Notice to Interested Persons

You are hereby notified that Jon Wainwright (the Applicant) has applied to the U.S. Department of Labor (the Department) for authorization under PTE 96-62 (61 FR 39988, July 31, 1996, as amended by 67 FR 44622, July 3, 2002)(EXPRO). The transaction involves the proposed sale (the Sale) by the Jon Wainwright Individual Retirement Account (the IRA) of its 25% interest (the Interest) in Santanilla Developers, LLC (Santanilla), a pass through entity holding an investment in certain unimproved real property (the Property), located at Santanilla, SWC Higley Road and Watford Court, Gilbert, Maricopa County, Arizona 85298, to Jon Wainwright, 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 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 its interest in an underperforming, illiquid asset. 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 and an assumption of the IRA's portion of the outstanding mortgage on the Property.

- As consideration for the Sale, the IRA receives the fair market value of the Interest, as determined by an appraisal of the Property conducted by a qualified independent appraiser (QIA) in an updated appraisal on the date of the Sale (provided that if the Sale occurs less than one year after the appraisal, the QIA may instead provide confirmation, either orally or in writing, that the fair market value of the Property on the date of Sale has not changed), less the IRA's portion of the outstanding mortgage, assumed by Applicant in connection with 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 in July 2010. As of November 24, 2014, the IRA had $659,400.35 in assets, comprised of the 25% interest in Santanilla (which was valued at $406,897.11, based on an appraised value of the Property equal to $4,100,000), $140,878.26 in cash (21.4% of the IRA assets), and $111,624.98 in other assets (16.9% of the IRA assets). The custodian of the IRA is Vantage Self-Directed Retirement Plans.

The Property

Two individuals, the Wainwright IRA, and another IRA formed the Santanilla Developers, LLC to hold title to a piece of undeveloped property outside of Phoenix, Arizona. The Wainwright IRA's 25% investment in Santanilla Developers, LLC constitutes 62% of the IRA's value.

The LLC bought the property on July 26, 2013, at a $4,100,000 purchase price from an unrelated third-party. Each member, including the IRA, contributed $331,201 in cash, for a total of $1,324,804. The LLC financed $3,000,000 through a non-recourse loan. The overage, approximately $225,000, was meant to cover possible overhead expenses. The Property is unimproved real property that has not generated any income for the IRA since its acquisition.

The Applicant represents that the members expected the Property to be readily marketable. The LLC had entered into a contract with an unrelated third-party buyer while the Property was in escrow (in September 2013). This deal was expected to be completed within 60 days of the LLC's purchase of the Property. However, the deal was never consummated. A subsequent potential buyer emerged in April 2014. This buyer also withdrew before the deal was consummated. The Property has been continuously offered for sale since September 2013.

During the IRA's holding of the Interest, it has incurred approximately $120,852 in expenses (including property taxes). These holding costs are a significant impediment to selling the Interest to a third party, particularly where the property has been actively marketed for sale for more than a year, without success.

The Property Appraisal

The Property was appraised on October 10, 2014, by a qualified independent appraiser, Timothy S. Love, who is employed by Cushman & Wakefield of Arizona, Inc. Mr. Love is a Certified General Real Estate Appraiser in the State of Arizona, holds the MAI designation, and has more than 30 years of appraisal experience. Mr. Love represents that he derived less than 1% of his total revenue for 2014 from the Applicant.

In the appraisal report, dated October 16, 2014, Mr. Love determined the fair market value of the Property to be $4,100,000. Therefore, the fair market value of the IRA's indirect Interest in the Property is $1,025,000. Based on this appraised value of the Property (and taking account of the IRA's portion of the outstanding mortgage on the Property as well as Santanilla's miscellaneous cash assets and accounts payable), the fair market value of the IRA's interest in Santanilla on October 10, 2014 was $406,897.25.

The Proposed Transaction

The Applicant proposes to purchase the Interest from the IRA in a one-time transaction for cash and an assumption of the IRA's portion of the underlying mortgage. Prior to consummation of the transaction, the appraisal of the Property will be updated by Mr. Love (provided that if the transaction occurs before October 16, 2015, Mr. Love may instead provide confirmation, either orally or in writing, that the fair market value of the Property on the date of transaction has not changed), and the transaction will be conducted using 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 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 without it the IRA would continue to incur expenses in connection with the Property with no assurance that the Property will sell. The proposed transaction will enable the IRA to dispose of the Interest in the Property, for cash and an assumption of the outstanding mortgage, 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. Also, the IRA will not pay any real estate commissions or expenses associated with the sale. Selling the Property will provide the IRA with increased liquidity and allow for diversification of investment. Further, the Sale will relieve the IRA from all obligations to service any debt incurred in connection with the non-recourse mortgage. 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 past 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 individual exemptions in which the transactions are "substantially similar" to the proposed transaction:

- Prohibited Transaction Exemption 2011-10 (76 FR 34253, June 13, 2011), involving the William W. Etherington Individual Retirement Account.

- Prohibited Transaction Exemption 2010-28 (75 FR 61775, October 6, 2010), involving the John D. Simmons Individual Retirement Account.

The proposed transaction is substantially similar to the above cited cases because they involve sales of real property interests by an IRA to a disqualified person. As in the subject case, each sale was a one-time transaction; the plan was to receive the current fair market value for its interest in the property as established at the time of the sale by a qualified independent appraiser; and the IRA was to pay no commissions of 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 procedures.

Your Right to Comment on Tentative Authorization

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

Submission Number: E-00757
Employee Benefits Security Administration
Office of Exemption Determinations
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-5700
Washington, DC 20210
Attn: Erica R. Knox

Be sure to refer to the submission number, which is E-00757. Comments must be received by the Department no later than February 20, 2015. 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 e-mailed to the Department. The fax number is (202) 219-0204 and the e-mail address is knox.erica@dol.gov. If you have questions regarding your right to comment on this tentative authorization, you may call Erica Knox at (202) 693-8644.

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