

# CHAPTER 11-STATUTE OF LIMITATIONS

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## *INTERNAL REVENUE SERVICE TAX EXEMPT AND GOVERNMENT ENTITIES*

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## INTRODUCTION

The specialist assigned and in possession of a return is ultimately responsible for protecting the interest of the government when the expiration of the statute is imminent. This principle also applies to a requisitioned return. Personnel requisitioning a return are responsible for the return whether or not such return is in their possession. Due to this responsibility, it is essential that agents be able to properly extend the statute of limitations in those cases where expiration of the statute is imminent.

EP has examination jurisdiction and must protect the statutes for the following returns:

**Form 5500 series**, *Annual Return/Return of Employee Benefit Plan*, although technically the statute is being extended for the Form 1041, *U.S. Fiduciary Income Tax Return*.

**Form 990-T**, *Exempt Organization Business Income Tax Return for Unrelated Business Income Tax*, Return for Unrelated Business Income for a trust of a plan qualified under IRC section 401(a).

**Form 5330**, *Return of Initial Excise Taxes Relating to Pension and Profit Sharing Plans*.

EP must also protect the statutes on any Form 1040, *U.S. Individual Income Tax Return* and Form 1120, *U.S. Corporation Income Tax Return* with discrepancy adjustments.

To protect the government's interest in statute cases, the EP agent must be able to determine the statute of limitations date for returns within the jurisdiction of EP and properly complete a statute extension form. To properly complete an extension form, the following must be determined:

- What constitutes a return for statute of limitations purposes?
- When was the return filed or due?
- Who is responsible for paying the tax?
- What is the taxable period for tax and statute extension purposes?

Furthermore, the agent must also be able to apply the necessary administrative control procedures and make sure TEQMS statute requirements are met.

## OBJECTIVES

At the end of this lesson, you will be able to:

1. Secure statute extensions when necessary by:
  - a. Calculating the statute of limitations dates.
  - b. Completing a statute extension form.
  - c. Preparing a cover letter to accompany the extension form.
2. Apply administrative control procedures to statute cases.
3. Verify that TEQMS statute of limitations requirements are met.

## DETERMINING THE STATUTE DATE

### GENERAL RULE – THREE-YEAR STATUTE

The statute of limitations (SOL) for assessment of taxes expires three years from the due date of the return or the date filed, whichever is later. See IRC section 6501(a). A return is deemed filed on the due date of the return if filed on or before its due date.

Although the IRS may approve an extension of time to file a return, the extension of the due date for filing the return does not change the date the SOL starts to run. Thus, the SOL begins to run on the later of the following:

The due date of the return, ignoring filing extension, or

The date of filing.

See the section titled “Filed Date – Postmarked Date - Received Date”, below, for further clarification.

### EXCEPTIONS TO THREE-YEAR RULE

#### **Six-Year Statute**

The statutory period for assessment or collection is six years from the date the return is filed or deemed filed, whichever is later, in cases where there has been a substantial omission (more than 25 percent) on the return of gross income. See IRC section 6501(e)(1).

The six-year statute also applies where there has been an omission of more than 25% of the excise tax due under Subtitle D (Chapters 41 through 44), unless disclosure of the item giving rise to the tax was made in a manner that adequately apprises the Secretary of the existence and nature of the item. See IRC section 6501(e)(3) and Treas. Reg. section 301.6501(e)-1(c).

Agents should take the most conservative approach and protect the three-year statute, if possible, even though a six-year statute appears applicable.

- This protects the interest of the government in the event it is subsequently determined that the six-year statute is not applicable.
- As such, the agent should secure a consent to extend the statute prior to the expiration of the three-year statute.
- If an agent and his manager determine that the six-year statute can be pursued, be aware that the burden of proof shifts to the government to support the six-year statute.

It is suggested that Area Counsel's written advice regarding the applicability of the six-year statute be obtained.

### **Indefinite Statute**

The three and six-year rules do not apply to:

- Filing a false or fraudulent return - IRC section 6501(c)(1).
- Willfully attempting to evade tax - IRC section 6501(c)(2).
- Failing to file a return - IRC section 6501(c)(3).

In these instances, the tax may be assessed or collected at any time.

### **Securing an Extension**

When an extension to the statute has been secured, the tax may be assessed at any time prior to the expiration of the period agreed upon. See IRC section 6501(c)(4).

The agreement to extend the statute period **must** be:

- In writing,
- Agreed to by both the IRS and the taxpayer, and
- Executed before the end of the SOL period being extended by the agreement.

Additional extension agreements must meet the same requirements. The Form 872 series is used to secure extensions. See Exhibits 1 and 2, below, for copies of Forms 872.

### **Issuance of a Statutory Notice of Deficiency**

The issuance of a Statutory Notice of Deficiency suspends the statutory period of limitations during the 150 days following the issuance of the notice. (If the notice is addressed to a taxpayer outside the U.S., 270 is substituted for the 150 days.)

The 150 days (or 270 days) consists of the following:

- Ninety (or 210) days for the taxpayer to petition the Tax Court, plus
- Sixty days for the Service to process the assessment.

If the taxpayer agrees to the deficiency by executing a waiver, the 90-day (or 210-day) suspension period terminates upon receipt of the waiver, and only the 60-day processing period remains.

The statutory notice of deficiency is issued by EP Mandatory Review, Group 7694. Therefore, if you have any questions regarding statutory notices, contact:

IRS – EP Mandatory Review  
P.O. Box 13163, Room 1550  
Baltimore, MD 21203  
Phone: (410) 962-9560  
FAX: (410) 962-0882/4819

For detailed information on this topic, see IRM 4.14.1, *Statutory Notices of Deficiency*.

Note: Again, it is important to remember that, for exceptions to the three-year rule, the burden of proof is on the Commissioner to prove that one of the exceptions to the general rule of the statute period is applicable.

## STATUTE DATES FOR EP RETURNS

### FORM 5500/1041

#### What constitutes the return for purposes of IRC section 6501?

IRC section 6501(a) does not bar assessment and collection of taxes from an employee benefit plan trust merely because the employer or plan administrator filed a Form 5500 series return and three years have expired since the latest of:

- The due date, or
- The date the return was filed.

Generally, it is the Schedule P attached to the Form 5500 that begins the running of the SOL on the Form 1041.

The trust, as a separate legal entity from the plan, usually files a Schedule P to obtain the protection afforded under IRC section 6501. Announcement 80-45, 1980-15 I.R.B. 17 introduced Schedule P, an optional trust statement.

The Schedule P is considered the annual return of an employee benefit trust or custodial account. It is sufficient to begin the running of the statutory period if the following requirements are met:

- The trustee must sign the Schedule P, and
- The Schedule P must be filed with the Form 5500 series return.

Although proper filing of the Schedule P guarantees the running of the SOL, the Form 5500 may be sufficient to start the running of the SOL if:

- A trustee signed a filed Form 5500 series return and is identified as such on the return, and
- There is sufficient data on the return to calculate the tax liability of the trust.

See *Martin Fireproofing Profit Sharing Plan & Trust v. Commissioner*, 92 T.C. No. 77 (1989)

Regardless of whether or not the trustee files a Schedule P, agents should secure extensions if they find indications that the trust is or will lose its qualified status. Consent forms to assess tax on a trust are executed by the trustee and the Director, Employee Plans or delegate.

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**Example 1:**

A Schedule P was filed with the Form 5500 for the plan year ending December 31, 2001. The Schedule P was signed by the trustee and filed with the Form 5500.

The filing of the Schedule P starts the running of the statute.

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**Example 2:**

The Schedule P in Example 1 was filed with the Form 5500. However, the Schedule P was not signed by the trustee.

The filing of the Schedule P does not start the running of the statute. See, however, Example 3.

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**Example 3:**

Same facts as Example 2. During your review of the Form 5500, you determine that the trustee signed a filed Form 5500 series return and is identified as such on the return, and there is sufficient data on the return to calculate the tax liability of the trust.

The filing of the Form 5500 starts the running of the statute.

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Ordinarily, a plan funded by group annuity contracts has no trust. If the plan is not qualified, there is no taxable trust. Therefore, a consent need not be secure to extend the statutory period.

**When was the return filed or due?**

The SOL begins to run on the later of the date the applicable return was filed or the due date of the return. Therefore, to properly determine the SOL date, when the return was filed or due must be determined.

If a return is filed after the due date of the return, the SOL starts running based upon the actual file date of the return. Determining the filed date of a return is discussed later in this lesson.

If a return is filed on or before the due date of the applicable return, the SOL begins to run on the due date of the return. The due date for filing the Form 5500 series return, which governs the statute date for the Form 1041 (required for trusts that lose their exempt status), is on or before the last day of the 7th month following the close of the plan year.



### **Who is responsible for paying the tax?**

Once a plan is no longer qualified under IRC section 401(a), income earned by the trust becomes taxable. The trust must file a Form 1041 for those years during which the plan is disqualified and the SOL is open. The Form 1041 is filed on behalf of the trust by the trustee. The trust is responsible for paying the tax, and the trustee is responsible for making sure the Form 1041 is filed and the taxes are paid. It is the trustee who must sign the statute extension form (Form 872) in order for the extension to be valid.

IRC section 6501(c)(4) provides that a taxpayer and the Service may consent in writing to extensions of the time to make assessments. The regulations under this Code section do not specify who may sign these consents. However, Rev. Rul. 83-41, 1983-1 C.B. 349, stipulates that the rules applicable to execution of the original return will be applied to the execution of consents related to those returns. Therefore, the person authorized to sign the return is also authorized to sign a consent related to that return. If there are multiple trustees, any one of them can sign the consent unless the trust document states otherwise. See Treas. Reg. section 1.6012-3(a)(1) and Rev. Rul. 83-41.

The trustee may appoint a representative who has the power to sign a Form 872. But remember, the person appointed to represent the plan sponsor during an audit does not automatically represent the trust. A separate authorization will usually be needed.

When securing a statute extension on the trust return (Form 1041), the Form 56, *Notice Concerning Fiduciary Relationship*, should also be sent to and completed by the trustee, particularly in those instances where it is not certain whether the person who will be signing the Form 872 is also the person who signs the Schedule P. The Form 56 is used by an individual to notify the Service of a fiduciary relationship. (Form 56 is found in Exhibit 3, below.)

### **What is the taxable period for Form 1041 purposes?**

If a trust becomes taxable because it is no longer qualified under IRC section 401(a), the trust must file a Form 1041 by the 15th day of the 4th month following the end of the **TAXABLE YEAR** of the trust. Per IRC section 644, for tax years beginning after 12/31/86, the **TAXABLE YEAR** of a trust is the calendar year.

Thus, if an agent is examining a plan with a fiscal year end and a consent must be secured, the consent must be completed using the calendar year as the taxable period.

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#### **Example 4:**

A pension trust is determined to be non-qualified for the plan year ending 6/30/02. Forms 1041 are required for the short period of 7/01/01 to 12/31/01 and for the calendar year 1/1/02 to 12/31/02. If consents are necessary to protect the SOL, they need to be completed for these calendar year periods.

Furthermore, the Form 1041 for the short period ending 200112 is due on April 15, 2002. The Form 1041 for the 200212 tax year is due on April 15, 2003.

## FORM 990-T

### **What constitutes the return for purposes of IRC section 6501?**

If the trust has unrelated business taxable income for the taxable year of \$1,000 or more, the trust is required to file a Form 990-T, *Exempt Organization Business Income Tax Return*. The return is due on the 15th day of the fourth month following the close of the taxable year of the trust. If the trust files a Form 990-T, then the Form 990-T is the return that begins the running of the SOL on the Form 990-T.

If the Form 990-T is not filed, the SOL starts to run based upon the Form 5500 return if:

- The plan administrator files the Form 5500 series return, and
- The Form 5500 discloses sufficient information to reveal the existence of unrelated business income (UBI).

