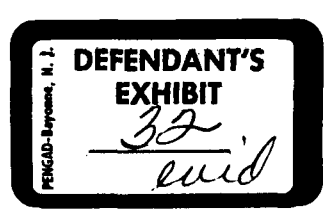
Professional Qualifications

President, Richard A. Intner, P.A., Certified Public Accountants, a personal service accounting firm founded in 1981 providing tax, financial consulting and management advisory services to a broad and diverse clientele.

President, Valuation & Litigation Support Service, Inc., a company founded in 1985 providing valuation services for all types of financial matters, including valuations of businesses and business interests, and determinations of cash flows, income levels, and various damages.

Expert witness qualified in federal bankruptcy and various state courts.

Discussion leader/lecturer for National Association of Certified Valuation Analysts accreditation program.



497A

TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Law and Explanation

PRICE: $10.00

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Act Provision Subject	Code Sec.	Effective Date	Act Sec.
		Pension Provisions	
Lower contribution & benefit limits for qualified plans	404, 415	Years ending after 7/1/82 for plans not in existence on 7/1/82; years beginning after 12/31/82 for plans in existence on 7/1/82*	235
Lower limits where individual is covered by both defined benefit plan & defined contribution plan	415	Same as above	235
Reduction of dollar limit for benefits commencing before age 62	415	Same as above	235
Suspension of cost of living adjustments	415	Adjustments made for years beginning after 12/31/82 and before 1/1/86	235
Loans from retirement plans	72	Generally applies to loans made after 8/13/82; existing loans renegotiated or renewed after that date treated as made on date of renegotiation or renewal*	236
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Repeal of special limitations on deduction for self-employed individuals and subchapter S corporations	401(j), 404(e), 1379	Years beginning after 12/31/83	238, 241
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(o) Special Rules for Distributions From Qualified Plans to Which Employee Made Deductible Contributions.—

* * *

(3) Amounts constructively received.—

(A) In general.—For purposes of this subsection, rules similar to the rules provided by *subsection (p)* shall apply.

* * *

(p) Loans Treated as Distributions.—For purposes of this section—

(1) Treatment as distributions.—

(A) Loans.—If during any taxable year a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan, such amount shall be treated as having been received by such individual as a distribution under such plan.

(B) Assignments or pledges.—If during any taxable year a participant or beneficiary assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.

(2) Exception for certain loans.—

(A) General rule.—Paragraph (1) shall not apply to any loan to the extent that such loan (when added to the outstanding balance of all other loans from such plan whether made on, before, or after August 13, 1982), does not exceed the lesser of—

(i) $50,000, or

(ii) ½ of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than $10,000).

(B) Requirement that loan be repayable within 5 years.—

(i) In general.—Subparagraph (A) shall not apply to any loan unless such loan, by its terms, is required to be repaid within 5 years.

(ii) Exception for home loans.—Clause (i) shall not apply to any loan used to acquire, construct, reconstruct, or substantially rehabilitate any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the participant or a member of the family (within the meaning of section 267(c)(4)) of the participant.

(C) Related employers and related plans.—For purposes of this paragraph—

(i) the rules of subsections (b), (c), and (m) of section 414 shall apply, and

(ii) all plans of an employer (determined after the application of such subsections) shall be treated as 1 plan.

(3) Qualified employer plan, etc.—For purposes of this subsection, the term "qualified employer plan" means any plan which was (or was determined to be) a qualified employer plan (as defined in section 219(e)(3) without regard to subparagraph (D) thereof). For purposes of this subsection, such term includes any government plan (as defined in section 219(e)(4)).

(4) Special rules for loans, etc., from certain contracts.—For purposes of this subsection, any amount received as a loan under a contract purchased under a qualified employer plan (and any assignment or pledge with respect to such a contract) shall be treated as a loan under such employer plan.

(q) 5-Percent Penalty for Premature Distributions From Annuity Contracts.—

(1) Imposition of penalty.—

(A) In general.—If any taxpayer receives any amount under an annuity contract, the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 5 percent of the portion of such amount includible in gross income which is properly allocable to any investment in the annuity contract made during the 10-year period ending on the date such amount was received by the taxpayer.

(B) Allocation on first-in, first-out basis.—For purposes of subparagraph (A), the amount includible in gross income shall be allocated to the earliest investment in

the contract with respect to which amounts have not been previously fully allocated under this paragraph.

(2) Subsection not to apply to certain distributions.—This subsection shall not apply to any distribution—

(A) made on or after the date on which the taxpayer attains age 59½,

(B) made to a beneficiary (or to the estate of an annuitant) on or after the death of an annuitant,

(C) attributable to the taxpayer's becoming disabled within the meaning of subsection (m)(7),

(D) which is one of a series of substantially equal periodic payments made for the life of a taxpayer or over a period extending for at least 60 months after the annuity starting date,

(E) from a plan, contract, account, trust, or annuity described in subsection (e)(5)(D), or

(F) allocable to investment in the contract before August 14, 1982.

(r) Cross Reference.—

For limitation on adjustments to basis of annuity contracts sold, see section 1021.

Amendment Note

Act Sec. 236(a) amended Code Sec. 72 by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) new subsection (p) to read as above.

Act Sec. 236(b)(1) amended Code Sec. 72 by striking out paragraphs (m)(4) and (m)(8). Prior to amendment, Code Sec. 72(m)(4) and (m)(8) read as follows:

"(4) Amounts constructively received.—

(A) Assignments or pledges.—If during any taxable year an owner-employee assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a trust described in section 401(a) which is exempt from tax under section 501(a), an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b) or any portion of the value of a contract purchased as part of a plan described in section 403(a), such portion shall be treated as having been received by such owner-employee as a distribution from such trust or as an amount received under the contract.

(B) Loans on contracts.—If during any taxable year, an owner-employee receives, directly or indirectly, any amount from any insurance company as a loan under a contract purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) or purchased as part of a plan described in section 403(a), and issued by such insurance company, such amount shall be treated as an amount received under the contract."

"(8) Loans to owner-employees.—If, during any taxable year, an owner-employee receives, directly or indirectly, any amount as a loan from a trust described in section 401(a) which is exempt from tax under section 501(a), such amount shall be treated as having been received by such owner-employee as a distribution from such trust."

Act Sec. 236(b)(2) amended Code Sec. 72(o)(3)(A) by striking out "subsection (m)(4) and (8)" and inserting in lieu thereof "subsection (p)".

The above amendments apply to loans, assignments, and pledges made after August 13, 1982. For purposes of the preceding sentence, the outstanding balance of any loan which is renegotiated, extended, renewed, or revised after such date shall be treated as an amount received as a loan on the date of such renegotiation, extension, renewal, or revision.

However, Act Sec. 236(c)(2) provides:

(2) Exception for certain loans used to repay outstanding obligations.—

(A) **In general.**—Any qualified refunding loan shall not be treated as a distribution by reason of the amendments made by this section to the extent such loan is repaid before August 14, 1983.

(B) **Qualified refunding loan.**—For purposes of subparagraph (A), the term "qualified refunding loan" means any loan made after August 13, 1982, and before August 14, 1983, to the extent such loan is used to make a required principal payment.

(C) **Required principal payment.**—For purposes of subparagraph (B), the term "required principal payment" means any principal repayment on a loan under the plan which was outstanding on August 13, 1982, if such repayment is required to be made after August 13, 1982, and before August 14, 1983.

Act Sec. 237(d)(1) amended Code Sec. 72(m)(5) by striking out "an owner-employee" the first place it appeared and inserting in lieu thereof "a key employee"; by striking out "while he was an owner-employee" and inserting in lieu thereof "while he was a key employee in a top-heavy plan"; and by striking out "an owner-employee" in clause (ii) and inserting in lieu thereof "a key employee".

Act Sec. 237(d)(2) amended Code Sec. 72(m)(5) by adding new subparagraph (C) at the end thereof to read as above.

Act Sec. 237(d)(3) amended paragraph (6) of Code Sec. 72(m) by striking out "except in

● ● *CCH Explanation*

number cards for use in filing quarterly returns. For a discussion on taxpayer identification numbers, see ¶ 5229.02 and following.

.015 Fiscal years.—Any time there is a change in rates the IRS issues new fiscal year return forms. The new forms enable fiscal year taxpayers with taxable years spanning the tax rate changeover date to properly compute their final tax under the old and the new rates.

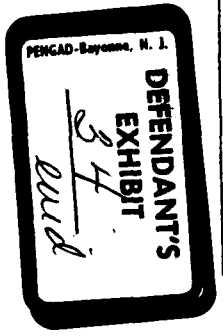
.017 Amended returns.—There is no statutory authority for filing amended returns. However, the acceptance of amended returns by the IRS is an established administration practice. It is by virtue of this practice that a taxpayer has the right to amend his original return on or before the last day prescribed for filing his original return. This rule is also supported by case law (see *Haggar Co.*, S.Ct., at .019, below, which held that an amended return declaring the amount of its capital stock was the "first return" for purposes of Section 215 of the National Industrial Recovery Act, and that the IRS could not refuse the amended return because it was filed prior to the due date of the original return).

Because an amended return is considered part of the taxpayer's return for purposes of computing a deficiency (see Reg. § 301.6211-1(a)), no interest or penalties will be charged against a taxpayer who files an amended return and pays additional tax on or before the filing date to correct an understatement of his tax liability on his original return. Also, any overpayment shown on the amended return will be credited or refunded in the same manner as an overpayment shown on an original return. The refund will be sent separately from any refund not yet received on an original return (IRS Pub. 17, Rev. November 1988).

If an amended return is filed after the due date, acceptance of it is discretionary with the IRS (see *J.E. Riley Investment Co.*, S.Ct., .019, below). If accepted, the amended return becomes part of the taxpayer's tax return for the year for purposes of computing a deficiency. However, additional tax shown on an amended return will be considered a deficiency for purposes of determining the penalties for failure to pay tax under Code Sec. 6653 (see Reg. § 301.6653-1(c)). As is the case with most discretionary administrative actions, the IRS may not abuse its discretion in refusing to allow an untimely amended return. For additional authority on this issue, see the cases at .019, below, and at ¶ 5316.10.

Because an amended return filed after the due date is not *the* return, it does not operate to start or extend the limitations period for assessment and collection. It is only the original return or an amended return filed on or before the due date that does this. A second return filed after the due date is merely an amendment or supplement to a return already in the files, and being effective by relation does not toll a limitation that has once begun to run (*Zellerbach Paper Co.*, SCt, 35-1 USTC ¶ 9003, 293 US 172).

Amended returns may also be used to make a claim for credit or refund of individual income taxes if the taxpayer originally filed a Form 1040, Form 1040A, or Form 1040EZ. Form 1040X (Amended U.S. Individual Income Tax Return) should be used. Claims for credit or refund of corporate income taxes should be made on Form 1120X (Amended U.S. Corporation Income Tax Return) where the corporation originally filed a Form 1120. See Reg. § 301.6402-3.



TX
TAX PRACTICE

STATEMENTS ON RESPONSIBILITIES IN TAX PRACTICE

These statements have been approved by at least two-thirds of the members of the Committee on Responsibilities in Tax Practice and the Federal Taxation Executive Committee by formal vote after examination of the subject matter. They have not been considered and acted upon by the Council of the Institute. These statements are not intended to be retroactive.

Statements on Reponsibilities in Tax Practice containing standards of responsibility which are more restrictive than those established by the Treasury Department or by the Institute's Code of Professional Ethics depend for their authority on the general acceptability of the opinions expressed.

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* Withdrawn May, 1982, by the Executive Committee of the Federal Tax Division.

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TX Section 161

Knowledge of Error: Return Preparation

Issue date, unless otherwise indicated: August, 1970

I. Introduction

.01 This Statement considers the responsibility of a certified public accountant when he learns of an error in a client's previously filed Federal tax return, or of the failure of a client to file a required Federal tax return. As used herein, the term "error" includes an omission.

.02 For purposes of this Statement, the client will not be considered to have made an error in cases where there is reasonable support for the position taken by the client or there was reasonable support at the time the return was filed.

.03 This Statement applies whether or not the CPA prepared the return which contains the error.

II. Statement

.04 A. A CPA shall advise his client promptly upon learning of an error in a previously filed return, or upon learning of a client's failure to file a required return. His advice should include a recommendation of the measures to be taken. Such advice may be given orally. The CPA is neither obligated to inform the Internal Revenue Service nor may he do so without his client's permission.

B. If the CPA is requested to prepare the current year's return and the client has not taken appropriate action to rectify an error in a prior year's return that has resulted or may result in a material understatement of tax liability, the CPA should consider whether to proceed with the preparation of the current year's return. If he does prepare such return, the CPA should take reasonable steps to assure himself that the error is not repeated. Furthermore, inconsistent double deductions, carryovers and similar items associated with the uncorrected prior error should not be allowed to reduce the tax liability for the current year except as specifically permitted by the Internal Revenue Code, Regulations, Internal Revenue Service pronouncements and court decisions.

C. Paragraph B is concerned only with errors that have resulted or may result in a material understatement of the tax liability. Moreover, that paragraph does not apply where a method of accounting is continued under circumstances believed to require the permission of the Commissioner of Internal Revenue to effect a change in the manner of reporting the item involved.

III. Explanation

.05 A. *Background*

Administrative regulations of the Treasury Department (Circular No. 230) prescribe certain rules applicable to practice before the Internal Revenue Service. Section 10.21 of these regulations deals directly with the subject matter of this Statement and presently provides that:

> Each attorney, certified public accountant or enrolled agent who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit or other paper which the client is required by law to execute in connection with such matter, shall advise the client promptly of the fact of such noncompliance, error or omission.

Other sections of these rules specifically forbid such actions as becoming a party to the giving of false or misleading information, participating in an attempt to evade a Federal tax, or failing to exercise due diligence in determining the correctness of representations made to the Internal Revenue Service.

Section 1.451-1(a) of the Income Tax Regulations provides that:

> If a taxpayer ascertains that an item should have been included in gross income in a prior taxable year, he should, if within the period of limitation, file an amended return and pay any additional tax due. Similarly, if a taxpayer ascertains that an item was improperly included in gross income in a prior taxable year, he should, if within the period of limitation, file claim for credit or refund of any overpayment of tax arising therefrom.

Section 1.461-1(a)(3)(i) of the Income Tax Regulations provides that:

> Each year's return should be complete in itself, and taxpayers shall ascertain the facts necessary to make a correct return. The expenses, liabilities or loss of one year cannot be used to reduce the income of a subsequent year. A taxpayer may not take advantage in a return for a subsequent year of his failure to claim deductions in a prior taxable year in which such deductions should have been properly taken under his method of accounting. If a taxpayer ascertains that a deduction should have been claimed in a prior taxable year, he should, if within the period of limitation, file a claim for credit or refund of any overpayment of tax arising therefrom. Similarly, if a taxpayer ascertains that a deduction was improperly claimed in a prior taxable year, he should, if within the period of limitation, file an amended return and pay any additional tax due. However, in a going business there are certain overlapping deductions. If these overlapping items do not materially distort income, they may be included in the years in which the taxpayer consistently takes them into account.

A member shall not knowingly misrepresent facts, and when engaged in the practice of public accounting, including the rendering of tax and management advisory services, shall not subordinate his judgment to others. In tax practice, a member may resolve doubt in favor of his client as long as there is reasonable support for his position. [As amended June 1, 1975.]

B. *Discussion*

1. *Responsibilities Upon Discovery of Error*—While performing services for a client, a CPA may learn of an error in a previously filed return or may learn that the client failed to file a required return. Whether or not the error resulted in an overstatement or understatement of the tax, the CPA's responsibility is to advise his client of the error and of the measures to be taken. If the error resulted in a material understatement of the tax liability, the most appropriate remedial measure ordinarily will be the filing of an amended return. If the error resulted in a material overstatement of tax the most appropriate remedial measure ordinarily will be the filing of a claim for refund. Where a return was not filed, the remedy ordinarily will be the filing of an original return. Although his advice may be given orally, the CPA may prefer to advise his client in writing.

It is the client's responsibility to decide whether to correct the error. The CPA is neither obligated to inform the Internal Revenue Service nor may he do so without his client's permission. In appropriate cases, particularly where it appears that the Internal Revenue Service might assert the charge of fraud, the client should be advised to consult his attorney before taking any action.

Where the error is discovered during an engagement which does not involve tax return preparation or representation of the client in an administrative proceeding before the Internal Revenue Service, the responsibility of the CPA is to advise the client of the existence of the error and to recommend that the matter be taken up with the client's tax adviser.

2. *Course of Action if the Client Does Not Correct the Error*—In the event that the client does not correct an error which has resulted or may result in a material understatement of tax, the CPA as a matter of sound professional practice should consider the implications of this refusal on his future relationships with the client.

Because the Federal tax system is one of self-assessment, the primary responsibility for a fair and accurate determination of tax liability rests upon the taxpayer. In continuing to serve a client who does not correct a material error, the CPA will want to satisfy himself that his doing so is compatible with his profession's service to other taxpayers who assess themselves fairly and accurately.

The concept of materiality is not a simple one and generally it has a different connotation in tax practice than in the determination of income for financial reporting purposes. Whether an error is material should be left to the judgment of the individual CPA.

3. *Preparation of a Subsequent Year's Return*—If the CPA concludes that he can continue his professional relationships with the client and is requested

to prepare a tax return for a year subsequent to that in which the error was committed, he should take all reasonable steps to assure himself that the error is not repeated. Furthermore, inconsistent double deductions, carryovers and similar items associated with the uncorrected prior error should not be allowed to reduce the tax liability for the current year except as specifically permitted by the Internal Revenue Code, Regulations, Internal Revenue Service pronouncements and court decisions.

Although taxable income should be determined on the basis of separate taxable years, there are instances in which a client desires to compensate in the current tax return for a prior year's understatement. This course of action is frequently motivated by the belief that the filing of an amended return will add to the cost and inconvenience of determining the ultimate tax liability over and above the tax deficiencies which might be determined. While there may be circumstances where this practice may be followed, it is not recommended.

Moreover, such a course of action raises the question of disclosure. It can be argued that such a return is not "true, correct and complete" within the meaning of the preparer's declaration, since it overstates the taxpayer's tax liability for the particular year. On the other hand, it can be asserted that the intent of the jurat is not contravened in cases of overpayment. While it is preferred and recommended that disclosure be made, this is not a requirement provided the prior error appears to have been made inadvertently and that the tax effects of this approach are substantially the same as would follow from the filing of an amended return.

→*The next page is 18,263.*←

What Obligations Do Taxpayers and Preparers Have to Correct Errors on Returns?

The Regulations and cases suggest amended returns "should" be filed and, in any event, later returns must accurately reflect the correct tax.

BY SHELDON D. POLLACK

Inevitably, taxpayers make errors in preparing their returns, which are reflected in the tax liability shown. Errors may consist of mathematical miscomputations, incorrect assumptions of facts, or improper characterization of certain items (*e.g.,* whether an item is properly includable or deductible). Such "good faith" errors may lead a taxpayer to incorrectly report income and deductions, resulting in an erroneous determination of tax due. At a later date (*i.e.,* after the return is filed and after the due date), the taxpayer or the tax advisor may discover the error.

Two important issues arise as a result of the discovery of an error on a previously filed return. First, must the taxpayer amend the original return to correctly restate income? Second, if the taxpayer does not amend the return, how is the taxpayer's reporting position determined in subsequent years when relying on items that reflect the prior error?

Must the Return Be Amended?

In determining whether a taxpayer should correct a prior year's return, the annual accounting concept must first be considered. Taxpayers are required to compute taxable income (or net losses) and file returns on a taxable year basis.[1]

It is well established that the only year in which to correct a factual error is the year of the original return. Furthermore, as is discussed below, it is possible that none of the established general principles that would permit a compensating correction in a different tax year (*e.g.,* the tax benefit rule or other equitable principles) will apply to prevent a double tax benefit.[2]

No requirement to amend. Although the Code and Regulations explain when a taxpayer is permitted to file an amended return, there is no provision requiring the filing of such a return. Reg. 1.451-1(a) states that if a taxpayer ascertains that an item should have been included in gross income in a prior taxable year, the taxpayer *should,* if within the period of limitation, file an amended return and pay any additional tax due. Similarly, under Reg. 1.461-1(a)(3)(i), if a deduction was improperly claimed in a prior taxable year, the taxpayer *should,* if within the period of limitation, file an amended return and pay any additional tax due. The use of "should," rather than "shall" or "must," indicates that it is probably advisable to file an amended return, but it is not mandatory.[3]

In *Badaracco, Sr.,* 464 U.S. 386 (1984), the Supreme Court held that the filing of an amended return does not start the running of the three-year statute of limitations if the original return was fraudulent. The Court noted that although Regs. 301.6211-1(a), 301.6402-3(a), 1.451-1(a), and 1.461-1(a)(3)(i) refer to an amended return, none of them requires the filing of such a return.[4]

Professional responsibilities. Since the Code, the Regulations, and the Supreme Court (in *Badaracco*) all suggest that a taxpayer *should* file such a return, a tax advisor must advise a client of this if an error on a filed return is later discovered. Section 10.21 of Treasury Circular 230 states that the advisor is required to tell a client that he or she did not properly file a return and that an amended return should be filed for the year at issue.[5] However, the advisor is not required to tell the client that there is a *duty* to amend the original return, and the advisor has no duty *per se* to withdraw from representation if the client fails to file an amended return.

ABA provisions. Formal Opinion 85-352 (1985) of the ABA Ethics Committee (Opinion) discusses a lawyer's responsibility in advising a taxpayer with respect to reporting a position on a return.[6] The Opinion states that with regard to the preparation of returns, an attorney has a duty not to deliberately mislead the Service, either by misstatements, silence, or by permitting a client to mislead. Consequently, to the extent an attorney advises a client as to the proper method of reporting a posi-

SHELDON D. POLLACK is an associate with the law firm of Ballard, Spahr, Andrews & Ingersoll in Philadelphia. He thanks Andrew J. Dubroff for his significant contributions to this article.

tion for the tax year at issue, the attorney may not deliberately mislead the Service or permit the client to do so.

In addition, tax advisors are subject to penalties under Section 6701 if they knowingly aid and abet a client in understating tax liability for subsequent years by using figures known to be incorrect (because they are derived from the incorrect income previously reported). Amending the return is the most conservative approach and is least likely to result in the Service charging the taxpayer with civil or criminal penalties for being deliberately misleading as to the error. Assuming a client has been advised regarding the obligation to file an amended return and has made an informed decision not to amend, subsequent returns also must not mislead the Service, through either misstatement or silence. Therefore, disclosure of calculations that use items from the erroneous prior return is strongly advised.

The Opinion also addresses the issue of an attorney's responsibility in advising the taxpayer with respect to a reporting position on a tax return, specifically as to the applicable standard for supporting that reporting position. The advice must be based on the attorney's "good faith belief" that there is a realistic possibility of success in litigating a challenge to the decision *not to file* an amended return. Because there is no legal duty to file an amended return, an attorney who so advises a client would appear to fully satisfy the requirements of the Opinion.[7]

Nevertheless, the tax advisor is often placed in a tenuous ethical position in which difficult questions arise: Must the advisor investigate the facts and circumstances surrounding a purported "good faith" error committed by a client? How strong a position must an advisor take in advising a client that an amended return should be filed (knowing that as a practical matter, a particular client will not amend a return absent a legal duty to do so)? Thus, the advisor's professional obligations may counteract the general conclusion that there is no statutory duty to file an amended return.

The Current Year's Return

If errors were made and the taxpayer chooses not to file an amended return, the income shown on the original return is erroneous and understated (even if it was filed in good faith and was based on all facts known at the time of filing). Generally, taxpayers cannot adjust income for any subsequent year to rectify or compensate for an understatement of adjusted gross income (and related tax liability) on a prior unamended return. The taxpayer cannot allocate taxable income (or deductible expenses) to any period other than the proper accounting period, regardless of whether the taxpayer or the Government would benefit from the improper allocation.[8]

Indeed, an effort by the taxpayer to compensate for any incorrect and insufficient determination of one year's tax liability by allocating the taxable income to another year might be construed by the Service as an attempt to *conceal* the previous erroneous understatement. Therefore, subsequent returns must be accurately and correctly filed, leaving the Service to assess a deficiency for the year of the error. If the statute of limitations has already run for that year, it may be too late to correct the error, regardless of whether the taxpayer or the Government was adversely affected by it.

Correcting erroneous information. Even if an amended return is not filed for a prior year, the current and subsequent years' returns must accurately reflect the taxpayer's income and deductions for the current accounting period. Thus, the "correct" and accurate reporting position must be determined using the facts and circumstances that are now known to be true.

Basis. An example of a prior error that can be reflected on a current return involves S corporation stock or a partnership interest. The taxpayer's basis in the stock or the interest reflects prior allocations of income from the S corporation or partnership. If the taxpayer previously made an error in understating income from the S corporation or partnership, should the taxpayer's basis for the current year reflect the income that was previously erroneously reported, or should it reflect the correct income (*i.e.*, the income that should have been reported)?

The problem of determining basis will arise only where a basis calculation is required, such as where losses allocated to the shareholder or partner are subject to a limitation determined by the amount of basis. The taxpayer's basis will have to be calculated to determine whether allocable losses can be deducted by the taxpayer for that year. A basis determination also will be needed if the taxpayer sells the stock or partnership interest, to determine gain or loss on the sale. However, in the absence of one of these events, basis is not an item that must be currently disclosed on a return.

A very different result will occur

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[1] See Reg. 1.441-1(a) (each taxable year is a separate unit for tax accounting purposes). See also Rev. Rul. 80-58, 1980-1 CB 181.

[2] But see Sections 1311 through 1314 (mitigation provisions); Rice, "When and How Will the Courts Apply the Mitigation Provisions?," 69 JTAX 106 (August 1989).

[3] See Wolfman, *Ethical Problems in Federal Tax Practice* 53-54 (Bobbs-Merrill, 2d ed., 1985); Harris, "On Requiring the Correction of Error Under the Federal Tax Law," 42 Tax Lawyer 515 (1989), at 517; Ronan, "Do Clients Have a Duty to File Amended Tax Returns?," 33 Practical Lawyer 25 (1987), at 26-27. See also "An Analysis of the Status of Amended Tax Returns and the Effects of Their Use," 23 Houston L. Rev. 769 (1986); Bittker, *Federal Taxation of Income, Estates and Gifts*, ¶ 111.1.7 (Warren, Gorham & Lamont, 1981).

[4] See also Broadhead, TCM 1955-328, *aff'd* 254 F.2d 169 (CA-5, 1958) (no Regulation requires the filing of amended returns); GCM 35738, 3/21/74 (there is no statutory authority for filing or accepting amended returns). But see Unvert, 72 TC 807 (1979), *aff'd* 656 F.2d 483 (CA-9, 1981) (preceding Badarraco, 464 U.S. 386 (1984), and indicating that there may be an obligation to file amended returns).

The ABA Section of Taxation currently has before it a proposal, drafted by Frederic G. Corneel, that would change current law to require that a taxpayer must amend a prior return where the taxpayer becomes aware of a "material error or omission."

[5] 31 CFR Section 10.21 (if an advisor knows that a client has not complied with the revenue laws of the U.S. or has made an error in or omission from any return, document, affidavit, or other paper that the client is required to execute, the advisor is to advise the client promptly of such fact). See also 31 CFR Section 10.51.

where basis is adjusted under Section 1016. For example, the adjusted basis of a building is determined under Section 1016(b) by reducing original basis for depreciation that was "allowed," but not by less than the depreciation that was actually "allowable."[9] When calculating the current year's depreciation, an error in computing an earlier year's deduction must be disregarded (and the correct figure used) if it resulted in the understatement of an allowable depreciation deduction. However, the erroneous deduction must be used in the current calculation if it overstated the deduction and was "allowed."

