

(a) The sale is a one-time cash transaction;

(b) The Plan receives the greater of either: (i) \$290,000; or (ii) the fair market value for the Property established at the time of the sale by an independent, qualified appraiser; and

(c) The Plan pays no commissions or other expenses associated with the sale.

### **(B) Summary of Facts and Representations**

1. The Plan is a discretionary profit sharing plan. The Plan's current trustee is Mr. Gorman. The Plan sponsor is a single practitioner law firm, with one secretary as an employee. The Plan has 2 participants. As of July 8, 2002, the Plan had approximately \$408,567.64 in total assets.

2. On August 20, 1996, the Plan purchased the Property from Bruce Munro and Shirley G. Mackintosh, unrelated third parties, for \$143,000. Mr. Gorman propose to pay the fair market value of the Property, which would be paid in full in cash at a closing to be held subsequent to the granting of the proposed exemption.

The applicant states that the Property has not been an income-producing asset and has been held for possible appreciation. The Plan has paid for taxes, insurance and maintenance on the Property since the acquisition (the Holding Costs). Specifically, the Plan has paid the following Holding Costs since its acquisition of the Property: (i) Real estate taxes, \$9,600; (ii) Insurance, \$1,500; (iii) Maintenance fees, \$3,000. The applicant states that the Holding Costs for the Property have been approximately \$14,100. Therefore, the total cost for the Property (*i.e.*, the acquisition price of \$143,000, plus the Holding Costs of approximately \$14,100) is approximately \$157,100 as of July 2002.

3. The Property is an unimproved 909 square foot parcel of land located at 19 Yankee Point Drive, Carmel, California. The Property was appraised on April 15, 2002. The appraisal was prepared by Raymond A. Elarmo (Mr. Elarmo), who is an independent, licensed real estate appraiser in the state of California.

Mr. Elarmo represents that although the Property is adjacent to the home of Mr. Gorman, the Property may or may not increase the value of Mr. Gorman's home due to concerns regarding water availability for the Property.

Mr. Elarmo states that consideration was given in the appraisal to three approaches to value, *i.e.*, the cost approach, sales comparison approach, and income approach. Mr. Elarmo relied on the sales comparison approach to determine the fair market value of the

Property. Mr. Elarmo has determined that the fair market value of the Property is \$290,000.

4. The applicant now proposes that the sale of the Property would provide liquidity to the Plan. Plan assets would then not be locked into a piece of land that has little foreseeable use. The Plan will pay no commissions or other expenses associated with the sale. The applicant will pay the Plan in cash, the greater of either: (a) \$290,000; or (b) the fair market value of the Property, as established by a qualified, independent appraiser at the time of the transaction.

5. In summary, the applicant represents that the transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The proposed sale will be a one-time cash transaction; (b) the Plan will receive the greater of either: (i) \$290,000; or (ii) the current fair market value for the Property, as established at the time of the sale by an independent, qualified appraiser; (c) the Plan will pay no fees, commissions or other expenses associated with the sale; and (d) the sale will enable the Plan to divest itself of a non-income producing asset and acquire investments which may yield higher returns.

**Notice to Interested Persons:** Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

**For Further Information Contact:**  
Khalif I. Ford of the Department at (202) 693-8540. (This is not a toll-free number.)

### **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 the Act and/or 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 the Act and/or 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 duties respecting the plan solely in the interest of the participants and beneficiaries of the plan 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 the plan must

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or 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; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 18th day of March, 2003.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
Department of Labor.*

[FR Doc. 03-6851 Filed 3-20-03; 8:45 am]

BILLING CODE 4510-29-P

## **DEPARTMENT OF LABOR**

### **Employment Standards Administration Wage and Hour Division**

#### **Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified herein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary