telephone (202) 219–8881. (This is not a toll-free number.)

## Donald D. Busker Individual Retirement Account (the IRA) Located in Detroit Lakes, Minnesota

[Application No. D-10005]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, 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 cash sale of two parcels of unimproved real property (the Properties) by the IRA to Donald D. Busker, a disqualified person with respect to the IRA 8 provided the following conditions are met:

- (a) The sale is a one-time transaction for cash;
- (b) 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;
- (c) The IRA receives the fair market value of the Properties as established at the time of the sale by an independent qualified appraiser; and
- (d) The IRA is not required to pay any commissions, costs or other expenses in connection with the sale.

Summary of Facts and Representations

- 1. The IRA is an individual retirement account, as described under section 408(a) of the Code, which was established by Donald D. Busker (Mr. Busker). As of June 14, 1995, the IRA had assets valued at \$362,470. The trustee of the IRA is the First Trust Company of North Dakota, N.A.
- 2. The applicants states that a portion of the IRA's existing assets, including the Properties, were obtained from a rollover of assets received by Mr. Busker in 1990 from distributions to which he was entitled as a participant in the Country Equities Inc. Retirement Plan (the CER Plan). The applicant states further that the CER Plan had received such assets from prior rollovers made to Mr. Busker from the Donald D. Busker and Associates Pension Trust (the Busker Pension Plan), which had been terminated in January 1982.

The Properties consist of two parcels of unimproved real property.

The first parcel (Property I) is located in Shell Lake Township in Becker County, east of Detroit Lakes, Minnesota. Property I consists of approximately eighty acres of unimproved wooded lowland in a fairly remote part of Becker County. The applicant states that access to Property I is available by easement over county land to the south.

The second parcel (Property II) is located near Frazee, Minnesota, on Murphy and Silver Lakes in Gorman Township, Otter Tail County. Property II currently consists of approximately 144 acres of unimproved land, part of which is zoned for agricultural conservation and part of which is zoned for potential development as a recreational area. In this regard, the applicant states that approximately 53 acres on Property II are part of the Conservation Reserve Program (CRP), a U.S. Government subsidy program for farmland that is not being used for agricultural purposes. In addition, part of the remaining acres which comprise Property II are located adjacent to Murphy Lake and are available for recreational uses. However, the applicant states that only about 3000 feet of this part of Property II is useable and that the remaining parts of Property II adjacent to the lakes are not currently capable of development because the land is excessively low and wet.

Mr. Busker represents that he does not own any land which is adjacent to either of the Properties and that the Properties have not been leased to or used by any disqualified person.

3. The Properties were originally acquired as a real estate investment by the Busker Pension Plan. The applicant states that the Properties were acquired from unrelated parties in two separate cash transactions. Specifically, Property I was acquired by the Busker Pension Plan in 1978 for \$4,250. Property II was acquired in 1978 as part of a larger parcel of real estate, which included a residential house and other improvements, for a total of \$98,500 (the Original Property II). Portions of the Original Property II were subsequently platted for development and, along with the house, sold by the Busker Pension Plan to unrelated parties. However, Mr. Busker has not been able to sell the remaining portions of the Original Property II, currently owned by the IRA (i.e. Property II as described above). The applicant states that parts of Property II have also been platted for possible sale as separate parcels. The applicant states further that the IRA has received approximately \$2992 in CRP subsidy payments as a result of its ownership of

the acres on Property II which are subject to the CRP subsidy program.

4. Roger K. Tinjum, an accredited rural appraiser associated with Tinjum Appraisal Company, located in Detroit Lakes, Minnesota, appraised the Properties in December 1993 and updated his appraisal in June 1995. Mr. Tinjum states that he is a qualified real estate appraiser with over thirty years of experience and is familiar with the Properties and other similar properties located in the area. In addition, Mr. Tinjum represents that both he and his firm are independent of, and unrelated to, Mr. Busker.

Mr. Tinjum's appraisal of the Properties relied primarily on the market approach, with an analysis of recent sales of similar properties in the area, to establish the fair market value of the Properties. Mr. Tinjum states that his analysis took into consideration the potential of the Properties for further development. In this regard, Mr. Tinjum represents that the highest and best use for the Properties would be recreational use. Based on this analysis, Mr. Tinjum concluded that the fair market values of Property I and Property II were \$20,000 and \$72,000, respectively, as of December 10, 1993.

By letter dated June 15, 1995, Mr. Tinjum states that the present fair market value of the Properties has not changed since December 10, 1993.

The applicant states that Mr. Tinjum will update his appraisal of the Properties at the time of the proposed transaction to establish their fair market value. Such appraisal will take into consideration any recent sales of comparable properties in the area since the date of Mr. Tinjum's last appraisal.

5. The applicant requests an exemption for the proposed sale of the Properties by the IRA to Mr. Busker. As noted above, the IRA would receive cash in exchange for the Properties in an amount equal to the fair market value of the Properties, as determined by an independent, qualified appraiser at the time of the transaction.

The applicant represents that the proposed transaction would be in the best interests of the IRA because it would allow the IRA to dispose of the Properties, which at the present time are illiquid investments which have not been appreciating in value, and reinvest the sale proceeds in more liquid investments which would offer greater returns. The applicant states that the terms and conditions of the sale would be at least as favorable to the IRA as the terms and condition which the IRA could obtain in an arm's-length transaction with an unrelated party. The applicant states further that the IRA

<sup>&</sup>lt;sup>8</sup> Pursuant to 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.