Other reflected items. Other current items that might reflect the taxpayer's previously understated income are carryovers of an NOL or charitable deduction. If the taxpayer carries over these or similar items to the current return, the carryover must be recomputed using the correct income figure. This could lead to a reduced NOL or charitable deduction carryover to the current year.[10]

It is advisable that any recomputation of a current item made to account for a prior error be revealed to the Service in a short disclosure statement attached to the current return. This eliminates the risk that the Service will claim that the taxpayer concealed the prior error by making an undisclosed adjustment to current items.[11]

Tax Benefit Rule

If the original return remains unamended, the three-year statute of limitations will generally apply, after which the Service will no longer be able to assess a deficiency. A six-year statute of limitations applies if the taxpayer omits more than 25% of the income that is reported. (There is, of course, no limit on the period for assessment in the case of a fraudulent return, but that is not within the scope of this article.) Once the limitations period has run out, the prior erroneous understatement of income will no longer be recoverable by the Service via an assessment for that year. However, under the tax benefit rule the Service may argue that there is a "fundamental inconsistency" in the prior and subsequent return positions taken by the taxpayer, so that income should be recognized in a later (open) taxable year even if the prior year is closed.

In *Hillsboro National Bank,* 460 U.S. 370 (1983), and its companion case, *Bliss Dairy, Inc.,* the IRS argued that the tax benefit rule dictates that there be an inclusion of amounts previously deducted if later events are "inconsistent" with the deductions taken. The IRS further asserted that a "recovery" is not necessary for the rule to apply.

The Supreme Court agreed that a recovery is not always necessary to invoke the tax benefit rule. According to the Court, the purpose of the rule is not simply to tax recoveries; rather, it is to achieve transactional parity in tax and to protect the Government and the taxpayer from the adverse effects of reporting a transaction on the basis of assumptions that are proved to have been erroneous by an event in a subsequent year. The Court qualified this assertion, however, by stating that not every unforeseen event requires the application of the tax benefit rule. According to the Court, the tax benefit rule will "cancel out" an earlier deduction only when a careful examination shows that the later event is fundamentally inconsistent with the premise on which the deduction was initially based.

The Court's statement of the tax benefit rule in *Hillsboro* makes it unclear in the example above whether a subsequent adjustment to basis reflecting the corrected (greater) income allocation, or a distribution of previously untaxed income, would be inconsistent with the prior treatment of such income. To the extent that a correction gives the taxpayer an adjusted basis in the partnership interest or S corporation stock greater than that indicated by the prior erroneous statement of income, the Service may argue that there is an inconsistency. While no recovery is required under the Court's statement of the tax benefit rule, this may be a later event that is fundamentally inconsistent with the prior treatment. It is unclear whether use of the corrected income figure is *per se* a fundamentally inconsistent event. A purported distribution out of previously taxed income, which escaped taxation solely due to the taxpayer's error, may be viewed as both a recovery and fundamentally inconsistent with the prior treatment.

Recovery need not trigger income. In *Goldberger's Estate,* 213 F.2d 78 (CA-3, 1954), the decedent had been a partner in a joint venture. The other joint venturers had concealed additional profits from the decedent in 1933. In 1944, the estate recovered some of the income not reported in 1933, but neither the estate nor the beneficiary reported the recovered income. The court noted that the estate's recovery represented a collection of profits that properly should

---

[6] See ABA Formal Opinion 85-352, Daily Tax Report (BNA) No. 145 (7/29/85), at J-l; see also ABA Formal Opinion 314 (1965); Lerner and Swails, "New AICPA Statements Revise Tax Practice Responsibilities," 70 JTAX 88 (February 1989).

[7] See also Lerner and Swails, *supra.*

[8] Security Flour Mills Co., 321 U.S. 281 (1944); Regs. 1.451-1(a) and 1.461-1(a)(3). See also Heer-Adres Investment Co., 17 TC 786 (1951), *nonacq.*; Kline, 15 TC 998 (1950), *acq.*; Standard Paving Co., 13 TC 425 (1949), *aff'd* 190 F.2d 330 (CA-10, 1951), *cert. den.*

[9] See also Reg. 1.1016-3(a)(1)(i).

[10] See Phoenix Coal Company, Inc., 231 F. 2d 420 (CA-2, 1956); Lone Manor Farms, Inc., 61 TC 436 (1974), *aff'd* 510 F.2d 970 (CA-3, 1975) (IRS could recompute NOL carryover to reflect correction of an error made in computing the loss sustained in an earlier, closed tax year; current NOL computation must be based on "determining" the earlier loss and the correct tax liability for that year).

[11] *Cf.* Reg. 1.170A-10(e) (requiring information statement attached to return regarding computation of a charitable deduction carryover; such statement would be the most obvious place to disclose a recomputation to correct for a prior error); Reg. 1.172-1(c) (requiring statement with tax return showing computation of NOL deduction).

[12] See also Frame, 195 F.2d 166 (CA-3, 1952); Asphalt Industries, Inc., 384 F.2d 229 (CA-3, 1967), *modified* CA-3, 7/29/68.

[13] See also B.C. Cook & Sons, Inc., 59 TC 516, 522 (1972); Twitchco, 348 F.Supp. 330 (DC Ala., 1972) (the tax benefit rule did not apply—and, thus, the taxpayer did not have to report additional income—when a lease was recharacterized as a sale, resulting in depreciation deductions that were less than the rent deductions preciously taken).

have been reported by the decedent in 1933. The fact that the decedent was deceived from properly reporting it in that year did not change that fact. Accordingly, the recovery was not taxable income in 1944.[12]

This suggests that a subsequent recovery in a later taxable year may not necessarily require an inclusion in income where income was not reported in a prior closed year.[13] It is unclear what events or tax treatment will generate taxable income under the tax benefit rule in a current year when there is understated income in a closed year. *Goldberger's Estate* implies that a prior error resulting in unreported income or an improper deduction will not necessarily yield taxable income on later recovery of the unreported funds. However, given that the facts of each case are unique, this may not always be the result.

Limits on reporting recoveries. Even if there is a recovery of income on a later event (*e.g.,* an attempt to use a higher basis for the stock or partnership interest), Section 111 may place a limit on the income to be recognized. Section 111, the codification of the tax benefit rule, limits the income inclusion attributable to a recovery during the taxable year of any amount deducted in any prior taxable year to the amount that actually reduced the tax in the prior year. Thus, even if the Service successfully asserts that there is taxable income in a subsequent year, and requires the inclusion in income of amounts recovered on a "fundamentally inconsistent" event, Section 111 will limit the inclusion to the tax actually saved in the prior closed year because of the understatement. If the prior understatement did not generate any tax reduction for the taxpayer in that year (*e.g.,* because there were losses or tax credits available for that year), then no income would be includable on the recovery event (*e.g.,* the sale of the stock or partnership interest, or a distribution from the S corporation or partnership) even if there was fundamentally inconsistent treatment of that tax item.

Conclusion

Where a taxpayer (or a tax advisor) discovers an error made in good faith on a previously filed tax return, there is no clear statutory or regulatory obligation to file an amended return to correct the understatement of tax, even if the statute of limitations has not yet run on the original return. In such a case, however, the taxpayer "should" file an amended return. A tax advisor is put in a more precarious position. While generally not bound by professional ethics to disclose the error to the IRS or withdraw from representation if the client decides not to file an amended return, preparation of the current year's and future years' returns will most likely raise difficult questions as to how to properly report items that reflect or carry over computations based on the previous error. □

OVERASSESSMENT DID NOT TERMINATE 872-A

A deficiency notice sent to taxpayers who had signed Form 872-A was not untimely even though the IRS had previously processed an overassessment. According to the Tax Court in *Masraff,* TCM 1989-638, the 872-A had not been terminated because there had been no previous assessment that increased the tax.

The taxpayers had filed their 1980 return in August 1981, and executed the open-ended waiver of the statute of limitations in July 1984 with respect to the disallowance of losses, deductions, and credits claimed in connection with a partnership. In July 1985, the taxpayers signed a Form 870 that showed a $30,000 decrease in their taxes for 1980, resulting from the IRS' failure to recoup a 1980 ITC carryback. After the IRS processed the $30,000 overassessment, it discovered the error and sent the taxpayers a notice of deficiency for 1980.

Terminating 872-A consent. Form 872-A provides that the waiver of the statute of limitations on assessment may be terminated on the earliest of:

1. The Service's receipt of an executed Form 872-T.

2. The issuance of a deficiency notice.

3. The assessment date of an increase in the tax that reflects the final determination of tax and the final administrative appeals consideration.

The taxpayers argued that the deficiency notice was time barred because the Form 872-A had been terminated when the IRS processed the overassessment. The Tax Court noted, however, that termination under this alternative hinges on an assessment of an *increase* in tax. Since the Form 870 showed a decrease in tax, that termination provision could not apply, and the Form 872-A remained in effect. □

IRS ANSWERS PRACTITIONER QUERIES

The Service's test program, TELETIN (which permits taxpayers to obtain Federal identification numbers by phone) and the ability to send faxes to the IRS were among the topics recently discussed at the Connecticut Society of CPAs annual meeting with the Hartford district director. Also discussed were the penalty and interest notice explanation, the Taxpayer Bill of Rights, and use of powers of attorney.

TINs. Taxpayer identification numbers (TINs) can now be obtained over the phone under a test program in some service centers called TELETIN. The IRS urges that taxpayers call the TELETIN phone number only to obtain TINs, and not for unrelated purposes.

Faxes and powers of attorney. Taxpayers receiving simple erroneous IRS notices no longer have to use the mails to correspond with the Service. Each

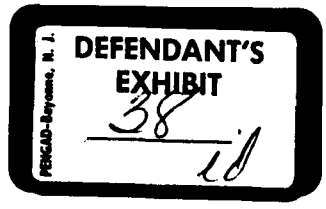
MARVEL NEW CO-EDITOR

With this issue, L. Paige Marvel becomes co-editor of the Procedure Department. Ms. Marvel is a partner in the Baltimore law firm of Venable, Baetjer & Howard, and is a member of the Council of the American Bar Association Section of Taxation, with responsibility for its Committees on Administrative Practice, Civil and Criminal Tax Penalties, and Court Procedure.

V & LSS VALUATION AND LITIGATION SUPPORT SERVICES, INC.

117 WATER STREET, SUITE 800, BALTIMORE, MARYLAND 21202-1083
PHONE: (410) 576-8577
FAX: (410) 539-1504

June 2, 1997



Janet M. Truhe, Esquire
Truhe & Maier, P.A.
Court Towers, Suite 505
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Richard Shofer v. Stuart Hack

Dear Janet:

At your request I have reviewed my correspondence to you of October 28, 1994 concerning the tax calculations relating to taxable income of $188,400.

I understand that the actual tax liabilities for 1984, 1985, and 1986 are $80,754 which is comprised of federal taxes of $65,418 and state taxes of $15,336.

In my previous correspondence I explained that the benefits of retirement plans logically lead to the conclusion that prudent individuals will withdraw the maximum amounts which can be withdrawn from retirement plans and still stay in the lowest possible tax bracket.

I point out that in 1994 when I last wrote to you about this subject, the maximum amount of taxable income on an annual basis for a married couple to stay in the lowest tax bracket was $38,000 per year. The 1997 maximum amount of taxable income permitting a married couple to stay in the lowest tax bracket is $41,200 per year.

Federal and state income taxes on gross taxable income of $41,200 are $8,808 each year.

Using a starting point of $188,400, $41,200 may be withdrawn each year for four years, namely 2004, 2005, 2006, and 2007, and this will leave a remaining balance of $23,600 for the year 2008.

Taxes on $23,600 for the year 2008 are $5,044.

I start with withdrawals in the year 2004 since that is the first year when Mr. Shofer will be absolutely required to make withdrawals based on his age, and I have assumed quarterly

withdrawals because income taxes are due quarterly. In the final year, 2008, I simply made the first two quarters slightly larger and that totally pays out the remaining balance at that point.

Since the taxes are not due until the future years under these calculations, after determining the amount of tax payable in the future as explained above, I then discounted those tax dollars back to the present, using July 1, 1997 as an appropriate date in light of the current trial date. I used a 7% discount rate for this purpose.

The discounted presented value of future tax payments as of July 1, 1997 based on the foregoing is $21,800.

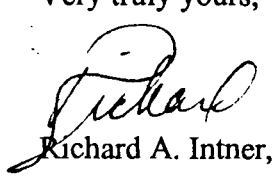
Expressed another way, if $21,800 were to be invested on July 1, 1997 at 7%, enough interest would accrue so that quarterly withdrawals to make tax payments could take place starting in March of 2004 continuing through the middle of 2008. I have enclosed a printout of my calculations schedule.

Simply put, using the assumptions previously stated in this letter, taxes on the taxable income of $188,400 are $40,270. These are scheduled to be paid quarterly in the amounts of $2,202 for the years 2004, 2005, 2006, and 2007, and $2,522 for the first and second quarters of 2008, and these taxes have a current cost of $21,800.

The difference between the actual tax liability of $80,754 and the future tax liability of $21,800 ($40,276 discounted back to the present) is $58,954.

Please let me know if you have any questions.

Very truly yours,



Richard A. Intner, CVA

RAI/lac

RICHARD SHOFER V. THE STUART HACK COMPANY, et al

Compound Period .....: Quarterly

Nominal Annual Rate ..: 7.000 %
Effective Annual Rate .: 7.186 %
Periodic Rate .....: 1.7500 %
Daily Rate .....: 0.01918%

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Deposit	07-01-1997	21,798.84	1		
2	Withdrawal	03-31-2004	2,202.00	1		
3	Withdrawal	06-30-2004	2,202.00	1		
4	Withdrawal	09-30-2004	2,202.00	1		
5	Withdrawal	12-31-2004	2,202.00	1		
6	Withdrawal	03-31-2005	2,202.00	1		
7	Withdrawal	06-30-2005	2,202.00	1		
8	Withdrawal	09-30-2005	2,202.00	1		
9	Withdrawal	12-31-2005	2,202.00	1		
10	Withdrawal	03-31-2006	2,202.00	1		
11	Withdrawal	06-30-2006	2,202.00	1		
12	Withdrawal	09-30-2006	2,202.00	1		
13	Withdrawal	12-31-2006	2,202.00	1		
14	Withdrawal	03-31-2007	2,202.00	1		
15	Withdrawal	06-30-2007	2,202.00	1		
16	Withdrawal	09-30-2007	2,202.00	1		
17	Withdrawal	12-31-2007	2,202.00	1		
18	Withdrawal	03-31-2008	2,522.00	1		
19	Withdrawal	06-30-2008	2,522.00	1		
20	Withdrawal	09-30-2008	0.00	1		

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Deposit	Withdrawal	Interest	Net Change	Balance
	07-01-1997	21,798.84		0.00	21,798.84	21,798.84
1997	Totals	21,798.84	0.00	0.00	21,798.84	
1	03-31-2004		2,202.00	13,022.24	10,820.24	32,619.08
2	06-30-2004		2,202.00	570.83	1,631.17-	30,987.91
3	09-30-2004		2,202.00	542.29	1,659.71-	29,328.20
4	12-31-2004		2,202.00	513.24	1,688.76-	27,639.44
2004	Totals	0.00	8,808.00	14,648.60	5,840.60	
5	03-31-2005		2,202.00	483.69	1,718.31-	25,921.13
6	06-30-2005		2,202.00	453.62	1,748.38-	24,172.75
7	09-30-2005		2,202.00	423.02	1,778.98-	22,393.77
8	12-31-2005		2,202.00	391.89	1,810.11-	20,583.66
2005	Totals	0.00	8,808.00	1,752.22	7,055.78-	
9	03-31-2006		2,202.00	360.21	1,841.79-	18,741.87
10	06-30-2006		2,202.00	327.98	1,874.02-	16,867.85
11	09-30-2006		2,202.00	295.19	1,906.81-	14,961.04
12	12-31-2006		2,202.00	261.82	1,940.18-	13,020.86
2006	Totals	0.00	8,808.00	1,245.20	7,562.80-	

RICHARD SHOFER V. THE STUART HACK COMPANY, et al

	Date	Deposit	Withdrawal	Interest	Net Change	Balance
13	03-31-2007		2,202.00	227.87	1,974.13-	11,046.73
14	06-30-2007		2,202.00	193.32	2,008.68-	9,038.05
15	09-30-2007		2,202.00	158.17	2,043.83-	6,994.22
16	12-31-2007		2,202.00	122.40	2,079.60-	4,914.62
2007	Totals	0.00	8,808.00	701.76	8,106.24-	
17	03-31-2008		2,522.00	86.01	2,435.99-	2,478.63
18	06-30-2008		2,522.00	43.38	2,478.62-	0.01
19	09-30-2008		0.00	0.01-	0.01-	0.00
2008	Totals	0.00	5,044.00	129.38	4,914.62-	
Grand Totals		21,798.84	40,276.00	18,477.16	0.00	

MAILED TO HOCK 10/18/85

Form **5500-C**

Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefit Programs

Pension Benefit Guaranty Corporation

Return/Report of Employee Benefit Plan

(With fewer than 100 participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6057(b) and 6058(a) of the Internal Revenue Code, referred to as the Code.

OMB No. 1210-0016

1984

This Form is Open to Public Inspection

For the calendar plan year 1984 or fiscal plan year beginning 1/1, 1984, and ending 12/31, 1984

Type or print in ink all entries on the form, schedules, and attachments. If an item does not apply, enter "N/A." File the originals.

This return/report is: (i) ☐ the return/report filed for the plan's first plan year; (ii) ☐ an amended return/report; or (iii) ☐ the final return/report filed for the plan.

▶ **Caution:** A penalty of $25 a day for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.
▶ Welfare benefit plans required to file this form do not complete items 7(b), 12, and 24 through 30. Certain welfare benefit plans are not required to file this form—see instructions.
▶ Keogh (HR 10) plans must check the box in item 5(a)(iii).
▶ Check here ▶ ☐ and do NOT complete items 6(c)(iv), 8(b) and (d); 9(c), 12, 13, 17, 18, 20, 21, 22, 23, 27, and 30 if this return/report is for a pension benefit plan that covers only an individual who wholly owns a trade or business, whether incorporated or unincorporated.
▶ If you have been granted an extension of time to file this form, you must attach a copy of the approved extension to this form.

Use IRS label. Otherwise, please print or type.

1 (a) Name of plan sponsor (employer, if for a single employer plan): Catalina Enterprises, Inc.

1 (b) Employer identification number: 52 0820445

Address (number and street): 5006 Liberty Heights Avenue

1 (c) Telephone number of sponsor: (301) 466-3337

City or town, State and ZIP code: Baltimore, Maryland 21207

1 (d) If plan year changed since last return/report, check here ▶ ☐

2 (a) Name of plan administrator (if same as plan sponsor enter "Same"): Same

1 (e) Business code number

Address (number and street)

2 (b) Administrator's employer identification no.

City or town, State and ZIP code

2 (c) Telephone number of administrator ( )

3 Is the name, address and identification number of plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan? ☒ Yes ☐ No. If "No," enter the information from the last return/report in (a) and/or (b).

(a) Sponsor ▶ N/A EIN

(b) Administrator ▶ N/A EIN

(c) If (a) indicates a change in the sponsor's name and EIN, is this a change in sponsorship only? (See specific instructions for definition of sponsorship.) ☐ Yes ☐ No

4 Check box to indicate the type of plan entity (check only one box):

(a) ☒ Single-employer plan
(b) ☐ Plan of controlled group of corporations or common control employers
(c) ☐ Multiemployer plan
(d) ☐ Multiple-employer-collectively-bargained plan
(e) ☐ Multiple-employer plan (other)

5 (a) (i) Name of plan ▶ Catalina Enterprises, Inc. Pension Plan

5 (b) Effective date of plan 12/28/71

(ii) ☐ Check if name of plan changed since the last return/report.
(iii) ☐ Check this box if this is a Keogh (HR10) plan.

5 (c) Enter three-digit plan number ▶ 001

6 Check at least one item in (a) or (b) and applicable items in (c): (a) Welfare benefit plan (Plan numbers 501 through 999):

(i) ☐ Health insurance (ii) ☐ Life insurance (iii) ☐ Supplemental unemployment
(iv) ☐ Other (specify) ▶

(b) Pension benefit plan (Plan numbers 001 through 500). (i) Defined benefit plan—(Indicate type of defined benefit plan below):

(A) ☐ Fixed benefit (B) ☐ Unit benefit (C) ☐ Flat benefit (D) ☐ Other (specify) ▶

(ii) Defined contribution plan—(Indicate type of defined contribution plan below):

(A) ☐ Profit-sharing (B) ☐ Stock bonus (C) ☐ Target benefit (D) ☐ Other money purchase
(E) ☐ Other (specify) ▶

(iii) ☐ Defined benefit plan with benefits based partly on balance of separate account of participant (Code section 414(k))
(iv) ☐ Annuity arrangement of a certain exempt organization (Code section 403(b)(1))
(v) ☐ Custodial account for regulated investment company stock (Code section 403(b)(7))
(vi) ☐ Pension plan utilizing individual retirement accounts or annuities (described in Code section 408) as the sole funding vehicle for providing benefits
(vii) ☐ Other (specify) ▶

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ 10/18/85 Signature of employer/plan sponsor ▶

Date ▶ Signature of plan administrator ▶

For Paperwork Reduction Act Notice, see page 1 of the Instructions.

DEFENDANT'S EXHIBIT 39 cmd

PENGAD-Bayonne, N. J.

Form **5500-C** (1984)

6 (c) Other plan features: (i) ☐ Thrift-savings (ii) ☐ Participant-directed account plan
(iii) ☐ Pension plan maintained outside the United States (see instructions) (iv) ☐ Master trust (see instructions) ▶

(d) Single employer plans enter the tax year end of the employer in which this plan year ends ▶ Month 12 Day 31 Year 84

	Yes	No
(e) Is this a pension plan of an affiliated service group?		X
(f) Does this plan contain a cash or deferred arrangement described in Code section 401(k)?		X

7 (a) Total participants (i) Beginning of plan year ▶ 10 (ii) End of plan year ▶ 9

(b) (i) Was any pension benefit plan participant(s) separated from service with a deferred vested benefit for which a Schedule SSA (Form 5500) is required to be attached?		X
(ii) If "Yes," enter the number of separated participants required to be reported ▶ N/A		

8 Plan amendment information (welfare plans do NOT complete (b)(ii)):

(a) Were any plan amendments to this plan adopted since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X
(b) If "Yes," (i) And if any amendments have resulted in a change in the information contained in a summary plan description or previously furnished summary description of modifications:		
(A) Have summary descriptions of the changes been sent to participants?	N/A	
(B) Have summary descriptions of the changes been filed with DOL?	N/A	
(ii) Does any such amendment result in the reduction of the accrued benefit of any participant under the plan?	N/A	

(c) Enter the date the most recent amendment was adopted ▶ Month Day N/A Year

(d) (i) Has a summary plan description been filed with DOL for this plan?	X	

(ii) If (i) is "Yes," what was the employer identification number and the plan number used to identify it?
Employer identification number ▶ 52-0820445 Plan number ▶ 001

9 Plan termination information:

(a) Was this plan terminated during this plan year or any prior plan year? If "Yes," enter year ▶		X
(b) If "Yes," were all trust assets either distributed to participants or beneficiaries, transferred to another plan or brought under the control of PBGC?	N/A	
(c) If (a) is "Yes," and the plan is covered by PBGC, is the plan continuing to file a PBGC Form 1 and pay premiums until the end of the plan year in which assets are distributed or brought under the control of PBGC?	N/A	

10 (a) Was this plan merged or consolidated into another plan, or were assets or liabilities transferred to another plan since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)? X

If "Yes," identify the other plan(s):

(b) Name of plan(s) ▶	(c) Employer identification number(s)	(d) Plan number(s)
N/A	N/A	N/A

(e) Has Form 5310 been filed? N/A ☐ Yes ☐ No

11 Indicate funding arrangement:
(a) ☒ Trust (b) ☐ Fully insured (c) ☐ Combination (d) ☐ Other (specify) ▶
(e) If (b) or (c) is checked, enter the number of Schedules A (Form 5500) which are attached ▶

12 (a) Is the plan covered under the Pension Benefit Guaranty Corporation termination insurance program? ☐ Yes ☒ No ☐ Not determined
(b) If (a) is "Yes," or "Not determined," enter the employer identification number and the plan number used to identify it.
Employer identification number ▶ N/A Plan number ▶ N/A

13 Complete both (a) and (b):

	Yes	No
(a) Is the plan insured by a fidelity bond? TO BE PURCHASED		X
(i) If "Yes," enter name of surety company ▶		
(ii) Amount of bond coverage ▶		
(b) Was any loss discovered since the last return/report Form 5500, 5500-C or 5500-K was filed for this plan (or during this plan year if this is the initial return/report)?		X

14 (a) If this is a defined benefit plan, is it subject to the minimum funding standards for this plan year? X
If "Yes," attach Schedule B (Form 5500).

