

Notice to Interested Persons

You are hereby notified that John M. Halwig (the Applicant) has applied to the U. S. Department of Labor (the Department) for authorization under PTE 96-62 (67 FR 44622, July 3, 2002) (EXPRO) . The transaction involves the proposed sale (the Sale) by the John M. Halwig IRA (the IRA) of a 40% interest (the Interest) in certain residential property (the Property) located at 305 10th Street NE, Atlanta, Georgia, to John M. Halwig, the IRA owner. If the submission by the Applicant receives final authorization from the Department, the sanctions resulting from the application of section 4975 of the Internal Revenue Code (the Code) by reason of section 4975(c)(1)(A),(D), and (E) shall not apply. The authorization is necessary because the Applicant is the IRA owner and a disqualified person with respect to the IRA, as a fiduciary with respect to the IRA. Because of the relationship between the Applicant and the IRA, such a transaction would otherwise constitute a prohibited transaction under the Code. This notice informs you of the submission to the Department and describes your right to comment to the Department about this proposed transaction.

Overview

The Applicant represents that the proposed Sale of the Interest by the IRA to the Applicant will (1) increase the liquidity of the IRA's portfolio, (2) enable the IRA to diversify its assets, and (3) enable the IRA to sell an illiquid asset without the need to provide additional funds to prepare the Property for sale. The authorization by the Department will be subject to the conditions described below.

- The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party.
- The Sale is a one-time transaction for cash.
- As consideration for the Sale, the IRA receives the fair market value of the Interest as determined by a qualified, independent appraiser (QIA) in an updated appraisal on the date of the Sale.
- The IRA pays no real estate commissions, costs, fees, or other expenses with respect to the Sale.

The IRA

The IRA, an individual retirement account described in section 408(a) of the Code, was established by the Applicant on October 7, 2008. The IRA custodian is PENSCO Trust Company, located in San Francisco, California. As of January 13, 2014, the IRA had \$496,007.90 in total assets, of which the Interest represented 46.6% of such assets.

The Property

On June 1, 2009, the IRA purchased the Interest in the Property in conjunction with the purchase of the remaining 60% interest in the Property by the Nancy D. Halwig IRA, which was established by the Applicant's spouse, Nancy D. Halwig. The Seller of the Property was Barry N. Hickman, an unrelated party. The IRA and the Nancy D. Halwig IRA paid a total of \$483,000.00 in cash for the Property. Of this amount, the IRA paid \$193,200.00 for the Interest. The Property is a vacant, partially-renovated home that has not generated any income for the IRA since its acquisition. The Property is also not located within close proximity to other real property that is owned by the Applicant or her spouse.

During the IRA's holding of the Interest, it has incurred approximately \$34,856.40 in expenses (including real estate taxes).

The Property Appraisal

The Property was appraised on September 9, 2013, by a qualified independent appraiser, David J. Bateman, who is employed by Bateman Appraisal Service of Atlanta, Georgia. Mr. Bateman is a Certified Residential Appraiser in the State of Georgia, who has more than 35 years of appraisal experience. Mr. Bateman represents that he derived less than 1% of his total revenue for 2013 from the Applicant and her spouse.

In the appraisal report, which is also dated September 9, 2013, Mr. Bateman determined the fair market value of the Property to be \$532,500.00. Therefore, the fair market value of the Interest in the Property is \$213,000.00.

The Proposed Transaction

The Applicant proposes to purchase the Interest from the IRA in a one-time cash transaction. Prior to consummation of the transaction, the appraisal of the Property will be updated by Mr. Bateman, and the transaction will be conducted at the updated appraisal amount. The terms and conditions of the Sale will be at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party. The Sale will be a one-time transaction for cash, for which the IRA will pay no real estate commissions, costs, fees, or other expenses.

Merits of the Proposed Transaction

The Applicant represents that the proposed transaction is in the interests and protective of the IRA because the IRA would need to spend thousands of additional dollars to prepare the Property for sale, with no assurance that the Property would sell. The proposed transaction will enable the IRA to dispose of the Interest in the Property, for cash, in an amount equal to the current fair market value of the Interest at the time of the transaction, as determined by a qualified independent appraiser. Further, the IRA will not pay any real estate commissions or expenses associated with the sale. The sale of the Property will occur approximately one month after final authorization to allow for preparation of the legal documents for closing.

Tentative Authorization of Proposed Transaction

Authorization by the Department has been requested pursuant to EXPRO, which requires that the transaction be "substantially similar" to at least two transactions which are subject to (1) two individual exemptions that were granted by the Department, and provided relief from the same prohibited transaction restrictions, within the 60 month period ending on the date of filing of the submission; or (2) one individual exemption that was granted within the past 120 month period (ending on the date of the filing of the submission) and one EXPRO case that received final authorization within the past 60 month period (ending on the date of the filing of the submission).

The following two cases are an individual exemption case and an approved EXPRO case in which the transactions are "substantially similar" to the proposed transaction:

- Final Authorization Number 10-03E, October 27, 2010, involving the Kristin P. Boardman IRA; and
- Prohibited Transaction Exemption 2011-10 (76 FR 34253, October 27, 2010), involving the William W. Etherington IRA.

The proposed transaction is substantially similar to the above cited cases because they involve sales of real property or an interest in real property by an IRA to a disqualified person. As in the subject case, each sale was a one-time cash transaction; the plan was to receive the current fair market value for the property as established at the time of the sale by a qualified independent appraiser; and the IRA was to pay no commissions or other expenses associated with the sale. Thus, there do not appear to be any material differences between the cited cases and this submission.

The transaction has met the requirements for tentative authorization under the exemption.

Your Right to Comment on Tentative Authorization

As an interested party, you have the right to submit comments to the DOL on the tentative authorization. If you decide to do so, you should submit your comments to the following address:

Submission Number: [E-00745]
Employee Benefits Security Administration
Office of Exemption Determinations
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-5700
Washington, DC 20210
Attn: Anna M. Vaughan

Be sure to refer to the submission number, which is E-00745. Comments must be received by the DOL no later than 7/21/14. All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

Comments may be faxed or emailed to the DOL. The fax number is (202) 219-0204 and the email address is Vaughan.Ann@dol.gov. If you have questions regarding your right to comment on this tentative authorization, you may call Anna Vaughan at (202) 693--8565.

The transaction will only be consummated after the issuance of a final authorization. If the DOL authorizes the transaction, the approximate date on which the transaction will occur within 60 days from the Authorization.