	INFORMATION REQUEST	Schedule No. or Exhibit OMB Number: 1545-0575
Name of Taxpayer	**Tax Identification Number**	**Year/Period Ended**

401(k) Plans Reporting 4971(a) Tax Project Questionnaire

Our records indicate you sponsor a 401(k) plan for the benefit of your employees and you filed a Form 5330 (Return of Excise Taxes Related to Employee Benefit Plans) reporting excise tax under Internal Revenue Code (IRC) section 4971(a). This appears to be in error as 401(k) plans are not subject to the minimum funding requirements and, therefore, would not owe this type of excise tax. IRC 4971(a) imposes a 10% excise tax on the total amount of the unpaid required minimum contributions to a plan with minimum funding requirements. While 401(k) plans are required to make deposits of deferrals and employer matching amounts, they are not subject to either the minimum funding requirements under IRC 412 or the applicable excise tax under IRC 4971(a).

However, 401(k) plans are subject to other types of excise taxes (such as: IRC 4972 involving nondeductible contributions and IRC 4979 involving excess contributions). Another common type involves failing to deposit deferral amounts timely, which are subject to the excise tax under IRC 4975(a). This Section imposes a 15% excise tax (the first tier) on the amount involved (which with a late deferral deposit is the interest on that amount) for prohibited transactions (PTs). If the tax calculated under IRC 4971(a) was in fact erroneously reported, that amount is generally ***substantially more*** than the tax calculated under IRC 4975(a) where the amount involved is interest.

What Should You Do?

It is important to us that you report the correct amount of excise tax due for transactions involving your retirement plan. Please review your records including the information regarding excise taxes and have someone knowledgeable about your above referenced plan provide the following information. Please return to either the address or fax number listed above. If you have any questions or need assistance, please contact the person listed above.

1) **Provide the following identifying information regarding the plan for which the excise tax was to be reported:**
   Plan Number:____
   Plan Type:____
   EIN:____
   Plan Period:____

2) **Was the tax correctly reported on the Form 5330 under IRC 4971?**
   a. ☐ Yes, please stop and return response to the address or fax number above.
   b. ☐ No – please continue to question 3.

3) **If IRC 4971(a) tax was reported in error, under which IRC section was the excise tax intended to be reported?** (*For example, was IRC 4975(a) tax intended to be reported*

for late deposits of employee deferrals? You may refer to the explanation below for reporting IRC 4975 tax on late deferrals or you may refer to the Instructions for Form 5330 for an explanation of all excise taxes related to retirement plans.)

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4) If you determine you filed the Form 5330 erroneously by reporting an excise tax under IRC 4971(a), please file an amended Form 5330. Make sure to check the box in line item H on page 1 to identify the return as an amended return. Also complete the line items necessary to report the correct type of excise tax. Mail the amended Form 5330 to:

Department of the Treasury
Internal Revenue Service Center
Ogden, UT 84201

An amended Form 5330 also serves as a claim for a refund or abatement of any excise tax reported in error. If you are filing a claim for refund or abatement, the claim must state clearly the reasons for the claim and include the appropriate supporting documentation to expedite its processing. **Do you intend to file an amended Form 5330?**

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For more information on this project, you may visit the IRS website at http://www.irs.gov/Retirement-Plans/Employee-Plans-Compliance-Unit-(EPCU) or contact the person whose name, telephone number, and e-mail address are identified above. Please note that the IRS cannot guarantee security for e-mail messages.

You may file an amended return claiming a refund or abatement any time prior to the expiration of the statute of limitations.

Determining the Amount of Applicable Excise Tax under IRC section 4975
Generally, if an employer does not timely pay elective deferrals to a qualified plan, this is considered a prohibited transaction under IRC 4975(c)(1). The prohibited transaction is treated as a continuous transaction, not a discrete transaction. The calculation of the amount involved uses the interest that could have been earned on the total of the untimely elective deferrals. The following table from Revenue Ruling 2006-38 illustrates the "amount involved" calculation. The aggregate amount withheld as elective deferrals from all employees total $100,000. The amount should have been paid to the qualified trust on 12/8/04. The employer failed to do so and did not actually correct the failure until 12/30/05.

Calculation of the Amount Involved

PT Number	Date PTs Occurred	Principal	Interest Rate	Time (Days/Total)	Amount Involved
1.	12/8/2004	$100,000	.05	.0628415 (23/366)	$314
2.	01/1/2005	$100,314	.05	.9972602 (364/365)	$5,002

The nature of continuous transactions results in multiple prohibited transactions ("PT Numbers 1 & 2" above). PT #1 occurred on the date that was determined to be the earliest date that the employer could segregate the $100,000 from general assets for deposit into the plan. PT #2 occurred on the first day of the subsequent plan year, as required for continuous prohibited transactions, until the plan year following correction. The cumulative nature of continuous transactions is also demonstrated above, as reflected in the increase of the principal amount for PT #2. For each subsequent plan year, the principal amount is an aggregate of the original amount of elective deferrals and the cumulative interest calculations for prior years, as calculated for the "amount involved."

If the prohibited transaction is not corrected in full as provided by IRC 4975(f)(5), a new transaction is deemed to occur on the first day of each subsequent tax year until correction is made. Any payments made during the year in which full correction is not made are not taken into consideration until January 1, of the following tax year (or the first day of the next tax year for Sponsors not operating on a calendar year basis). The time *(number of days loan outstanding/total number of days in the year)* the prohibited transaction is outstanding is only pro-rated in the year it is initiated and the year in which full correction is made.

The interest rate for underpayments described in IRC Section 6621(a)(2) on the date the prohibited transaction occurred (or is deemed to occur) is an appropriate interest rate to use when calculating the amount involved when the employer does not make timely payments of elective deferrals to a qualified plan. The interest rate for underpayments under IRC Section 6621(a)(2) was 5% on 12/8/04 and 1/1/05. The following considers the calculation above and takes into account the first tier excise tax:

Calculation of the First Tier Excise Tax

PT Number	Date Prohibited Transactions Occurred	Taxable Period	2004 Taxable Year	2005 Taxable Year
1.	12/8/2004	12/8/04 to 12/30/05	$328	$328
2.	01/1/2005	01/1/05 to 12/30/05	-----	$5,003
			$328 x .15	$5,331 x .15
			$49	$800

Accordingly, the IRC 4975(a) first tier excise tax for 2004 is $49 and for 2005 is $800, for a combined total of $849 for both years. The above illustrations only apply for purposes of determining the amount involved and the excise tax where there is a failure to transmit participant contributions or amounts that would have otherwise been payable to the participant in cash. These illustrations do not apply for prohibited transactions under IRC 4975 in which the amount involved is defined as provided under IRC 4975(f)(4).

Separate Forms 5330 are to be filed for each tax year in which the prohibited transaction remains uncorrected. Revenue Ruling 2006-38 provides additional information on the calculation of the amount involved and the excise tax when the employer does not timely pay elective deferrals to a qualified plan.