(b) If this is a defined contribution plan, i.e., money purchase or target benefit, is it subject to the minimum funding standards (if a waiver was granted, see instructions)? X

If "Yes," complete (i), (ii) and (iii) below:

(i) Amount of employer contribution required for the plan year	$ 42,903.12
(ii) Amount of contribution paid by the employer for the plan year	$ 42,903.12
Enter date of last payment by employer ▶ Month 9 Day 13 Year 85	
(iii) If (i) is greater than (ii) subtract (ii) from (i) and enter the funding deficiency here. Otherwise enter zero. (If you have a funding deficiency, file Form 5330.)	$ -0-

15 Plan assets and liabilities at the beginning and end of the current plan year (list all assets and liabilities at current value). A fully insured welfare plan or a pension plan with no trust and which is funded entirely by allocated insurance contracts which fully guarantee the amount of benefit payments should check the box and not complete the rest of this item ▶ ☐

Note: *Include all plan assets and liabilities of a trust or separately maintained fund. If more than one trust/fund, report on a combined basis. Include all insurance values except for the value of that portion of an allocated insurance contract which fully guarantees the amount of benefit payments. Round off amounts to nearest dollar. If you have no assets to report enter "-0-" on line 15(f).*

Assets	a. Beginning of year	b. End of year
(a) Cash— (i) Interest bearing		
(ii) Non-interest bearing	11,224.24	12,386.48
(iii) Total cash	11,224.24	12,386.48
(b) Receivables	29,934.28	401,661.49
(c) Investments—		
(i) Government securities		
(ii) Pooled funds/mutual funds		
(iii) Corporate (debt and equity instruments)	8,000.28	8,000.28
(iv) Value of interest in master trust		
(v) Real estate and mortgages		
(vi) Other	1,228,180.75	574,074.75
(vii) Total investments	812,100.00	894,000.00
(d) Building and other depreciable property used in plan operation		
(e) Unallocated insurance contracts		
(f) Other assets	4178.64	
(g) Total assets (add (a)(iii); (b); (c)(vii); (d); (e) and (f))	2,143,511.19	1,880,239.22
Liabilities and Net Assets		
(h) Payables	282,080.99	358,308.13
(i) Acquisition indebtedness	614,078.43	157,775.81
(j) Other liabilities	207,300.72	31,357.94
(k) Total liabilities (add (h) through (j))	1,103,560.14	547,441.09
(l) Net assets (subtract (k) from (g))	1,040,011.00	1,332,798.14

16 Plan income, expenses and changes in net assets during the plan year. Include all income and expenses of a trust(s) or separately maintained fund(s), including any payments made for allocated insurance contracts. Round off amounts to nearest dollar.

	a. Amount	b. Total
(a) Contributions received or receivable in cash from:		
(i) Employer(s) (including contributions on behalf of self-employed individuals)	43,603.05	
(ii) Employees		43,603.05
(iii) Others		
(b) Noncash contributions		
(c) Earnings from investments (interest, dividends, rents, royalties)		251,893.90
(d) Net realized gain (loss) on sale or exchange of assets		
(e) Other income (specify) ▶ Misc. Inc, Note Redeemed		99,175.34
(f) Total income (add (a) through (e))		394,672.29
(g) Distribution of benefits and payments to provide benefits:		
(i) Directly to participants or their beneficiaries	18,185.25	
(ii) To insurance carrier or similar organization for provision of benefits (including prepaid medical plans)		
(iii) To other organizations or individuals providing welfare benefits		18,185.25
(h) Interest expense		18,427.41
(i) Administrative expenses (salaries, fees, commissions, insurance premiums)		
(j) Other expenses (specify) ▶ R.E. Expenses, Taxes, Misc. Expenses		42,959.49
(k) Total expenses (add (g) through (j))		79,572.15
(l) Net income (subtract (k) from (f))		315,100.14
(m) Changes in net assets: (i) Unrealized appreciation (depreciation) of assets	72,000	
(ii) Net investment gain (or loss) from all master trust investment accounts		
(iii) Other changes (specify) ▶		72,000.00
(n) Net increase (decrease) in net assets for the year (add (l) and (m))		247,780.14
(o) Net assets at beginning of year (line 15(k), column a)		1,040,018.00
(p) Net assets at end of year (add (n) and (o)) (equals line 15(k), column b)		1,282,798.14

17 As of the end of the plan year:

(a) What percentage of plan assets are loaned to a party-in-interest? . . . . . 0 %

(b) What percentage of plan assets are invested in securities issued by a party-in-interest? . . . . . 0 %

(c) What percentage of plan assets are invested in real estate which is leased by a party-in-interest? . . . . . 0 %

	Yes	No
18 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report):		
(a) Has there been a termination in the appointment of any trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager or custodian?		X
If "Yes," explain and include the name, position, address and telephone number of the person whose appointment has been terminated ▶ N/A		
(b) Has the plan used the services of a contract administrator?	X	
If "Yes," enter the contract administrator's name and employer identification number (see instructions) ▶ The Stuart Hack Company 52-0747494		
(c) Indicate the amount of the plan's administrative expenses for the: (i) Preceding year ▶ $ 0 (ii) Second preceding year ▶ $ 0		
(d) Have any insurance policies or annuities been replaced?		N/A
(e) Was the plan funded with: (i) ☐ Individual policies or annuities (ii) ☐ Group policies or annuities (iii) ☐ Both		
19 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report):		
(a) Other than transactions described in the exceptions outlined in the instructions, were there any transactions, directly or indirectly, between the plan and a party-in-interest? If "Yes," see specific instructions.		X
(b) Has the plan granted an extension on any loan for which, before the granting of an extension, it has not received all the principal and interest payments due under the terms of the loan?		X
(c) Has the plan granted an extension of time or renewal for the payment of any obligation owed to it which amounts to more than 10% of the plan assets?		X
20 As of the end of any plan year since the end of the plan year covered by the last return/report, Form 5500, 5500-C or 5500-K which was filed for this plan (or as of the end of this plan year if this is the initial return/report):		
(a) Did the plan have investments of the type reportable under item 15(c)(vii) or (ix) which in the aggregate in either category exceeded 15% of plan assets?		X
(b) Did the plan have loans outstanding or investments in a single enterprise (other than the United States Government) which exceeded 15% of plan assets?		X
21 During the plan year covered by this return:		
(a) Did the plan acquire any qualifying employer security or qualifying employer real property, when immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the plan assets?		X
(b) Did the plan acquire any qualifying employer security or qualifying employer real property, when immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the plan assets?		X
(c) Has any plan fiduciary had either a financial interest worth more than $1,000 in any party providing services to the plan or received anything of value from any party providing services to the plan?		X
(d) Has any employer owed the plan contributions which were more than three months past due under the terms of the plan?		X
(e) Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year, or classified as uncollectable?		X
(f) Were any leases to which the plan was a party in default or classified as uncollectable?		X
22 Who is the plan's designated agent for legal process? ▶ Mr. Richard Shafer		
23 Give the name and address of each fiduciary (including trustees) to the plan ▶ Mr. Richard Shafer c/o Catalina Enterprises, Inc. 5001e Liberty Heights Avenue (Baltimore, MD 21207		
24 Is this plan an adoption of any of the plans below? (If "Yes," check appropriate box and enter IRS serial number): (a) ☐ Master/prototype, (b) ☐ Field prototype, (c) ☐ Pattern, (d) ☐ Model plan, or (e) ☐ Bond purchase plan? Enter the four or eight-digit IRS serial number (see instructions) ▶ N/A		
25 (a) Is this plan integrated with social security?		X
(b) Is it intended that this plan qualify under Code section 401(a) or 405?	X	
(c) If (b) is "Yes," have you received a determination letter from the IRS for this plan?		X
(d) Does the employer/sponsor listed in item 1(a) of this form maintain other qualified pension benefit plans? If "Yes," list the number of plans including this plan ▶ 2	X	

		Yes	No
26	Information about employees of employer at end of the plan year. (a) Does the plan satisfy the percentage tests of Code section 410(b)(1)(A)? If "No," complete only (b) below and see Specific Instructions	X	
	(b) Total number of employees	10	
	(c) Number of employees excluded under the plan because of: *(i)* Minimum age or years of service	3	
	(ii) Employees on whose behalf retirement benefits were the subject of collective bargaining	8	
	(iii) Nonresident aliens who receive no earned income from United States sources	0	
	(iv) Total excluded (add (i), (ii) and (iii))	3	
	(d) Total number of employees not excluded (subtract (c)(iv) from (b))	7	
	(e) Employees ineligible (specify reason) ▶	0	
	(f) Employees eligible to participate (subtract (e) from (d))	7	
	(g) Employees eligible but not participating	0	
	(h) Employees participating (subtract (g) from (f))	7	

27	Vesting (check only one box to indicate the vesting provisions of the plan):		
	(a) Full and immediate vesting, or full vesting within 3 years		
	(b) No vesting in years 1 through 9, and full vesting after the 10th year of service		
	(c) For each year of employment, beginning with the 4th year, vesting equal to 40% after 4 years of service, 5% additional for the next 2 years, and 10% additional for each of the next 5 years		
	(d) 100% vesting within 5 years after contributions are made (class year plan only)		
	(e) Other vesting		X

		Yes	No
28 (a)	Did the employer receive plan assets (including a return of contributions) since the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X
(b)	If this is a defined benefit plan which provides for annual, automatic increases in the maximum dollar limitations under Code section 415, does the plan provide that any such increase is effective no earlier than the calendar year for which IRS determines that increase under Code section 415(d)?	N/A	
(c)	Is this a plan with Employee Stock Ownership (ESOP) features?		X
	(i) If "Yes," was a current appraisal of the value of the stock made immediately before any contribution of stock or purchase of the stock by the trust for the plan year covered by this return/report?	N/A	
	(ii) If (i) is "Yes," was the appraisal made by an unrelated third party?	N/A	
29	Have any individuals performed services as a leased employee for this employer or for any other employer who is aggregated with this employer under section 414(b), (c), or (m)? If "Yes," see instructions for completing item 26.		X
30 (a)	Is this plan a top heavy plan within the meaning of Code section 416 for this plan year?	X	
(b)	If (a) is "Yes," complete (i), (ii) and (iii) below:		
	(i) Has the plan complied with the vesting requirements of Code section 416(b)?	X	
	(ii) Has the plan complied with the minimum benefit requirements of Code section 416(c)?	X	
	(iii) Has the plan complied with the limitation on compensation of Code section 416(d)?	X	

If additional space is required for any item, attach additional sheets the same size as this form.

SCHEDULE P
(Form 5500)
Department of the Treasury
Internal Revenue Service

Annual Return of Fiduciary of Employee Benefit Trust

▶ File as an attachment to Form 5500, 5500-C, or 5500-R.

OMB No. 1210-0016

1984

For trust calendar year 1984 or fiscal year beginning 1/1, 1984, and ending 12/31, 1984.

Please type or print

1 (a) Name of trustee or custodian
Mr. Richard Shofer

(b) Address (number and street)
5006 Liberty Heights Avenue

(c) City or town, State and ZIP code
Baltimore, Maryland 21207

2 Name of trust
Catalina Enterprises, Inc. Pension Plan

3 Name of plan if different from name of trust
Same

4 Have you furnished the participating employee benefit plan(s) with the trust financial information required to be reported by the plan(s) on their Forms 5500, or 5500-C? . . . . . ☒ Yes ☐ No

5 Enter the plan sponsor's employer identification number as shown on the form to which this schedule is attached . . . . . ▶ 52 0820445

Under penalties of perjury, I declare that I have examined this schedule, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ 10/18/85 Signature of fiduciary ▶ Richard Shofer

Instructions

(Section references are to the Internal Revenue Code.)

A. Purpose of Form

You may use this schedule to satisfy the requirements under section 6033(a) for an annual information return from every section 401(a) organization exempt from tax under section 501(a).

The filing of this form will also start the running of the statute of limitations under section 6501(a) for any trust described in section 401(a) which is exempt from tax under section 501(a).

B. Who May File

(1) Every trustee of a trust described in section 401(a) which was created as part of an employee benefit plan.

(2) Every custodian of a custodial account described in section 401(f).

C. How to File

File Schedule P (Form 5500) for the trust year ending with or within any participating plan's plan year as an attachment to the Form 5500, 5500-C, or 5500-R filed by the plan for that plan year.

Schedule P (Form 5500) may be filed only as an attachment to a Form 5500, 5500-C, or 5500-R. A separately filed Schedule P (Form 5500) will not be accepted.

If the trust or custodial account is used by more than one plan, file only one Schedule P (Form 5500). It must be filed as an attachment to one of the participating plan's returns/reports. If a plan uses more than one trust or custodial account for its funds, file one Schedule P (Form 5500) for each trust or custodial account.

D. Signature

The fiduciary (trustee or custodian) must sign this schedule. If there is more than one fiduciary, one of them, authorized by the others, may sign.

E. Other Returns and Forms that May be Required

(1) Form 990-T.—For trusts described in section 401(a), a tax is imposed on income derived from business that is unrelated to the purpose for which the trust received a tax exemption. Report such income and tax on Form 990-T, Exempt Organization Business Income Tax Return. (See sections 511 through 514 and related regulations.)

(2) Forms W-2P and 1099-R.—If you made payments or distributions to individual beneficiaries of a plan, report these payments on Forms W-2P or 1099-R. (See sections 6041 and 6047 and related regulations.)

(3) Forms 941 or 941E.—If you made payments of distributions to individual beneficiaries of a plan, you are required to withhold income tax from those payments, unless the payee elects not to have the tax withheld. Report this withholding on Form 941 or 941E. (See Forms 941 or 941E and Circular E, Publication 15.)

(Rev. October 1982)
Department of the Treasury
Internal Revenue Service

to File Certain Employee Plan Returns

▶ For Paperwork Reduction Act Notice, see Instructions Back

File With IRS Only

File in DUPLICATE by the due date for filing the return. (See general instructions 2 and 3.)

Name of taxpayer or plan sponsor (see instructions)
Catalina Enterprises, Inc.

Address (Number and street)
5006 Liberty Heights Avenue

City or town, State, and ZIP code
Baltimore, MD 21207

Check applicable box and enter number (see specific instructions)

☒ Employer identification number ▶ 52 - 0820445 OR

☐ Social security number ▶

1 I request an extension of time until (see specific instruction 1) ▶ 10/15/85 (check appropriate block(s)):

(a) ☐ To file Form 5500, Annual Return/Report of Employee Benefit Plan (with related schedules).

(b) ☒ To file Form 5500-C, Return/Report of Employee Benefit Plan (with related schedules).

(c) ☐ To file Form 5500-K, Return/Report of Employee Pension Benefit Plan (with related schedules).

(d) ☐ To file Form 5500-G, Annual Return/Report of Employee Benefit Plan.

(e) ☐ To file Form 5500-R, Registration Statement of Employee Benefit Plan (with related schedules).

(f) ☐ To file Form 5330, Return of Initial Excise Taxes Related to Pension and Profit-sharing Plans for tax year beginning ▶ ..... and ending ▶ .....

(g) If you checked (f) above, are you electing to be taxed under ERISA section 2003(c)(1)(B)? . . . . . ☐ Yes ☐ No

2 Complete the following for the plan covered by this application (see general instruction 2):

Plan name	Plan number	Plan year ending Month	Day	Year
CATALINA ENTERPRISES, INC. PENSION PLAN	001	12	31	84

3 (a) Has an extension of time to file the designated return(s) been previously granted for this tax year? . . . ☐ Yes ☒ No

(b) If "Yes," show the date(s) to which the extension was granted . . . . . ▶ n/a

4 Attach a detailed statement of why you need the extension (see specific instruction 4). PLEASE SEE ATTACHED

5 If the extension is for Form 5330, enter the amount of tax estimated to be due on Form 5330. Pay this amount with this application . . . . . ▶

Caution: *Interest on late payment of tax accrues at the rate established under section 6621 of the Internal Revenue Code from the regular due date of the return until paid. (For the penalty for late payment of tax, see specific instruction 5.)*

Under penalties of perjury, I declare that to the best of my knowledge and belief the statements made on this form are true, correct, and complete and that I am authorized to prepare this application.

Signature ▶ Clarmarie B. Jordan Date ▶ 7/15/85

Note: *The person who signs this form may be an employer or plan administrator filing Form 5500, 5500-C, 5500-K, 5500-G, 5500-R or 5330; a disqualified person filing Form 5330; an attorney or certified public accountant qualified to practice before the IRS; a person enrolled to practice before the IRS; or a person holding a power of attorney.*

Notice to Applicant.—THE INTERNAL REVENUE SERVICE WILL INDICATE BELOW WHETHER THE EXTENSION IS GRANTED OR DENIED AND WILL RETURN THE ORIGINAL OF THE APPLICATION

☑ The application IS approved to ▶ 10-15-85 (You MUST attach a copy of this form to each return you file for which an extension is granted.)

☐ The application IS NOT approved. (You MUST attach a copy of this form to each return you file for which a grace period is granted.) However, in view of your reasons stated in the application, a 10-day grace period is granted from the date shown below or due date of the return, whichever is later. This 10-day grace period constitutes a valid extension of time for purposes of elections otherwise required to be made on timely filed returns.

☐ The application IS NOT approved.

After consideration of the reasons stated in your application, we have determined the extension is not warranted. (The 10-day grace period is not granted.)

☐ The application cannot be considered, since you filed it after the due date of the return.

☐ Other ▶

RECEIVED
JUL 19 1985
PSC PHILA, PA
14

Donald Spignuolo

(Date) (Director) By: RECEIVED

AUG 5 1985

THE STUART HACK COMPANY

363-479-2

V & LSS VALUATION AND LITIGATION SUPPORT SERVICES, INC.

117 WATER STREET, BALTIMORE, MARYLAND 21202-1083
PHONE: (410) 576-8577
FAX: (410) 539-1504

October 28, 1994

Janet M. Truhe, Esquire
Ward, Janofsky & Truhe, P.A.
Court Towers
Suite 505
210 W. Pennsylvania Avenue
Towson, MD 21204

FILE COPY

RE: Richard Shofer v. Stuart Hack, et al.
Circuit Court for Baltimore City

Dear Janet:

At your request I have reviewed Mr. Bornhorst's letter of October 20, 1993 with respect to the calculations.

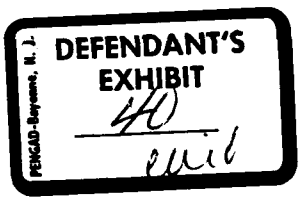
Mr. Bornhorst states that the tax liabilities are $79,553.25 (federal $65,418.00 and state $14,135.25).

One of the premises of retirement plans as structured under our income tax laws is that in exchange for a corporation getting a present tax benefit of deducting the amounts contributed, society benefits because individuals who have retired will continue to have income after their retirement. The individual participant gets an additional tax advantage in that he or she is presumably at a lower income tax bracket.

In addition, funds are drawn out of the retirement plan over an extended time period thereby assuring the individual of funds available to spend during retirement.

As a result, I believe that the appropriate calculation for these proceedings are an annual withdrawl of $38,000.00 per year. Under our present income tax rates, this is the maximum amount that can be withdrawn and still remain in the lowest income tax bracket.

I do not know when Mr. Shofer will retire, but whether or not he ever retires and assuming a long life, withdrawls must be made commencing in the year 2004 since Mr. Shofer will be age 70 1/2 in December of 2003.



I have prepared calculations assuming equal quarterly withdrawls (quarterly since income taxes are due quarterly) in the amount of $9,500.00 per quarter ($38,000.00) for the years 2004, 2005, 2006, and 2007, and $9,100.00 per quarter for the year 2008 ($36,400.00), which withdrawls total $188,400.00.

Annual taxes on the first four years are $8,124.00 based on the above, and $7,779.00 in the final year. Total federal and state income taxes therefore are $40,275.00.

I then discounted those tax dollars back to March 1, 1995 which is an appropriate date in light of the trial date. For discounting purposes I used a 7% discount rate.

The discounted present value of future tax payments as of March 1, 1995 based on the above is $18,297.70.

Expressed another way, if one were to invest $18,297.70 on March 1, 1995 at 7%, enough interest would accrue so that quarterly withdrawls of $2,031.00 could take place starting March of 2004 and continuing through 2007, plus additional withdrawls of $1,945.00 per quarter for the year 2008.

In summary, the difference between the present tax liability as stated by Mr. Bornhorst of $79,553.25, and the future tax liability of $18,297.70 ($40,275.00 discounted back to the present) is $61,255.55.

Please let me know if you have any questions.

Cordially,

Richard A. Intner

RAI/gnh

Compounding period...: Quarter

Nominal annual rate..: 7.000 %
Effective annual rate: 7.186 %
Periodic rate.....: 1.7500 %
Equivalent daily rate: 0.01918 %

CASH FLOW DATA

	Event	Date	Amount	#	Period	End-date
1	Deposit	03-01-95	18,297.70	1		
2	Wthdrwl	03-31-04	2,031.00	1		
3	Wthdrwl	06-30-04	2,031.00	1		
4	Wthdrwl	09-30-04	2,031.00	1		
5	Wthdrwl	12-31-04	2,031.00	1		
6	Wthdrwl	03-31-05	2,031.00	1		
7	Wthdrwl	06-30-05	2,031.00	1		
8	Wthdrwl	09-30-05	2,031.00	1		
9	Wthdrwl	12-31-05	2,031.00	1		
10	Wthdrwl	03-31-06	2,031.00	1		
11	Wthdrwl	06-30-06	2,031.00	1		
12	Wthdrwl	09-30-06	2,031.00	1		
13	Wthdrwl	12-31-06	2,031.00	1		
14	Wthdrwl	03-31-07	2,031.00	1		
15	Wthdrwl	06-30-07	2,031.00	1		
16	Wthdrwl	09-30-07	2,031.00	1		
17	Wthdrwl	12-31-07	2,031.00	1		
18	Wthdrwl	03-31-08	1,945.00	1		
19	Wthdrwl	06-30-08	1,945.00	1		
20	Wthdrwl	09-30-08	1,945.00	1		
21	Wthdrwl	12-31-08	1,944.00	1		

AMORTIZATION SCHEDULE - Normal amortization

Pmt	Date	Deposit	Withdrawal	Interest	Balance
Dep	03-01-1995	18,297.70		**0.00**	18,297.70
1995	totals	18,297.70	0.00	**0.00**	
1	03-31-2004		2,031.00	16,068.15	32,334.85
2	06-30-2004		2,031.00	565.86	30,869.71
3	09-30-2004		2,031.00	540.22	29,378.93
4	12-31-2004		2,031.00	514.13	27,862.06
2004	totals	**0.00**	8,124.00	17,688.36	
5	03-31-2005		2,031.00	487.59	26,318.65
6	06-30-2005		2,031.00	460.58	24,748.23
7	09-30-2005		2,031.00	433.09	23,150.32
8	12-31-2005		2,031.00	405.13	21,524.45
2005	totals	**0.00**	8,124.00	1,786.39	

Pmt	Date	Deposit	Withdrawal	Interest	Balance
9	03-31-2006		2,031.00	376.68	19,870.13
10	06-30-2006		2,031.00	347.73	18,186.86
11	09-30-2006		2,031.00	318.27	16,474.13
12	12-31-2006		2,031.00	288.30	14,731.43
2006	totals	**0.00**	8,124.00	1,330.98	
13	03-31-2007		2,031.00	257.80	12,958.23
14	06-30-2007		2,031.00	226.77	11,154.00
15	09-30-2007		2,031.00	195.20	9,318.20
16	12-31-2007		2,031.00	163.07	7,450.27
2007	totals	0.00	8,124.00	842.84	
17	03-31-2008		1,945.00	130.38	5,635.65
18	06-30-2008		1,945.00	98.62	3,789.27
19	09-30-2008		1,945.00	66.31	1,910.58
20	12-31-2008		1,944.00	33.42	0.00
2008	totals	0.00	7,779.00	328.73	
Grand totals		18,297.70	40,275.00	21,977.30	

transmittal letter I don't remember having any.

Q Do you know why this money was treated as an interest expense?

A Because it was payment of interest on a loan.

Q And at the time you knew it was a loan from a pension plan, is that correct?

A **Yes.**

Q Now, did you talk with anyone other than Mr. Lane about the tax treatment of these monies from the pension plan?

MS. SCHUETT: Objection to the form of the question. You may answer.

Q Well, prior to the time this return was completed by Grabush, Newman did you have any conversation with anyone -- and I'm assuming you spoke with Mr. Lane but if that's not correct please say so -- but do you recall talking with anyone about the tax treatment of these loans?

MS. SCHUETT: Okay, just to get this clear I think he already testified that he doesn't, unless it's marked on a sheet somewhere, he doesn't recall ever having discussed it with the preparer. If the question --

Q Anyone else.

MS. SCHUETT: Do you remember discussing it with anyone else?

A No, I don't.

Q I'm including in that question Mr. Shofer, did you ever talk with him about the tax treatment of this money?

A Of the loan itself, no.

Q Of anything else about this loan?

A Well, he's the one that would have calculated the amount of the interest.

Q All right.

A That would have probably been our only discussion, as to how he calculated it.

Q Do you personally recall doing any research into the issue of the tax treatment of these monies from the pension plan prior to the completion of this 1984 return by Grabush?

A I did not do any research regarding taxability of the loan.

Q To your knowledge did anyone at Grabush, Newman conduct any research into this issue prior to the completion

Prepared By Ka 1/20/8?
Approved By

{10 AM Dickelhupfer -
{1230 Cattaling

Nick Gimpitro, Alan Mehrun / Ka

a) Loans w/ T's pension plans -

b) $75000 Mort - covers cash transaction 84

c) show $75000 1985 withdrawn from voluntary.

d) what was transferred to Hock - in 1985

F 5500R) 1984/85 filed
but no balance sheet

G) 1120 - change - 84
85

- Letters to Dr. Los 84 returns (amend)
- Xerox files over to W/C/K ?
- change 85 P&L on Pension 75000 + interest letter - from Hufer.
- 1120 change 85 amend 84
- 1985 1040 reduce interest exp
-

3rd Party Defendant
1
[illegible]

3RD
REQUEST
4/2/85

November 23, 1984

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: **Catalina Enterprises, Inc. Pension Plan**

Dear Richard:

The annual valuation of your plan is due as of 12/31/84. Before the work can begin we shall need certain information from you for the plan year beginning 1/1/84 and ending 12/31/84.

Enclosed are instructions and work sheets covering plan assets, transactions, corporate information and employee census data. Please read each section of this request carefully. It is important that you give us accurate information so that we can prepare your annual statement and government reports correctly.

Please sign and return the completed forms to my attention. Forms that are not applicable should be marked "N/A" and returned with completed forms. Please be sure to sign all places where indicated.

If you have any questions, please give me a call.

Cordially,

Alan Vandendriessche
Account Executive

AV:lcs
Enclosures

cc: Harvey M. Newman, CPA

THE STUART HACK COMPANY

Consultants & Actuaries

3623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

Writer's Direct Dial No.

6

January 13, 1985

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: Catalina Enterprises, Inc. Pension Plan

Dear Mr. Shofer:

I am enclosing the Annual Statement and the participants' progress reports for the plan year ending 12/31/84.

If you have any questions, please call me.

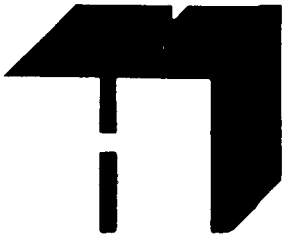
Sincerely,

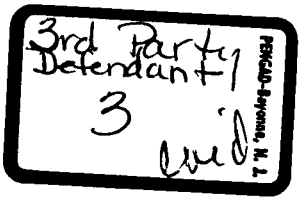
Janelle Hardy

Janelle Hardy
Pension Administrator

JH:lcs
Enclosures

cc: Harvey M. Newman, CPA

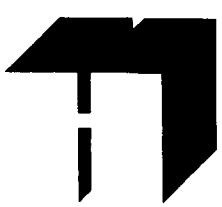




Rec'd 1/16/86

THE STUART HACK COMPANY

STATISTICAL REPORT

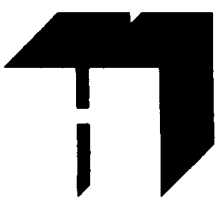


THE STUART HACK COMPANY

ANNUAL STATEMENT FOR

CATALINA ENTERPRISES, INC.
PENSION PLAN

PLAN YEAR ENDING 12/31/84



Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700

Washington, D.C. 621-4064

THE STUART HACK COMPANY

CATALINA ENTERPRISES, INC.

PENSION PLAN

INDEX

PLAN YEAR ENDING 12/31/84

THE STUART HACK COMPANY

CATALINA ENTERPRISES, INC.

PENSION PLAN

TRUST FUND STATEMENT

FOR THE PERIOD 1/1/84 TO 12/31/84

OPENING MARKET VALUE		$1,040,018.03
RECEIPTS:		
1985 Advance Contribution	$ 699.93	
1984 Contributions	42,903.12	
Earnings	297,049.21	
Unrealized Gain in Market Value	72,000.00	
		$ 412,652.26
DISBURSEMENTS:		
Paid Participants	$ (18,185.25)	
Interest Expense	(88,917.41)	
Other Expenses	(62,769.49)	
		$ (169,872.15)
CLOSING MARKET VALUE		$1,282.798.14*

* Closing Market Value includes the following:

Participant Accounts	$1,269.711.73
Escrow Account	12,386.48
1985 Advance Contribution	699.93
	$1,282,798.14

CATALINA ENTERPRISES, INC. PENSION PLAN
DEFINED BENEFIT PENSION PLAN SPECIFICATIONS

1. Effective Date — December 28, 1971

   Entry Dates — January 1, July 1

2. Eligibility Requirements
   (A) Minimum Months of Service: 12
   (B) Minimum Age: 25

3. Normal Retirement Age
   (A) 1st annivesary date after attainment of age 65 and 10 years of participation.
   (B) Eligibility for early retirement: Attainment of age 55 and 10 years of participation.

4. Employer Contribution Formula
   (A) 11.63% of annual salary.
   (B) 7% of annual salary in excess of $10,800.

5. Vesting Schedule

Yr.	%	Yr.	%	Yr.	%
1	10	6	60	11	100
2	20	7	70	12	100
3	30	8	80	13	100
4	40	9	90	14	100
5	50	10	100	15	100

Vesting based upon total service using plan years. Service prior to effective date excluded.