If the UBI reported on the Form 5500 series return is less than 75 percent of total gross income from unrelated business activity, the SOL period is six years from the date the Form 5500 series return was filed. See IRC section 6501(e).

If the Form 990-T is not filed, and the above Form 5500 criteria are not met, the SOL does not begin running.

The timely filing of the Form 5500 series return does not excuse the taxpayer from the delinquency penalty on a delinquent 990-T secured during the examination. See IRM 7.6.1.2.5(4). For detailed information on penalties, see IRM 120.1 CH. 2, *Penalty Handbook – Failure to File/Failure to Pay Penalties*.

### **When was the return filed or due?**

For Form 990-T purposes, the SOL commences to run with either:

- The filing of the Form 990-T or
- The filing of the Form 5500 return if it discloses sufficient information to reveal the existence of UBI.

Thus, to properly determine the SOL date, the agent must determine the following:

- Was a Form 990-T filed? If yes, then the agent must determine when the Form 990-T was filed or due.

If the Form 990-T is filed after the due date of the return, the SOL starts running based upon the actual file date of the return.

If the Form 990-T is filed on or before the due date of the return, the SOL begins to run on the due date of the return, which is on or before the 15th day of the fourth month following the close of the taxable year of the trust, which for a qualified plan is the plan year.

- If a Form 990-T was not filed, was a Form 5500 filed that disclosed the existence of UBI? If yes, then the agent must determine when the Form 5500 was filed or due.

If the Form 5500 return is filed after the due date of the return, the SOL starts running based upon the actual file date of the return.

If the Form 5500 is filed on or before the due date of the return, the SOL begins to run on the due date of the return, which is on or before the last day of the 7th month following the close of the plan year.

### **Who is responsible for paying the tax?**

If the trust has engaged in activities which result in unrelated business taxable income, the trust is required to file a Form 990-T for those years during which the trust has engaged in such activities and for which the SOL is open. The Form 990-T is filed on behalf of the trust by the trustee. The trust is responsible for paying the tax, and the trustee is responsible for making sure the Form 990-T is filed and that the taxes are paid. It is the trustee who must sign the statute extension form (Form 872) in order for the extension to be valid.

### **What is the taxable period for Form 990-T purposes?**

If the trust is required to file a Form 990-T, the taxable year of the trust is the same as the plan year of the trust. Because the trust does not lose its exempt status due to UBI, if the plan is on a calendar year, the Form 990-T will be filed based upon a calendar year. If the trust is on a fiscal year, the Form 990-T will be filed based upon the plan's fiscal year. Furthermore, the Form 872 must reflect the plan year of the trust as the period being extended.

A Form 872 secured with respect to the income tax liability of the trust will extend the statute with respect to both a Form 990-T and a Form 1041 if the trust is on a calendar year. This will only be an issue, however, if a Form 872 is secured for UBI and the agent later determines that the plan is not qualified. If the trust loses its qualified status, UBI does not apply. The entire income of the trust is taxable under IRC section 1(e). See also IRC sections 501(a) and (b).

<b>EXCISE TAX RETURNS, OTHER THAN PROHIBITED TRANSACTIONS</b>
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**What constitutes the return for purposes of IRC section 6501?**

What constitutes the return for IRC Chapter 43 excise taxes is defined by the regulations and is related to the type of excise tax due. The Form 5330 is the return that begins the running of the SOL for the following excise taxes:

<b>Excise Tax:</b>	<b>Description of Tax:</b>
IRC section 4971	Minimum funding deficiency
IRC section 4972	Nondeductible contributions to qualified plans
IRC section 4973(a)(3)	Excess contributions to a section 403(b)(7)(A) custodial account
IRC section 4976	Maintaining a funded welfare benefit plan that provides a disqualified benefit during any tax year
IRC section 4977	Excess fringe benefits
IRC sections 4978, 4978A and 4978B	Certain ESOP dispositions
IRC section 4979	Excess contributions to plans with cash or deferred arrangements
IRC section 4979A	Certain prohibited allocations of qualified securities by an ESOP
IRC section 4980	Reversion of qualified plan assets to employers

**When was the return filed or due?**

For Chapter 43 excise taxes, other than for prohibited transactions, the SOL commences to run only when the Form 5330 is filed or due, whichever is later. The Form 5330 is due for the Chapter 43 excise taxes as indicated in the following table:

<b>Excise Tax:</b>	<b>Due Date of Form 5330:</b>
IRC section 4971	<p>By the later of:</p> <ul style="list-style-type: none"> <li>• The last day of the 7th month after the end of the employer's tax year or</li> <li>• 8 ½ months after the last day of the plan year that ends with or within the employer's tax year.</li> </ul> <p><b><u>Example 5:</u></b></p> <p>Both the employer and the plan are on a calendar year. The plan year ends with the employer's tax year. If the tax year in question is 200012, the Form 5330 is due on September 15, 2001.</p>

<p>IRC sections 4972, 4973(a)(3), 4976, 4978, 4978A, 4978B, and 4979A</p>	<p>By the last day of the 7th month after the end of the <b>tax year</b> of the employer or other person who must file the return.</p> <p><b><u>Example 6:</u></b></p> <p>If the employer is on a calendar year tax year of 199912, the Form 5330 is due on July 31, 2000. If the employer is on a fiscal tax year ending October 31, 1999, the Form 5330 is due on May 31, 2000.</p>
<p>IRC section 4977</p>	<p>By the last day of the 7th month after the end of the <b>calendar year</b> in which the excess fringe benefits were paid to the employees of the employer.</p>
<p>IRC section 4979</p>	<p>By the last day of the 15th month after the close of the <b>plan year</b> to which the excess contributions or excess aggregate contributions relate.</p> <p><b><u>Example 7:</u></b></p> <p>Excess contributions were made to a plan for the plan year ending December 31, 2000. The Form 5330 for such excess contributions is due by March 31, 2002.</p>
<p>IRC section 4980</p>	<p>No later than the last day of the month following the month in which the reversion occurred.</p> <p><b><u>Example 8:</u></b></p> <p>Trust assets reverted back to an employer on May 16, 2002 for a plan having a plan year ending on December 31<sup>st</sup>. The Form 5330 is due for the reversion on June 30, 2002.</p>

### Who is responsible for paying the tax?

The employer who sponsors the plan is the taxpayer and must sign the Form 872 for the following excise taxes:

<b>Excise Tax:</b>	<b>Description of Tax:</b>
IRC section 4971	Minimum funding deficiency
IRC section 4972	Nondeductible contributions to qualified plans
IRC section 4976	Maintaining a funded welfare benefit plan that provides a disqualified benefit during any tax year
IRC section 4977	Excess fringe benefits
IRC sections 4978, 4978A and 4978B	Certain ESOP dispositions
IRC section 4979	Excess contributions to plans with cash or deferred arrangements
IRC section 4979A	Certain prohibited allocations of qualified securities by an ESOP
IRC section 4980	Reversion of qualified plan assets to employers

If the employer is a corporation, the Form 5330 and the Form 872 must be signed by one of the following:

- President,
- Vice-president,
- Treasurer,
- Assistant treasurer,
- Chief accounting officer or
- Any other officer duly authorized to sign the return.

See IRC section 6062.

The participant or beneficiary is the taxpayer for the IRC section 4973(a)(3) excise tax for excess contributions to a section 403(b)(7)(A) custodial account and must sign the Form 872.

Note: For excise tax due on early distributions under IRC section 72(t) and for excise tax due on minimum required distributions under IRC section 4974, the participant is the taxpayer. Both excise taxes are filed using a Form 5329, *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*, which is normally attached to the Form 1040. The Form 5329 is only filed separately if the taxpayer is not required to file a Form 1040. Although the Form 5329 is not under the jurisdiction of EP, these issues might be raised due to a discrepancy adjustment. For all SOL considerations, it is the Form 1040 that governs.

### **What is the taxable period for Chapter 43 excise tax purposes, other than PTs?**

Consents must reflect the taxable year of the entity or person responsible for paying the tax. Thus, for the above excise taxes, the taxable year should either be that of the employer or that of the participant or beneficiary.

## **EXCISE TAX RETURNS, PROHIBITED TRANSACTIONS**

### **What constitutes the return for purposes of IRC section 6501?**

If a disqualified person (DP) engages in a prohibited transaction (PT) under IRC section 4975 with a plan, the DP is required to file Form 5330, *Return of Initial Excise Taxes Relating to Pension and Profit Sharing Plans*. The return is due at the end of the seventh month following the close of the taxable year of the DP.

For Forms 5330 filed for IRC section 4975 excise tax, the three-year statute of limitations will commence to run on the date the administrator files the Form 5500 series return in which the PT is sufficiently disclosed to apprise the IRS of the existence and nature of such PT. See IRC section 6501(l)(1).

Thus, it is the filing of the Form 5500, and not the Form 5330, which starts the running of the statute. The timely filing of the Form 5500 series return, however, does not excuse the taxpayer from the delinquency penalty on delinquent Forms 5330 secured during the examination.

If the filed Form 5500 series return does not disclose the PT, the six-year statute period applies. The excise tax may be assessed, or collection begun without assessment, at any time within six years after the later of the date the Form 5500 series return was filed or due.

### **When was the return filed or due?**

For IRC section 4975 purposes, the SOL commences to run when the applicable Form 5500 is filed. Even though the DP files the Form 5330 and pays the excise tax, it is the filing of the applicable Form 5500 series return that commences the running of the SOL for IRC section 4975 excise tax. See T.D. 7883. Also, see GCM 38846 and Treas. Reg. section 301.6501(e)(1)(c)(4).

To properly determine the return filed or due date for purposes of PTs, a distinction must be made between PTs that are discrete acts and those that are continuing transactions.

### **Discrete Act**

Any PT that is a one-time occurrence, such as a sale, is a discrete act. With a discrete act, taxes are imposed annually on the PT beginning with the taxable period in which the PT originally occurred and ending only when the PT is corrected or the SOL expires.

Per General Council Memorandum (GCM) 39066, dated February 24, 1983, "Even

though... the taxes are imposed annually, there is only one period of limitations applicable to all the tax attributable to an act of self-dealing [or PT]." Therefore, the filed or due date to be used in determining the SOL date is limited to that of the initial Form 5500 return attributable to the discrete act.

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**Example 9:**

Sadie, a DP, entered into a prohibited sale with a calendar year plan. The DP's tax year is also on the calendar year. The sale occurred on July 1, 1999. Therefore, the PT falls within the tax year ending December 31, 1999 and is attributable to the plan year ending December 31, 1999. Forms 5330 have not been filed by Sadie. The Form 5500 for 1999 was filed timely and adequately disclosed the PT.

Although the due date for both the Form 5330 and Form 5500 is July 31, 2000, it is the filing of the Form 5500 that starts the running of the SOL for the PT. Therefore, the statutory period for assessment of the excise tax on this transaction expires on July 31, 2003, as the Form 5500 was timely filed.

The Service must assess all excise taxes on this transaction, even those payable in 2000-2003, before July 31, 2003. The IRS cannot assess any excise tax on a PT, payable in any year, once the statute has expired for the taxable year of the disqualified person in which the transaction occurred if that PT is a discrete act.

NOTE: If the PT is not adequately disclosed, the six year rule applies and the SOL expires on July 31, 2006.

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Even though the PT may be a discrete transaction (single act), the agent must obtain extensions for each subsequent year. For discrete acts, the statute is technically extended for each affected taxable year if a consent is obtained with respect to the year in which the PT occurred. However, obtaining extensions for each year will resolve any questions as to whether later years have closed because specific extensions were not obtained for those years. The extensions are valid only if obtained from the disqualified person involved in the PT. Do not secure extensions from the plan administrator unless the plan administrator is the DP. Again, if the statutory period expires for the particular act, tax may not be assessed in later years.

