Pensions (1950)

THE DISTRIBUTORS GROUP, INCORPORATED

STANDARD PLAN

FOR

EMPLOYEES' PROFIT-SHARING

AND

RETIREMENT TRUSTS

SUBMITTED BY

Prepared By

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This folder summarizes certain features of Employees' Profit-Sharing and Retirement Trusts. It is not intended as a substitute for legal advice in connection therewith. Employers contemplating the establishment of such Trusts should retain qualified legal counsel for interpretation of all matters of fact and opinion summarized herein.

FOREWORD

In establishing an Employees' Profit-Sharing and Retirement Trust a number of essential elements must be combined. There must be a formally executed Trust Agreement with a Trustee, either an individual or a bank or trust company. There must be a Plan, also a formal document, embodying all the terms decided upon by the employer, such as what portion of total employees are to participate, what is to be the age of retirement, how benefits are to be disbursed, etc. The Plan and Trust Agreement must be filed with the Commissioner of Internal Revenue and the Collector of Internal Revenue and meet the requirements of the Internal Revenue Code and regulations or the tax advantages (both to employer and employee) will be lost. If the employer is a corporation certain corporate action is required.

To simplify an otherwise complex subject a *Standard* Plan and Trust Agreement has been developed for Distributors Group, Incorporated, of New York, professional managers of investment funds, in collaboration with specialized and experienced legal counsel and with trust companies. There is ample leeway, within this Standard Plan, for practically every employer to adapt it directly to his own particular situation.

This Standard Plan is summarized, in layman's language, in the following pages. Note that each employer's own decisions on just 7 points adapts this Plan directly to his specific requirements. The degree of latitude possible for each such decision is stated.

The law permits such plans to be amended at any time, hence decisions made in the first year are not irrevocable.

Summary of

The Distributors Group, Incorporated

STANDARD PLAN

The following plan for the exclusive benefit of those of its employees who meet the requirements for Participants as hereinafter set forth, has been adopted as of 1950 by , the Employer.

CONTRIBUTIONS . . .

The Employer proposes to contribute annually to a trust fund % of its net earnings, as hereinafter defined, but not more than 15% of the total annual compensation of Participants. Net earnings for this purpose shall be defined as

Decision #1

Practically any formula is acceptable provided that it is so specific that, given gross earnings of any amount, the "net earnings" are determinable by straight mathematics. It is well to use as a starting point for the definition "net earnings as reported for Federal income tax purposes" and to list any desired deductions from that figure.)

The formula may comprise a flat percentage, or a graduated scale of percentages, of earnings before taxes; or specific (and entirely arbitrary) deductions from such earnings may be made before applying the percentages.

Such contributions will be paid to , as Trustee, under the terms of a Trust Agreement, providing for the investment of the funds, and periodically of the income derived therefrom, as directed by the Trust Committee.

PARTICIPANTS . . .

All employees as defined in the Social Security Law (including officers and executives) of the Employer as of the date of the adoption of this Plan, and

Decision #2

Either (a) ALONE who were in the employ of the Employer at (specify any date desired *within 5 years prior* to the date of the adoption of the Plan)

or WITH (b) and who received total compensation, as defined, from the Employer in the calendar (or fiscal) year just past, aggregating not less than an annual rate of $3,000

shall be Participants in this Plan. All present and future employees shall be entitled to become Participants upon their completing comparable qualification requirements of continuous service with the Employer.

As regards continuity of service, employees who are or were in the military service of the United States are to be considered as though actually employed by the Employer for the period of such service.

N.B. - Officers and employees of a corporation who are also stockholders may be Participants but the burden of proof is on the corporation to show that stockholders receive no more favorable treatment than non-stockholders. Partners and sole proprietors may not be Participants although their employees may be.

The initial contribution to the trust fund by the Employer, and thereafter all such contributions, shall be apportioned to each Participant in the proportion to which the compensation of each such Participant bears to the compensation of all Participants in the period for which such contributions shall have been made.

"Compensation" of Participants is defined to include, *in addition* to salaries and wages:-

Decision #3

(a) overtime
(b) commissions
(c) bonuses or other profit-sharing payments.

(Include all, any or none, as desired. Ceilings may be put on any such items, or on regular compensation, for purposes of this definition. If it is desired to give weight to length of service a unit method may be used which allocates one unit for each stated amount of salary and one unit for each year of service and then divides each contribution in relation to the total units of all Participants,

FORFEITABLE INTERESTS . . .

Until the interest of any Participant in the Trust Fund shall become non-forfeitable, as herein provided, it shall be forfeited in case of voluntary resignation from employment or discharge for cause, and shall serve to increase the then respective proportionate interests of all other Participants.

Decision #4

When a Participant shall have completed a period of years of continuous *participation in this plan* (specify any period desired but not *longer* than 5 years) then % of his proportionate interest in the Trust Fund shall become non-forfeitable (specify any percentage *not less than 20%).*

Thereafter upon the completion of each additional year of participation in this Plan an additional % shall become non-forfeitable (specify *any* percentage - *preferably* not *less* than 5%).

If any Participant shall attain the age of retirement as hereinafter defined, shall die, shall be declared by the Employer to have become totally incapacitated while in the service of the Employer, or shall have his service terminated by the Employer because of curtailment of business and without fault of the Participant, then the entire 100% of his interest shall become non-forfeitable.

RETIREMENT AGE . . .

Each Participant, upon attaining the age of

Decision #5

(specify any age desired between 55 and 65 (for men.) The retirement age for women may be set at 5 years less than that for men, if desired)

shall automatically be retired unless for special reasons the Employer and the Participant agree that such Participant shall continue in active service. Until *actual* retirement a Participant shall not *receive* benefits but shall continue to participate in the Plan and in the Employer contributions. An employee who at the date of adoption of this Plan has already reached, or has already passed, the age of retirement is eligible for participation on the same basis as others, but also *receives* benefits only upon actual retirement.