Top Heavy Vesting Schedule:

Years	Percent Vested
1	0%
2	20%
3	40%
4	60%
5	80%
6	100%

CENSUS REPORT

Client : CATALINA ENTERPRISES,INC.
Allocation Date : 12/31/1984

Name	Sex	Birth Date	Hire Date	Plan Entry Date	Term Date	*** Current *** Pay	Hours	Status	Soc. Sec. #
BREAULT, S.	M	01/22/43	07/14/80	01/01/82		39500.00	1000		218-40-1620
BROOKS, J.	F	01/11/50	07/12/82	01/01/84	10/05/84	0.00	1000	Eligible Term.	215-52-2755
CICCONE, J.	M	02/12/60	06/07/83	01/01/85		0.00	1000	Ineligible-Service	215-76-6225
CICCONE, S.	F	09/29/39	04/01/71	07/01/72		21600.00	1000		140-30-8517
LENZEN, E.	F	10/28/47	03/01/75	07/01/76		17292.00	1000		217-56-0655
RICHARDSON, M.	M	08/27/30	01/23/78	07/01/79		11447.00	1000		239-38-0832
RYCKMAN, H.	M	12/02/37	12/01/76	01/01/78	11/07/83	0.00	0	Forfeiture	216-34-8822
RYCKMAN, K.	M	11/08/60	09/11/78	07/01/85		0.00	1000	Ineligible-Min Age	218-72-8834
SHOFER, A.	F	03/01/60	11/22/82	01/01/85		0.00	1000	Ineligible-Service	216-84-0920
SHOFER, R.	M	06/21/33	01/01/66	01/01/72		200000.00	1000		219-58-1068
SOBEL, P.	M	08/20/42	04/01/78	00/00/00		0.00	0	Undistrib. Balance	000-00-0020
SOMERS, P.	F	11/09/50	05/08/78	07/01/79		10132.00	1000		219-58-3011
SPERATO, G.	M	07/06/25	01/01/76	01/01/77		40190.00	1000		216-20-6990
						340161.00			

----- Allocation Status Codes -----

Status Number		Status Code Interpretation
01		Active.
02		Active but over Normal Retirement Age.
03	*	Active but ineligible to receive Forfeitures.
04	*	Active (still employed) but Withdrawn.
05	*	Active but ineligible to receive Contributions nor Forfeitures
06		Reserved
07		Reserved
08		Inactive Participant because of failure to meet hours test in current year.
09	*	Retired (Early, Normal, or Late)
10	*	Retired (Disability)
11	*	Deceased
12	*	Approved Leave of Absence
13		Reserved
14		Reserved
15	*	Pending Forfeiture
16	*	Forfeiture in Current Allocation
17	*	Undistributed Benefits - 100% Vested in Current Balance.
18		Reserved
19		Reserved
20	*	Transfered out to another location
21		Terminated
22	*	Part-Time
23		Reserved
24		Reserved
25	*	Ineligible (Waived Participation)
26		Ineligible (Hours)
27		Ineligible (Service)
28		Ineligible (Minimum Age)
29		Ineligible (Maximum Age)
30		Ineligible (Non-Matching Group Code)

* Only overridden by computer if covered group code does not match

Allocation Summary for all Participants in the
CATALINA ENTERPRISES, INC. PENSION PLAN

	Starting Balance 12/31/83	Contrib. For Year	Forfeit. For Year	Earnings For Year	Withdrawals For Year	Adjust-ments	Ending Balance 12/31/84	Vested Balance
BREAULT, S.								
Status Active								
Pay 39500.00								
Integ Level 10800.00								
Vest Svc 4 yrs								
Vest Pct 60.00 %								
Employer Account	11972.86	6602.85	0.00	2590.04	0.00	0.00	21165.75	12699.45
CICCONE, S.								
Status Active								
Pay 21600.00								
Integ Level 10800.00								
Vest Svc 13 yrs								
Vest Pct 100.00 %								
Employer Account	87087.69	3268.08	0.00	18839.32	0.00	0.00	109195.09	109195.09
LENZEN, E.								
Status Active								
Pay 17292.00								
Integ Level 10800.00								
Vest Svc 10 yrs								
Vest Pct 100.00 %								
Employer Account	30683.95	2465.50	0.00	6637.73	0.00	0.00	39787.18	39787.18
RICHARDSON, M.								
Status Active								
Pay 11447.00								
Integ Level 10800.00								
Vest Svc 7 yrs								
Vest Pct 100.00 %								
Employer Account	15192.67	1376.58	0.00	3286.57	0.00	0.00	19855.82	19855.82
RYCKMAN, H.								
Status Forfeit								
Vest Svc 7 yrs								
Vest Pct 100.00 %								
Term Date 11/07/83								
Employer Account	25978.79	0.00	-7793.64	0.00	-18185.15	0.00	0.00	0.00
SHOFER, R.								
Status Active								
Pay 200000.00								
Integ Level 10800.00								
Vest Svc 13 yrs								
Vest Pct 100.00 %								
Employer Account	561650.79	30000.00*	0.00	121499.57	0.00	0.00	713150.36	713150.36
Employee Voluntary	209415.95	0.00	0.00	45302.08	0.00	0.00	254718.03	254718.03
Employee Subtotals	771066.74	30000.00	0.00	166801.65	0.00	0.00	967868.39	967868.39

Forfeitures and Pending Distributions for the
CATALINA ENTERPRISES, INC. PENSION PLAN

Name	Balance 12/31/1983	Amount Withdrawn	Earnings	Vested %	Amount Forfeited	Balance 12/31/1984	Amount To Be Distributed
RYCKMAN, H.	25978.79	-18185.15	0.00	100.00	7793.64	0.00	0.00
SOBEL, P.	3961.46	0.00	856.97	100.00	0.00	4818.43	4818.43
Grand Totals	29940.25	-18185.15	856.97		7793.64	4818.43	4818.43

CATALINA ENTERPRISES, INC.

PENSION PLAN

TOP-HEAVY ANALYSIS

AS OF 12/31/84

I. Key Employees	O/S	Distribution Date	Accrued Benefit Values: Defined Contribution	Defined Benefit
R. Shofer	S	N/A	$771,066.74	N/A

Total Key Employee Accrued Benefits: $771,066.74 (1)

II. Non-Key Employees	Plan Year Ended	Value of All Accrued Benefits: Defined Contribution	Defined Benefit
All Employees (Active)	12/31/83	$256,361.61	N/A

Total Value of all non-key employee accrued benefits: $256,361.61 (2)

Total Value of all Accrued Benefits (1)+(2): $1,027,428.35 (3)

Top-Heavy Ratio: (1)/(3) = 771,066.74 / 1,027,428.35 = 75%

CATALINA ENTERPRISES, INC.

PENSION PLAN

SUMMARY ANNUAL REPORT

This is a summary of the annual report for the Catalina Enterprises, Inc. Pension Plan, whose sponsor's EIN is 52-0820445, for the period 1/1/84 to 12/31/84. The annual report has been filed with the Internal Revenue Service, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

BASIC FINANCIAL STATEMENT

Benefits under the plan are provided by a trust fund. Plan expenses were $169,872. These expenses included $88,917 in interest expenses, $18,185 in benefits paid to participants and beneficiaries and $62,769 in other expenses. A total of 9 persons were participants in or beneficiaries of the plan at the end of the plan year, although not all of these persons had yet earned the right to receive benefits.

The value of the plan assets after subtracting liabilities of the plan was $1,282,798 as of 12/31/84, compared to $1,040,018 as of 12/31/83. During the plan year, the plan experienced an increase in its net assets of $242,780. This increase included unrealized appreciation or depreciation in the value of the plan assets; that is, the difference between the value of the plan assets at the end of the year and the value of the assets at the beginning of the year or the cost of assets acquired during the year. The plan had total income of $412,652, including employer contributions of $43,603 and earnings from investments of $297,049.

MINIMUM FUNDING STANDARDS

An actuary's statement shows that enough money was contributed to the plan to keep it funded in accordance with the minimum funding standards of ERISA.

YOUR RIGHTS TO ADDITIONAL INFORMATION

You have the right to receive a copy of the full annual report or any part thereof, on request.

To obtain a copy of the full annual report, or any part thereof, write or call the office of Catalina Enterprises, Inc., the plan sponsor, at 5006 Liberty Heights Avenue, Baltimore, Maryland 21207. The charge to cover copying costs will be $1.25 for the full annual report or $.25 per page for any part thereof.

You also have the right to receive from the plan administrator, on request and at no charge, a statement of the assets and liabilities of the plan and accompanying notes, or a statement of income and expenses of the plan and accompanying notes, or both. If you request a copy of the full annual report from the plan administrator, these two statements and accompanying notes will be included as part of the report. The charge to cover copying costs given above does not include a charge for the copying of these portions of the report because these portions are furnished without charge.

You also have the legally protected right to examine the annual report at the main office of the plan at 5006 Liberty Heights Avenue, Baltimore, Maryland 21207 and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department of Labor should be addressed to:

Public Disclosure Room
N4677
Pension and Welfare Benefit Programs
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20216

Form **5500-C**

Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefit Programs

Pension Benefit Guaranty Corporation

Return/Report of Employee Benefit Plan

(With fewer than 100 participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6057(b) and 6058(a) of the Internal Revenue Code, referred to as the Code.

OMB No. 1210-0016

1984

This Form is Open to Public Inspection

For the calendar plan year 1984 or fiscal plan year beginning 1/1, 1984, and ending 12/31, 1984.

Type or print in ink all entries on the form, schedules, and attachments. If an item does not apply, enter "N/A." File the originals.

This return/report is: (i) ☐ the return/report filed for the plan's first plan year; (ii) ☐ an amended return/report; or (iii) ☐ the final return/report filed for the plan.

▶ **Caution:** A penalty of $25 a day for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.

▶ Welfare benefit plans required to file this form do not complete items 7(b), 12, and 24 through 30. Certain welfare benefit plans are not required to file this form—see instructions.

▶ Keogh (HR 10) plans must check the box in item 5(a)(iii).

▶ Check here ▶ ☐ and do NOT complete items 6(c)(iv), 8(b) and (d); 9(c), 12, 13, 17, 18, 20, 21, 22, 23, 27, and 30 if this return/report is for a pension benefit plan that covers only an individual who wholly owns a trade or business, whether incorporated or unincorporated.

▶ If you have been granted an extension of time to file this form, you must attach a copy of the approved extension to this form.

Use IRS label. Otherwise, please print or type.

1 (a) Name of plan sponsor (employer, if for a single employer plan): Catalina Enterprises, Inc.

1 (b) Employer identification number: 52 0820445

Address (number and street): 5006 Liberty Heights Avenue

1 (c) Telephone number of sponsor: (301) 466-3337

City or town, State and ZIP code: Baltimore, Maryland 21207

1 (d) If plan year changed since last return/report, check here ▶ ☐

2 (a) Name of plan administrator (if same as plan sponsor enter "Same"): Same

1 (e) Business code number

Address (number and street)

2 (b) Administrator's employer identification no.

City or town, State and ZIP code

2 (c) Telephone number of administrator ( )

3 Is the name, address and identification number of plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan? ☒ Yes ☐ No. If "No," enter the information from the last return/report in (a) and/or (b).

(a) Sponsor ▶ N/A EIN

(b) Administrator ▶ N/A EIN

(c) If (a) indicates a change in the sponsor's name and EIN, is this a change in sponsorship only? (See specific instructions for definition of sponsorship.) ☐ Yes ☐ No

4 Check box to indicate the type of plan entity (check only one box):

(a) ☒ Single-employer plan
(b) ☐ Plan of controlled group of corporations or common control employers
(c) ☐ Multiemployer plan
(d) ☐ Multiple-employer-collectively-bargained plan
(e) ☐ Multiple-employer plan (other)

5 (a) (i) Name of plan ▶ Catalina Enterprises, Inc. Pension Plan

5 (b) Effective date of plan 12/28/71

(ii) ☐ Check if name of plan changed since the last return/report.

(iii) ☐ Check this box if this is a Keogh (HR10) plan.

5 (c) Enter three-digit plan number ▶ 001

6 Check at least one item in (a) or (b) and applicable items in (c): (a) Welfare benefit plan (Plan numbers 501 through 999):

(i) ☐ Health insurance (ii) ☐ Life insurance (iii) ☐ Supplemental unemployment

(iv) ☐ Other (specify) ▶

(b) Pension benefit plan (Plan numbers 001 through 500): (i) Defined benefit plan—(indicate type of defined benefit plan below):

(A) ☐ Fixed benefit (B) ☐ Unit benefit (C) ☐ Flat benefit (D) ☐ Other (specify) ▶

(ii) Defined contribution plan—(Indicate type of defined contribution plan below):

(A) ☐ Profit-sharing (B) ☐ Stock bonus (C) ☐ Target benefit (D) ☐ Other money purchase

(E) ☐ Other (specify) ▶

(iii) ☐ Defined benefit plan with benefits based partly on balance of separate account of participant (Code section 414(k))

(iv) ☐ Annuity arrangement of a certain exempt organization (Code section 403(b)(1))

(v) ☐ Custodial account for regulated investment company stock (Code section 403(b)(7))

(vi) ☐ Pension plan utilizing individual retirement accounts or annuities (described in Code section 408) as the sole funding vehicle for providing benefits

(vii) ☐ Other (specify) ▶

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ ✓ Signature of employer/plan sponsor ▶ ✓

Date ▶ Signature of plan administrator ▶

6 (c) Other plan features: (i) ☐ Thrift-savings (ii) ☐ Participant-directed account plan
(iii) ☐ Pension plan maintained outside the United States (see instructions) (iv) ☐ Master trust (see instructions) ▶

(d) Single employer plans enter the tax year end of the employer in which this plan year ends ▶ Month 12 Day 31 Year 84

	Yes	No
(e) Is this a pension plan of an affiliated service group?		X
(f) Does this plan contain a cash or deferred arrangement described in Code section 401(k)?		X

7 (a) Total participants (i) Beginning of plan year ▶ 10 (ii) End of plan year ▶ 9

(b) (i) Was any pension benefit plan participant(s) separated from service with a deferred vested benefit for which a Schedule SSA (Form 5500) is required to be attached?		X
(ii) If "Yes," enter the number of separated participants required to be reported ▶ N/A		

8 Plan amendment information (welfare plans do NOT complete (b)(ii)):

(a) Were any plan amendments to this plan adopted since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X
(b) If "Yes," (i) And if any amendments have resulted in a change in the information contained in a summary plan description or previously furnished summary description of modifications:		
(A) Have summary descriptions of the changes been sent to participants?	N/A	
(B) Have summary descriptions of the changes been filed with DOL?	N/A	
(ii) Does any such amendment result in the reduction of the accrued benefit of any participant under the plan?	N/A	
(c) Enter the date the most recent amendment was adopted ▶ Month ____ Day N/A Year ____		
(d) (i) Has a summary plan description been filed with DOL for this plan?		X

(ii) If (i) is "Yes," what was the employer identification number and the plan number used to identify it?
Employer identification number ▶ 52-0820445 Plan number ▶ 001

9 Plan termination information:

(a) Was this plan terminated during this plan year or any prior plan year? If "Yes," enter year ▶		X
(b) If "Yes," were all trust assets either distributed to participants or beneficiaries, transferred to another plan or brought under the control of PBGC?	N/A	
(c) If (a) is "Yes," and the plan is covered by PBGC, is the plan continuing to file a PBGC Form 1 and pay premiums until the end of the plan year in which assets are distributed or brought under the control of PBGC?	N/A	

10 (a) Was this plan merged or consolidated into another plan, or were assets or liabilities transferred to another plan since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)? X

If "Yes," identify the other plan(s):

(b) Name of plan(s) ▶	(c) Employer identification number(s)	(d) Plan number(s)
N/A	N/A	N/A

(e) Has Form 5310 been filed? N/A ☐ Yes ☐ No

11 Indicate funding arrangement:
(a) ☒ Trust (b) ☐ Fully insured (c) ☐ Combination (d) ☐ Other (specify) ▶
(e) If (b) or (c) is checked, enter the number of Schedules A (Form 5500) which are attached ▶

12 (a) Is the plan covered under the Pension Benefit Guaranty Corporation termination insurance program? ☐ Yes ☒ No ☐ Not determined
(b) If (a) is "Yes," or "Not determined," enter the employer identification number and the plan number used to identify it.
Employer identification number ▶ N/A Plan number ▶ N/A

13	Yes	No
(a) Is the plan insured by a fidelity bond?		X
(i) If "Yes," enter name of surety company ▶ TO BE PURCHASED		
(ii) Amount of bond coverage ▶		
(b) Was any loss discovered since the last return/report Form 5500, 5500-C or 5500-K was filed for this plan (or during this plan year if this is the initial return/report)?		X

14		
(a) If this is a defined benefit plan, is it subject to the minimum funding standards for this plan year? If "Yes," attach Schedule B (Form 5500).		X
(b) If this is a defined contribution plan, i.e., money purchase or target benefit, is it subject to the minimum funding standards (if a waiver was granted, see instructions)?		X
If "Yes," complete (i), (ii) and (iii) below:		
(i) Amount of employer contribution required for the plan year	$ 42,903.12	
(ii) Amount of contribution paid by the employer for the plan year	$ 42,903.12	
Enter date of last payment by employer ▶ Month 9 Day 13 Year 85		
(iii) If (i) is greater than (ii) subtract (ii) from (i) and enter the funding deficiency here. Otherwise enter zero. (If you have a funding deficiency, file Form 5330.)	$ 0	

15 Plan assets and liabilities at the beginning and end of the current plan year (list all assets and liabilities at current value). A fully insured welfare plan or a pension plan with no trust and which is funded entirely by allocated insurance contracts which fully guarantee the amount of benefit payments should check the box and not complete the rest of this item ▶ ☐

Note: *Include all plan assets and liabilities of a trust or separately maintained fund. If more than one trust/fund, report on a combined basis. Include all insurance values except for the value of that portion of an allocated insurance contract which fully guarantees the amount of benefit payments. Round off amounts to nearest dollar. If you have no assets to report enter "-0-" on line 15(f).*

Assets	a. Beginning of year	b. End of year
(a) Cash— (i) Interest bearing		
(ii) Non-interest bearing	11224.24	12,386.48
(iii) Total cash	11224.24	12,386.48
(b) Receivables	79,934.28	401,661.49
(c) Investments—		
(i) Government securities		
(ii) Pooled funds/mutual funds		
(iii) Corporate (debt and equity instruments)	8000.28	8000.28
(iv) Value of interest in master trust		
(v) Real estate and mortgages		
(vi) Other	1,228,180.75	574,024.75
(vii) Total investments		
(d) Building and other depreciable property used in plan operation	812,000	884,000
(e) Unallocated insurance contracts		
(f) Other assets	4178.64	
(g) Total assets (add (a)(iii); (b); (c)(vii); (d); (e) and (f))	2,143,518.19	1,880,239.22
Liabilities and Net Assets		
(h) Payables	282,080.99	358,308.13
(i) Acquisition indebtedness	614,078.43	157,775.01
(j) Other liabilities	207,340.77	81,357.94
(k) Total liabilities (add (h) through (j))	1,103,500.19	597,441.08
(l) Net assets (subtract (k) from (g))	1,040,018	1,282,798.14

16 Plan income, expenses and changes in net assets during the plan year. Include all income and expenses of a trust(s) or separately maintained fund(s), including any payments made for allocated insurance contracts. Round off amounts to nearest dollar.

	a. Amount	b. Total
(a) Contributions received or receivable in cash from:		
(i) Employer(s) (including contributions on behalf of self-employed individuals)	43,603.05	
(ii) Employees		
(iii) Others		43,603.05
(b) Noncash contributions		
(c) Earnings from investments (interest, dividends, rents, royalties)		257,823.90
(d) Net realized gain (loss) on sale or exchange of assets		
(e) Other income (specify) ▶		39,175.34
(f) Total income (add (a) through (e))		340,652.29
(g) Distribution of benefits and payments to provide benefits:		
(i) Directly to participants or their beneficiaries	18185.25	
(ii) To insurance carrier or similar organization for provision of benefits (including prepaid medical plans)		
(iii) To other organizations or individuals providing welfare benefits		18,185.25
(h) Interest expense		88,927.41
(i) Administrative expenses (salaries, fees, commissions, insurance premiums)		
(j) Other expenses (specify) ▶		62,759.49
(k) Total expenses (add (g) through (j))		
(l) Net income (subtract (k) from (f))		170,780.14
(m) Changes in net assets: (i) Unrealized appreciation (depreciation) of assets	72,000	
(ii) Net investment gain (or loss) from all master trust investment accounts		
(iii) Other changes (specify) ▶		72,000
(n) Net increase (decrease) in net assets for the year (add (l) and (m))		242,780.14
(o) Net assets at beginning of year (line 15(k), column a)		1,040,018.00
(p) Net assets at end of year (add (n) and (o)) (equals line 15(k), column b)		1,282,798.14

17 As of the end of the plan year:

(a) What percentage of plan assets are loaned to a party-in-interest? 0 %

(b) What percentage of plan assets are invested in securities issued by a party-in-interest? 0 %

(c) What percentage of plan assets are invested in real estate which is leased by a party-in-interest? 0 %

	Yes	No
18 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report):		
(a) Has there been a termination in the appointment of any trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager or custodian?		X
If "Yes," explain and include the name, position, address and telephone number of the person whose appointment has been terminated ▶ N/A		
(b) Has the plan used the services of a contract administrator?	X	
If "Yes," enter the contract administrator's name and employer identification number (see instructions) ▶ The Stuart Hack Company 52-0747494		
(c) Indicate the amount of the plan's administrative expenses for the: (i) Preceding year ▶ $ 0 (ii) Second preceding year ▶ $ 0		
(d) Have any insurance policies or annuities been replaced?		N/A
(e) Was the plan funded with: (i) ☐ Individual policies or annuities (ii) ☐ Group policies or annuities (iii) ☐ Both		
19 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report):		
(a) Other than transactions described in the exceptions outlined in the instructions, were there any transactions, directly or indirectly, between the plan and a party-in-interest? If "Yes," see specific instructions.		X
(b) Has the plan granted an extension on any loan for which, before the granting of an extension, it has not received all the principal and interest payments due under the terms of the loan?		X
(c) Has the plan granted an extension of time or renewal for the payment of any obligation owed to it which amounts to more than 10% of the plan assets?		X
20 As of the end of any plan year since the end of the plan year covered by the last return/report, Form 5500, 5500-C or 5500-K which was filed for this plan (or as of the end of this plan year if this is the initial return/report):		
(a) Did the plan have investments of the type reportable under item 15(c)(vii) or (ix) which in the aggregate in either category exceeded 15% of plan assets?		X
(b) Did the plan have loans outstanding or investments in a single enterprise (other than the United States Government) which exceeded 15% of plan assets?		X
21 During the plan year covered by this return:		
(a) Did the plan acquire any qualifying employer security or qualifying employer real property, when immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the plan assets?		X
(b) Did the plan acquire any qualifying employer security or qualifying employer real property, when immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the plan assets?		X
(c) Has any plan fiduciary had either a financial interest worth more than $1,000 in any party providing services to the plan or received anything of value from any party providing services to the plan?		X
(d) Has any employer owed the plan contributions which were more than three months past due under the terms of the plan?		X
(e) Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year, or classified as uncollectable?		X
(f) Were any leases to which the plan was a party in default or classified as uncollectable?		X
22 Who is the plan's designated agent for legal process? ▶ Mr Richard Shafer		
23 Give the name and address of each fiduciary (including trustees) to the plan ▶ Mr. Richard Shafer c/o Catalina Enterprises, Inc. 5006 Liberty Heights Avenue, Baltimore, MD 21207		
24 Is this plan an adoption of any of the plans below? (If "Yes," check appropriate box and enter IRS serial number): (a) ☐ Master/prototype, (b) ☐ Field prototype, (c) ☐ Pattern, (d) ☐ Model plan, or (e) ☐ Bond purchase plan? Enter the four or eight-digit IRS serial number (see instructions) ▶ n/a		
25 (a) Is this plan integrated with social security?		X
(b) Is it intended that this plan qualify under Code section 401(a) or 405?	X	
(c) If (b) is "Yes," have you received a determination letter from the IRS for this plan?	X	
(d) Does the employer/sponsor listed in item 1(a) of this form maintain other qualified pension benefit plans? If "Yes," list the number of plans including this plan ▶ 2	X	

		Yes	No
26	Information about employees of employer at end of the plan year. (a) Does the plan satisfy the percentage tests of Code section 410(b)(1)(A)? If "No," complete only (b) below and see Specific Instructions	X	
(b)	Total number of employees	10	
(c)	Number of employees excluded under the plan because of: *(i)* Minimum age or years of service	3	
	(ii) Employees on whose behalf retirement benefits were the subject of collective bargaining	0	
	(iii) Nonresident aliens who receive no earned income from United States sources	0	
	(iv) Total excluded (add (i), (ii) and (iii))	3	
(d)	Total number of employees not excluded (subtract (c)(iv) from (b))	7	
(e)	Employees ineligible (specify reason) ▶	0	
(f)	Employees eligible to participate (subtract (e) from (d))	7	
(g)	Employees eligible but not participating	0	
(h)	Employees participating (subtract (g) from (f))	7	

27	Vesting (check only one box to indicate the vesting provisions of the plan):	
(a)	Full and immediate vesting, or full vesting within 3 years	
(b)	No vesting in years 1 through 9, and full vesting after the 10th year of service	
(c)	For each year of employment, beginning with the 4th year, vesting equal to 40% after 4 years of service, 5% additional for the next 2 years, and 10% additional for each of the next 5 years	
(d)	100% vesting within 5 years after contributions are made (class year plan only)	
(e)	Other vesting	X

		Yes	No
28 (a)	Did the employer receive plan assets (including a return of contributions) since the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X
(b)	If this is a defined benefit plan which provides for annual, automatic increases in the maximum dollar limitations under Code section 415, does the plan provide that any such increase is effective no earlier than the calendar year for which IRS determines that increase under Code section 415(d)?	N/A	
(c)	Is this a plan with Employee Stock Ownership (ESOP) features?		X
	(i) If "Yes," was a current appraisal of the value of the stock made immediately before any contribution of stock or purchase of the stock by the trust for the plan year covered by this return/report?	N/A	
	(ii) If (i) is "Yes," was the appraisal made by an unrelated third party?	N/A	
29	Have any individuals performed services as a leased employee for this employer or for any other employer who is aggregated with this employer under section 414(b), (c), or (m)? If "Yes," see instructions for completing item 26.		X
30 (a)	Is this plan a top heavy plan within the meaning of Code section 416 for this plan year?	X	
(b)	If (a) is "Yes," complete (i), (ii) and (iii) below:		
	(i) Has the plan complied with the vesting requirements of Code section 416(b)?	X	
	(ii) Has the plan complied with the minimum benefit requirements of Code section 416(c)?	X	
	(iii) Has the plan complied with the limitation on compensation of Code section 416(d)?	X	

If additional space is required for any item, attach additional sheets the same size as this form.

SCHEDULE P (Form 5500)

Department of the Treasury
Internal Revenue Service

Annual Return of Fiduciary of Employee Benefit Trust

▶ File as an attachment to Form 5500, 5500-C, or 5500-R.

OMB No. 1210-0016

1984

For trust calendar year 1984 or fiscal year beginning 1/1, 1984, and ending 12/31, 1984.

Please type or print

1 (a) Name of trustee or custodian

Mr. Richard Shofer

(b) Address (number and street)

5006 Liberty Heights Avenue

(c) City or town, State and ZIP code

Baltimore, Maryland 21207

2 Name of trust

Catalina Enterprises, Inc. Pension Plan

3 Name of plan if different from name of trust

Same

4 Have you furnished the participating employee benefit plan(s) with the trust financial information required to be reported by the plan(s) on their Forms 5500, or 5500-C? . . . . . ☒ Yes ☐ No

5 Enter the plan sponsor's employer identification number as shown on the form to which this schedule is attached . . . . . ▶ 52 0820445

Under penalties of perjury, I declare that I have examined this schedule, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ /

Signature of fiduciary ▶ /

Instructions

(Section references are to the Internal Revenue Code.)

A. Purpose of Form

You may use this schedule to satisfy the requirements under section 6033(a) for an annual information return from every section 401(a) organization exempt from tax under section 501(a).

The filing of this form will also start the running of the statute of limitations under section 6501(a) for any trust described in section 401(a) which is exempt from tax under section 501(a).

B. Who May File

(1) Every trustee of a trust described in section 401(a) which was created as part of an employee benefit plan.

(2) Every custodian of a custodial account described in section 401(f).

C. How to File

File Schedule P (Form 5500) for the trust year ending with or within any participating plan's plan year as an attachment to the Form 5500, 5500-C, or 5500-R filed by the plan for that plan year.

Schedule P (Form 5500) may be filed only as an attachment to a Form 5500, 5500-C, or 5500-R. A separately filed Schedule P (Form 5500) will not be accepted.

If the trust or custodial account is used by more than one plan, file only one Schedule P (Form 5500). It must be filed as an attachment to one of the participating plan's returns/reports. If a plan uses more than one trust or custodial account for its funds, file one Schedule P (Form 5500) for each trust or custodial account.

D. Signature

The fiduciary (trustee or custodian) must sign this schedule. If there is more than one fiduciary, one of them, authorized by the others, may sign.

E. Other Returns and Forms that May be Required

(1) Form 990-T.—For trusts described in section 401(a), a tax is imposed on income derived from business that is unrelated to the purpose for which the trust received a tax exemption. Report such income and tax on Form 990-T, Exempt Organization Business Income Tax Return. (See sections 511 through 514 and related regulations.)

(2) Forms W-2P and 1099-R.—If you made payments or distributions to individual beneficiaries of a plan, report these payments on Forms W-2P or 1099-R. (See sections 6041 and 6047 and related regulations.)

(3) Forms 941 or 941E.—If you made payments of distributions to individual beneficiaries of a plan, you are required to withhold income tax from those payments, unless the payee elects not to have the tax withheld. Report this withholding on Form 941 or 941E. (See Forms 941 or 941E and Circular E, Publication 15.)

