



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

AUG 5 - 2005

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
Room N-5669
200 Constitution Ave., NW
Washington, DC 20210

Re: Voluntary Fiduciary Correction Program

Dear Sir or Madam:

I am submitting this comment on behalf of the Employee Plans function of the Tax-Exempt and Government Entities division of the Internal Revenue Service (the "Service"). We appreciate the opportunity to comment on the proposed amendments to the Voluntary Fiduciary Correction Program ("VFC") and the proposed amendment to Prohibited Transaction (PT) Exemption 2002-51.

Our comment specifically relates to the requirements in order to use Prohibited Transaction Exemption 2002-51 where a fiduciary has failed to transmit participant contributions to a pension plan within the time frames described in Department of Labor Regulation at 29 CFR section 2510.3-102 and/or the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding of receipt by an employer. Currently, this exemption provides relief from the excise taxes of Internal Revenue Code (IRC) section 4975(a) and section 4975(b) for failure to transmit participant contributions and loan repayments if:

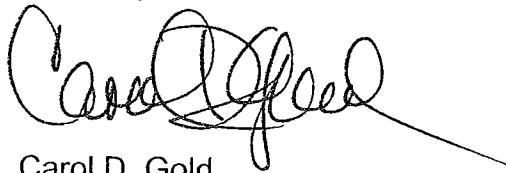
- (i) the employer has met all of the requirements of the revised VFC Program; and
- (ii) the Employee Benefits Security Division of the Department of Labor has issued a no action letter with respect to the transaction; and
- (iii) the contributions or repayments were transmitted to the pension plan not more than 180 days from the date the amounts were received by the employer or the date the amounts otherwise would have been payable to the participant in cash; and
- (iv) the employer has not used PT 2002-51 for a similar transaction during the three-year period prior to the submission of the current application; and

- (v) written notice of the transaction for which the employer is seeking relief under the VFC program, including the method of correcting the transaction, is provided to participant and beneficiaries within 60 calendar days of the submission of the VFC application.

We recommend that the exemption be modified to eliminate the notice requirement noted above in situations where the excise tax due under IRC section 4975 for a failure to timely transmit participant contribution and loan repayments is less than or equal to \$100.00 as long as the excise tax that would be owed and payable to the Service is contributed to the plan and allocated to participants and beneficiaries. Since the "amount involved" in a transaction involving a failure to remit participant contributions and loan repayments is the loss of the use of the money by the plan, we recommend that the amount contributed to the plan in lieu of the excise taxes be allocated to participants and beneficiaries in the same manner as provided under the plan with respect to plan earnings. The employer would not be required to file a Form 5330 or report the transaction in Part III of the Schedule G of the Form 5500. The other conditions for relief under PT 2002-51 would not be affected by this alternative to the notice requirement.

We appreciate the opportunity to comment. If you need any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol D. Gold". The signature is fluid and cursive, with a long horizontal line extending to the right from the end of the name.

Carol D. Gold
Director, Employee Plans