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**Example 10:**

Assume that a plan sold assets to the sponsoring employer on September 7, 1999. The sale, which was disclosed on the 1999 Form 5500, had not been corrected by the time the plan is audited in 2001.

The plan has a calendar year end. The DP's tax year is also on the calendar year. Both parties to the sale are calendar year taxpayers. The plan has timely filed Form 5500, but the employer failed to pay any tax on the transaction.



The SOL for all years will expire on July 31, 2003. Therefore, the Service must obtain all required consents from the employer by July 31, 2003.

Under these circumstances, although technically a consent need only be requested for the taxable year 1999, the year in which the PT occurred, the agent will take a more conservative approach and will request consents for 2000, 2001 and any subsequent open years and solicit Forms 5330 for all open years for which a return is due. (A single Form 872 that reflects all taxable periods may also be used.) If consents are not secured prior to the expiration of the SOL, all years are barred from assessment.

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### **Continuing Transactions**

For a continuing transaction, such as a loan or lease, the situation is different. In addition to the original transaction, a new transaction is deemed to occur on the first day of each subsequent taxable year beginning within the taxable period of the originating transaction. The amount involved is reported and taxed in the originating and again in each subsequent year until the originating transaction is corrected.

The IRS position stated in GCM 38846 is based on the treatment accorded self-dealing under private foundation rules:

An additional prohibited transaction is deemed to occur on the first day of each subsequent taxable year or portion of a taxable year within the taxable period. Treas. Reg. s53.4941(e)(1)-(1)(e)(1). See Treas. Reg. s141.4975-13. Each deemed transaction is then treated like a discrete transaction, and the appropriate statute of limitations may be determined....

Thus, the filing of the Form 5500 return for the year in which the PT first occurred starts the running of the SOL for purposes of the tax on the actual transaction occurring in that plan year. It does not start the running of the SOL for the transactions deemed to occur in subsequent plan years.

There are separate SOL for the transactions deemed to occur in each subsequent year. It is the filing of the Form 5500 return for each subsequent plan year that starts the running of the SOL for transactions occurring in such years.

The filed or due date to be used in determining the SOL date is not only the initial, but also all subsequent Forms 5500 filed prior to correction of the continuing transaction (PT). Therefore, unlike a discrete act, the statutory period may expire for the act engaged in that first year, but the tax may be assessed for subsequent acts deemed to have occurred before correction is made and for which the statutory period has not expired. Therefore, it is essential that the agent obtain extensions for all years for which the SOL is open and for which expiration of the SOL is imminent.

Whether the transaction is discrete or continuous, the agent must secure the consent to extend the statutory period from all disqualified persons who may be subject to tax on the PT. Absent other written authority, the signature of any one DP will not bind others who do not themselves sign an extension. If extensions are not obtained from all DPs, the Service may still proceed against those who have waived the limitations period.

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**Example 11:**

Terry, a DP, entered into a prohibited leasing of trust assets on August 1, 1995. The leasing agreement continued on a monthly basis until December 31, 2000. The plan is on a calendar year. The DP's tax year is also the calendar year. The Forms 5500 were filed on or before the due date of July 31<sup>st</sup> for the 1995 through 2000 plan years. The statutory period for assessing excise tax is reflected in the following table:

<b>Date of PT</b>	<b>Due Date of Form 5500</b>	<b>SOL</b>
August 1, 1995	July 31, 1996	July 31, 1999
January 1, 1996	July 31, 1997	July 31, 2000
January 1, 1997	July 31, 1998	July 31, 2001
January 1, 1998	July 31, 1999	July 31, 2002
January 1, 1999	July 31, 2000	July 31, 2003
January 1, 2000	July 31, 2001	July 31, 2004

Assume that the Form 5500 under audit is for the plan year ending December 31, 1999 and that today's date is February 1, 2002.

Although the original transaction occurred on August 1, 1995, because this is a continuing transaction, a new transaction is deemed to occur each year. Therefore, assessment is barred due to the expiration of the SOL for the plan years ending December 31, 1995 through 1997. If a statute extension is obtained by July 31, 2002, excise tax may be assessed for the transaction occurring on January 1, 1998 and attributable to the plan year ending December 31, 1998.

**Who is responsible for paying the tax?**

For purposes of IRC section 4975, the taxpayer is the disqualified person (or persons) involved in the prohibited transaction.

**What is the taxable period for Prohibited Transaction purposes?**

The taxable period is the disqualified person's tax year in which the prohibited transaction occurred or was deemed to have occurred. More than one disqualified person may be involved in a prohibited transaction. In such cases, all of the parties are jointly and severally held liable. While each disqualified person must sign a separate consent, only one must pay the tax. Furthermore, the Form 872 must reflect the taxable period of the DP(s).

## STATUTE OF LIMITATIONS – STEP BY STEP APPROACH

As previously stated, for purposes of IRC section 4975 (PTs), the return that begins the running of the SOL is the **FORM 5500**. Consequently, the SOL for a PT begins with the due date or filed date, whichever is later, of the Form 5500 for the plan year in which the PT occurred.

To calculate the SOL for PTs which are either discrete acts or continuing transactions, the following step by step approach may be helpful:

- Step 1 – On what date did the PT occur?
- Step 2 – In which plan year(s) did the PT occur?
- Step 3 – What is the later of the due date or filed date of the Form 5500 associated with the plan year in which the PT occurred?
- Step 4 – What is the taxable period of the DP in which the PT occurred?

The following examples will demonstrate the step by step approach for both discrete and continuing transactions:

### Example 12:

You are auditing the 200108 Form 5500 for the Glendale Corporation. The Corporation's taxable year is also 200108. The 199908 Form 5500 was filed on 1-25-00. Based on a review of the plan assets, you determined the following:

On March 20, 1999, the trust purchased a piece of property from the Glendale Corporation. This is a **DISCRETE** act.

#### **Step 1 – On what date did the PT occur?**

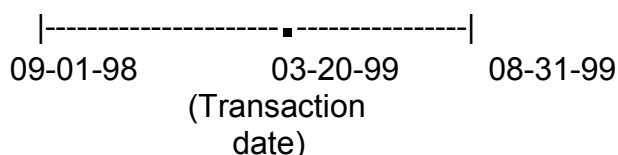
The discrete act occurred on 03-20-99.

#### **Step 2 – In which plan year(s) did the PT occur?**

Again, the discrete act occurred on 03-20-99. This date falls within the 09-01-98 to 08-31-99 (199908) plan year.

Or, using a time line:

Plan Year



**Step 3 – What is the later of the due date or filed date of the Form 5500 associated with the plan year in which the PT occurred?**

The PT occurred on 03-20-99. This falls within the 199908 plan year. The 199908 Form 5500 was filed on 1-25-00. The due date for the 199908 Form 5500 is the last day of the 7<sup>th</sup> month after the end of the plan year. Therefore, the Form 5500 is due on 03-31-00. Because the due date of the return is later than the filed date, the SOL is based upon the due date of the return. Assuming that the three-year statute applies, the SOL for this transaction expires on 03-31-03.

**Step 4 – What is the taxable period of the DP in which the PT occurred?**

The discrete act is reported on a Form 5330 for the tax year ending 199908 (the tax year of the disqualified person). The Form 5330 for the 199908 tax year is due 03-31-00. If the disqualified person has not filed the Form 5330, you should solicit the delinquent return, keeping in mind the SOL is 03-31-03.

The tax on the discrete act is also due and payable for each subsequent year until corrected. Consents must be obtained for the year in which the discrete act occurs and each subsequent year the tax is due and where expiration of the SOL is imminent. If the SOL expires for the discrete act, excise tax cannot be assessed in the subsequent years.

REMINDER: The SOL for IRC section 4975 taxes has nothing to do with the due date of the Form 5330. The later of the due date or the filed date of the Form 5500 for the plan year in which the transaction occurred begins the running of the SOL. You are, however, concerned with the taxable period of the DP to ensure that you solicit the statute extension for the correct taxable period or periods, which are the taxable periods of the DP.

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**Example 13:**

Edmunds Corp. maintains a profit sharing plan. The corporation sold the plan a building for \$50,000, the FMV on February 2, 1999, the date of the sale. The Edmunds Corp. is a calendar year taxpayer. The Edmunds Corp. Profit Sharing Plan has a plan year ending June 30<sup>th</sup>. The Form 5500 for 199906 was timely filed.

During your audit, you determine that the sale is a PT and a **DISCRETE** act. The transaction was corrected on July 31, 2001.

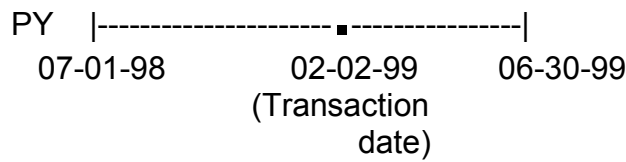
**Step 1 – On what date did the PT occur?**

The discrete act occurred on 02-02-99.

**Step 2 – In which plan year(s) did the PT occur?**

Again, the discrete act occurred on 02-02-99. This falls within the plan year that ends on 6-30-99.

Or, using a time line:



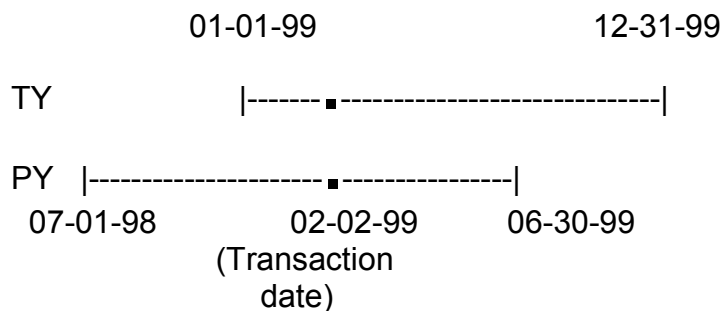
**Step 3 – What is the later of the due date or filed date of the Form 5500 associated with the plan year in which the PT occurred?**

The PT occurred on 02-02-99. This falls within the 199906 plan year. The due date for the 199906 Form 5500 is the last day of the 7<sup>th</sup> month after the end of the plan year. Therefore, the Form 5500 is due on 01-31-00. Assuming that the three-year statute applies, the SOL for this transaction expires on 01-31-03

**Step 4 – What is the taxable period of the DP in which the PT occurred?**

The discrete act is reported on a Form 5330 for the tax year ending 199912 (the tax year of the disqualified person). The Form 5330 for the 199912 tax year is due 07-31-00. If the disqualified person has not filed the Form 5330, you should solicit the delinquent return, keeping in mind the SOL is 01-31-03 and is based on the Form 5500.

Or, using time lines to tie the tax year to the plan year:



The tax on the discrete act is also due and payable for each subsequent year until corrected. Consents must be obtained for the year in which the discrete act occurs and each subsequent year the tax is due and where expiration of the SOL is imminent. If the SOL expires for the discrete act, excise tax cannot be assessed in the subsequent years.

Again, the SOL for IRC Section 4975 taxes has nothing to do with the due date of the Form 5330. The later of the due date or the filed date of the Form 5500 for the plan year in which the transaction occurred begins the running of the SOL. You are, however, concerned with the taxable period of the DP to ensure that you solicit the statute extension for the correct taxable period or periods, which are the taxable periods of the DP.

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**Example 14:**

You are auditing the 200108 Form 5500 for the Glendale Corporation. The Corporation's taxable year is also 200108. Based on a review of the plan assets, you discovered that on October 15, 1998, the trust loaned \$100,000 to Mr. Franklin, 100% owner of the Glendale Corporation. As of the date of the audit, no amount was paid on the loan. You determine that this is a **CONTINUING** transaction. Furthermore, all Forms 5500 were timely filed.