(Rev. October 1982)
Department of the Treasury
Internal Revenue Service

to File Certain Employee Plan Returns

▶ For Paperwork Reduction Act Notice, see instructions on back

File With IRS Only

File in DUPLICATE by the due date for filing the return. (See general instructions 2 and 3.)

Name of taxpayer or plan sponsor (see instructions)
Catalina Enterprises, Inc

Address (Number and street)
5006 Liberty Heights Avenue

City or town, State, and ZIP code
Baltimore, MD 21207

Check applicable box and enter number (see specific instructions)

☒ Employer identification number
▶ 52 - 0820445 OR

☐ Social security number
▶

1 I request an extension of time until (see specific instruction 1) ▶ 10/15/85 (check appropriate block(s)):

(a) ☐ To file Form 5500, Annual Return/Report of Employee Benefit Plan (with related schedules).

(b) ☒ To file Form 5500-C, Return/Report of Employee Benefit Plan (with related schedules).

(c) ☐ To file Form 5500-K, Return/Report of Employee Pension Benefit Plan (with related schedules).

(d) ☐ To file Form 5500-G, Annual Return/Report of Employee Benefit Plan.

(e) ☐ To file Form 5500-R, Registration Statement of Employee Benefit Plan (with related schedules).

(f) ☐ To file Form 5330, Return of Initial Excise Taxes Related to Pension and Profit-sharing Plans for tax year beginning ▶ ..... and ending ▶ .....

(g) If you checked (f) above, are you electing to be taxed under ERISA section 2003(c)(1)(B)? . . . . . ☐ Yes ☐ No

2 Complete the following for the plan covered by this application (see general instruction 2):

Plan name	Plan number	Plan year ending Month	Day	Year
CATALINA ENTERPRISES, INC. PENSION PLAN	001	12	31	84

3 (a) Has an extension of time to file the designated return(s) been previously granted for this tax year? . . . . ☐ Yes ☒ No

(b) If "Yes," show the date(s) to which the extension was granted . . . . . ▶ n/a

4 Attach a detailed statement of why you need the extension (see specific instruction 4). PLEASE SEE ATTACHED

5 If the extension is for Form 5330, enter the amount of tax estimated to be due on Form 5330. Pay this amount with this application . . . . . ▶

Caution: *Interest on late payment of tax accrues at the rate established under section 6621 of the Internal Revenue Code from the regular due date of the return until paid. (For the penalty for late payment of tax, see specific instruction 5.)*

Under penalties of perjury, I declare that to the best of my knowledge and belief the statements made on this form are true, correct, and complete and that I am authorized to prepare this application.

Signature ▶ Clarmaine B. Ford Date ▶ 7/15/85

Note: *The person who signs this form may be an employer or plan administrator filing Form 5500, 5500-C, 5500-K, 5500-G, 5500-R or 5330; a disqualified person filing Form 5330; an attorney or certified public accountant qualified to practice before the IRS; a person enrolled to practice before the IRS; or a person holding a power of attorney.*

Notice to Applicant.—THE INTERNAL REVENUE SERVICE WILL INDICATE BELOW WHETHER THE EXTENSION IS GRANTED OR DENIED AND WILL RETURN THE ORIGINAL OF THE APPLICATION

☒ The application IS approved to ▶ 10-15-85 (You MUST attach a copy of this form to each return you file for which an extension is granted.)

☐ The application IS NOT approved. (You MUST attach a copy of this form to each return you file for which a grace period is granted.) However, in view of your reasons stated in the application, a 10-day grace period is granted from the date shown below or due date of the return, whichever is later. This 10-day grace period constitutes a valid extension of time for purposes of elections otherwise required to be made on timely filed returns.

☐ The application IS NOT approved.

After consideration of the reasons stated in your application, we have determined the extension is not warranted. (The 10-day grace period is not granted.)

☐ The application cannot be considered, since you filed it after the due date of the return.

☐ Other ▶

RECEIVED
JUL 15 1985
PSC PHILA, PA.
14

Donald Spagnuolo

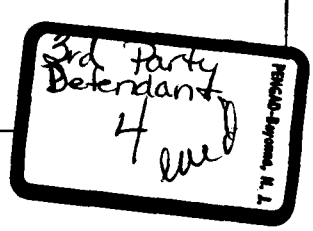
(Date) (Director) By: RECEIVED

AUG 5 1985

363-479-2

RICHARD SHOFER	:	IN THE	
Plaintiff	:	CIRCUIT COURT	
v.	:	FOR	
THE STUART HACK COMPANY, et al.	:	BALTIMORE CITY	
	:	Case No. 88102069/ CL79993	
Defendants	:		
* * * * * * * * * *	:		
THE STUART HACK COMPANY, et al.	:		
	:		
Third-Party Plaintiffs	:		
v.	:		
GRABUSH, NEWMAN & CO., P.A.	:		
	:		
Third-Party Defendant	:		

Reported By: Dawn M. Hart, CSR
Riggleman, Turk & Nelson
(301) 539-6398



don't have any problem with that but the tone that he has somehow said something that's different than what he previously testified to I object to.

Q I believe my earlier question to you on this subject was prior to the completion of this return by Grabush, did you speak with anyone including Mr. Shofer about the tax treatment of these loans from the pension plan.

Did you understand that as being my earlier question?

A Yes, I may have misinterpreted it because I would not have raised the question initially. It would have been raised, you know, from Mr. Shofer to me as it --

Q Okay.

A -- as, I should say, as a statement of fact.

Q All right. Tell me about your conversations with Mr. Shofer concerning the tax treatment of the monies taken by him in 1984 from his pension plan, tell me what you recall.

MS. SCHUETT: We're talking about conversations and we're not talking about all conversations up to date, we're talking about 1985 conversations?

MS. TRUHE: No, any conversations Mr. Larash had with Mr. Shofer prior to the completion of this 1984 return.

MS. SCHUETT: Okay. Prior to the return.

A All I remember is a discussion of that document from Hack and I would, I would be guessing as to what was actually said in any conversation.

Q Did Mr. Shofer --

A I don't remember.

Q -- show you a copy of that document?

A To my knowledge, he did, yes.

Q Did you keep a copy of that document?

A I was looking through my files in the last two days to refresh for this and I didn't run across a copy of that document.

Q Do you recall whether you asked him for a copy of that document?

A I can only say that I probably did.

Q Do you recall --

MS. SCHUETT: Just to clarify the record, in the file that we talked about prior to the beginning of this

deposition, there is a copy of that letter.

MS. TRUHE: All right. Thank you.

Q Do you recall whether you read this document?

A I'm sure I read it.

Q What was your understanding of the meaning of that document or the opinion expressed therein?

A Well, as I said, I reviewed the file in the last two days, I didn't run across that document so I haven't read it recently. So I don't have any recollection anymore as to any specifics in it other than a general impression that it allowed loans from the pension plan to Richard Shofer.

MR. BOWDEN: I didn't hear the last part of your sentence, I'm sorry.

MS. SCHUETT: Other than it allowed loans from the pension plan to Richard Shofer.

Q (By Ms. Truhe) Did the letter talk about tax treatment of these loans?

MS. SCHUETT: Objection.

A I don't recall.

Q What was your understanding as to Mr. Hack's opinion regarding the taxability or tax treatment of these

loans?

A It was my understanding that the loans would be considered as a legitimate loan and there was nothing more to be concerned about from a tax point of view.

Q So let me see if I understand what your understanding was in, I believe 1985 as to the tax treatment of these loans.

It was your impression from your conversation with Mr. Shofer and your reading of this letter from Mr. Hack that it was Mr. Hack's opinion that Mr. Shofer could borrow without limitation from his pension plan and that there would be no tax consequences to him; is that correct?

A Yes.

Q And again you did not research this issue any further, is that correct?

A Not until we decided we had to amend returns or not until 1986, a year down the road or so.

Q Why did you decide, again I'm talking about prior to the completion of the 1984 return, why did you decide not to do any research and rely on Mr. Hack's opinion?

A Well, it concerned an area of pension plans which

Q All right. Why don't you continue with this sequence of events, I believe that's where you left off, you were advising where you had sent Mr. Shofer a communication advising him to amend his 1984 return.

A Right.

Q By the way let me ask you one other question in connection with that. Who was it who decided either at Grabush or anywhere else that Mr. Shofer should amend his 1984 return?

MS. SCHUETT: Objection to the form of the question. Could I hear the question again, please.

(Record read.)

MS. SCHUETT: So the question is who decided to do the amendment?

Q No, who decided that Mr. Shofer should be advised to amend his 1984 return?

MS. SCHUETT: Okay.

A It was a combination of Alan Marvel and myself.

Q So, you and Mr. Marvel decided that you should advise Mr. Shofer to amend his 1984 return in this regard; is that correct?

A Yes.

Q All right. Did anyone else assist you or otherwise participate in that particular decision-making?

A It was discussed at various times in conjunction with how much income would have to be reported on those prior years because that also presumed in order to report it you would have to amend the return, so we would have discussed it prior to this letter with Shofer, with Nick Gianpetro, perhaps with Stu Hack, I'm not sure on that.

Q All right. Did you, and for now I'll just confine my question to you personally, did you ever advise Mr. Shofer that he was under no legal duty to amend his 1984 return?

MS. SCHUETT: Objection. Are you telling this witness that Mr. Shofer was under no legal duty; you're telling him that that's the truth?

MS. TRUHE: No, I'm not necessarily saying that one way or another. I'm just asking him whether he ever told Mr. Shofer anything to the effect that -- I guess you have to assume for the purpose of my question that there was no legal duty to amend a tax return, but did you ever tell Mr. Shofer anything along the lines of, while you should

amend your tax return you are under no legal duty to do so, did you ever tell him anything like that?

A I can't honestly say I did; I don't remember.

Q All right. To your knowledge did Mr. Marvel ever tell him anything like that?

A I don't know.

Q Did you ever have any other written communication with Mr. Shofer on this subject aside from, or actually it's Shofer Deposition Exhibit No. 4?

A Concerning amending the return?

Q Yes.

A I don't remember any.

Q All right.

A And when I reviewed my files the last two days I didn't spot any.

Q By the way with regard to the 1985, the original 1985 tax return for Mr. Shofer individually that was signed off by you on February 12th, 1987, why was the preparation of that return so late?

A Let me see. I don't remember when I had the initial interview with him for 1985. Do we have a copy of

tional disregard of rules or regulations. Proposed regulations under section 6694(b) provide a tax return position contrary to rules and regulations will not be penalized if it is not frivolous, as long as the position is disclosed.

Other practice standards found in the penalty provisions of the tax code include

- Knowingly aiding or abetting in preparation of any document for any tax matter leading to an understatement of tax liability (IRC section 6701).
- Promoting abusive tax shelters (IRC section 6700).
- Disclosing taxpayer information (IRC sections 6713 and 7216).
- Aiding or assisting in preparation of a false return (IRC section 7206).

CIRCULAR 230

CPAs, attorneys and enrolled agents, who are permitted to practice before the IRS, are governed by circular 230, which is included in Treasury Department regulations sections 10.01–.98. According to section 10.2(a), " 'Practice before the [IRS]' comprehends all matters connected with presentations to the [IRS]...relating to a client's rights, privileges or liabilities under [Internal Revenue] laws or regulations...." This includes representation of clients at IRS conferences and preparing and filing documents with the service.

Circular 230 establishes four broad standards all tax practitioners must follow.

- A tax practitioner is required to "submit records or information in any matter before the IRS, upon proper and lawful request..." (section 10.20).
- If a CPA is aware of any client omission, noncompliance or error in any document that has been filed with the IRS, the accountant "shall advise the client promptly of the fact of such noncompliance, error or omission" (section 10.21).
- Practitioners are required to exercise due diligence (which itself is not defined) in assisting or preparing a tax return, in determining whether verbal and written communications to the IRS are correct and in determining whether written or oral advice given to a client is correct regarding "any matter administered by the IRS" (section 10.20).
- Practitioners are expected to avoid "disreputable conduct," which includes such activities as giving false or misleading information to the IRS, using false or misleading information to attract clients and using abusive language with IRS agents (section 10.51).

A definition of due diligence may be included in future changes to circular 230. According to IRS personnel, this definition is likely to track closely with the regulations interpreting the tax preparer penalty regulations.

A tax practitioner who violates the provisions of circular 230 may be suspended or disbarred from IRS practice. In addition, under section 10.74, the IRS director of practice may furnish information about practitioners disciplined by the IRS to proper state authorities. Currently, this information is given to authorities in 13 states and the District of Columbia.

AICPA CODE OF CONDUCT

The professional conduct of all AICPA members is governed by the AICPA Code of Professional Conduct. Variations of the ethics code adopted by state CPA societies and boards of accountancy govern CPAs who are members of those societies or regulated by those boards. Under the ethics code, CPAs are bound by broad ethical strictures such as the responsibility to

- Be independent (Rule 101).
- Exercise integrity and objectivity (Rule 102).
- Perform in a professionally competent manner, exercise due professional care, adequately plan and supervise work and base decisions on sufficient relevant data (Rule 201).
- Maintain client confidentiality (Rule 301).
- Avoid acts that discredit the profession (Rule 501).

In addition, Rules 202 and 203 require CPAs to abide by "technical standards." However, not all technical standards are enforceable under these rules. The SRTPs are examples of unenforceable technical standards. For purposes of this article, standards under the aegis of Rules 202 and 203 are called enforceable technical standards.

Currently, the only enforceable technical standards are accounting and auditing standards issued by the Securities and Exchange Commission, the AICPA and the Financial Accounting Standards Board. CPAs are not currently bound by any specific enforceable technical standards of tax practice.

SRTPs

Originally issued between 1964 and 1977, the SRTPs were subsequently revised in 1988 and 1991. Their main goal is to educate the public and practitioners as to what might be termed minimal tax practice standards. Although the SRTPs are not enforceable technical standards, they do represent a consensus of the AICPA tax division about what constitutes good, ethical tax practice.

The introduction to the SRTPs says they "are not intended to establish a code of conduct in tax practice that is separate and apart from the general ethical precepts of the Institute's Code of Professional Conduct." The topics covered by the SRTPs include the following:

- The standard a CPA tax practitioner must follow when recommending a tax return position to a client, the "realistic possibility standard" (SRTP no. 1, *Tax Return Positions*).
- Procedures for answering questions on tax returns (SRTP no. 2, *Answers to Questions on Returns*).
- Procedural aspects of tax return preparation (SRTP no. 3, *Certain Procedural Aspects of Preparing Returns*).
- Using estimates (SRTP no. 4, *Use of Estimates*).
- What to do when departing from a tax return position as concluded in an administrative proceeding or court decision (SRTP no. 5, *Departure From a Position Previously Concluded in an Administrative Proceeding or Court Decision*).
- Recommended procedures when an error is discovered in a prior year's tax return or during an admin-

THE STUART JACK COMPANY
Consultants & Actuaries
4615 Fyes Road
Baltimore, Maryland 21209
(301) 367-8500
Washington, D.C. (703) 4064

December 22, 1983

PERSONAL AND CONFIDENTIAL

Ms. Pam Somers
Catalina Enterprises
5006 Liberty Heights Avenue
Baltimore, MD 21207

RE: **Fee Agreement for**
Catalina Enterprises, Inc. Pension Plan

Dear Pam:

There are two types of work we do for you on an annual basis. The first type is "regular annual administration." The second is "special work." Special work includes procedures which we are unable to predict or quantify in advance, and will be billed on an actual time basis unless we quote you a special additional fixed fee. A list of regular annual administration work and special work for your plan is enclosed.

Although there may be additional changes as a result of regulations issued in regard to TEFRA this year, we can quote you a fee for the regular annual administration. For the plan year 12/31/83, the fee for regular annual administration of the plan will be $900.00, plus any out-of-pocket expenses (out-of-pocket expenses include photocopies, delivery service charges, postage, and the like). One-half of the quoted fee is due with the renewal data for your plan. One-fourth will be billed when we notify you of the plan deposit and the remaining one-fourth will be billed when we deliver your annual statement. Out-of-pocket expenses and any charges for special work will be billed monthly as they are incurred.

Please sign and return the enclosed copy of this letter as your authorization for us to proceed with the work.

Sincerely,

Alan Vandendriessche
Account Executive

AV:rcd
Enclosures

Authorized by:

Signature _____ Date _____

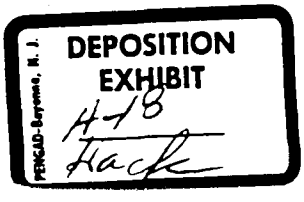
cc: Accounting

DEFENDANT'S EXHIBIT 1

REGULAR ANNUAL ADMINISTRATION

MONEY PURCHASE, TARGET BENEFIT, PROFIT SHARING
AND EMPLOYEE STOCK OWNERSHIP PLANS

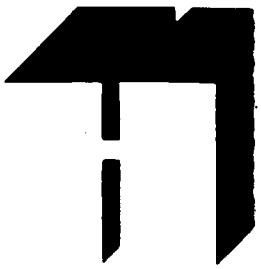
1. Employee census and asset data request
2. Review asset reports prepared by your accountant or bank
3. Eligibility and vesting
4. Deposit calculation
5. Renewal computer run
6. Progress reports
7. Contribution Statement
8. 5500 forms
9. Summary Annual Report
10. Annual Statement



SPECIAL WORK ITEMS

1. Processing employee terminations
2. Balancing plan assets
3. Investment evaluation
4. Amendments to your plan
5. Technical questions requiring research and/or advice
6. Actuarial studies to attain changed goals
7. Plan loan advice or servicing
8. Deposit estimates
9. Calculating salary and deposit amounts based on total profit figure
10. Discussions with client, CPA, attorney or bank re:
    a. estimating plan deposit
    b. changing plan deposit
    c. estate planning
    d. year-end tax planning
    e. TEFRA
    f. other technical questions not related to regular annual administration
11. FASB 35 and 36 numbers for financial statements.
12. IRS audits
13. Response to IRS questions regarding 5500s
14. Special beneficiary designations

Invoice



Ms. Pam Sommers
Catalina Enterprises
5006 Liberty Heights Avenue
Baltimore, MD 21207

PROJECT # CGMBS
INVOICE # 000718
08/12/83

Catalina Enterprises
Profit Sharing Special Wk

GOVERNMENT FORMS

TOTAL $20.00

SECOND REQUEST
9/23/83

DEFENDANT'S EXHIBIT
2

TERMS:
NET 10 DAYS

THE STUART HACK COMPANY
Consultants & Actuaries

4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C. 621-4064

PHONE 466-3333

CROWN MOTORS

WE'RE NICE TO DEAL WITH

5000 LIBERTY HEIGHTS AVENUE
BALTIMORE, MD. 21207

February 24, 1982

Mr. Barry Blumberg
Maryland National Bank
Rutherford Plaza
7133 Rutherford Road
Baltimore, Maryland 21207

Dear Barry:

The purpose of this letter is to set forth the picture as we see it to exist at this time and to come forth with a proposal that, if acceptable, may serve to resolve the present unstable situation.

Maryland National has made proposals and suggestions regarding operations at Crown Motors for the year 1982. Catalina has done worksheets and projections in order to determine the probable outcome of working along the lines suggested by Maryland National. Catalina believes that it would not be possible to operate our company profitably (or perhaps at all) following those guidelines. Catalina is enclosing copies of the worksheets along with this letter for review in order to illustrate our belief that we must find another solution.

Initially, Catalina went to Maryland National with a proposal that, if accepted, would have provided Catalina with the necessary working capital. However, our plan was not acceptable to Maryland National and during the time period that ensued, the situation has deteriorated even further.

Simply put, the problem is that Crown Motors needs a supply of working capital in excess of what is presently available. However, Crown Motors does understand that looking at it from the viewpoint of Maryland National, the bank just wants to lower its exposure by reducing the debt level and at the same time create more favorable ratios. Crown understands this.

Since the inception of Catalina Enterprises, Inc. Pension Trust, and until this point, the two entities (the Pension Trust and Crown Motors) have had no transactions between themselves other than the annual contribution made to the Trust. It has long been the assumption of the Trust that there should be no money traveling back and forth between these related parties. However, it came to the attention of Crown Motors last year that the government had made certain temporary exceptions to this party-in-interest rule. More

specifically, the government has decided that for a trial period, and under certain very stringent "arms-length" rules, a Pension Trust would be allowed to finance the receivables of a parent company's customers. However, even despite this ruling, Crown Motors chose not to do such a thing because we did not want to create any "gray" areas. Aside from that reason, another reason was that the Pension Trust was desiring to rent a vacant building, and wanted to conserve any cash available for broker commissions or improvements to the building that might be necessary to tailor a deal for any prospective tenant.

Catalina still has reservations about party-in-interest transactions. However, it now appears that if the Pension Trust does not do something to support Crown Motors, Crown Motors may become a very poor parent to the Pension Trust. After all, the purpose of the Pension Trust is to provide security for the employees of Crown Motors. But, the most insecure thing that can happen to the employees of Crown Motors is to have Crown deteriorate from lack of adequate working capital.

The principal assets of the Pension Trust are two buildings. These buildings together are probably worth close to $300,000 less a current first mortgage of approximately $125,000. With this in mind, the following proposal might be of value in resolving the present situation.

Catalina Enterprises, Inc. Pension Trust acquires a second mortgage for $300,000. This mortgage would be for a relatively short term, say, four or five years, with a fluctuating interest rate tied to the prime. Instead of amortizing on a monthly basis, the mortgage would be payable via a balloon payment at the end of that four or five year period. However, initially, only $150,000 would be advanced to the Pension Trust on the second mortgage. The rest would be available in increments as needed. The Pension Trust would then use this initial $150,000 along with cash that it already has, to finance the accounts receivable of the parent company -- Crown Motors.

The amount of cash then available to the Pension Trust would be enough to finance more than $250,000 of Crown Motors' receivables, using a formula of a 60% advance of gross balance. When the Pension Trust reaches the point where it has acquired $200,000 in receivables, the Pension Trust would then use these receivables as collateral for a loan of another $100,000. The second $100,000, along with amortization of the original group of paper would provide enough availability to the Pension Trust to buy another $200,000 or more in paper. Using this system, the initial $150,000 advance on the second

mortgage will have been enough to start the process whereby the Pension Trust acquires the paper to use as collateral to borrow on a 50% basis. It may be that the Pension Trust never has to call on much more of that second mortgage money available to it. However, the funds will be there as a reserve available especially for the slow part of Crown's cycle -- November through February. During those periods of time, it is conceivable that part of the extra availability on the second mortgage will suffice to keep the account in margin at all times.

For perhaps the balance of the first year of the inception of this plan, the Pension Trust will do all of the financing for Crown Motors. The Pension Trust is a separate entity, completely apart from Crown Motors, and it has a very strong balance sheet. It would appear that the Pension Trust would be a very creditworthy entity.

If the Pension Trust does all of the financing for Crown Motors for a period of perhaps ten months, this will allow Crown Motors to reduce its indebtedness to Maryland National Bank by approximately $400,000 during that period of time.

TAX CONSEQUENCES TO THE TRUST

The Trust understands that it will be subject to income tax at corporate rates on net finance income derived from financing the accounts receivable of Crown. This is one of the areas that the Trust has sought to avoid, but it becomes necessary at this time.

TAX CONSEQUENCES TO CROWN

There would, however, come a period of time when Crown Motors must again start financing some of its own receivables.

Crown Motors now has total deferred income in excess of $900,000. As Crown Motors starts selling receivables to the Pension Trust instead of financing the accounts itself, it follows that Crown's gross accounts receivable balances will drop and so will deferred income. As deferred income drops, earned income picks up. Consequently, it is vital that Crown Motors maintain an adequate level of accounts receivable itself so that taxable earned income from the reduction of deferred income does not become a major problem for the company. We have prepared a chart to illustrate how this might work. What would probably be ideal is to have the Pension Trust finance Crown Motors's receivables until Crown reduces total debt to Maryland National to the $450 - $500,000 level and to then have Crown start financing its own accounts again, using as funds to do so the reserves that will have

been building up within the Pension Trust. At the point where Crown produces enough paper to be at a margin level agreeable to Maryland National, Crown might then continue with financing its own accounts and consequently maintaining an agreeable level of deferred income.

The chart below will illustrate how Crown Motors' total debt to Maryland National may reduce as debt within the Pension Trust increases:

End Of	Crown Motors	Pension Trust	Pension Assets:Liab*
February	930,000		
March	843,523	154,560	4.06:1
April	772,436	290,729	3.36:1
May	729,374	397,918	3.07:1
June	683,405	457,459	2.97:1
July	658,969	521,490	2.92:1
August	621,063	557,934	2.94:1
September	584,667	581,886	2.99:1
October	559,908	610,392	3.03:1
November	525,469	642,956	3.09:1
December	494,309	662,552	3.15:1

* These ratios also include the first mortgage on the real estate.

1. In implementing this proposal, Pension Trust assets would always remain approximately 3:1 or better against liabilities.

2. Crown Motors' debt at Maryland National would be reduced by perhaps $400,000 by year-end.

3. Cash flow to operate Crown Motors would all come from downpayments and selling accounts receivable to the Pension Trust at a 60% advance.

4. Crown Motors would do the collection of the accounts receivable for the Pension Trust at no expense to the Pension Trust.

5. In effect, the cash flow provided by this arrangement would provide Crown Motors with the capability of remaining profitable and remaining.

6. By springtime of 1983 (Crown's busy season), Crown will probably have reached a point where debt to Maryland National is reduced to a point that Crown may build enough receivables to be at a margin requirement acceptable to Maryland National, then Crown may resume

financing their own accounts receivable.

7. The Pension Trust may then play a smaller role in complementing Crown's future financial needs, but may still be available if necessary.

8. The Pension Trust will at the same time make additional gains from rental income and a modest appreciation of real property.

9. As Crown gains the ability to resume its own financing, the Pension Trust will reduce its debt.

To us, this plan appears workable. However, there is still another problem. If the plan were implemented at this time, Crown may still not have sufficient inventory available to produce accounts receivable at the rate projected. It is likely that Crown's sales would pick up somewhat at this time of year even with limited inventory. Much of the cash flow in the next month or so must be used to catch up on overdue accounts payable. Therefore, while implementation of this plan would probably ensure the continued operational ability of Crown Motors, it would take some special availability of additional funds for financing inventory (if even for a short time -- 90 to 120 days) to allow Crown to produce sales optimally.

Cordially,

Richard Shofer

RS;pes

Enclosures: Worksheet
Financial Statement
Material from Stuart Hack Company
Appraisal from William Currie Associates

Copy: Bernard Denick, Esq.
Louis Omansky, Esq., Stuart Hack Co.

$150,000.00 8/23 19[illegible]

after date I promise to pay

to the order of CATALINA ENTERPRISES INC. PENSION TRUST

ONE HUNDRED FIFTY THOUSAND Dollars

at 500 LIBERTY MTS FOR - AT A RATE OF 12% PER YEAR

Value received

No. Due ON DEMAND

$50,000.00 9/5/ 19[illegible]

after date I promise to pay

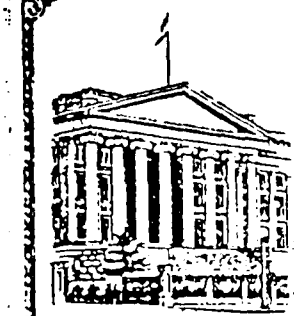
to the order of CATALINA ENTERPRISES INC. PENSION TRUST

FIFTY THOUSAND Dollars

at 500 LIBERTY MTS FOR - AT RATE OF 12% PER YEAR

Value received

No. Due ON DEMAND



$75,000.00 FEB 21, 19[illegible]

after date I promise to pay

to the order of CATALINA ENTERPRISES INC. PENSION TRUST

THIRTY-FIVE THOUSAND AND 00/100 Dollars

at 12% INTEREST PER YEAR

Value received

No. Due ON DEMAND

$3000.00/100 2/25/ 19[illegible]

after date I promise to pay

to the order of CATALINA ENTERPRISES INC. PENSION TRUST

THREE THOUSAND AND 00/100 Dollars

at 12% INTEREST

Value received

No. Due ON DEMAND

DEFENDANT'S EXHIBIT 4

$ 10,000 7/30/ 1985

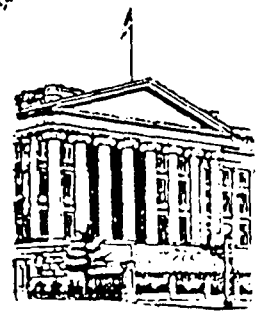
after date I promise to pay to the order of CATALINA ENTERPRISES INC, PENSION TRUST

TWELVE THOUSAND AND 00/100 Dollars

at 12% PER YEAR INTEREST

Value received with interest at 12% percent per annum

No Due ON DEMAND



$ 25,000 00/100 8/13/ 1985

after date I promise to pay to the order of CATALINA ENTERPRISES INC, PENSION TRUST

TWENTY FIVE THOUSAND Dollars

at 12% PER YEAR INTEREST RATE

Value received.

