

restrictions of sections 406(a), 406(b) (1) and (2) and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale (the Sale) of a certain parcel of improved real property (the Property) from the Plan to M. A. Hanna Company (Hanna), a party in interest with respect to the Plan provided that the following conditions are met:

(1) The fair market value of the Property is established by a qualified and independent real estate appraiser;

(2) Hanna pays the greater of \$990,800 or the current fair market value of the Property;

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

(4) The Plan pays no fees or commissions related to the Sale; and

(5) Hanna pays any excise taxes to the Internal Revenue Service owed pursuant to section 4975(a) of the Code resulting from Hanna's lease of the Property from the Plan through the date of publication in the **Federal Register** of the final grant of the exemption within 90 days of such date.

#### Summary of Facts and Representations

1. Hanna is a Delaware Corporation with its principal office and place of business in Cleveland, Ohio. In November 1987, Hanna acquired all of the outstanding capital stock of PMS Consolidated, Inc. The Hanna/PMS Consolidated, Inc. merger was effective April 1, 1993. PMS Consolidated is the original plan sponsor.

2. The Plan is a defined contribution pension plan. As of April 1, 1995, the Plan had 706 participants and total assets of \$14,240,928. Wells Fargo Bank has served as Plan trustee since January 1, 1992. The PMS Committee for Employee Benefits Administration is the Plan fiduciary responsible for selecting the Plan's investments. Currently, only one individual serves on this committee. He is an employee and officer of the PMS Division of Hanna.

3. In November of 1968, the Plan acquired the Property as undeveloped land from PMS Consolidated for \$10,050, and subsequently built the building for \$550,887. The Plan has invested a total of \$560,937 in the Property. The Property is located in Coral Springs, Florida. In July 1969, the Plan leased the Property to PMS Consolidated. (the Lease). The Lease was last renewed on January 1, 1989 for a five year period, and currently is on a month to month basis. All property taxes and insurance costs were paid by PMS Consolidated for the duration of the Lease. PMS Consolidated also has

incurred \$509,967 in leasehold improvements over the term of the lease.<sup>1</sup> At the time the Hanna/PMS Consolidated merger became effective, Hanna became aware of the Lease. Unsuccessful efforts were made to sell the Property to an unrelated third party. As a result the Plan proposes to sell the Property to Hanna.<sup>2</sup>

4. The Property was appraised by two independent qualified appraisers. Both appraisers utilized the market value approach which is defined as the most probable price which the appraised property will bring in a competitive market under all conditions requisite to a fair sale. On October 24, 1994, C.R. Johnson & Associates, Inc., certified MAI real estate appraisers determined the value of the Property to be \$706,000. AMH Appraisal Consultants appraised the Property at \$850,000 as of November 2, 1994.

The rental rate under the Lease was at fair market rental rates. The rental rate under the Lease was \$5.78 per square foot. In developing a value for the Property, AMH considered four comparable properties which had rental rates ranging from \$3.50 to \$6.00 per square foot. C.R. Johnson considered six properties, noting that one property was the "most comparable." The rental rate for this property was \$5.75 per square foot.

5. The Plan proposes to sell the Property for \$990,800. This purchase price, which reflects Hanna's internal valuation of the Property, is substantially in excess of appraisals referred to above. Hanna has agreed to pay \$990,800 in order to ensure that Plan participants and beneficiaries are not disadvantaged by reason of the Plan's previous holding of the Property or the Sale of the Property. The Sale will be for cash, and the Plan will pay no fees or commissions with regard to the transaction.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) the Sale is a one-time transaction for cash, and no commissions will be paid upon the Sale;

<sup>1</sup> The terms of the lease provides that leasehold improvements revert to the Plan upon the termination of the lease.

<sup>2</sup> The applicant recognizes that the lease by the Plan of the Property to Hanna constitutes a prohibited transaction under section 406(a) of the Act and section 4975 of the Code. Accordingly, Hanna has filed a form 5330 with the Internal Revenue Service and paid the Internal Revenue Service the excise taxes that are applicable under section 4975(a) of the Code through the date on which the application was filed. Further, Hanna represents that it will pay the additional excise taxes due through the date of the grant of final exemption within 90 days of its publication in the **Federal Register**.

(2) the Plan will be receiving at least fair market value for the Property as determined by an independent qualified real estate appraiser; and (3) Hanna will pay all applicable excise taxes which are due by reason of the Lease within 90 days of the publication in the **Federal Register** of the exemption proposed herein.

#### Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code including sections 401(a)(4), 404 and 415.

For Further Information Contact: Allison Padams of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

#### Apartment Laundries, Inc., Profit Sharing Plan (the Plan), Located in Tulsa, Oklahoma; Proposed Exemption

[Application No.: D-09835]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CAR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lease (the Lease) of improved property (the Property) by the individual account of James L. Sharp (the Account) in the Plan to Apartment Laundries, a party in interest with respect to the Plan provided that the following conditions are met: (1) the terms of the Lease are and will remain at least as favorable as the Plan could obtain in an arm's length transaction with an unrelated party; (2) the fair market rental value has been and will continue to be determined on an annual basis by a qualified, independent appraiser; and (3) the fair market value of the Property, as determined by a qualified, independent appraiser, represents no more than 25% of value of the assets in the Account.

#### Summary of Facts and Representations

1. Apartment Laundries (the Employer) is an Oklahoma corporation