**STEP 1 – On what date did the PT occur?**

The continuing transaction began on 10-15-98. However, for transactions of a continuing nature, a new prohibited transaction is deemed to occur on the first day of each taxable year until correction is effected. The tax year is the disqualified person's tax year. In this example, the disqualified person is an individual. Therefore, the tax year is the calendar year.

Until a continuing transaction is corrected, there is a new PT on the first day of the disqualified person's subsequent tax years as follows:

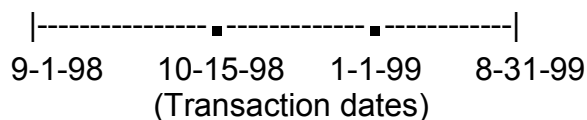
PT	DATE OF TRANSACTION
Actual - #1	10-15-98
Deemed - #2	01-01-99
Deemed - #3	01-01-00
Deemed - #4	01-01-01

**STEP 2 - In Which Plan Year(s) Did the PT Occur?**

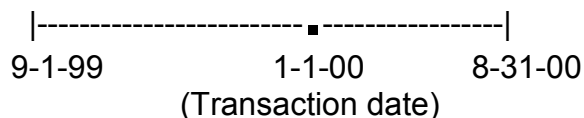
TRANSACTION	DATE OF OCCURRENCE	PLAN YEAR IN WHICH PT OR DEEMED PT OCCURS
#1	10-15-98	09-01-98 to 08-31-99
#2	01-01-99	09-01-98 to 08-31-99
#3	01-01-00	09-01-99 to 08-31-00
#4	01-01-01	09-01-00 to 08-31-01

Using time lines:

199908 PY –



200008 PY –



**STEP 3 - What is the later of the due date or filed date of the Form 5500 associated with the plan year in which the PT occurred?**

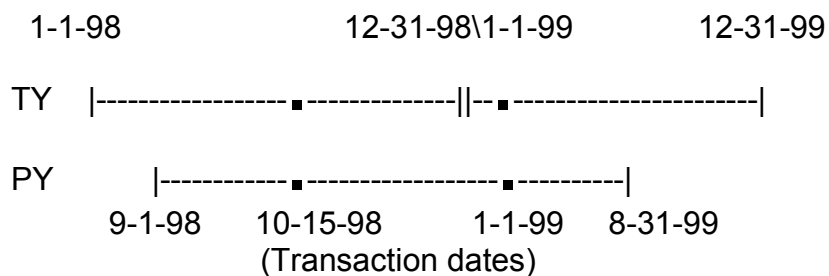
All Forms 5500 were timely filed. Therefore, in determining the SOL, the due date applies.

(1) TRANSACTION	(2) DATE OF OCCURRENCE	(3) PLAN YEAR IN WHICH PT OR DEEMED PT OCCURS	(4) DUE DATE OF 5500 FOR col. (3)	(5) SOL FOR 5500 IN col. (4)
#1	10-15-98	09-01-98 to 08-31-99	03-31-00	03-31-03
#2	01-01-99	09-01-98 to 08-31-99	03-31-00	03-31-03
#3	01-01-00	09-01-99 to 08-31-00	03-31-01	03-31-04
#4	01-01-01	09-01-00 to 08-31-01	03-31-02	03-31-05

**Step 4 – What is the taxable period of the DP in which the PT occurred?**

The continuing transaction PTs are reported on Form 5330 for the tax years ending 199812, 199912, 200012, and 200112 (the tax years of the disqualified person). If the disqualified person has not filed the Forms 5330, you should solicit the delinquent returns, keeping in mind the SOL in column (5), above.

Using time lines for transactions occurring in the 199908 PY:



The following illustrates the relationship of the due dates of the Forms 5330 and the SOL dates in this example:

TRANSACTION	TAX YEAR	DUE DATE OF FORM 5330	SOL DATE
#1	199812	7/31/99	3/31/03
#2	199912	7/31/00	3/31/03
#3	200012	7/31/01	3/31/04
#4	200112	7/31/02	3/31/05

Again, the SOL is governed by the later of the due date or the filed date of the Form 5500. The taxable period to be extended, however, is that of the DP.

**Example 15:**

You are auditing the 200110 Form 5500 for the Duval Corporation. The Corporation's taxable year is the calendar year. Based on a review of the plan assets, you discovered that on October 17, 1998, the trust entered into a leasing agreement with Ms. Franklin, the 100% owner of the Duval Corporation. The leasing of trust property by Ms. Franklin continued until December 31, 2001. You determine that this is a **CONTINUING** transaction.

**STEP 1 – On what date did the PT occur?**

The continuing transaction began on 10-17-98. However, for transactions of a continuing nature, a new prohibited transaction is deemed to occur on the first day of each taxable year until correction is effected. The tax year is the disqualified person's tax year. In this example, the disqualified person is an individual. Therefore, the tax year is the calendar year.

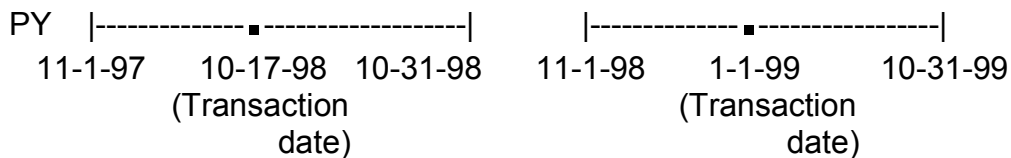
Until a continuing transaction is corrected, there is a new PT (deemed transaction) on the first day of the disqualified person's subsequent tax years as follows:

PT	DATE OF TRANSACTION
Actual - #1	10-17-89
Deemed - #2	01-01-99
Deemed - #3	01-01-00
Deemed - #4	01-01-01

**STEP 2 - In Which Plan Year(s) Did the PT Occur?**

TRANSACTION	DATE OF OCCURRENCE	PLAN YEAR IN WHICH PT OR DEEMED PT OCCURS
#1	10-17-98	11-01-97 to 10-31-98
#2	01-01-99	11-01-98 to 10-31-99
#3	01-01-00	11-01-99 to 10-31-00
#4	01-01-01	11-01-00 to 10-31-01

Using time lines for plan years ending 199810 and 199910:



**STEP 3 - What is the later of the due date or filed date of the Form 5500 associated with the plan year in which the PT occurred?**

All Forms 5500 were timely filed. Therefore, the due date applies.

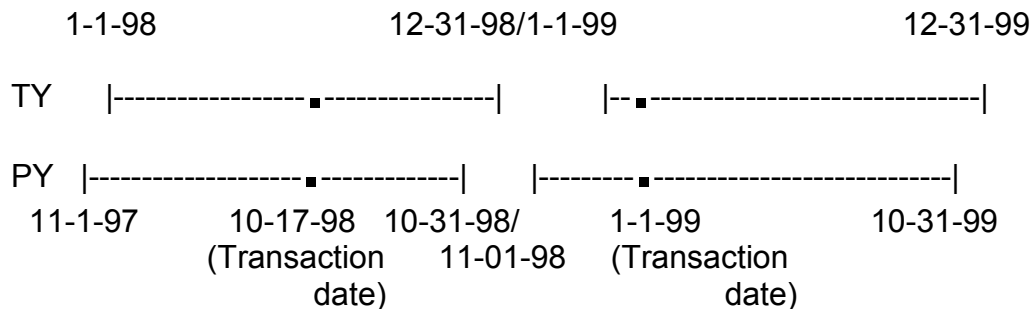


(1) TRANSACTION	(2) DATE OF OCCURRENCE	(3) PLAN YEAR IN WHICH PT OR DEEMED PT OCCURS	(4) DUE DATE OF 5500 FOR col. (3)	(5) SOL FOR 5500 IN col. (4)
#1	10-17-98	11-01-97 to 10-31-98	05-31-99	05-31-02
#2	01-01-99	11-01-98 to 10-31-99	05-31-00	05-31-03
#3	01-01-00	11-01-99 to 10-31-00	05-31-01	05-31-04
#4	01-01-01	11-01-00 to 10-31-01	05-31-02	05-31-05

**Step 4 – What is the taxable period of the DP in which the PT occurred?**

The continuing transaction PTs are reported on Form 5330 for the tax years ending 199812, 199912, 200012, and 200112 (the tax year of the disqualified person). If the disqualified person has not filed the Forms 5330, you should solicit the delinquent returns, keeping in mind the SOL in column (5), above.

Using time lines for the 199812 and 199912 tax years and the 199810 and 199910 plan years:



The following illustrates the relationship of the due dates of the Forms 5330 and the SOL dates for this example:

TRANSACTION	TAX YEAR	DUE DATE OF FORM 5330	SOL DATE
#1	199812	7/31/99	5/31/02
#2	199912	7/31/00	5/31/03
#3	200012	7/31/01	5/31/04
#4	200112	7/31/02	5/31/05

Again, the SOL is governed by the later of the due date or the filed date of the Form 5500. The taxable period to be extended is that of the DP.

Note: Assuming the audit occurred after May 31, 2002, although the SOL has expired for Transaction #1, assessment of excise tax is NOT barred for subsequent years, as this is a continuing transaction. IF this were a discrete act, assessment would be barred for all years.

## FILED DATE – POSTMARKED DATE - RECEIVED DATE

As stated previously, the SOL for assessment of taxes expires three years from the due date of the return, without filing extensions, or the date filed, whichever is later. Furthermore, a return is deemed filed on the due date of the return if filed on or before its due date. But what is meant by filed date? That depends upon whether the return is postmarked by or after the due date of the return.

If a return is <b><i>postmarked</i></b> on or before:	Then the SOL begins to run on:
The statutory due date, (the due date of the controlling return),	The statutory due date, even if the return is received before the statutory due date.
The statutory due date or the extension due date but received after the statutory or extension due date,	The statutory due date because timely mailed is considered timely filed.

The received date (by the IRS) starts the running of the SOL in the following instances:

- If a return is postmarked before the extension due date, but after the statutory due date, and received before the extension due date. (IRC sections 7502 and 6501 do not apply in these cases.)
- If a return is postmarked after the due date.

See the following:

- IRC Section 7502(a)
- *Hotel Equities Corp.*, 546 F.2d 725 (7th Cir. 1977) [CCH - 77-1 USTC @ 9102]
- *Pace Oil Co., Inc.*, 73 T.C. 249, Dec. 36,417
- Rev. Rul. 73-133, 1973-1 C.B. 605

The postmark date is considered the filed date only if:

- The postmark date falls within the prescribed period for filing, including extensions,
- The return is deposited in the mail in an envelope or wrapper properly addressed to the appropriate IRS office with postage prepaid, and
- The return is delivered to the IRS office after the date it was due. (See IRC section 7502 (1)(2)(3))

Otherwise, as stated above, the received date is considered the filed date.

Furthermore, the postmark must be a United States Postal Service postmark or meet the requirements of Treas. Reg. section 301.7502-1(c)(1)(iii). If the postmark is omitted or illegible and the taxpayer cannot present evidence of timely mailing, the received date will be considered the filed date for all purposes.

See the following:

- *J. L. Rappaport*, 55 TC 709 Dec. 30,635
- *P. Reugsegger*, 68 TC 463, Dec. 34,492
- *B & C Playlands, Inc.*, 53 TCM 1324, DEC 44,037(M)

Per IRC section 7503, when the due date for filing a return falls on a Saturday, Sunday, or a legal holiday, the filing shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday.

Form 5546, *Examination Return Charge Out Sheet*, usually reflects an SOL date. This date is generally based on the later of the due date or the received date, not the postmarked date.