No Due ON DEMAND

$ 5,000.00/100 8/21/ 1985

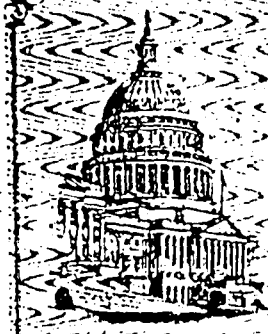
after date I promise to pay to the order of CATALINA ENTERPRISES INC, PENSION TRUST

FIVE THOUSAND AND 00/100 Dollars

at 12% ANNUAL INTEREST

Value received.

No Due ON DEMAND



$ 35,000 SEPT. 30, 1986

after date I promise to pay to the order of CATALINA ENTERPRISES INC, PENSION TRUST

THIRTY-FIVE THOUSAND AND 00/100 Dollars

at

Value received with interest at 12% percent per annum

No Due ON DEMAND

2ND
REQUEST
2/13/85

November 23, 1984

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: Catalina Enterprises, Inc. Pension Plan

Dear Richard:

The annual valuation of your plan is due as of 12/31/84. Before the work can begin we shall need certain information from you for the plan year beginning 1/1/84 and ending 12/31/84.

Enclosed are instructions and work sheets covering plan assets, transactions, corporate information and employee census data. Please read each section of this request carefully. It is important that you give us accurate information so that we can prepare your annual statement and government reports correctly.

Please sign and return the completed forms to my attention. Forms that are not applicable should be marked "N/A" and returned with completed forms. Please be sure to sign all places where indicated.

If you have any questions, please give me a call.

Cordially,

Alan Vandendriessche
Account Executive

AV:lcs
Enclosures

cc: Harvey M. Newman, CPA

DEFENDANT'S EXHIBIT
5

FINAL
REQUEST
5/7/85

November 23, 1984

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: **Catalina Enterprises, Inc. Pension Plan**

Dear Richard:

The annual valuation of your plan is due as of 12/31/84. Before the work can begin we shall need certain information from you for the plan year beginning 1/1/84 and ending 12/31/84.

Enclosed are instructions and work sheets covering plan assets, transactions, corporate information and employee census data. Please read each section of this request carefully. It is important that you give us accurate information so that we can prepare your annual statement and government reports correctly.

Please sign and return the completed forms to my attention. Forms that are not applicable should be marked "N/A" and returned with completed forms. Please be sure to sign all places where indicated.

If you have any questions, please give me a call.

Cordially,

Alan Vandendriessche
Account Executive

AV:lcs
Enclosures

cc: Harvey M. Newman, CPA

DEFENDANT'S EXHIBIT
6

September 26, 1985

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

RE: **Catalina Enterprises, Inc. Profit Sharing Plan**

Dear Richard:

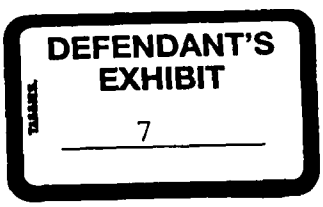
You asked that I check to see if we are waiting for any data to finish up the 1984 work. Our records show we are still waiting for the asset data and the contribution statement. The 5500 form is due at the IRS at 10/15/85 so it is important we receive this data very soon.

We would be delighted to work with you to terminate the profit sharing plan. It too is under a time constraint with regard to TEFRA required amendments. The law is that for a plan to retain its qualified status it must be amended to include TEFRA wording and submitted to the IRS by 11/1/85. The next step after amending the profit sharing plan is to terminate it.

The fees for amending and terminating are as follows:

Amend profit sharing plan and submitt to IRS	$ 750
Terminate profit sharing plan and submitt to IRS	$2,000

Please note that 5500 forms must be filed for the profit sharing trust for as long as the trust holds assets. Also, the above termination fee does not include preparation of distribution packages for participants. That work is done on a time and expense basis.



As you are aware the Stuart Hack Company has not serviced the profit sharing plan for several years. It is likely we will need updated account balances and 5500's for those years we did not work on the plan.

One final note, the profit sharing plan amendment must be received by the IRS not later than 11/1/85. It is important we move with reasonable speed to get the amendment filed by 11/1 and the 5500 for the money purchase plan filed by 10/15/85.

Please sign and return a copy of this letter along with a $1,000 retainer as your authorization for us to begin this work.

Sincerely,

Alan Vandendriessche

AV:lcs

cc: Marc Reader

Signature:_____ Date:_____

TO Mr. Richard [illegible]
Catalina Enterprises, Inc.
5006 Liberty Heights Ave.
Baltimore, MD 21207

THE STUART HACK COMPANY
Consultants & Actuaries
4623 Falls Road
Baltimore, Maryland 21209
(301) 366-8700
Washington, D.C.
621-4064

000769

SUBJECT Catalina Enterprises, Inc. Pension Plan | DATE 10/11/85 | MESSAGE

Dear Mr. Shofer:

Enclosed are the 1984 government forms due 10/15/85 for the Catalina Enterprises, Inc. Pension Plan. As we have never received asset data OR a completed contribution statement for the plan year ending 12/31/84 we were unable to complete questions 14(b)(ii) and (iii) and 15. Also we have no record of a surety bond and were therefore unable to complete question 13(a)(i) and (ii). Please fill in these questions and send us a copy of the completed form for our records. Please call with any questions.

SIGNED Janelle Hardy

TO | DATE | REPLY

SIGNED _____

DETACH AND FILE FOR FOLLOW-UP

DEFENDANT'S EXHIBIT
8

MAILED TO PBGC 10/18/85

Form **5500-C**

Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefit Programs

Pension Benefit Guaranty Corporation

Return/Report of Employee Benefit Plan

(With fewer than 100 participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6057(b) and 6058(a) of the Internal Revenue Code, referred to as the Code.

OMB No. 1210-0016

1984

This Form is Open to Public Inspection

For the calendar plan year 1984 or fiscal plan year beginning 1/1, 1984, and ending 12/31, 1984

Type or print in ink all entries on the form, schedules, and attachments. If an item does not apply, enter "N/A." File the originals.

This return/report is: (i) ☐ the return/report filed for the plan's first plan year; (ii) ☐ an amended return/report; or (iii) ☐ the final return/report filed for the plan.

▶ Caution: A penalty of $25 a day for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established

▶ Welfare benefit plans required to file this form do not complete items 7(b), 12, and 24 through 30. Certain welfare benefit plans are not required to file this form—see instructions.

▶ Keogh (HR 10) plans must check the box in item 5(a)(iii).

▶ Check here ▶ ☐ and do NOT complete items 6(c)(iv), 8(b) and (d); 9(c), 12, 13, 17, 18, 20, 21, 22, 23, 27, and 30 if this return/report is for a pension benefit plan that covers only an individual who wholly owns a trade or business, whether incorporated or unincorporated.

▶ If you have been granted an extension of time to file this form, you must attach a copy of the approved extension to this form.

Use IRS label. Otherwise, please print or type.

1 (a) Name of plan sponsor (employer, if for a single employer plan): Catalina Enterprises, Inc.

1 (b) Employer identification number: 52 0820445

Address (number and street): 5006 Liberty Heights Avenue

1 (c) Telephone number of sponsor: (301) 466-3337

City or town, State and ZIP code: Baltimore, Maryland 21207

1 (d) If plan year changed since last return/report, check here ▶ ☐

2 (a) Name of plan administrator (if same as plan sponsor enter "Same"): Same

1 (e) Business code number

Address (number and street)

2 (b) Administrator's employer identification no.

City or town, State and ZIP code

2 (c) Telephone number of administrator: ( )

3 Is the name, address and identification number of plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan? ☒ Yes ☐ No. If "No," enter the information from the last return/report in (a) and/or (b).

(a) Sponsor ▶ N/A EIN

(b) Administrator ▶ N/A EIN

(c) If (a) indicates a change in the sponsor's name and EIN, is this a change in sponsorship only? (See specific instructions for definition of sponsorship.) ☐ Yes ☐ No

4 Check box to indicate the type of plan entity (check only one box):

(a) ☒ Single-employer plan
(b) ☐ Plan of controlled group of corporations or common control employers
(c) ☐ Multiemployer plan
(d) ☐ Multiple-employer-collectively-bargained plan
(e) ☐ Multiple-employer plan (other)

5 (a) (i) Name of plan ▶ Catalina Enterprises, Inc. Pension Plan

5 (b) Effective date of plan 12/28/71

(ii) ☐ Check if name of plan changed since the last return/report.

(iii) ☐ Check this box if this is a Keogh (HR10) plan.

5 (c) Enter three-digit plan number ▶ 001

6 Check at least one item in (a) or (b) and applicable items in (c): (a) Welfare benefit plan (Plan numbers 501 through 999):

(i) ☐ Health insurance (ii) ☐ Life insurance (iii) ☐ Supplemental unemployment

(iv) ☐ Other (specify) ▶

(b) Pension benefit plan (Plan numbers 001 through 500): (i) Defined benefit plan—(indicate type of defined benefit plan below):

(A) ☐ Fixed benefit (B) ☐ Unit benefit (C) ☐ Flat benefit (D) ☐ Other (specify) ▶

(ii) Defined contribution plan—(indicate type of defined contribution plan below):

(A) ☐ Profit-sharing (B) ☐ Stock bonus (C) ☐ Target benefit (D) ☐ Other money purchase

(E) ☐ Other (specify) ▶

(iii) ☐ Defined benefit plan with benefits based partly on balance of separate account of participant (Code section 414(k))

(iv) ☐ Annuity arrangement of a certain exempt organization (Code section 403(b)(1))

(v) ☐ Custodial account for regulated investment company stock (Code section 403(b)(7))

(vi) ☐ Pension plan utilizing individual retirement accounts or annuities (described in Code section 408) as the sole funding vehicle for providing benefits

(vii) ☐ Other (specify) ▶

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ 10/14/85 Signature of employer/plan sponsor ▶ [signature]

Date ▶ Signature of plan administrator ▶

DEFENDANT'S EXHIBIT 9

6 (c) Other plan features: (i) ☐ Thrift-savings (ii) ☐ Participant-directed account plan
(iii) ☐ Pension plan maintained outside the United States (see instructions) (iv) ☐ Master trust (see instructions) ▶

	Yes	No
(d) Single employer plans enter the tax year end of the employer in which this plan year ends ▶ Month 12 Day 31 Year 84		
(e) Is this a pension plan of an affiliated service group?		X
(f) Does this plan contain a cash or deferred arrangement described in Code section 401(k)?		X

7 (a) Total participants (i) Beginning of plan year ▶ 10 (ii) End of plan year ▶ 9

(b) (i) Was any pension benefit plan participant(s) separated from service with a deferred vested benefit for which a Schedule SSA (Form 5500) is required to be attached?		X
(ii) If "Yes," enter the number of separated participants required to be reported ▶ N/A		

8 Plan amendment information (welfare plans do NOT complete (b)(ii)):

(a) Were any plan amendments to this plan adopted since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?		X
(b) If "Yes," (i) And if any amendments have resulted in a change in the information contained in a summary plan description or previously furnished summary description of modifications:		
(A) Have summary descriptions of the changes been sent to participants?		N/A
(B) Have summary descriptions of the changes been filed with DOL?		N/A
(ii) Does any such amendment result in the reduction of the accrued benefit of any participant under the plan?		N/A
(c) Enter the date the most recent amendment was adopted ▶ Month ____ Day N/A Year ____		
(d) (i) Has a summary plan description been filed with DOL for this plan?	X	

(ii) If (i) is "Yes," what was the employer identification number and the plan number used to identify it?
Employer identification number ▶ 52-0820445 Plan number ▶ 001

9 Plan termination information:

(a) Was this plan terminated during this plan year or any prior plan year? If "Yes," enter year ▶		X
(b) If "Yes," were all trust assets either distributed to participants or beneficiaries, transferred to another plan or brought under the control of PBGC?		N/A
(c) If (a) is "Yes," and the plan is covered by PBGC, is the plan continuing to file a PBGC Form 1 and pay premiums until the end of the plan year in which assets are distributed or brought under the control of PBGC?		N/A

10 • (a) Was this plan merged or consolidated into another plan, or were assets or liabilities transferred to another plan since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)? X

If "Yes," identify the other plan(s):

(b) Name of plan(s) ▶	(c) Employer identification number(s)	(d) Plan number(s)
N/A	N/A	N/A

(e) Has Form 5310 been filed? N/A ☐ Yes ☐ No

11 Indicate funding arrangement:
(a) ☒ Trust (b) ☐ Fully insured (c) ☐ Combination (d) ☐ Other (specify) ▶
(e) If (b) or (c) is checked, enter the number of Schedules A (Form 5500) which are attached ▶

12 (a) Is the plan covered under the Pension Benefit Guaranty Corporation termination insurance program? ☐ Yes ☒ No ☐ Not determined
(b) If (a) is "Yes," or "Not determined," enter the employer identification number and the plan number used to identify it.
Employer identification number ▶ N/A Plan number ▶ N/A

13 Complete both (a) and (b):

	Yes	No
(a) Is the plan insured by a fidelity bond? TO BE PURCHASED		X
(i) If "Yes," enter name of surety company ▶		
(ii) Amount of bond coverage ▶		
(b) Was any loss discovered since the last return/report Form 5500, 5500-C or 5500-K was filed for this plan (or during this plan year if this is the initial return/report)?		X

14 (a) If this is a defined benefit plan, is it subject to the minimum funding standards for this plan year? If "Yes," attach Schedule B (Form 5500).

(b) If this is a defined contribution plan, i.e., money purchase or target benefit, is it subject to the minimum funding standards (if a waiver was granted, see instructions)? X

If "Yes," complete (i), (ii) and (iii) below:

(i) Amount of employer contribution required for the plan year	$ 42,903.12
(ii) Amount of contribution paid by the employer for the plan year	$ 42,903.12
Enter date of last payment by employer ▶ Month 9 Day 13 Year 85	
(iii) If (i) is greater than (ii) subtract (ii) from (i) and enter the funding deficiency here. Otherwise enter zero. (If you have a funding deficiency, file Form 5330.)	$ -0-

15 Plan assets and liabilities at the beginning and end of the current plan year (list all assets and liabilities at current value). A fully insured welfare plan or a pension plan with no trust and which is funded entirely by allocated insurance contracts which fully guarantee the amount of benefit payments should check the box and not complete the rest of this item ▶ ☐

Note: *Include all plan assets and liabilities of a trust or separately maintained fund. If more than one trust/fund, report on a combined basis. Include all insurance values except for the value of that portion of an allocated insurance contract which fully guarantees the amount of benefit payments. Round off amounts to nearest dollar. If you have no assets to report enter "-0-" on line 15(f).*

Assets	a. Beginning of year	b. End of year
(a) Cash— (i) Interest bearing		
(ii) Non-interest bearing	11,224.24	12,386.48
(iii) Total cash	16,224.24	12,386.48
(b) Receivables	29,934.28	401,661.49
(c) Investments—		
(i) Government securities		
(ii) Pooled funds/mutual funds		
(iii) Corporate (debt and equity instruments)	8,000.28	8,000.28
(iv) Value of interest in master trust		
(v) Real estate and mortgages		
(vi) Other	1,228,180.75	574,074.75
(vii) Total investments		
(d) Building and other depreciable property used in plan operation	812,100.00	884,000.00
(e) Unallocated insurance contracts		
(f) Other assets	4,178.64	
(g) Total assets (add (a)(iii); (b); (c)(vii); (d); (e) and (f))	2,143,511.19	1,880,239.22
Liabilities and Net Assets		
(h) Payables	282,080.99	351,308.13
(i) Acquisition indebtedness	614,078.43	157,775.01
(j) Other liabilities	207,340.77	81,357.94
(k) Total liabilities (add (h) through (j))	1,103,500.19	597,441.08
(l) Net assets (subtract (k) from (g))	2,040,010.00	1,282,798.14

16 Plan income, expenses and changes in net assets during the plan year. Include all income and expenses of a trust(s) or separately maintained fund(s), including any payments made for allocated insurance contracts. Round off amounts to nearest dollar.

	a. Amount	b. Total
(a) Contributions received or receivable in cash from:		
(i) Employer(s) (including contributions on behalf of self-employed individuals)	49,603.05	
(ii) Employees		
(iii) Others		49,603.05
(b) Noncash contributions		
(c) Earnings from investments (interest, dividends, rents, royalties)		259,893.90
(d) Net realized gain (loss) on sale or exchange of assets		
(e) Other income (specify) ▶ Misc. Inc., Note Redeemed		99,175.34
(f) Total income (add (a) through (e))		340,652.29
(g) Distribution of benefits and payments to provide benefits:		
(i) Directly to participants or their beneficiaries	18,185.25	
(ii) To insurance carrier or similar organization for provision of benefits (including prepaid medical plans)		
(iii) To other organizations or individuals providing welfare benefits		18,185.25
(h) Interest expense		88,922.41
(i) Administrative expenses (salaries, fees, commissions, insurance premiums)		
(j) Other expenses (specify) ▶ R.E. Expenses, Taxes, Misc. Expenses		62,959.49
(k) Total expenses (add (g) through (j))		
(l) Net income (subtract (k) from (f))		170,585.14
(m) Changes in net assets: (i) Unrealized appreciation (depreciation) of assets	72,188.	
(ii) Net investment gain (or loss) from all master trust investment accounts		
(iii) Other changes (specify) ▶		72,000.00
(n) Net increase (decrease) in net assets for the year (add (l) and (m))		242,780.14
(o) Net assets at beginning of year (line 15(k), column a)		1,040,018.00
(p) Net assets at end of year (add (n) and (o)) (equals line 15(k), column b)		1,282,798.14

17 As of the end of the plan year:

(a) What percentage of plan assets are loaned to a party-in-interest? 0

(b) What percentage of plan assets are invested in securities issued by a party-in-interest? 0

(c) What percentage of plan assets are invested in real estate which is leased by a party-in-interest? 0

	Yes
18 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report):	
(a) Has there been a termination in the appointment of any trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager or custodian?	
If "Yes," explain and include the name, position, address and telephone number of the person whose appointment has been terminated ► N/A	
(b) Has the plan used the services of a contract administrator?	X
If "Yes," enter the contract administrator's name and employer identification number (see instructions) ► The Stuart Hack Company 52-0747494	
(c) Indicate the amount of the plan's administrative expenses for the: (i) Preceding year ► $ 0 (ii) Second preceding year ► $ 0	
(d) Have any insurance policies or annuities been replaced?	N/A
(e) Was the plan funded with: (i) ☐ Individual policies or annuities (ii) ☐ Group policies or annuities (iii) ☐ Both	
19 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report):	
(a) Other than transactions described in the exceptions outlined in the instructions, were there any transactions, directly or indirectly, between the plan and a party-in-interest? . . . . . If "Yes," see specific instructions.	X
(b) Has the plan granted an extension on any loan for which, before the granting of an extension, it has not received all the principal and interest payments due under the terms of the loan?	X
(c) Has the plan granted an extension of time or renewal for the payment of any obligation owed to it which amounts to more than 10% of the plan assets?	X
20 As of the end of any plan year since the end of the plan year covered by the last return/report, Form 5500, 5500-C or 5500-K which was filed for this plan (or as of the end of this plan year if this is the initial return/report):	
(a) Did the plan have investments of the type reportable under item 15(c)(vii) or (ix) which in the aggregate in either category exceeded 15% of plan assets?	X
(b) Did the plan have loans outstanding or investments in a single enterprise (other than the United States Government) which exceeded 15% of plan assets?	X
21 During the plan year covered by this return:	
(a) Did the plan acquire any qualifying employer security or qualifying employer real property, when immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the plan assets?	X
(b) Did the plan acquire any qualifying employer security or qualifying employer real property, when immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the plan assets?	X
(c) Has any plan fiduciary had either a financial interest worth more than $1,000 in any party providing services to the plan or received anything of value from any party providing services to the plan?	X
(d) Has any employer owed the plan contributions which were more than three months past due under the terms of the plan? . .	X
(e) Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year, or classified as uncollectable?	X
(f) Were any leases to which the plan was a party in default or classified as uncollectable?	X
22 Who is the plan's designated agent for legal process? ► Mr. Richard Shafer	
23 Give the name and address of each fiduciary (including trustees) to the plan ► Mr. Richard Shafer c/o Catalina Enterprises, Inc. 5006 Liberty Heights Avenue Baltimore, MD 21207	
24 Is this plan an adoption of any of the plans below? (If "Yes," check appropriate box and enter IRS serial number): (a) ☐ Master/prototype, (b) ☐ Field prototype, (c) ☐ Pattern, (d) ☐ Model plan, or (e) ☐ Bond purchase plan? Enter the four or eight-digit IRS serial number (see instructions) ► N/A	
25 (a) Is this plan integrated with social security?	X
(b) Is it intended that this plan qualify under Code section 401(a) or 405?	X
(c) If (b) is "Yes," have you received a determination letter from the IRS for this plan?	X
(d) Does the employer/sponsor listed in item 1(a) of this form maintain other qualified pension benefit plans? . . . . . If "Yes," list the number of plans including this plan ► 2	X

		Yes
26	Information about employees of employer at end of the plan year. (a) Does the plan satisfy the percentage tests of Code section 410(b)(1)(A)? If "No," complete only (b) below and see Specific Instructions	X
(b)	Total number of employees	10
(c)	Number of employees excluded under the plan because of: *(i)* Minimum age or years of service	3
	(ii) Employees on whose behalf retirement benefits were the subject of collective bargaining	8
	(iii) Nonresident aliens who receive no earned income from United States sources	8
	(iv) Total excluded (add (i), (ii) and (iii))	3
(d)	Total number of employees not excluded (subtract (c)(iv) from (b))	7
(e)	Employees ineligible (specify reason) ▶	
		0
(f)	Employees eligible to participate (subtract (e) from (d))	7
(g)	Employees eligible but not participating	0
(h)	Employees participating (subtract (g) from (f))	7

27 Vesting (check only one box to indicate the vesting provisions of the plan):

(a) Full and immediate vesting, or full vesting within 3 years

(b) No vesting in years 1 through 9, and full vesting after the 10th year of service

(c) For each year of employment, beginning with the 4th year, vesting equal to 40% after 4 years of service, 5% additional for the next 2 years, and 10% additional for each of the next 5 years

(d) 100% vesting within 5 years after contributions are made (class year plan only)

(e) Other vesting

		Yes
28 (a)	Did the employer receive plan assets (including a return of contributions) since the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?	
(b)	If this is a defined benefit plan which provides for annual, automatic increases in the maximum dollar limitations under Code section 415, does the plan provide that any such increase is effective no earlier than the calendar year for which IRS determines that increase under Code section 415(d)?	n
(c)	Is this a plan with Employee Stock Ownership (ESOP) features?	
	(i) If "Yes," was a current appraisal of the value of the stock made immediately before any contribution of stock or purchase of the stock by the trust for the plan year covered by this return/report?	n
	(ii) If (i) is "Yes," was the appraisal made by an unrelated third party?	n
29	Have any individuals performed services as a leased employee for this employer or for any other employer who is aggregated with this employer under section 414(b), (c), or (m)? If "Yes," see instructions for completing item 26.	
30 (a)	Is this plan a top heavy plan within the meaning of Code section 416 for this plan year?	X
(b)	If (a) is "Yes," complete (i), (ii) and (iii) below:	
	(i) Has the plan complied with the vesting requirements of Code section 416(b)?	X
	(ii) Has the plan complied with the minimum benefit requirements of Code section 416(c)?	X
	(iii) Has the plan complied with the limitation on compensation of Code section 416(d)?	X

If additional space is required for any item, attach additional sheets the same size as this form.

SCHEDULE P
(Form 5500)
Department of the Treasury
Internal Revenue Service

Annual Return of Fiduciary of Employee Benefit Trust

▶ File as an attachment to Form 5500, 5500-C, or 5500-R.

OMB No. 1210-0011

1984

For trust calendar year 1984 or fiscal year beginning 1/1, 1984, and ending 12/31, 1984

Please type or print

1 (a) Name of trustee or custodian
Mr Richard Shofer

(b) Address (number and street)
5006 Liberty Heights Avenue

(c) City or town, State and ZIP code
Baltimore, Maryland 21207

2 Name of trust
Catalina Enterprises, Inc. Pension Plan

3 Name of plan if different from name of trust
Same

4 Have you furnished the participating employee benefit plan(s) with the trust financial information required to be reported by the plan(s) on their Forms 5500, or 5500-C? ☒ Yes ☐ N

5 Enter the plan sponsor's employer identification number as shown on the form to which this schedule is attached ▶ 52 0820445

Under penalties of perjury, I declare that I have examined this schedule, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ 10/12/85 Signature of fiduciary ▶ Richard Shofer

Instructions

(Section references are to the Internal Revenue Code.)

A. Purpose of Form

You may use this schedule to satisfy the requirements under section 6033(a) for an annual information return from every section 401(a) organization exempt from tax under section 501(a).

The filing of this form will also start the running of the statute of limitations under section 6501(a) for any trust described in section 401(a) which is exempt from tax under section 501(a).

B. Who May File

(1) Every trustee of a trust described in section 401(a) which was created as part of an employee benefit plan.

(2) Every custodian of a custodial account described in section 401(f).

C. How to File

File Schedule P (Form 5500) for the trust year ending with or within any participating plan's plan year as an attachment to the Form 5500, 5500-C, or 5500-R filed by the plan for that plan year.

Schedule P (Form 5500) may be filed only as an attachment to a Form 5500, 5500-C, or 5500-R. A separately filed Schedule P (Form 5500) will not be accepted

If the trust or custodial account is used by more than one plan, file only one Schedule P (Form 5500). It must be filed as an attachment to one of the participating plan's returns/reports. If a plan uses more than one trust or custodial account for its funds, file one Schedule P (Form 5500) for each trust or custodial account.

D. Signature

The fiduciary (trustee or custodian) must sign this schedule. If there is more than one fiduciary, one of them, authorized by the others, may sign.

E. Other Returns and Forms that May be Required

(1) Form 990-T.—For trusts described in section 401(a), a tax is imposed on income derived from business that is unrelated to the purpose for which the trust received a tax exemption. Report such income and tax on Form 990-T, Exempt Organization Business Income Tax Return. (See sections 511 through 514 and related regulations.)

(2) Forms W-2P and 1099-R.—If you made payments or distributions to individual beneficiaries of a plan, report these payments on Forms W-2P or 1099-R. (See sections 6041 and 6047 and related regulations.)

(3) Forms 941 or 941E.—If you made payments of distributions to individual beneficiaries of a plan, you are required to withhold income tax from those payments, unless the payee elects not to have the tax withheld. Report this withholding on Form 941 or 941E. (See Forms 941 or 941E and Circular E, Publication 15.)

Department of the Treasury
Internal Revenue Service

...to File Certain Employee Plan Returns

▶ For Paperwork Reduction Act Notice, see instructions on back

File With IRS Only

File in DUPLICATE by the due date for filing the return. (See general instructions 2 and 3.)

Name of taxpayer or plan sponsor (see instructions)
Catalina Enterprises, Inc

Address (Number and street)
5006 Liberty Heights Avenue

City or town, State, and ZIP code
Baltimore, MD 21207

Check applicable box and enter number (see specific instructions)

☒ Employer identification number ▶ 52-0820445 OR

☐ Social security number ▶

1 I request an extension of time until (see specific instruction 1) ▶ 10/15/85 (check appropriate block(s)):

(a) ☐ To file Form 5500, Annual Return/Report of Employee Benefit Plan (with related schedules).