PAYMENTS . . .

Within 60 days after a Participant shall (a) be retired (at or *after* the retirement age) or (b) die, or (c) have his service with the Employer terminated, or (d) be declared by the Employer to be totally incapacitated, the Trust Committee shall instruct the Trustee to disburse the then value of such Participant's then interest in cash or in securities then held in the Trust. Payments shall be made by one of the following methods, as directed by the Trust Committee in its discretion:- (1) a single payment or (2) in annual, semi-annual, or quarterly instalments or (3) used all or in part to purchase a paid-up retirement income insurance or annuity contract for the Participant and/or his designated beneficiaries, or (4) by a combination of these methods.

THE TRUST COMMITTEE . . .

The Trust Committee shall consist of three or more persons appointed annually by the Employer (or by the Employer and a representative of the Employees.) It is responsible for the administration of this Plan, for instructing the Trustee with respect to the investment and reinvestment of the Trust and the income therefrom, and for the determination, in its final discretion, of all questions arising with respect to the interpretation of the terms of this Plan. No member of the Trust Committee may participate in any action of the Committee on a matter involving solely his own interest as a Participant.

The Committee shall from time to time direct the investments of the trust fund without previous application to or subsequent ratification by any court, tribunal or commission and shall not be bound as to the character of any investment by any statute or rule of law or custom governing the investment of trust funds. Investments may be made in shares of mutual investment companies registered under the Investment Company Act of 1940, in bonds, notes, mortgages, commercial paper, preferred stocks, common stocks or other securities, rights or property, real or personal, or in any other forms of investment provided that such investments are made solely for the benefit of the Trust and not, directly or indirectly for the benefit of the Employer. The Committee shall be reimbursed by the Employer for any necessary expenditures incurred in the discharge of its duties. No member of the Committee shall incur any liability for anything done or omitted by him, excepting only for his own wilful misconduct.

Decision
#6 (Names of the members of the Trust Committee - 3 or more -)

THE TRUSTEE . . .

Under the terms of a Trust Agreement (a document separate from the Plan) acts as Trustee for all of the assets of the Trust Fund. As directed by the Trust Committee, the Trustee invests and reinvests these assets and the income received from them, receives direct from the Employer all contributions made to the Trust Fund, and pays the benefits directly to the Participants or to their beneficiaries.

Decision
#7 (Name of the Trustee)

AMENDMENTS . . .

The Employer may at any time and from time to time amend this Plan; provided, however, that no amendment shall be made at any time by which the Trust Fund may be diverted to purposes other than for the exclusive benefit of the Participants and their Beneficiaries, and no amendment shall be made at any time prejudicial to any interest of any Participant or his Beneficiaries. Notwithstanding anything herein to the contrary, however, the Plan may be amended at any time if found necessary in order to conform to the provisions and requirements of the Federal Internal Revenue Code with respect to Employees' Trusts or any amendments thereto or regulations issued pursuant thereto, and no such amendment shall be considered prejudicial to any interest of any Participant hereunder or of his Beneficiaries.

EXPENSES . . .

All expenses incurred in the establishment of the Trust Fund and in its operation are to be paid by the Employer, including legal fees, Trustees' fees, Trust Committee expenses, brokerage fees or compensation with respect to purchase and sale of investments, notices to employees, etc. etc. Such expenses are a business expense of the Employer for Federal income tax purposes. They are not included in computing the amount of the Employer's contribution to the Trust.

The major items of expense are as follows:-

COUNSEL The services of counsel are considered essential in the original drafting of the Plan and of the Trust Agreement. Unless the employer's regular counsel have had considerable experience in this highly specialized and relatively new field they will usually recommend the retention of attorneys who have specialized in this work.

As sponsors of this Standard Plan we are prepared to recommend law firms who will collaborate with regular counsel for reasonable fees. They will adapt to the Standard Plan the decisions of the employer on the points of possible variation, submit the complete Plan and Trust Agreement for approval of the employer in final form for execution. They will advise as to the corporate action required, and upon its completion will file, or instruct the employer how to file, all documents with such authorities as may then require them.

TRUSTEE An individual (whether an employee, participant, or neither) may act as Trustee, or several such individuals may act jointly for nominal or for no compensation. For most cases the use of individuals in this capacity is wisely limited to the early years of the Trust, for the Trustee's function is a long-term one and therefore most suitably exercised by a bank.

A bank or trust company which is equipped to handle a large volume of this work will, *with respect to the Standard Plan,* (1) maintain the required records, (2) execute the Trust Committee's investment instructions, (3) hold in safe keeping all cash and securities and (4) make disbursements to participants and beneficiaries, all for an annual fee of about 1/4 of 1% of the gross assets of the Trust (but with a *minimum* charge of $150.00 per year.) Obviously these functions are more accurately described as those of a Custodian.

Should fees on this low scale not be practicable for the employer's present banking connections (due to lack of volume of such work) we are prepared to negotiate such arrangements with a bank in the metropolitan area which is familiar with the Standard Plan, with the Standard Trust Agreement and with our highly simplified method of maintaining records.

TRUST COMMITTEE RECORDS . . .

We will supply the Trust Committee with a simplified method of maintaining records, conforming to that used by the Trustee, including all necessary forms and instructions. Bookkeeping is thereby reduced to a very low figure, estimated at less than one-tenth man-hour per year per Participant.

OUR SERVICES . . .

Our compensation for assisting employers in establishing an Employees' Profit-Sharing and Retirement Trust is derived solely from the regular distribution charges made for investments purchased by the Trust. Such charges are identical with those payable by any purchaser of such investments dealing through any investment dealer.