**Note:** For an EMFOLT, the 150 transaction code is the received date and may be used to determine the statute date. Furthermore, for an EMFOLT, there is only one 150, and it is located to the left of the DLN. For a BMFOLT, the TC 150 date to the right of the DLN is the received date and may be used to determine the statute date. The 150 to the far left and on the same line as the TC 150 date is actually the date the Service Center inputs the TC 150 date and should not be used to determine the statute date. See also the discussion on TEQMS, below.

For electronically filing returns, the date of transmission is the filed date.

## RETURNS FILED ON THE WRONG FORM

Failure to use the exact form prescribed by the Commissioner will not prevent the running of the SOL if the return actually filed:

- Was in good faith,
- Is absent fraudulent intent, and
- Meets the statutory requirements.

See *Comm. v. Lane-Wells Co.*, 321 US 219, 88 L Ed 684, 64 S Ct 511 (1944)

## RETURNS FILED FOR THE WRONG PERIOD

A return must cover the entire taxable period of the taxpayer. For example, if a taxpayer maintains their books and records on a fiscal year and files a return for a calendar year, the return does not cover the entire period. In such cases, the SOL does not begin to run until a return is filed which does include that portion of the fiscal year not covered in the earlier return. See *Comm. v. Lane-Wells Co.*, 321 US 219, 88 L Ed 684, 64 S Ct. 511 (1944) and *Atlas Oil & Refining Corp.*, 22 TC 552 (1954).

If a return covers the correct period, it is immaterial that the face of the return reflects an incorrect period. See *Bastrop Mercantile Co., Ltd.*, 7 BTA 529. and *CF. Flomot Gin Co.*, 40 BTA 688

A return for a fractional part of the year, unless authorized by the Commissioner (such as a liquidated organization following Treas. Reg. section 1.6043-3), does not start the running of the SOL for the period covered. It is not considered a return as required by statute. See *American Vineyard Co.*, 15 BTA 452.

## **SUBSTITUTE FOR RETURNS**

Per IRC section 6020, if any person, required to do so, fails to file a return, the Secretary may prepare such return. A substitute for return may be prepared under either IRC section 6020(a) or IRC section 6020(b), depending upon the circumstances.

- If a return is prepared under IRC section 6020(a), such return shall start the running of the SOL. Furthermore, IRM 7.6.1 CH. 3.2.4, *EP Examinations Procedures Handbook*, provides that if an entity fails to file a delinquent tax return when requested by an agent, but executes an agreement (i.e. signs a Form 870, 2504, or 4549) to an agent's report prepared as a substitute for the tax return, the agreed report constitutes a return under IRC section 6020(a) and will be used as though it were a return in computing the SOL. Rev. Rul. 74-203, 1974-1 C.B. 330
- If a return is prepared under IRC section 6020(b), such return shall **not** start the running of the SOL. Treas. Reg. section 301.6501(b)-1(c) provides that the execution of a return by the Service under the authority of IRC section 6020(b) shall not start the running of the SOL on assessment and collection. Regardless of whether the taxpayer agrees to the assessment by signing a Form 870, 2504 or 4549, a substitute for return prepared under IRC section 6020(b) will not start the running of the SOL.

Therefore, to start the running of the SOL, either:

- The taxpayer must file a return, or
- The Service must prepare a return under IRC section 6020(a).

Rev. Rul. 76-562, 1976-2 C.B. 430 provides that a return prepared and executed by the Service under IRC section 6020(b), although not starting the SOL, does stop the running of the delinquency period for purposes of computing additional penalties under IRC section 6651(a)(1) for failure to file and under IRC section 6651(a)(2) for failure to pay the amounts shown on the return.

If tax is assessed and paid by the taxpayer without the taxpayer filing a return (for example, use of substitute for return to assess the tax), the taxpayer has only two years from the date of payment to file a claim. See IRC section 6511(a).

## FORM 895, NOTICE OF STATUTE EXPIRATION

The group manager should notify the agent of those assigned returns where the period of limitations will expire within 210 *days*. This notification should be accomplished by furnishing the agent with a partially completed Form 895, *Notice of Statute Expiration*. The Form 895 should be returned by the agent to the manager within 10 days to confirm notification of receipt of the Form 895. See IRM 25.6.23.6.2. See also Exhibit 4, below, for a partially completed Form 895 (Rev. 1-91).

Upon receiving a partially completed Form 895 from the group manager or designee, the agent will complete the following steps:

- By reference to the tax return and/or a transcript of account, verify the correctness of data on the Form 895, specifically: taxpayer's name; address; SSN or EIN; MFT; tax period; and statute expiration date.
- To verify the statute expiration date, inspect any of the following:
  - ◆ An EMFOLT print ("TC 150 date" located to left of DLN) for Form 5500, for PTs and for UBI if a Form 990-T has not been filed and the Form 5500 criteria discussed under Form 990-T, above, applies.
  - ◆ A BMFOLT print ("TC 150 date" to the right of the DLN) for Forms 990-T and Forms 5330, if other than PTs,
  - ◆ An Employee Plans Classification Sheet (the "Original return received" date),
  - ◆ An original filed return from the Service Center (Use postmark received date on original return).
- Note any errors or changes on Form 895.
- Complete Items 9 through 12 if using the Form 895 revised 1-91 or items 6 through 9 if using the ERCS version of the Form 895. See IRM Exhibit 25.6.23-2 for detailed instruction for the ERCS version of Form 895.
- Sign and date Form 895.
- Return the completed Form 895 to the group manager for review within 10 days of receipt.
- After approval by the group manager, attach Form 895 to the inside of the case file folder. When the case is closed from the group, attach Form 895 to the outside of the case file folder on top of all other attached papers.

Also, see IRM 4.71.9, *Statute Control Procedures*, which amplifies and supplements the statute procedures in IRM 25.6, *Statute of Limitations Handbook*.

Note: The ERCS version of the Form 895 was not yet available at the time of this writing but is expected to be issued at a future date.

Appropriate notes should be made on both the original and manager's copy of Form 895 for any follow-up actions that are taken, such as the execution of an extension of the statutory period or a decision not to extend the SOL.

Additional procedures that may be implemented per Area Manager discretion should also be followed. For example, Area Managers may implement a requirement to have the agent and manager initial both parts of the 895 next to the statute date and any subsequent extended dates.

Upon transfer of returns, within or outside of the area, both copies of Form 895 will accompany the return file, along with an EPIC generated Form 3210.

The group manager should attempt to ensure that agreed cases have at least 180 days remaining on the SOL and unagreed cases have one year remaining when they are closed from the group. All examination cases in which revocation is proposed will be considered unagreed. All cases, as well as all related cases, submitted for technical advice should have one year remaining on the SOL before being sent to EP Special Review for processing.

In instances where deviation from these time frames is necessary, a memo should accompany the case file providing an explanation by the group manager of the reasons the case was submitted with less than the above time frames. A copy of this memo should be forwarded to the respective Area Manager.

If a decision is made not to extend the statutory period, Form 895 should be appropriately noted and initialed by the agent and the group manager. A memorandum of explanation, detailing the reasons for not extending the statutory period, should be signed by the manager and attached to the Form 895, with a copy placed in the case file.

Furthermore, a copy of the memo should be forwarded to the Area Manager. This will serve to support the decision not to extend the statutory period. At least 60 days prior to statute expiration, but no more than 180 days, both AIMS and EPIC should be updated to reflect documentation of this decision by use of alpha code "PP" – Non-taxable EP/EO Return. The PP code may be used in this instance when it is determined with certainty the non-taxable return will not be converted to a taxable return.

When an alpha code, such as PP, is used, a copy of the AIMS print should be included in the file to verify the date of the update action. The case should be placed in a red folder. If it is later determined that the use of this alpha code was inappropriate, a Form 3999 may be required, as outlined in IRM 4.71.9.6.

**Red Folders** - All cases with less than **210 days** remaining on the statutory period should be placed in a red folder.

## SECURING STATUTE EXTENSIONS, FORM 872

Generally, the examination of an EP return will be conducted to ensure that the case is closed prior to the expiration of the statute. However, additional time may be needed to resolve an examination. In such cases, the statutory period for assessment may be extended by consent agreements. When extending the SOL, the period of extension should be no longer than is necessary to complete the examination and permit administrative closing of the case.

Group manager approval must be obtained before requesting a taxpayer to execute a consent.

When additional time is necessary to allow for the collection or assessment of tax, the statutory period may be extended by a consent agreement executed by a taxpayer entity and the Director, Employee Plans.

- Form 872, *Consent to Extend the Time to Assess Tax*, is generally the consent form used to extend the statutory period. (Found in Exhibits 1 and 2, below)
- Form 977, *Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary*, is used to obtain a consent to extend the period of limitations for assessment against a transferee or fiduciary.
- Form 872-A, *Special Consent to Extend the Time to Assess Tax*, is a special consent form used to extend the statutory period to a date 90 days after the Service's consideration of the case.
- The period established by an executed Form 872-A is terminated by a properly executed Form 872-T, *Notice of Termination of Special Consent to Extend the Time to Assess Tax*.

It is recommended that Form 872 consents be used rather than Form 872-A.

As a result of the IRS Restructuring and Reform Act of 1998, Section 6501(c)(4)(B), the agent should inform the taxpayer on each occasion when the taxpayer is requested to extend the SOL as to the following rights (effective for requests made after December 31, 1999):

- The right to refuse to extend the limitation period.
- The right to request that the extension be limited to particular issues.
- The right to request that the limitation period be limited to a specific date.

The notification should be made to the taxpayer by sending Letter 907 with the most recently revised Publication 1035, *Extending the Tax Assessment Period*.

The appropriate consent forms are prepared in duplicate and generally for each taxable

period involved.

If both income and excise taxes are involved for a sole taxpaying entity, the same consent form may be used for both. Remember, the trust fund never pays the excise tax. Therefore, extensions should not be secured for both income and excise taxes on the trust. Only income tax should be included on the trust extension.

The original consent will be securely attached to the return for the latest year covered by the consent.

A copy of the consent, or a statement, will be associated with all other returns covered by the consent. If a statement is used, it should reflect the terms of the consent, i.e., taxable years, extension date, restrictions and date signed.

Consents for more than one year are subject to the same conditions, processing and approval procedures as consents obtained for one year.

The consent of any one trustee is sufficient to extend the statutory period for the trust. But when securing extensions of the SOL for the assessment of an excise tax against disqualified persons who are jointly and severally liable for the tax, each disqualified person must sign an extension.