(b) ☒ To file Form 5500-C, Return/Report of Employee Benefit Plan (with related schedules).

(c) ☐ To file Form 5500-K, Return/Report of Employee Pension Benefit Plan (with related schedules).

(d) ☐ To file Form 5500-G, Annual Return/Report of Employee Benefit Plan.

(e) ☐ To file Form 5500-R, Registration Statement of Employee Benefit Plan (with related schedules).

(f) ☐ To file Form 5330, Return of Initial Excise Taxes Related to Pension and Profit-sharing Plans for tax year beginning ▶ ..... and ending ▶ .....

(g) If you checked (f) above, are you electing to be taxed under ERISA section 2003(c)(1)(B)? . . . . . ☐ Yes ☐ No

2 Complete the following for the plan covered by this application (see general instruction 2):

Plan name	Plan number	Plan year ending Month	Day	Year
CATALINA ENTERPRISES, INC. PENSION PLAN	001	12	31	84

3 (a) Has an extension of time to file the designated return(s) been previously granted for this tax year? . . . ☐ Yes ☒ No

(b) If "Yes," show the date(s) to which the extension was granted . . . . . ▶ n/a

4 Attach a detailed statement of why you need the extension (see specific instruction 4). PLEASE SEE ATTACHED

5 If the extension is for Form 5330, enter the amount of tax estimated to be due on Form 5330. Pay this amount with this application . . . . . ▶

Caution: *Interest on late payment of tax accrues at the rate established under section 6621 of the Internal Revenue Code from the regular due date of the return until paid. (For the penalty for late payment of tax, see specific instruction 5.)*

Under penalties of perjury, I declare that to the best of my knowledge and belief the statements made on this form are true, correct, and complete and that I am authorized to prepare this application.

Signature ▶ Charmaine B. Ford Date ▶ 7/15/85

Note: *The person who signs this form may be an employer or plan administrator filing Form 5500, 5500-C, 5500-K, 5500-G, 5500-R or 5330; a disqualified person filing Form 5330; an attorney or certified public accountant qualified to practice before the IRS; a person enrolled to practice before the IRS; or a person holding a power of attorney.*

Notice to Applicant—THE INTERNAL REVENUE SERVICE WILL INDICATE BELOW WHETHER THE EXTENSION IS GRANTED OR DENIED AND WILL RETURN THE ORIGINAL OF THE APPLICATION

☒ The application IS approved to ▶ 10-15-85 (You MUST attach a copy of this form to each return you file for which an extension is granted.)

RECEIVED
JUL 19 1985
PSC PHILA, PA
14

☐ The application IS NOT approved. (You MUST attach a copy of this form to each return you file for which a grace period is granted.) However, in view of your reasons stated in the application, a 10-day grace period is granted from the date shown below or due date of the return, whichever is later. This 10-day grace period constitutes a valid extension of time for purposes of elections otherwise required to be made on timely filed returns.

☐ The application IS NOT approved.

After consideration of the reasons stated in your application, we have determined the extension is not warranted. (The 10-day grace period is not granted.)

☐ The application cannot be considered, since you filed it after the due date of the return.

☐ Other ▶

Donald Applegrueto

(Date) (Director) By: RECEIVED

AUG 5 1985

THE STERN MACK COMPANY

363-479-2

THE STUART ACK COMPANY

November 7, 1986

PERSONAL AND CONFIDENTIAL

Mr. Richard Shofer
Catalina Enterprises, Inc.
T/A Crown Motors
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Mr. Shofer:

Attached are copies of the 1984 and 1985 asset sheets that we received from Pamela Somers.

As we discussed, the contributions for 1984 do not match up. I have circled the problem. Number 1 indicates the different contribution amounts. Number 2 indicates a different total income. Number 3 indicates different year end assets. I have reviewed our files carefully and see no indication as to what the difference might be. (I apologize for the quality of the copy, but the copy we were sent was barely decipherable.)

Please have the assets reviewed and send us an explanation of the correct amount so that we can complete the annual statement for 12/31/85.

If you have any questions, please call.

Sincerely,

Katherine Goldsmith

Katherine Goldsmith
Pension Administrator

KG:lcs
Enclosures

cc: Pamela Somers
Harvey M. Newman, CPA

DEFENDANT'S EXHIBIT 10

INCOME:		
Contributions	55,082.46	61,721.96
Interest Earned	184,491.65	28,943.67
Rental Income	73,382.25	116,754.00
Miscellaneous Income	4,175.34	5,140.55
A/R Interest Earned		57,003.81
Secured Note	35,000.00	0.00
TOTAL INCOME	352,071.70	272,564.65
EXPENSES:		
Interest Expense:		
1st Mtge	7,467.42	6,219.50
2nd Mtge & Secured Loan	74,394.71	5,023.08
3rd Mtge	7,065.28	24,136.40
Legal & Accounting	0.00	0.00
R.E. Expenses	31,469.47	30,625.38
Federal Taxes	29,241.78	1,215.00
Miscellaneous Expenses	2,048.24	50.30
Vestec Interest Paid	18,185.25	0.00
Loss on Sales	0.00	0.00
TOTAL EXPENSES	169,872.15	[illegible]
APPRECIATION/DEPRECIATION OF ASS		
R.E. - Chg in Appraised Val	79,597.00	43,000.00
R.E. - Depreciation	(7,597.00)	0.00
NET CHANGES IN ASSETS	72,000.00	43,000.00
NET INCOME	254,199.55	248,284.93
Assets Yr Begin	1,040,018.00	1,294,217.55
Assets Yr End	1,294,217.55	1,542,502.48

BALANCE SHEETS — INCOME & EXPENSE — CATALINA PENSION TRUST

BALANCE SHEETS	12-31-83	12-31-84
[illegible]	[illegible]235.[illegible]	[illegible]106,23[illegible]
Accounts Receivable	1,226,130.75	574,524.75
Due from [illegible]	0.00	[illegible]
Tax Escrow & Security Deposits	[illegible]	[illegible]
Notes Receivable, Participant	[illegible].00	800,000.00
Accrued Interest, Participant Loan	0.00	0.00
Security Deposit - Bond	8,000.28	5,000.28
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]
Rent Receivable	0.00	0.00
TOTAL CURRENT ASSETS	1,331,518.13	705,233.32
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible] Improvements	11,679.81	11,679.21
[illegible] Change in Value	576,224.48	553,321.48
Less Accumulated Depreciation	(60,470.63)	(55,067.53)
[illegible]	[illegible]	[illegible]
TOTAL CURRENT & FIXED ASSETS	2,142,513.13	1,340,235.22
[illegible]		
Federal Taxes Payable	65,720.00	42,745.00
Note Payable, [illegible]	20,500.00	15,500.00
1st Mortgage	[illegible]	77,314.86
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
Miscellaneous Payables	5,313.77	[illegible]
Reserve Old Crown	28,355.25	0.00
Security Deposits	15,352.38	12,354.27
[illegible]	[illegible]	[illegible]
DEFERRED INCOME		
Unearned Income -- Installment Sales	207,340.77	51,257.94
[illegible]	[illegible]	[illegible]
Participants' Interest	1,740,315.36	1,252,736.[illegible]
TOTAL NET WORTH	[illegible]	[illegible]

INCOME & EXPENSE	12-31-83	12-31-84
[illegible]	[illegible]	[illegible]
Interest Earned	132,516.26	184,451.65
Rental Income	112,528.25	72,382.25
Miscellaneous Income	247.50	4,175.34
Gain on Notes	(140,000.00)	80,000.00
TOTAL INCOME	205,636.29	340,652.29
EXPENSES:		
Interest Expense:		
1st Mtge	8,974.51	7,357.42
2nd Mtge & Secured Loan	51,617.44	71,394.71
3rd Mtge	0.00	7,355.22
Legal & Accounting	0.00	0.00
R.E. Expenses	22,572.53	[illegible]
Federal Taxes	31,000.00	29,231.75
Miscellaneous Expenses	(69.11)	3,943.24
Vested Interest Paid	0.00	18,185.25
Loss on Sales	0.00	0.00
TOTAL EXPENSES	134,447.61	155,371.15
APPRECIATION/DEPRECIATION OF ASSETS		
R.E. - [illegible] Value	(5,135.00)	75,517.00
[illegible]	(5,517.00)	(3,557.00)
NET CHANGES IN ASSETS	(13,795.00)	72,000.00
NET INCOME	71,433.68	242,739.14
Assets Yr Begin	968,604.32	1,040,018.00
Assets Yr End	1,040,018.00	1,282,738.14

→ 436603.05 #1

→ 340652.29 #2

#3

Special — the figure is to be held out of alternatives

U.S. Department of Labor
Pension and Welfare Benefits Administration
Washington District Office
1730 K Street N.W., Suite 556
Washington, D.C. 20006
(202) 254-7013 Fax: (202) 254-3378

February 18, 1994

Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Dear Mr. Shofer:

The Department of Labor (the Department) has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans such as the Catalina Enterprises, Inc. Pension Plan (the Plan).

This office has concluded its investigation of the Plan and of your activities as its trustee. Based on the facts gathered in this investigation, and subject to the possibility that additional information may lead us to revise our views, it appears that, as trustee, you may have violated several provisions of ERISA. The purpose of this letter is to advise you of our findings and to give you an opportunity to comment before the Department determines what, if any, action to take.

As we understand the facts, many of which were provided by you to this Office during the course of our investigation, Catalina Enterprises, Inc., doing business as Crown Motors (the Sponsor), sells used cars, and finances these purchases. The Sponsor receives between 20-28% interest on these notes. The Plan purchases 50% of the note value of virtually all of these customer notes. The agreement between the Plan and the Sponsor provides that the Plan will earn "an interest rate of 12%, or a commercially reasonable interest rate, whichever is the higher". The Plan has earned between 11-12.75% on its investment. You have stated that the Sponsor receives the extra interest of between 9-17% because the Sponsor takes all the risks (see next paragraph), and does all the paperwork involved.

The agreement between the Plan and the Sponsor states that the Sponsor will repay any loan which is in default. This is done at the end of the year in an annual cash-out. The default ratio (those notes which were over 60 days past due) has been about 15%. Robert Murphy acts as a Trustee in connection with the

customer notes; however he has only generally approved of the transactions, reviews the notes sporadically, and makes no written report.

As of December 31, 1991, the Plan had $2,950,138 invested in customer notes, including defaulted notes from a prior financing arrangement which the Sponsor owes the Plan. This amount constituted 72.2% of total Plan assets.

It is our view that these transactions violate Title I of ERISA, sections 404(a)(1)(A), (B), (C), & (D); 406(a)(1)(A), (B), & (D); and 406(b)(1) & (2). Copies of these sections are enclosed for your information. Although there is a Class Exemption (PTE 85-68, also enclosed) which allows the purchase of customer notes by the Plan, we feel that the requirements under the exemption are not being met. Specifically, we believe that the transactions are not on terms at least as favorable to the plan as an arm's length transaction with an unrelated party would be, the Plan's continuing rights are not being adequately monitored, more than 50 percent of the current value of plan assets are invested in customer notes, and the employer is not providing immediate repayment of notes more than 60 days in arrears.

In addition, our investigation has disclosed that you have borrowed $375,000 from the Plan. Nine loans were issued between August 9, 1984 and September 30, 1986. These loans were demand notes, with no security provided. In addition, you borrowed $75,000 from the Plan on February 22, 1985. This note was secured by property in the Virgin Islands, and was issued for four years. Although payments have been made on all loans, as of December 31, 1991, you still owed the Plan $184,388. It is our view that these loans violate Title I of ERISA, sections 404(a)(1)(A), (B), & (D); 406(a)(1)(B) & (D); and 406(b)(1) & (2).

Also, our investigation disclosed that you guaranteed notes given by the Plan to Maryland National Bank. On August 31, 1987, you signed a General Guaranty. On September 17, 1987, you guaranteed a consolidated note in the amount of $700,000. On August 29, 1988, you again guaranteed a consolidated note (including the $700,000 note) in the amount of $900,000. We believe that these transactions violate Title 1 of ERISA, section 406(a)(1)(B).

In our view, for the reasons cited above, you are in violation of ERISA and will remain so as long as the loan in question remains outstanding. Therefore, we invite you to discuss with us immediately how these violations may be corrected and the losses restored to the Plan.

We have provided the foregoing statement of our views to help you evaluate your obligations as a fiduciary within the meaning of ERISA. Your failure to correct the violations and restore losses

may result in the referral of this matter to the Office of the Solicitor of Labor for possible legal action.

In addition to any possible legal action by the Department, you should also be aware that the Secretary, pursuant to section 504(a) of ERISA, is authorized to furnish information to "any person. . .actually affected by any matter which is the subject" of an ERISA investigation. Further, even if the Secretary decided not to take any legal action in this matter, you would nonetheless remain subject to suit by other parties including plan fiduciaries and plan participants or their beneficiaries.

If you take proper corrective action the Department will not bring a law suit with regard to these issues. However, ERISA section 502(l) requires the Secretary of Labor to assess a civil penalty against a fiduciary who breaches a fiduciary responsibility under, or commits any other violation of, part 4 of Title I of ERISA or any other person who knowingly participates in such breach or violation. The penalty under section 502(l) is equal to 20 percent of the "applicable recovery amount", a term which means any amount recovered from a fiduciary or other person with respect to a breach or violation either pursuant to a settlement agreement with the Secretary or ordered by a court to be paid in a judicial proceeding instituted by the Secretary.[1/] Further, you should understand that the Department is speaking only for itself and only with regard to the issues discussed above; the Department has no authority to restrain any third party or any other governmental agency from taking any action it may deem appropriate.

We hope this letter will be helpful to you in the execution of your fiduciary duties, and that, with respect to the specific

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[1/] The Department may, in its sole discretion, waive or reduce the penalty if it determines in writing that the fiduciary or knowing participant in the breach acted reasonably and in good faith, or it is reasonable to expect that the fiduciary or knowing participant will not be able to restore all losses to the plan without severe financial hardship unless such waiver or reduction is granted. The Department may, in its sole discretion, agree to such a waiver or reduction in conjunction with entering into a settlement agreement. The procedure for applying for a waiver or reduction of the civil penalty is set forth in an interim regulation promulgated by the Department at 29 C.F.R. 2570.80 to 2570.88. A petition for a waiver or reduction of the civil penalty should be directed to the Philadelphia Area Office. The Department has also issued a proposed regulation regarding implementation of the civil penalty at 29 C.F.R. 2560.5021-1.

matters discussed, you will promptly discuss with us how these violations may be corrected and the losses restored to the Plan. Please advise me, in writing, within 10 days of your receipt of this letter what action you propose to take with respect to the specific matters discussed.

Sincerely,

Gerard Gumpertz
Area Director
Philadelphia Area Office

Enclosures

cc: Nicholas Giampetro, Esq.
Thomas H. Bornhorst, Esq.

Title I of ERISA provides that:

Section 404(a)(1) ...a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and--

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

Section 406(a), except as provided in Section 408:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect--

(A) sale or exchange, or leasing, of any property between the plan and a party-in-interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of, a party-in-interest, of any assets of the plan;

Section 406(b), A fiduciary with respect to a plan shall not --

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries....

include machinery sold by equipment distributors such as, but not limited to, earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications, but shall not include such equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be expected to be resold in the ordinary course of the equipment distributor's business.

(2) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term shall in no event event exceed 48 months. For purposes of this exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation.

(3) Where the note is secured by tangible personal property other than heavy equipment or motor vehicles described in paragraph (g)(1) and (2) of this section, the terms shall in no event exceed 36 months.

(h) All records, information and data required to be maintained which relate to plan investments in customer notes covered by this exemption shall be unconditionally available at their customary location for examination during normal business hours by:

(1) The Department of Labor,

(2) The Internal Revenue Service,

(3) Plan participants and beneficiaries, or

(4) Any duly authorized employee or representative of a person described in subparagraph (1) through (3) above.

Signed at Washington, D.C., this 3d day of August, 1984.

Alan D. Lebowitz,

Deputy Administrator for Program Operations, Office of Pension and Welfare Benefit Programs.

[FR Doc. 84-21326 Filed 8-9-84; 8:45 am]

BILLING CODE 4510-29-M

PTE 85-68
Permanent Exemption
50 Fed. Reg. 13293 (Apr. 3, 1985)

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-68; Application File No. D-5258]

Permanent Class Exemption To Permit Employee Benefit Plans to Invest in Customer Notes of Employers

AGENCY: Office of Pension and Welfare Benefit Programs, Department of Labor.

ACTION: Grant of Class Exemption.

SUMMARY: This document contains a class exemption to permit employee benefit plans to purchase and hold customer notes of employers. [Replaces Prohibited Transaction Exemption 79-9]. The exemption affects participants, beneficiaries and fiduciaries of plans investing in customer notes, and employers of the plan participants.

EFFECTIVE DATE: July 1, 1984. A condition requiring independent fiduciary oversight will be effective with respect to transactions entered into after 30 days after the date of this Federal Register.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Office of Regulations and Interpretations, Office of Pension

and Welfare Benefit Programs, U.S. Department of Labor, (202) 523-7901. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On August 10, 1984, notice was published in the Federal Register (49 FR 32127) of the pendency before the Department of a proposed class exemption to allow an employee benefit plan to purchase and hold customer notes from an employer of employees covered by the plan. A temporary class exemption, Prohibited Transaction Exemption (PTE) 79–9 (44 FR 17819, March 23, 1979), permitting transactions of this kind expired on June 30, 1984. The exemption provided relief from the prohibited transaction restrictions of sections 406(a), 406(b) (1) and (2) and 407(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code.

In order to establish a record on which to base a determination as to whether permanent relief should be granted for plan investments in customer notes, the Department contacted a number of plans that had relied on PTE 79–9 seeking information concerning their experience with the temporary class exemption. The Department also solicited the views of the Associated Equipment Distributors (AED), an association of several hundred small businesses engaged primarily in the sale of construction equipment. Responses to the Department's inquiries and to a survey conducted by the AED among its member companies indicated that PTE 79–9 had provided good investment opportunities to the participating plans which afforded them relatively favorable yields with a high degree of safety. At the urging of plans that have relied on PTE 79–9 and the AED, the Department proposed the new permanent class exemption on its own motion under section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and section 3.01 of ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

The notice gave interested persons an opportunity to comment and to request a hearing on the proposal. Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1.

1. Description of the Exemption

The class exemption granted pursuant to this notice permits a plan to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. The new exemption incorporates many of the same conditions or limitations imposed under PTE 79–9, which were intended as safeguards to ensure the protection of the plan assets involved in the transactions. These conditions include a written guarantee by the employer to immediately repurchase a note if it becomes more than 60 days delinquent. A plan may not invest more than 50 percent of its assets in customer notes and over 10 percent in the notes of a single customer. Each customer note sold to a plan must be secured by a perfected security interest in the property financed by the note and the collateral must be insured. Also, maximum terms ranging up to five years are imposed on the notes, depending on the type of property being financed.

A condition of PTE 79–9 that required a plan to notify the Department annually in writing if it relied on the exemption is not retained in the new exemption for reasons discussed in the preamble to the proposal.[2] On the other hand, a new requirement for independent fiduciary oversight in regard to plan investments

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

[2] See 49 FR at 32129.

in customer notes has been included in the exemption. Under this new condition, a plan fiduciary who is independent of the employer must approve in advance any acquisition of customer notes by a plan and must monitor the plan's ongoing rights with respect to the customer notes held in its portfolio.

2. Discussion of Comments Received

The Department received nine letters commenting on various aspects of the proposed class exemption. The comment letters in general urged that the class exemption be adopted and stated that an exemption of this kind is in the best interests of the participants and beneficiaries of plans.

Four comment letters objected to the requirement proposed in the exemption that a fiduciary, who is independent of the employer, approve in advance any sales of customer notes to a plan and

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monitor the ongoing plan investments in these notes. The letters asserted that the available evidence indicates that the temporary exemption worked well without an independent fiduciary requirement and that sufficient safeguards already are present in the proposed new exemption. The commenters maintain that the requirement for an independent fiduciary would add an unnecessary expense to a plan's operation which would reduce the plan's net investment return. Some of the letters further indicated that certain financial institutions either would be reluctant to serve in the capacity defined in the exemption or would demand a broader fiduciary role. The commenters noted that many employers relying on the exemption are smaller companies that traditionally have not utilized independent fiduciaries.

As stated in the preamble to the proposed exemption, the Department believes, based on its experience with both class exemptions and individual exemptions, that independent fiduciary oversight is an important method of protecting the plan assets involved in an exempt transaction and avoiding a potential conflict of interest situation where, for example, the employer, who is typically a fiduciary, engages in transactions with the plan. The Department recognizes that PTE 79-9 appears to have operated well with the safeguards incorporated in the temporary exemption and that this new requirement may impose some added expense on the part of plans utilizing the exemption. The Department is not convinced, however, that the marginal savings to a plan in cost or effort from eliminating this condition outweigh the added protection of having any covered transaction subject to the prior approval and monitoring of a fiduciary independent of the employer. For this reason and the reasons previously outlined in the preamble to the proposed exemption, condition III(b) is being retained in the final exemption.

Two comment letters recommended, without further explanation, that the scope of the exemption be expanded to permit sales of customer notes to a plan by affiliates of the sponsoring employer as well as by the employer itself. Section II of the proposal states, in part, that the exemption provides relief for the "acquisition from an employer with respect to a plan * * * of customer notes." Under the definition of customer notes in Section I, such a note must be accepted in connection with the employer's primary business activity as a seller of the tangible personal property being financed by the note. The commenters point out that an individual exemption (PTE 82-48, 47 FR 10924) was granted on March 12, 1982 on a temporary basis to the retirement plans of the Bale Chevrolet affiliated group. The exemption covers transactions similar to those described in PTE 79-9 except that the customer notes are purchased from Bale Finance Company (Bale Finance) which finances automobile sales for customers of the Bale Chevrolet Company (Bale Chevrolet). Bale Chevrolet and Bale Finance are the sole members of a

controlled group as defined in section 1563(a) of the Code. The Department stated in the preamble to the notice of pendency that the exemption was proposed to be in effect only through June 30, 1984 to coincide with the expiration date of PTE 79–9, so that the Department could make a determination at that time in regard to future relief for the applicant.

The Department does not believe that a sufficient showing has been made that the problems associated with the scope of the exemption are commonplace and, consequently, has determined not to modify the definition of customer notes in the exemption. However, the Department continues to be prepared to consider individual exemptive relief for transactions of the type described in PTE 82–48 if the requisite findings under section 408(a) of ERISA can be made.

The Associated Equipment Distributors submitted a letter of comment concerning condition III(d) of the proposed exemption. Under that condition, an employer is required to repurchase a customer note from a plan in the event the note becomes over 60 days in arrears. As noted in the preamble to the proposal, the AED had stated in a letter to the Department dated April 5, 1984 that business customers sometimes experience seasonal or temporary cash-flow problems not reflective of their basic financial condition. As a result, the 60-day default period has occasionally caused good notes with favorable yields to be removed from a plan. At that time the AED recommended that the default period be extended from 60 to 90 days. The Department tentatively rejected that earlier recommendation for reasons discussed in the preamble to the proposed exemption.

In its most recent comment letter, the AED urged the Department to reconsider this matter and reiterated its view that such an extension would be in the best interests of plan participants. According to the AED, an employer, such as an equipment dealer, knows its customers well and therefore usually knows whether a customer is in a sound financial position despite occasional seasonal difficulties.

The AED recommended that the proposed exemption be modified to state that, while a note would still be considered to be in default if it was 60 days in arrears, the employer would have another 30 days to repurchase the note or to see that payments on the note are made timely. Alternatively, the AED recommended that, in cases of a 60-day delinquency, the employer could petition the independent fiduciary referred to in section III(b) of the proposed exemption to grant a 30-day extension.

After consultation with the employer, the independent fiduciary would have the discretion to grant or deny the requested extension based on his or her judgment as to the soundness of the note and the likelihood of its becoming current.

Upon consideration of the arguments put forth by the AED, the Department has decided to accept the second alternative suggested in the comment letter and has modified section III(d) of the exemption accordingly. In all other respects, the proposed exemption is being adopted without change.

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 ERISA and 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 ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; 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) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations:

(i) The class exemption set forth herein is administratively feasible,

(ii) It is in the interests of plans and of their participants and beneficiaries, and

(iii) It is protective of the rights of the participants and beneficiaries of plans;

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The class exemption is supplemental to, and not in derogation of, any other provisions of ERISA and 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.

Exemption

Accordingly, the following class exemption is hereby granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I. Definition of Customer Notes. For purposes of this exemption, a customer note is a two-party instrument, executed along with a security agreement for tangible personal property, which is accepted in connection with, and in the normal course of, an employer's primary business activity as a seller of such property. A two-party instrument is a promissory instrument used in connection with the extension of credit in which one party (the maker) promises to pay a second party (the payee) a sum of money.

Section II. Transactions Covered. Effective July 1, 1984, if the conditions of section III of this exemption are satisfied, the prohibitions of sections 406(a), 406(b) (1) and (2) and 407(a) of ERISA and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the acquisition from an employer with respect to a plan and holding by the plan of customer notes (which, pursuant to section III(d), are guaranteed by the employer), or the repurchase of those notes by the employer.

Section III. Conditions. The following conditions must be met in the case of each plan which engages in covered transactions in reliance on the exemption:

(a) The transaction is on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be.

(b) Effective with respect to customer notes sold after May 3, 1985—

(1) Prior to the consummation of a transaction described in section II of this exemption, the transaction is approved on behalf of the plan by a fiduciary who is independent of the employer, upon a determination made by such fiduciary that the (other) conditions of this exemption will be satisfied. The independent fiduciary shall acknowledge his or her plan fiduciary status in writing with respect to the transaction. For purposes of this paragraph, a person is independent of an employer even though he or she was selected by the employer (or by a person with an interest in the employer) if he or she has no other interest in the transaction for which an exemption is sought that might affect his or her best judgment as a fiduciary;

(2) The plan's continuing rights under the terms and conditions of the acquired customer note(s) and under this exemption shall be monitored and enforced on behalf of the plan by the same or another plan fiduciary who is independent of the employer and who has acknowledged his or her fiduciary status and liability as described in paragraph (b)(1) of this section. The independent fiduciary shall be

responsible for taking all appropriate actions necessary to protect the plan's rights with regard to the safety and collection of the notes purchased by the plan. These actions shall include, but not be limited to, ascertaining that payments are received timely, diligently pursuing the receipt of delinquent payments and enforcing the employer's guarantee to repurchase delinquent notes, with accrued interest, as described in paragraph (d) of this section.

(c) The acquisition of a customer note from the employer shall not cause a plan to hold immediately following the acquisition (i) more than 50 percent of the current value (as defined in section 3(26) of ERISA) of plan assets in customer notes of the employer or (ii) more than 10 percent of the current value of plan assets in the notes of any one customer.

(d) The employer guarantees in writing the immediate repayment of the outstanding balance of the notes and accrued interest in the event the note is more than 60 days in arrears or if other events occur that, in the opinion of the independent fiduciary referred to in paragraph (b) of this section, impair the safety of the note as a plan investment. The independent fiduciary may at his or her discretion grant an additional 30-day extension before repurchase of the note by the employer is necessary upon a petition by the employer, if the fiduciary determines, after consultation with the employer, that such an extension is in the best interests of the participants and beneficiaries of the plan. The other events (of impairment) referred to above include, but are not limited to, the following:

(1) The obligor on the note fails to comply with any terms or conditions of the note.

(2) The obligor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors or a liquidating agent, offers a composition or extension to creditors or make a bulk sale.

(3) Any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation or dissolution is begun by or against the obligor.

(4) A receiver of any property of the obligor is appointed under any jurisdiction at law or in equity.

(5) The obligor fails to take proper care of or abandons the property being financed by the note.

(e) The plan receives adequate security for the note. For purposes of this exemption, the term adequate security means that the note is secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security is such that it may reasonably be anticipated that loss of principal or interest will not result. In no event shall adequate security mean an interest in intangible personal property, such as, but not limited to, accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

(f) Insurance against loss or damage to the collateral from fire or other hazards will be procured and maintained by the obligor until the note is repaid or repurchased by the employer, and the proceeds from such insurance will be assigned to the plan.