In securing consents on Form 872 for a trust (income tax for the Form 1041 or UBIT for the Form 990-T), make sure that the Form 872 indicates "TRUST NAME" rather than "CORPORATE NAME" and also indicates "TRUSTEES" rather than CORPORATE OFFICER(S)", as illustrated below:



**Illustration 1**

MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.			
YOUR SIGNATURE HERE	→ _____	_____	(Date signed)
SPOUSE'S SIGNATURE	→ _____	_____	(Date signed)
TAXPAYER'S REPRESENTATIVE SIGN HERE	→ _____	_____	(Date signed)
TRUST NAME	.Glendale, Inc. Employee Stock Ownership Plan Trust		
TRUSTEE(S) SIGN HERE	→ Elizabeth Greene	President & Trustee	July 11, 2003
	_____	(Title)	(Date signed)
	→ _____	_____	(Date signed)
		(Title)	(Date signed)

If securing extension from a corporation on excise tax, make sure that the Form 872 indicates "CORPORATE NAME" and "CORPORATE OFFICER(S)", as illustrated below:

**Illustration 2**

MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.			
YOUR SIGNATURE HERE	→ _____	_____	(Date signed)
SPOUSE'S SIGNATURE	→ _____	_____	(Date signed)
TAXPAYER'S REPRESENTATIVE SIGN HERE	→ _____	_____	(Date signed)
CORPORATE NAME	Harper Industries International		
CORPORATE OFFICER(S) SIGN HERE	→ James W. Harper	CEO	May 16, 2002
	_____	(Title)	(Date signed)
	→ _____	_____	(Date signed)
		(Title)	(Date signed)

If securing extensions for individuals, make sure they sign on the correct line(s), as illustrated below:

**Illustration 3**

<b>MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.</b>		
YOUR SIGNATURE HERE →	<i>Gordon G. Gannon</i>	<i>Nov. 18, 2002</i> <small>(Date signed)</small>
SPOUSE'S SIGNATURE →	_____	<small>(Date signed)</small>
TAXPAYER'S REPRESENTATIVE SIGN HERE →	_____	<small>(Date signed)</small>
CORPORATE NAME	_____	
CORPORATE OFFICER(S) SIGN HERE	_____	<small>(Date signed)</small>
	<small>(Title)</small>	<small>(Date signed)</small>
	_____	<small>(Date signed)</small>
	<small>(Title)</small>	<small>(Date signed)</small>

The following letters are used to transmit the Form 872:

- Letter 907, *Extension of Statute of Limitation*, is used to transmit the applicable consent forms. (Found in Exhibit 5, below)
- Letter 928, the second request to extend the Statute of Limitation, found in Exhibit 6, is used as a follow-up to Letter 907 when necessary.
- Letter 929, *Letter Transmitting Signed Consent Form Extending Statute of Limitation*, is used to transmit the duplicate copy of the executed consent form to the taxable entity (or representative). (Found in Exhibit 7, below)

When timely executed consent forms cannot be obtained, statutory notices of deficiency should be issued.

## **SPECIAL INSTRUCTIONS**

### **MULTIPLE-YEAR CONSENTS**

One Form 872 may be used to obtain consents for one or more taxable years. When one form is used to obtain consents for more than one year, all years covered will be entered on the line in the second paragraph of the form following "tax period(s) ended".

Form 872 will only be used for multiple years when the taxpayers and restricted issue(s) are identical in the years covered and the date to which the extensions are made is the same for all years covered.

Multiple years should not be put on one consent form under the following circumstances:

- Extension dates requested for all years covered are not made to the same date.
- Restricted issues are not identical for each year covered. (See Rev. Proc. 68-31, 1968-2 C.B. 917.)

The original consent will be securely attached to the return for the latest year covered by the consent. A copy of the consent or a statement will be associated with all other returns covered by the consent. If a statement is used, it should reflect the terms of the consent, that is, taxable years, extension date, restrictions, and date signed.

Consents for more than one year are subject to the same conditions, processing, and approval procedures as consents obtained for one year.

### **RETURNS WITH LESS THAN ONE YEAR REMAINING ON SOL**

Without prior managerial approval, an examiner cannot begin an examination or requisition any return for audit if fewer than twelve months remain on the statute. The approval and justification, or disapproval should be documented in the case chronology record of the relevant case file.

Agents are not required to pick up a "prior year" return merely to protect the government's interest. A "prior year" return is defined as any year before the year under examination.

The agent shall discuss the necessity of picking up any "prior year" return with the group manager. Reasons should be substantial and compelling in terms of tax liabilities or issues should have substantial compliance impact.

The approval or disapproval should be documented in the case chronology. A request for AIMS establishment and a Form 895 (if applicable) should be submitted to the manager at the same time.

## REVOCATION ISSUES

When a statute extension is to be secured on a trust with a fiscal year end, the conversion to a calendar year taxable period is made for purposes of properly completing the statute extension form(s).

As previously noted, when an agent is proposing revocation of a qualified plan, which would result in the conversion of a Form 5500 series return to a taxable return, the agent is responsible for controlling and protecting the statute until such time as:

- A Form 1041 is secured and the case is timely forwarded for closure within TE/GE, or
- The matter is referred to the appropriate examination function by the use of Form 5666, *EP/EO Referral Information Report*, or Form 5346, *Examination Information Report*.

For any examination involving revocation, the agent is responsible for preparing and forwarding necessary referrals to the appropriate examination function responsible for the Form 1041 trust return in a timely manner. The agent should consider a preliminary referral based on the issues contained in the proposed revocation. Any necessary support for preparation of the Form 1041 should be included with the referral. In this instance, where a timely referral is made to the examination function, the use of alpha code "PP" to update the SOL may also be appropriate. A memorandum of explanation detailing the use of alpha code "PP" in this instance should be signed by the manager and attached to Form 895 with a copy also placed in the case file. Additionally, a copy of the memo should be forwarded to the Area Manager, per his or her discretion.

## TEQMS CONSIDERATIONS

In working all cases, it is important that the TEQMS quality standards be met. The quality standards that apply to SOL considerations are Element 1.A, Aspect 3 and Element 7.C.

### STANDARD ELEMENT 1A, PRIOR TO TAXPAYER CONTACT: ASPECT 3. WAS THE CORRECT STATUTE OF LIMITATIONS DATE DETERMINED?

Prior to initial contact with the taxpayer, the correct statute expiration date should be determined by reviewing applicable IDRS research (EMFOLT), the return and return charge-out document (if received).

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**Example 16:**

The EP examination case file contained an AMDIS print, which reflected the ASSED date (i.e., the statute of limitations date). The file did not contain an EMFOLT print to verify the filing date or reflect consideration of the Form 5500 due date.

Based on a strict interpretation of this quality aspect, if an EMFOLT was not part of the statute analysis for an examination of a Form 5500, this quality aspect was previously rated "Not Met". However, there are other methods of verifying the filing date of the applicable return that controls the SOL, as provided below.

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There are essentially three components to Aspect 3 that must be met:

- Verification of the date the controlling return was filed.
- Pre-audit analysis to ascertain the proper statute expiration date.
- Documentation in the case file reflecting the preceding two requirements.

As always, examiners must still prepare a statute analysis in the pre-audit section of their workpapers that clearly explains how they calculated or arrived at the SOL date.

Note that an AMDISA print reflecting an ASSED date is not sufficient to verify the proper SOL date. Systems such as AIMS (AMDISA) and EPIC are never used to verify statutes. These systems are only used to reflect that statutes have been properly updated.

**Effective immediately for 5500 series:**

With respect to Form 5500 series returns, the examiner must verify the date that the Form 5500 return was filed by utilizing any of the following (**Any one must be included in the file**):

- An EMFOLT print ("TC 150 date"),
- An Employee Plans Classification Sheet (the "Original return received" date), or
- An original filed return from the Service Center (Use postmark received date on original return).

**Effective immediately for Form 990-T:**

With respect to Form 990-T, the examiner must verify the date that the return was filed by securing any of the following (**Any one must be included in the file**):

- A BMFOLT print ("TC 150 date" located to the right of the document locator number), or
- An original filed Form 990-T return from the Service Center (Use postmark received date on original return).

In addition, with respect to Form 990-T, where there is adequate disclosure on the related Form 5500, the examiner must secure evidence of the date that the related Form 5500 was filed. Refer to *California Thoroughbred Breeders Association v. Commissioner*, 47 T.C. 335 (1996) and Rev. Rul. 69-247, 1969-1, C.B. 303.

Where an information return filed in good faith discloses information sufficient to apprise the Service as to the nature and extent of items that should have been reported on a related return, the information return commences the running of the statute for the related Form 990-T.

**Effective immediately for Form 5330:**

With respect to Form 5330 returns, the examiner must verify the date that the Form 5330 return was filed by utilizing any of the following (**Any one must be included in the file**):

- A BMFOLT print (the "TC 150 date" located to the right of the document locator number), or
- An original filed Form 5330 return from the Service Center (Use postmark received date on original return).

In addition, with respect to prohibited transactions, the examiner must secure evidence of the date the Form 5500 was filed (as previously described). Remember that for prohibited transactions, the statute is controlled by the Form 5500 plan year in which the act or deemed act occurred. Refer to Code section 6501(l).

**Other Requirements:**

Examiners still need to secure appropriate IDRS transcripts on individuals and/or other entities responsible for income or excise taxes when determining the SOL on their returns. For example, this would include protecting the statutes with respect to employment tax returns in audits involving 403(b) and 457 nonqualified plans.

**STANDARD ELEMENT 7C, WERE ACTIONS TAKEN TIMELY TO PROTECT THE SOL?**

Appropriate and timely actions must be taken by the agent to protect the SOL on all key and related returns of the assigned case. When necessary, consents to extend the SOL should be correctly prepared and timely secured. All extensions must be executed by the appropriate parties. Form 895 procedures should be followed and statute dates updated on AIMS.

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**Example 17:**

A case was assigned to an agent with 13 months remaining on the statute. The taxpayer continually procrastinated but agreed to extend the statute when only seven months remained until expiration of the statute. Form 895 was correctly completed and submitted to the group manager in a timely manner. A properly executed Form 872 was secured by the agent.

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Element 7C would be rated "N/A" if no action is needed to protect the SOL.

Please note that TEQMS guidelines are subject to change. If you have any questions, please contact Martin Friedlander, TEQMS Analyst at:

IRS – TE/GE  
625 Fulton Street  
10 Metro Tech Center, Room 503  
Brooklyn, NY 11201

Phone: (718) 488-2379  
FAX: (718) 488-2310

## **SUMMARY**

- The agent assigned the case is ultimately responsible for protecting the statute for all returns for which EP has examination jurisdiction: Form 5500 series returns (although technically the statute is being protected for the Form 1041), Form 990-T returns, and Form 5330 returns. Statutes must also be protected for Forms 1040 and 1120, where discrepancy adjustments are made.
- The SOL date is three years from the date the return was filed or the due date, whichever is later. There are exceptions to the three-year rule for cases of false filing, fraudulent filing, evasion of tax, and failure to file. If gross income is understated by more than 25 percent or excise tax is understated by more than 25 percent, the six-year SOL applies.
- The SOL for assessment of income tax (Form 1041) starts to run with the filing of the Form 5500 series return. This is generally the case whether or not the Schedule P is filed. The SOL for assessment of UBI starts to run with either the filing of the Form 990-T or, if not filed, the filing of the Form 5500 series return which sufficiently discloses the UBI. The Form 5500 series return starts the running of the SOL for Forms 5330 required for PTs that occur in a disqualified person's taxable year that begins after 12/31/77. For all other excise taxes, the filing of the Form 5330 starts the running of the SOL.
- Form 895, *Notice of Statute Expiration*, is to be completed by the EP specialist as a means of controlling statutes.

- Form 872, *Consent to Extend the Time to Assess Tax*, is used to secure extensions. The group manager must approve all requests for consents. The party required to file a return is the party to execute consents. Form 56 is used to identify the fiduciary relationship of the trustee if extensions are being secured for trust income taxes.
- TEQMS Elements 1A, Aspect 3 must be addressed in all cases worked. It is important that the agent verify the date that the Form 5500 return was filed, using any of the acceptable sources as indicated above. It is also important that the agent document his finding in the workpapers.
- IF applicable, TEQMS Element 7C must be addressed by taking appropriate actions to timely protect the SOL.

## **SUMMARY OF COMMONLY USED FORMS, PUBLICATIONS & LETTERS**

Common Forms, publications and letters used in extending the SOL include the following:

Form 895, *Notice of Statute Expiration* - for internal use, only.

Form 872, *Consent to Extend the Time to Assess Tax*.

Form 56, *Notice Concerning Fiduciary Relationship*.

Publication 35, *Extending the Tax Assessment Period* – must be provided to taxpayer.

Letter 907, *Extension of Statute of Limitation*.

Letter 928, used as second request for statute extension.

Letter 929, *Letter Transmitting Signed Consent Form Extending Statute of Limitation*.