(g) Repayment must be provided for in the following manner:

(1) Where the note is secured by heavy equipment, the term shall in no event exceed 60 months. For purposes of this exemption, heavy equipment shall include machinery sold by equipment distributors such as, but not limited to, earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications, but shall not include such equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be expected to be resold in the ordinary

course of the equipment distributor's business.

13296

(2) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term shall in no event exceed 48 months. For purposes of this exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation.

(3) Where the note is secured by tangible personal property other than heavy equipment or motor vehicles described in paragraph (g) (1) and (2) of this section, the term shall in no event exceed 36 months.

(h) All records, information and data required to be maintained which relates to plan investments in customer notes covered by this exemption shall be unconditionally available at their customary location for examination during normal business hours by:

(1) The Department of Labor,

(2) The Internal Revenue Service,

(3) Plan participants and beneficiaries, or

(4) Any duly authorized employee or representative of a person described in subparagraph (1) through (3) above.

Signed at Washington, D.C., this 28th day of March 1985.

Alan D. Lebowitz,

Acting Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 85-7901 Filed 4-2-85; 8:45 am]

BILLING CODE 4510-29-M

Richard Shelton — KA — 7/29

1040

1994

(11) INTEREST EXP

	Type Interest	Business Investment Interest Limitation
Apartment - Patterson	120 - ✓	-
1st Mort - ✓	3869.49 ✓	-
✓ - Dunsmuir	13268.16	-
Points - Settlement Sheet - Dunsmuir	1428 - ✓	-
Increase in principal - Dunsmuir	- (?)	< CAN WE DEDUCT ANYTHING HERE? -
2nd Mort - Dunsmuir	4108.39 ✓	- no
Personal loan to Pension Plan	11,030.86	-
✓ ✓ from Canada	1,719 -	-
Business ✓ - -	25781 - ✓	25781 -
personal loan - Sierra Shores	2599.41 ✓	(interest on old dwelling) -
Interest on property Taxes	23.74	-
	23.74	
	16.19	-
MasterCard	311.10 ✓	-
	64,399.08	25781
	+1836 pts. POC ✓	

(12) CONTRIBUTIONS - Lee's Club

(13) MISC -

Wall St Journal $185 -

Value Line 37 -

HARVEY M NEWMAN CPA
GERALD L GRABUSH CPA
BARRY B BONDROFF CPA
PHILIP I MATZ CPA
NORMAN N POLONSKY CPA
KENNETH E LARASH CPA
ALLEN M SCHIFF CPA

Grabush, Newman & Co., P.
Certified Public Accountants

February 20, 1987

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights
Baltimore, Maryland 21207

Dear Dick:

It has come to our attention, during the preparation of you corporation and individual income tax returns for 1985, that your individual income tax return, Form 1040 should be amended for the year ended December 31, 1984.

The amendment would be in the form of additional income of approximately $150,000 which is the amount that was drawn out of the pension in 1984, in the form of loans, that was in excess of the allowable loan amount of $50,000. The changing of the character of these items from loans to withdraws and consequently income to you, would also effect the interest deduction claimed that year.

If you have any questions on this letter, or want us to proceed with making the amendment as noted, please call me.

Very truly yours,

Kenneth E. Larash

KEL/njj

DEFENDANT'S EXHIBIT 17

MEMO TO : SFJ

FROM : EJK

DATE : JULY 12, 1988

RE : ATTORNEY THOMAS BOWDEN

Susan, I got a call on July 1 from Tom Bowden from I believe Baltimore.

He has a malpractice action against Stewart Hack & Company.

Apparently, Hack advised a client of theirs that he could withdraw his voluntary contribution account.

Allegedly, Hack did not give any tax advice, or if he did he gave the wrong tax advice. I think it was probably the former.

In any event, the individual took out the money and assumed that it was not taxable. This is somewhat ludicrous, but I would have to see exactly what was said.

I would also have to see the documentation.

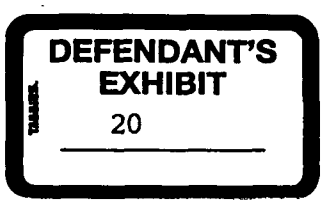
Right now, he is looking for us to be expert witnesses. He says he has a local lawyer who is a pension lawyer and contends that it is malpractice.

I told him I'd look at the case on an hourly basis and give him an analysis, both as to whether Hack gave the wrong advice or failed to give him advice and whether we think Hack has any responsibility to give him tax advice. I told him I didn't think that most of the actuaries I know would specifically give tax advice.

I also believe that it would be unusual for someone to assume that money would not be taxable.

In any event, we can take a look at it and see what the guy has.

I told him, specifically, that we could not spend any time preparing or assisting in depositions, etc., until the fall.



LAW OFFICES

Prusky & Giampetro, P. C.

A PROFESSIONAL CORPORATION

THE DULANEY CENTER
SUITE 108
849 FAIRMOUNT AVENUE
TOWSON, MD 21204
(301) 339 7466

BYRON R. PRUSKY
D.C., PA AND N.J. BARS ONLY
NICHOLAS J. GIAMPETRO
N.J., PA AND D.C. BARS ALSO
FRANS M. DE NIE
N.J., PA AND D.C. BARS ALSO
DAVID M. TRALINS

PHILADELPHIA OFFICE
TWO PENN CENTER PLAZA
SUITE 1919
PHILADELPHIA, PA 19102
(215) 564-1991

WASHINGTON OFFICE
8201 CORPORATE DRIVE
SUITE 1250
LANDOVER, MD 20785
(202) 872-1818

PLEASE REPLY TO:

Towson

November 3, 1987

Mr. Richard Shofer
5006 Liberty Heights Avenue
Baltimore, Maryland 21207

Personal & Confidential

Dear Dick:

The purpose of this letter is to outline what we discussed in our conversation on October 30, 1987.

In 1984 it is my understanding that you withdrew $200,000 from your voluntary account. The treatment is as follows:

1. Approximate amount of $76,000 which represents your basis in the voluntary account. You can treat this withdrawal as a loan or as a withdrawal. If it is treated as a loan, then interest is due thereon. If it is not treated as a loan or if it is treated as a withdrawal it is not taxable to you.

2. The next $50,000 is treated as a loan; however, it is not taxable subject to the rules under the Tax Equity and Fiscal Responsibility Act of 1982.

3. The balance is a loan which will be considered as taxable to you.

Your withdrawal of $74,000 in 1985 is a loan with interest due thereon. This loan is treated as a taxable distribution.

It would further appear that you may withdraw, if the plan provides, part or all of your voluntary contributions, and the

DEFENDANT'S EXHIBIT 21

earnings thereon at any time, even while you are an active participant in the plan (Alan, see Rev. Rul. 69-277). Hence, you may elect to treat any "loan" from your voluntary account as an actual distribution and terminate its loan status. However, to the extent that the loan was not taxable (i.e., the second $50,000), upon treating it as a withdrawal it would become taxable.

Should you have any further questions about our conversation, do not hesitate to contact me. It is always a pleasure to be of service to you.

Sincerely yours,
PRUSKY & GIAMPETRO, P.C.

By: _____
Nicholas J. Giampetro

NJG/laf

cc: Alan Marvel, C.P.A.

bcc: Dennis

DEFENDANT'S EXHIBIT 22

LAW OFFICES
Prusky & Giampetro, P. C.
A PROFESSIONAL CORPORATION
THE DULANEY CENTER
SUITE 108
849 FAIRMOUNT AVENUE
TOWSON, MD 21204
(301) 339-7466

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N.J., PA. AND D.C. BARS ALSO
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PHILADELPHIA OFFICE
TWO PENN CENTER PLAZA
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PHILADELPHIA, PA 19102
(215) 564-1991

WASHINGTON OFFICE
8201 CORPORATE DRIVE
SUITE 1250
LANDOVER, MD 20785
(202) 872-1818

PLEASE REPLY TO:
Towson

April 11, 1988

Thomas A. Bowden, Esquire
Blum, Yumkas, Mailman, Gutman & Denick, P.A.
1200 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201-2914

Personal & Confidential

Dear Mr. Bowden:

You have asked us to express an opinion regarding the contents of a letter dated August 9, 1984 by the Stuart Hack Company addressed to Richard Shofer and signed by Stuart Hack. The focus of this letter will be on the issue of borrowing money from a voluntary account and its attendant tax consequences.

The last paragraph of the Hack letter provides "the TEFRA provisions on the limits on loans apply only to employer accounts and specifically do not apply to employee voluntary accounts. It is my opinion, you can use your voluntary account as collateral for a loan or you can borrow up to 100% of your voluntary account."

Section 72(p) of the Internal Revenue Code provides that loans from qualified retirement plans are treated as distributions from the plan. That section further provides an exception to the general rule that if the amount of the loan is not greater than the lesser of $50,000 or one-half of the vested accrued benefit of the participant, the loan will not be treated as a distribution. This rule is applicable for loans made after August 13, 1982, but loans made after August 13, 1982 are aggregated with loans made on or before August 13, 1982. We are enclosing a copy of the applicable section of the Internal Revenue Code. The foregoing was the law in effect in 1984 and 1985, but has since been changed as a result of the Tax Reform Act of 1986; however, the changes are effective for transactions entered into after December 31, 1986.

Loans in excess of non-taxable limits are not prohibited, merely taxable and, hence, their taxability does not excuse lack of repayment. All taxable plan loans are subject to tax as other income. Repayment of taxable loan distributions establishes a basis equivalent to the amounts repaid so that when a regular plan distribution is made, these amounts will not be subject to taxation again.

The law treats loans in excess of the above limits as distributions, the tax treatment of which is dependent in part on whether a participant's interest in the plan included non-deductible employee contributions recoverable as non-taxable distributions. The Senate explanation to the bill which was enacted into law provides that loans will be deemed made first from non-deductible employee contributions to the extent available. Hence, loans from a voluntary account to the extent of the employee's contributions thereto would be non-taxable. Loans in excess of the employees contribution to the voluntary account are subject to the rule that to the extent the loan is greater than the lesser of $50,000 or one-half of the vested accrued benefit the loan will be treated as a taxable distribution.

It is our further opinion that a taxable distribution will result in a non-deductible excise tax in the amount of 10% of distributions occurring before the participant attains the age of 59 1/2.

Should you require further information, feel free to contact us.

Sincerely yours,
PRUSKY & GIAMPETRO, P.C.

Nicholas J. Giampetro

NJG/laf

DEFENDANT'S EXHIBIT 23

April 21, 1988

Nicholas J. Giampetro, Esquire
Prusky & Giampetro, P.C.
The Dulaney Center
Suite 108
849 Fairmount Avenue
Towson, Maryland 21204

Re: Richard Shofer, Catalina Enterprises, Inc.
Catalina Enterprices, Inc. Pension Plan

Dear Mr. Giampetro:

Thank you for your letter dated April 11, 1988, concerning Stuart Hack's August 9, 1984 letter. It is clear from that letter that Hack's suggestion as to borrowing from Shofer's voluntary account had serious tax consequences that were not mentioned in Hack's letter.

Now, I would appreciate your expanding the scope of your letter to support other allegations set forth in the Complaint filed in the case. A copy of that Complaint is enclosed.

To the extent that you can do so, I would like you to opine as to the following:

1. Whether Hack's August 9, 1984, advice was correct with regard to using voluntary accounts as collateral;

2. Whether following Hack's advice with regard to collateralizing a voluntary account would have had any tax consequences;

3. Whether following Hack's advice with regard to collateralizing a voluntary account would have been illegal, and

4. Whether the omission in Hack's letter of any mention of tax consequences by either collateralizing or borrowing from voluntary accounts constituted a failure to observe the standard of care of a reasonably prudent and competent actuary and pension consultant.

I look forward to your response to these questions at your earliest convenience.

Very truly yours,

Thomas A. Bowden

TAB/aes
15WD13C:L60-L60.1

cc: Mr. Richard Shofer

LAW OFFICES

Prusky & Giampetro, P. C.

A PROFESSIONAL CORPORATION

THE DULANEY CENTER
SUITE 108
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TOWSON, MD 21204
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N.J., PA. AND D.C. BARS ALSO
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PHILADELPHIA, PA 19102
(215) 564-1991

WASHINGTON OFFICE
8201 CORPORATE DRIVE
SUITE 620
LANDOVER, MD 20785
(202) 872-1818

PLEASE REPLY TO:

Towson

June 16, 1988

Thomas A. Bowden, Esquire
Blum, Yumkas, Mailman, Gutman & Denick, P.A.
1200 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

Personal & Confidential

RE: Richard Shofer v. The Stuart Hack Company, et al.
Case No: 88102069/CL79993

Dear Mr. Bowden:

The purpose of this letter is to respond to your letter dated April 21, 1988, whereby you asked me to clarify and expound upon certain facets of a letter received by Richard Shofer from Stuart Hack on August 9, 1984.

Pivotol to the answer to your questions contained in your letter of April 21, 1988 is that the Internal Revenue Code Section 72(p)(1)(B) states:

> (B) Assignments or Pledges. - If during any taxable year a participant or beneficiary assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.

Hence, loans and assignments or pledges are treated the same for purposes of determining whether said loan or assignment is a distribution under Section 72 of the Internal Revenue Code.

DEFENDANT'S EXHIBIT
24

There does not appear to be any mention of the tax consequences of pledging or assigning amounts in a voluntary account to the extent that they exceed one's after-tax contribution. The advice contained in Mr. Hack's letter and the ommission from Mr. Hack's letter of the tax consequences of borrowing from the voluntary account in excess of one's after-tax employee contributions does not constitute an illegal act.

Should you desire further information, do not hesitate to contact us.

Sincerely yours,
PRUSKY & GIAMPETRO, P.C.

Nicholas J. Giampetro

NJG/laf

1501 W... Avenue
Ba... Maryland ...
(301) 669-...
Washington DC 621-1933

DEFENDANT'S EXHIBIT 26

August 14, 1980

Mr. Richard Shofer
Catalina Enterprises, Inc.
5006 Liberty Heights Ave.
Baltimore, MD 21207

Re: Catalina Enterprises, Inc.
Pension and Profit Sharing Plans
Forms 5500-C and Prohibited Transaction

Dear Mr. Shofer:

Enclosed you will find the annual reporting forms for both Pension and Profit Sharing Plans which must be filed with the Internal Revenue Service by 10/15/80. The 5500-C forms with their attachments should be filed according to the instruction sheet. As you file the form I would appreciate it, if you would return the postcard to us indicating the date you filed the form.

Since the pension plan borrowed $4,300 from the profit sharing plan in 1978, we believe this is a prohibited transaction and we have answered "yes" to question 21 (a) on page 3 of the 5500 form. Also, we have prepared an attachment to the 5500 form outlining the little information we have about the transaction. This attachment is required as a part of the filing.

You will also note that we have partially prepared a Return of Initial Excises Tax Related to Pension and Profit Sharing Plan (Form 5330.) Recently, we have noticed that both the Internal Revenue Service and the Department of Labor are taking a much more active role in reviewing plans to insure that they do not enter into any transactions that are prohibited under the law. Because of the stepped up enforcement taken by the government in this area, we think that it is advisable, in order to protect the plan, to advise all of our

clients to strictly follow the law concerning prohibited transactions and report and pay the tax on any transactions that we discover during the year. Thus, I would strongly suggest that you complete parts III, IV and VI of the Form 5330 and pay any tax that is due. We were unable to compute the tax because we do not have enough information on the transaction. Basically, the "amount involved in prohibited transaction" that must be filled in, in part III, item 13 column c., is not the amount of the loan, but is actually the greater of either the actual amount charged for the use of the money during the 1979 plan year. What this means is that the tax is computed on the interest the plan actually paid or should have paid if the fair market rate of interest was greater than actually paid by the plan. The tax is equal to 5% of the amount involved.

To give you an example, suppose the plan was to pay $800 interest on the loan during 1979. The tax would be 5% of $800 or $40.

You may wish to contact your accountant for additional information on how to compute the tax on this particular prohibited transaction.

I want you to understand that because of the stepped up enforcement action by the government, we think it is advisable that all plans strictly follow the law when it comes to prohibited transactions. Whether or not you actually pay the tax or file Form 5330, it is, of course, entirely up to you, but we do recommend that you comply with with the rules regarding prohibited transactions. For your own information, the excise tax of 5% is imposed each year until the prohibited transaction is entirely corrected, in this case meaning the loan is entirely paid off. Also, the Internal Revenue Service can give you a 90 day "correction period" in order to correct a transaction.

Once the I.R.S. formally notifies you that they are imposing the 90 day correction period, if the transaction is not corrected within that 90 day period then the Service has the right to impose an excise tax equal to 100% of the amount involved in the transaction. Finally, the Department of Labor can file suite against the plan fiduciaries requiring that the transaction be corrected. In short, the Internal Revenue Service can turn this loan into a 90 day demand note.

If you do decide to pay the excise tax and file Form 5330, I would appreciate it if you would send us a copy of the form as it is filed with the Internal Revenue Service.

Finally, we are not expressing any opinion on whether the 1973 interplan loan of $16,500 and the 1974 loan of $4,000 are prohibited transactions. They may not have been prohibited when entered into, but they may now be prohibited because of the lack of payments.

Very truly yours,

John W. Molino
Manager
Plan Administration

JWM/mr
Enclosures

cc: Harvey Newman, CPA

Comm & Perm. 41 file.

CLIENT TELEPHONE CONTACT SHEET

DATE 8/3/84

TIME CALL STARTED ______

CLIENT NAME Crown Motors & Castelinia Enterprises

PLAN: [X] PENSION [X] PROFIT SHARING [ ] ______

INSURANCE: [ ] PENSION [ ] GROUP [ ] DISABILITY

[ ] MAJOR MEDICAL [ ] ______

PARTY: [ ] CALLING

[ ] CALLED Dick Schafer

PHONE NO. ______

DATE: ______ [ ] 2D FOLLOW UP [ ] 3D FOLLOW UP

REASON (1) Use vol acct. as collateral for loan)

a. Principal only?

b. Are vol. accts protected from creditors? - Int. No.

(2) could he (in loans to vol. acct) & forward to plan? - could be discriminatory.

(3) Reg. loans be collateralized & vol. acct can be collateral.

per R. Brown:

1. Yes, no written auth.

Must agree not do w/draw vol. acct

2.

TIME CALL FINISHED ______

INITIALS [initials]

DEFENDANT'S EXHIBIT 27

000800

CLIENT TELEPHONE CONTACT SHEET

DATE 8/7/84

TIME CALL STARTED ______

CLIENT NAME Cadillac Ent. (Crown Motors)

PLAN: ☐ PENSION ☐ PROFIT SHARING ☐ ______

INSURANCE: ☐ PENSION ☐ GROUP ☐ DISABILITY

☐ MAJOR MEDICAL ☐ ______

PARTY: ☐ CALLING ☐ CALLED Dick Shafer

PHONE NO. ______

DATE: ______ ☐ 2D FOLLOW UP ☐ 3D FOLLOW UP

REASON: ① Needs Ltr can borrow from Vol. acct. w/o need for collateral up to 100% of vol. acct.

② Borrow up to 50,000 from (1) but must be collateralized. Vol. acct. could be collateral.

③ Vol acct can be put up a collateral for loan from a bank.

④ Acct will continue partic in plan earnings.

TIME CALL FINISHED ______

INITIALS [illegible]

DEFENDANT'S EXHIBIT 28

000740

Pl. - Douglas Taylor
Def. Janet Truhe
Deborah Whelihan
John T. May

CIRCUIT COURT FOR BALTIMORE CITY
EXHIBIT LIST

PLAINTIFF/~~STATE~~ Richard Shofer

DEFENDANT Stuart Hack, et al

CASE NO. 88102069 | CL 79993

JUDGE Matricciani

CLERK Herndon STENO Video

COURT Pt. 20

PLAINTIFF/STATE EXHIBIT

evid 1. Letter from Louis Omansky - 8/21/75
evid 2. Pension Plan + Trust Agreement
evid 3. Letter from Louis Omansky - 10/6/76
evid 4. Letter from Louis Omansky - 2/12/81
evid 5. Letter from Stuart Hack - 8/9/84
evid 6. Summary Notes
evid 7. Letter from Kenneth Larash 2/20/87
evid 8. Letter from Richard Shofer - 3/3/87
evid 9. Letter from Stuart Hack - 4/8/87
evid 10. Income Tax Returns - 1984
evid 11. Amended Income Tax Returns - 1984
evid 12. Income Tax Returns - 1985
evid 13. Amended Income Tax Returns - 1985
evid 14. Income Tax Returns - 1986
evid 15. Income Tax Returns - 1987
evid 16. 1984 Amended Pension Plan
evid 17. Letter from Alan VandenBroeschke 11-2-84
evid 18. Invoices - 9/25/84
evid 19. Letter from Charmaine Gudon - 3/11/85
evid 20. Letter from Stuart Hack 3/7/86

DEFENDANT EXHIBIT

evid 1. Fee agreement
evid 2. Invoice - Catalina Enterprises
evid 3. Letter from Richard Shofer - 2/24/82
4. joint Exhibit - TT 6
evid 5. Letter from Alan VandenBroeschke (second request) 11/23/84
evid 6. Letter from Alan VandenBroeschke (final request) 11/23/84
evid 7. Letter from Alan VandenBroeschke 9/26/85
evid 8. Memo from Janelle Hardy - 10/11/85
evid 9. IRS - 5500C Rept. of Employee's Benefit Plan
evid 10. Letter from Katherine Gadsden 11/7/86
evid 11. Letter from Dept. of Labor
evid 12. Balance sheet
13. joint Exhibit - TT 10
evid 14. Handwritten form
15. joint exhibit - TT 12
16. joint exhibit - TT 13
evid 17. Letter from Kenneth Larash 2/20/87
18. joint exhibit - TT 11
evid 19. Letter from Kenneth Larash 11/7/86
evid 20. Memos from Edward Kabala - 7/12/88

CIRCUIT COURT FOR BALTIMORE CITY
EXHIBIT LIST

PLAINTIFF/~~STATE~~ Richard Shofer

DEFENDANT Stuart Hack, et al

CASE NO. 88102069 | CL 79993

JUDGE Matricciani

CLERK Herndon STENO Video

COURT Pt. 20

PLAINTIFF/STATE EXHIBIT	DEFENDANT EXHIBIT
evid 2 1. Letter from Alan Vandendriessche 11/24/86	evid 21. Letter from Nicholas Giampetro (Richard Shafer) 11/3/87
evid 2 2. Letter from Stuart Hack - 10/13/87	evid 22. Letter from Nicholas Giampetro 4/11/88
evid 2 3. Letter from Hack-Pension Client	evid 23. Letter from Thomas Bowden - 4/21/88
evid 2 4. Letters from Kenneth Larash	evid 24. Letter from Nicholas Giampetro (Thomas Bowden) 6-16-88
evid 2 5. Letter from Kenneth Larash 12/4/87	25. Joint Exhibit #2
evid 2 6. Newsletter	evid 26. Letter from John Molino - 8-14-80
evid 2 7. Letter from Nicholas Giampetro 4-30-87	evid 27. Telephone contact sheet
evid 2 8. Letter from Timothy Krause 10-11-84	evid 28. Client Telephone contact sheet 8/7/84
evid 2 9. Letter from Timothy Krause 6-14-89	29.
ID 30. Professional fees and billings	30.
ID 31. Documentation of Shofer's Money Problem	evid 31. Copy of Resume E. Barrows
ID 32. 5500C - 1984 tax form (copy)	evid 32. Curriculum Vitae - Richard Intner
EV ID 33. trust fund statement	evid 33. Copy of publication (tax equity)
ID 34. Memo from Judith Reeve	evid 34. general requirement of returns
ID 35. acct. receivable records - 1990-91	evid 35. tax practice
ID 36. Rept. to Shofer evaluation of taxes	id 36. Copy of article - 2/90
evid 37. tax analysis	evid 37. federal tax regulations
evid 38. Letter from Nicholas Giampetro 4/30/87	~~ID~~ 38. Letter from Richard Intner 6-2-97
evid 39. Letter from Nicholas Giampetro 3/19/93	evid 39. 1984 - 5500C form (original)
evid ~~ID~~ 40. Stipulation Letter from Barry Berman to Richard Shafer	evid ~~ID~~ 40. Letter from Richard Intner

CC-127

Deborah Whelihan - Def.
John May - Def.

CIRCUIT COURT FOR BALTIMORE CITY
EXHIBIT LIST

3rd Party

PLAINTIFF/STATE Richard Shofer

DEFENDANT Stuart Hack, et al

CASE NO. 88102069 /CL 79993

JUDGE Matricciani

CLERK Herndon STENO Video

COURT PT 20

	PLAINTIFF/STATE EXHIBIT	DEFENDANT EXHIBIT
1.		evid Handwritten notes 1/27/87 11/23/84
2.		evid Letter from A. Vandendriessche
3.		evid Copy of letter to R. Shofer 1/13/86
4.		evid Disposition testimony
5.		evid Journal of accountancy 1992
6.		
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F. Leach
2-22-10
366 Pages

MSAREF.NET, MSA SC 5458
An Archives of Maryland Publication

MSA SC 5458-82-152

Dates: 2010/02/17
Description: Case numbers received from J. Hollander -

BALTIMORE CITY CIRCUIT COURT (Paternity Papers) Arrington v. Rodriguez, 1989, Box 169 Case No. 119070 [MSA T3351-923, CW/16/31/25]
File should be named msa_sc5458_82_152_[full case number]-####
2010-02-22 C Baker scanned 137 pages, created pdf and uploaded pdf to msaref for folder #1.
2010-02-22 C Baker scanned 164 pages, created pdf and uploaded pdf to msaref for folder #2.
2010-02-22 C Baker scanned 292 pages, created pdf and uploaded pdf to msaref for folder #3.

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Rolnik v. Union Labor Life Ins. Co., 1987, Case No. 87313071
Case is split between 2 boxes:
Box 387 [MSA T2691-2026, HF/8/35/8]
Box 388 [MSA T2691-2027, HF/8/35/9]
2010-02-19 F. Leach scanned 369 pages, created pdf and uploaded pdf to msaref for folder #1.
2010-02-19 D. Lee scanned 271 pages, created pdf and uploaded pdf to msaref for folder #2.
2010-02-19 D. Lee scanned 326 pages, created pdf and uploaded pdf to msaref for folder #3.
2010-02-22 F. Leach scanned 432 pages, created pdf and uploaded pdf to msaref for folder #4.
2010-02-22 D. Lee scanned 473 pages, created pdf and uploaded pdf to msaref for folder #5.

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Shofer v.The Stuart Hack Co., Box 128 Case No. 88102069 [MSA T2691-2232, HF/11/30/3] 88102069-1 F. L 2-22-10 366 Pages
See also for "brick binders":
Box 527 [MSA T2691-2631, HF/11/38/18]
Box 528 [MSA T2691-2632, HF/11/38/19]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Attorney Grievance Commission v. Yacono, 1992, Box 1953 Case No. 92024055 [MSA T2691-4591, OR/12/14/65] **File not in Box**
File should be named msa_sc5458_82_152_[full case number]-####

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BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Bowden, 1987, Box 142 Case No. 18721501 [MSA T3372-984, CW/2/23/13]
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BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Redmond, 1988, Box 191 Case No. 48828071 [MSA T3372-1282, HF/11/23/43]
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BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Parker, 1990
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BALTIMORE CITY CIRCUIT COURT (Criminal Transcripts) State v. Monk, 1991, Box 78 Case No. 591277019 [MSA T3657-403, OR/17/11/21]
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BALTIMORE CITY CRIMINAL COURT (Transcripts) Eraina Pretty, 1978, Box 43 Case Nos. 57811846, 57811847, 57811848, 57811858, 57811859, 57811860 [MSA T496-3990, OR/18/22/41]
Case 57811847 and Case 57811858 have pull slips in the record center box that indicate the files were sent back to Baltimore City Circuit Court attn: Jack Blake in 1993.
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BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Johnson (or Johnson-Bey),

1987, Box 11 Case No. 28701917 [MSA T3372-853, CW/2/20/26]

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System design by Dr. Edward C. Papenfuse and Nancy Bramucci.
Programmed in *Microsoft SQL Server* and *Cold Fusion 7.0* by Nancy Bramucci.
Technical support provided by Wei Yang, Dan Knight, Tony Darden, and Matt Davis.
Version 2.8.1