# EXHIBITS

## EXHIBIT 1 – FORMS 872, TRUST EXTENSION

<b>Form 872</b> (Rev. January 2001)	Department of the Treasury—Internal Revenue Service <b>Consent to Extend the Time to Assess Tax</b>	In Reply Refer to EP:GC:0516 Taxpayer Identification Number:
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\_\_\_\_\_  
(Name(s))

Taxpayer(s) of \_\_\_\_\_  
(Number, Street, City or Town, State, Zip Code)

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal \_\_\_\_\_ tax due on any return(s) made by  
(Kind of tax)

For the above taxpayer(s) for the period (s) ended \_\_\_\_\_

May be assessed at any time on or before \_\_\_\_\_ . However, if  
(Expiration date)

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

**MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.**

**YOUR SIGNATURE HERE** → \_\_\_\_\_  
(Date signed)

**SPOUSE'S SIGNATURE** → \_\_\_\_\_  
(Date signed)

**TAXPAYER'S REPRESENTATIVE SIGN HERE** → \_\_\_\_\_  
(Date signed)

**TRUST NAME** \_\_\_\_\_

**TRUSTEE(S) SIGN HERE** → \_\_\_\_\_ (Title) \_\_\_\_\_ (Date signed)

→ \_\_\_\_\_ (Title) \_\_\_\_\_ (Date signed)

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

Carol D. Gold \_\_\_\_\_ Director, Employee Plans  
(Division Executive Name – see instructions) (Division Executive Title – see instructions)

**BY** \_\_\_\_\_ EP Group Manager, 0516 \_\_\_\_\_  
(Signature and Title) (Date signed)

(Signature Instructions are on the back of this form)

Catalog Number 20755I

Form 872 (Rev. 1-2001)

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## Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for gift tax and the donor and the donor's spouse elected to have gifts to third persons considered as made one-half by each, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for Chapter 41, 42, or 43 taxes involving a partnership or is for a partnership return, only one authorized partner need sign.

If this consent is for Chapter 42 taxes, a separate Form 872 should be completed for each potential disqualified person, entity, or foundation manager that may be involved in a taxable transaction during the related tax year. See Revenue Ruling 75-391, 1975-2 C.B. 446.

If you are an attorney or agent of the taxpayer(s), you may sign this consent provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.

If you are acting as a fiduciary (such as executor, administrator, trustee, etc.) and you sign this consent, attach Form 56, Notice Concerning Fiduciary Relationship, unless it was previously filed.

If the taxpayer is a corporation, sign this consent with the corporate name followed by the signature and title of the officer(s) authorized to sign.

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## Instructions for Internal Revenue Service Employees

Complete the Division Executive's name and title depending upon your division.

If you are in the Small Business/Self-Employed Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Compliance Policy; Director, Compliance Services.)

If you are in Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

If you are in Appeals, enter the name and title of the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

**EXHIBIT 2 – FORM 872, CORPORATE EXTENSION**

<b>Form 872</b> (Rev. January 2001)	Department of the Treasury—Internal Revenue Service <b>Consent to Extend the Time to Assess Tax</b>	In Reply Refer to EP:GC:0516 Taxpayer Identification Number:
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\_\_\_\_\_  
(Name(s))

Taxpayer(s) of \_\_\_\_\_  
(Number, Street, City or Town, State, Zip Code)

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal \_\_\_\_\_ tax due on any return(s) made by  
(Kind of tax)

For the above taxpayer(s) for the period (s) ended \_\_\_\_\_

May be assessed at any time on or before \_\_\_\_\_ . However, if  
(Expiration date)

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

**MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.**

**YOUR SIGNATURE HERE** → \_\_\_\_\_  
(Date signed)

**SPOUSE'S SIGNATURE** → \_\_\_\_\_  
(Date signed)

**TAXPAYER'S REPRESENTATIVE SIGN HERE** → \_\_\_\_\_  
(Date signed)

**CORPORATE NAME** \_\_\_\_\_

**CORPORATE OFFICER(S) SIGN HERE** → \_\_\_\_\_ (Title) \_\_\_\_\_ (Date signed)

→ \_\_\_\_\_ (Title) \_\_\_\_\_ (Date signed)

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

\_\_\_\_\_  
(Division Executive Name – see instructions) Carol D. Gold Director, Employee Plans  
(Division Executive Title – see instructions)

**BY** \_\_\_\_\_ EP Group Manager, 0516 \_\_\_\_\_  
(Signature and Title) (Date signed)

(Signature Instructions are on the back of this form)

Catalog Number 20755I

Form 872 (Rev. 1-2001)

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## Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for gift tax and the donor and the donor's spouse elected to have gifts to third persons considered as made one-half by each, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for Chapter 41, 42, or 43 taxes involving a partnership or is for a partnership return, only one authorized partner need sign.

If this consent is for Chapter 42 taxes, a separate Form 872 should be completed for each potential disqualified person, entity, or foundation manager that may be involved in a taxable transaction during the related tax year. See Revenue Ruling 75-391, 1975-2 C.B. 446.

If you are an attorney or agent of the taxpayer(s), you may sign this consent provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.

If you are acting as a fiduciary (such as executor, administrator, trustee, etc.) and you sign this consent, attach Form 56, Notice Concerning Fiduciary Relationship, unless it was previously filed.

If the taxpayer is a corporation, sign this consent with the corporate name followed by the signature and title of the officer(s) authorized to sign.

---

## Instructions for Internal Revenue Service Employees

Complete the Division Executive's name and title depending upon your division.

If you are in the Small Business/Self-Employed Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Compliance Policy; Director, Compliance Services.)

If you are in Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

If you are in Appeals, enter the name and title of the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

# EXHIBIT 3 – FORM 56, NOTICE CONCERNING FIDUCIARY RELATIONSHIP

Form <b>56</b> (Rev. August 1997) Department of the Treasury Internal Revenue Service	<b>Notice Concerning Fiduciary Relationship</b> (Internal Revenue Code sections 6036 and 6903)	OMB No. 1545-0013	
<b>Part I Identification</b>			
Name of person for whom you are acting (as shown on the tax return)		Identifying number	
Address of person for whom you are acting (number, street, and room or suite no.)		Decedent's social security no.	
City or town, state, and ZIP code (If a foreign address, see instructions.)			
Fiduciary's name			
Address of fiduciary (number, street, and room or suite no.)			
City or town, state, and ZIP code		Telephone number (optional)	
<b>Part II Authority</b>			
1 Authority for fiduciary relationship. Check applicable box:			
a(1) <input type="checkbox"/> Will and codicils or court order appointing fiduciary. Attach certified copy . . . (2) Date of death . . . . . b(1) <input type="checkbox"/> Court order appointing fiduciary. Attach certified copy . . . . . (2) Date (see instructions) . . . . . c <input type="checkbox"/> Valid trust instrument and amendments. Attach copy d <input type="checkbox"/> Other. Describe ▶			
<b>Part III Tax Notices</b>			
Send to the fiduciary listed in Part I all notices and other written communications involving the following tax matters:			
2 Type of tax (estate, gift, generation-skipping transfer, income, excise, etc.) ▶			
3 Federal tax form number (706, 1040, 1041, 1120, etc.) ▶			
4 Year(s) or period(s) (if estate tax, date of death) ▶			
<b>Part IV Revocation or Termination of Notice</b>			
Section A—Total Revocation or Termination			
5 Check this box if you are revoking or terminating all prior notices concerning fiduciary relationships on file with the Internal Revenue Service for the same tax matters and years or periods covered by this notice concerning fiduciary relationship . . . ▶ <input type="checkbox"/>			
Reason for termination of fiduciary relationship. Check applicable box:			
a <input type="checkbox"/> Court order revoking fiduciary authority. Attach certified copy.			
b <input type="checkbox"/> Certificate of dissolution or termination of a business entity. Attach copy.			
c <input type="checkbox"/> Other. Describe ▶			
Section B—Partial Revocation			
6a Check this box if you are revoking earlier notices concerning fiduciary relationships on file with the Internal Revenue Service for the same tax matters and years or periods covered by this notice concerning fiduciary relationship . . . . . ▶ <input type="checkbox"/>			
b Specify to whom granted, date, and address, including ZIP code, or refer to attached copies of earlier notices and authorizations ▶			
Section C—Substitute Fiduciary			
7 Check this box if a new fiduciary or fiduciaries have been or will be substituted for the revoking or terminating fiduciary(ies) and specify the name(s) and address(es), including ZIP code(s), of the new fiduciary(ies) . . . . . ▶ <input type="checkbox"/>			
<b>Part V Court and Administrative Proceedings</b>			
Name of court (if other than a court proceeding, identify the type of proceeding and name of agency)		Date proceeding initiated	
Address of court		Docket number of proceeding	
City or town, state, and ZIP code	Date	Time a.m. p.m.	
Place of other proceedings			
I certify that I have the authority to execute this notice concerning fiduciary relationship on behalf of the taxpayer.			
<b>Please Sign Here</b>	Fiduciary's signature	Title, if applicable	Date
	Fiduciary's signature	Title, if applicable	Date

For Paperwork Reduction Act and Privacy Act Notice, see back page. Cat. No. 16375I Form 56 (Rev. 8-97)

**EXHIBIT 4 – FORM 895, NOTICE OF STATUTE EXPIRATION**

1. (a) Name and Address of Taxpayer  Ellsworth Corporation Profit Sharing Plan		1. (b) Taxpayer Identification No. 90-9999999	2. Statute of Limitation Date 07/31/02
		3. Employee Charged with Return Co Co Franklin	4. Notification Date 12/31/01
		5. Group No. 2222	6. Post of Duty
Return Form 5500	8. Taxable Year or Period 199812	9. Date Return Filed or Due ( <i>whichever is later</i> ) 07/31/99	

10. Appropriate Box to be Checked by the individual Charged with Return			11. Expiration Date ( <i>Update as necessary</i> ) 07/31/02
(a) <input type="checkbox"/> Consent Secured	(j) <input type="checkbox"/> Non-tax. Fiduciary (JJ)		
(b) <input type="checkbox"/> Claim Timely Filed (AA)	(k) <input type="checkbox"/> Bankruptcy Suspense (KK)		
(c) <input type="checkbox"/> NOL Carryback Year (BB)	(l) <input type="checkbox"/> Third Party Records (LL)		
(d) <input type="checkbox"/> Joint Investigation (CC)	(m) <input type="checkbox"/> Section 183(e)(4) (MM)		
(e) <input type="checkbox"/> Credit Carryback (DD)	(n) <input type="checkbox"/> Section 6501(e) (NN)		
(f) <input type="checkbox"/> Failure to File (EE)	(o) <input type="checkbox"/> Section 6501(c) (OO)		
(g) <input type="checkbox"/> Reference Return Only (FF)	(p) <input type="checkbox"/> Non-tax. EP/EO (PP)		
(h) <input type="checkbox"/> NON-TEFRA Flow-thru (GG)	(q) <input type="checkbox"/> Taxpayer Refused to Execute Consent		
(i) <input type="checkbox"/> TEFRA Investor (HH)	(r) <input type="checkbox"/> Irregular Assessment Period ( <i>Explain in Item 12, Remarks</i> )		

12. Remarks

13. For Examination Support Use:

Deficiency: \_\_\_\_\_ Location: \_\_\_\_\_

Penalty: \_\_\_\_\_ Agreement: \_\_\_\_\_

14. Signature (employee charged with return) \_\_\_\_\_ Date Returned to Supervisor \_\_\_\_\_

15. Item	Date		Initials
	Received	Forwarded	
<b>Examination</b>			
(a) Examiner			
(b) Group Supervisor			
(c) Review			
Appeals			
(d)			
Examination Support and Processing			
(e)			
(f)			
Returns Processing			
(g)			
(h)			
(i)			
(j)			

16. Explanation for Delays

1. (a) Name and Address of Taxpayer  <b>Ellsworth Corporation Profit Sharing Plan</b>		1. (b) Taxpayer Identification No. <b>90-9999999</b>	2. Statute of Limitation Date <b>07/31/02</b>
		3. Employee Charged with Return <b>Co Co Franklin</b>	4. Notification Date <b>12/31/01</b>
		5. Group No. <b>2222</b>	6. Post of Duty
Return Form <b>5500</b>	8. Taxable Year or Period <b>199812</b>	9. Date Return Filed or Due ( <i>whichever is later</i> ) <b>07/31/99</b>	
10. Appropriate Box to be Checked by the individual Charged with Return			11. Expiration Date ( <i>Update as necessary</i> ) <b>07/31/02</b>
(a) <input type="checkbox"/> Consent Secured (b) <input type="checkbox"/> Claim Timely Filed (AA) (c) <input type="checkbox"/> NOL Carryback Year (BB) (d) <input type="checkbox"/> Joint Investigation (CC) (e) <input type="checkbox"/> Credit Carryback (DD) (f) <input type="checkbox"/> Failure to File (EE) (g) <input type="checkbox"/> Reference Return Only (FF) (h) <input type="checkbox"/> NON-TEFRA Flow-thru (GG) (i) <input type="checkbox"/> TEFRA Investor (HH)			(j) <input type="checkbox"/> Non-tax. Fiduciary (JJ) (k) <input type="checkbox"/> Bankruptcy Suspense (KK) (l) <input type="checkbox"/> Third Party Records (LL) (m) <input type="checkbox"/> Section 183(e)(4) (MM) (n) <input type="checkbox"/> Section 6501(e) (NN) (o) <input type="checkbox"/> Section 6501(c) (OO) (p) <input type="checkbox"/> Non-tax. EP/EO (PP) (q) <input type="checkbox"/> Taxpayer Refused to Execute Consent (r) <input type="checkbox"/> Irregular Assessment Period <i>(Explain in Item 12, Remarks)</i>
12. Remarks			
13. For Examination Support Use:			
Deficiency:		Location:	
Penalty:		Agreement:	
14. Signature (employee charged with return)			Date Returned to Supervisor

**EXHIBIT 5 – LETTER 907, INITIAL REQUEST FOR STATUTE EXTENSION**



**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

TAX EXEMPT AND  
GOVERNMENT ENTITIES

(Insert Date)

**Tax Year(s):**

**Taxpayer Identification Number:**

**Kind of Tax:**

**Consent Form Number:**

872

**Person to Contact:**

**Employee Identification Number:**

**Phone Number:**

Dear

The limitation period allowed by law for assessing additional tax on your federal tax return will expire soon. Therefore, we request that you consent to extend the period for assessment.

We have enclosed copies of consent Form 872, which extends the statute of limitation period. Before signing this form, it is important that you understand your rights concerning consents, which are as follows:

- 1) You have the right to refuse to extend the limitation period.
- 2) You have the right to request the extension be limited to particular issues held open for further examination or appeal.
- 3) You have the right to request the limitation period be limited to a specific date.

If you wish to exercise any of your rights mentioned above, please review the enclosed



Publication 1035, *Extending the Tax Assessment Period*, for a more detailed explanation of your rights, options, and procedures.

**NOTE:** You do not have to sign the consent to be considered to have cooperated with the Internal Revenue Service for purposes of determining who has the burden of proof in any court proceeding.

**Joint Filers:** As required by law, separate notices are sent to each individual filing a joint return. If the enclosed consent is for a joint return each individual must sign. You may each sign your individual copies of the consent or both may sign one set together.

If you agree to the terms in the enclosed consent form, please sign all copies of the consent-form and return them within 10 days from the date of this letter, **IT IS IMPORTANT THAT YOU SIGN YOUR NAME EXACTLY AS IT APPEARS ON FORM 872.** Upon acceptance, we will return an approved copy for your records.

If you have questions concerning the enclosed form or your rights when extending the statute of limitations, please contact the person whose name and number is shown above. If the telephone number is outside your local calling area, there will be a long distance charge to you. You may also write the person whose name is shown above at 1100 Commerce Street, MC 4922 DAL, Dallas, TX 75242. If you choose to write, please provide a telephone number and most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Preston R. Butcher  
Director, EP Examinations

Enclosures:

Copies of consent form  
Publication 1035

**Letter 907 (Rev. 2-2000)**  
Catalog Number 12650C



**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

TAX EXEMPT AND  
GOVERNMENT ENTITIES

(Insert Date)

**Social Security or Employer  
Identification Number:**

**Tax Period Ended:**

**Extension To:**

**Consent Form Number:**

**Person to Contact:**

**Employee Identification Number:**

**Contact Telephone Number:**

Dear

We recently wrote you that the period which the law would permit assessment of any tax due for the above year will soon end. We asked that you extend this period by signing and returning both copies of a consent form we enclosed.

Since we have no record of a reply, we now ask that you either sign and return the forms, or let us know that you do not intend to do so. If we do not hear from you within a few days, we will have to act on your return before the statute of limitations expires.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

Preston R. Butcher  
Director, EP Examinations

Enclosure:  
Copy of Consent

**EXHIBIT 7 – LETTER 929, COVER LETTER FOR RETURN OF FORM 872 TO TAXPAYER**



**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

TAX EXEMPT AND  
GOVERNMENT ENTITIES

(Insert Date)

**Tax Period Ended:**

**Consent Form Number:**

**Extension to:**

**Person to Contact:**

**Employee Identification Number:**

**Contact Telephone Number:**

Dear

Enclosed is a copy of the above consent for your records. It extends to the date shown the time in which we may assess tax for this period.

If you have any questions, please contact the person whose name and telephone number are shown above. You may also write the person whose name is shown above at 1100 Commerce Street, MC 4922 DAL, Dallas, TX 75242.

Sincerely,

Preston R. Butcher  
Director, EP Examinations

Enclosure  
Form 872

Letter 929

## **EXERCISES**

### **FORM 5500**

Calculate the Form 5500 statute date for the following:

1. The plan has a year end of 200012. A Schedule P was filed.
2. The plan has a year end of 200012. No Schedule P was filed, but the trustee signed the Form 5500 and is indicated as such. There is sufficient data on the return to calculate the tax liability of the trust.
3. The plan has a year end of 200012. No Schedule P was filed. The trustee signed the Form 5500 and is indicated as trustee on the form. There is not sufficient data on the return to calculate the tax liability of the trust.

**CODE SECTION 644**

You are examining the Douglas Corporation Profit Sharing Plan that has a year end of 200011. During the audit, you determine that the plan is not qualified under IRC section 401(a) and does not qualify for a closing agreement. Your only option is to disqualify the plan retroactively to December 1, 1996. You further determined that as of today's date of February 1, 2002, the plan remains disqualified. The plan has not regained its qualified status. The plan has been in effect since December 1, 1994. Douglas Corporation's tax year is the calendar year.

- a. List all qualified and nonqualified trust years.

Qualified Years

Nonqualified Years

- b. Calculate the statute of limitations for each year. Assume the Form 5500 returns were timely filed with Schedule P attached.

<b>Tax Year</b>	<b>Plan Year within which last day of tax year falls</b>	<b>Due Date of timely filed Form 5500</b>	<b>SOL Expiration Date</b>
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c. If today's date were February 14, 2002, for what year or years would you obtain extensions?

d. For all other years, why would you NOT secure extensions?

e. Complete the appropriate Form(s) 872 for the year or years for which you would secure an extension. Forms 872 are provided in the following pages. You may not need all of the Forms 872 provided. Be sure to review each form before filling them out to ensure you are using the correct form. The following additional information may be helpful for completing the form(s):

Douglas Corporation's address –

125 Douglas Boulevard, Suite E;  
San Antonio, Texas 78000

Douglas Corporation EIN – 90-1234500

Douglas Corporation Profit Sharing Plan Trust EIN – 90-2345600

Reminder: For the new "Expiration date" on the Form 872, be sure to follow the 180 days/one year requirements as outlined in IRM 4.71.9.2(6).

\_\_\_\_\_  
(Name(s))

Taxpayer(s) of \_\_\_\_\_  
(Number, Street, City or Town, State, Zip Code)

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal \_\_\_\_\_ tax due on any return(s) made by  
(Kind of tax)

For the above taxpayer(s) for the period (s) ended \_\_\_\_\_

May be assessed at any time on or before \_\_\_\_\_ . However, if  
(Expiration date)

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

**MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.**

**YOUR SIGNATURE HERE** → \_\_\_\_\_  
(Date signed)

**SPOUSE'S SIGNATURE** → \_\_\_\_\_  
(Date signed)

**TAXPAYER'S REPRESENTATIVE SIGN HERE** → \_\_\_\_\_  
(Date signed)

**CORPORATE NAME** \_\_\_\_\_

**CORPORATE OFFICER(S) SIGN HERE** → \_\_\_\_\_ (Title) \_\_\_\_\_ (Date signed)

→ \_\_\_\_\_ (Title) \_\_\_\_\_ (Date signed)

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

Carol D. Gold \_\_\_\_\_ Director, Employee Plans  
(Division Executive Name – see instructions) (Division Executive Title – see instructions)

**BY** \_\_\_\_\_ EP Group Manager, 0516 \_\_\_\_\_  
(Signature and Title) (Date signed)

(Signature Instructions are on the back of this form)

Catalog Number 207551

Form 872 (Rev. 1-2001)

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## Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for gift tax and the donor and the donor's spouse elected to have gifts to third persons considered as made one-half by each, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for Chapter 41, 42, or 43 taxes involving a partnership or is for a partnership return, only one authorized partner need sign.

If this consent is for Chapter 42 taxes, a separate Form 872 should be completed for each potential disqualified person, entity, or foundation manager that may be involved in a taxable transaction during the related tax year. See Revenue Ruling 75-391, 1975-2 C.B. 446.

If you are an attorney or agent of the taxpayer(s), you may sign this consent provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.

If you are acting as a fiduciary (such as executor, administrator, trustee, etc.) and you sign this consent, attach Form 56, Notice Concerning Fiduciary Relationship, unless it was previously filed.

If the taxpayer is a corporation, sign this consent with the corporate name followed by the signature and title of the officer(s) authorized to sign.

---

## Instructions for Internal Revenue Service Employees

Complete the Division Executive's name and title depending upon your division.

If you are in the Small Business/Self-Employed Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Compliance Policy; Director, Compliance Services.)

If you are in Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

If you are in Appeals, enter the name and title of the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.



\_\_\_\_\_  
(Name(s))

Taxpayer(s) of \_\_\_\_\_  
(Number, Street, City or Town, State, Zip Code)

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal \_\_\_\_\_ tax due on any return(s) made by  
(Kind of tax)

For the above taxpayer(s) for the period (s) ended \_\_\_\_\_

May be assessed at any time on or before \_\_\_\_\_ . However, if  
(Expiration date)

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

**MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.**

**YOUR SIGNATURE HERE** → \_\_\_\_\_  
(Date signed)

**SPOUSE'S SIGNATURE** → \_\_\_\_\_  
(Date signed)

**TAXPAYER'S REPRESENTATIVE SIGN HERE** → \_\_\_\_\_  
(Date signed)

**CORPORATE NAME** \_\_\_\_\_

**CORPORATE OFFICER(S) SIGN HERE** → \_\_\_\_\_ (Title) \_\_\_\_\_ (Date signed)

→ \_\_\_\_\_ (Title) \_\_\_\_\_ (Date signed)

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

Carol D. Gold \_\_\_\_\_ Director, Employee Plans  
(Division Executive Name – see instructions) (Division Executive Title – see instructions)

**BY** \_\_\_\_\_ EP Group Manager, 0516 \_\_\_\_\_  
(Signature and Title) (Date signed)

(Signature Instructions are on the back of this form)

Catalog Number 20755I Form 872 (Rev. 1-2001)

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## Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for gift tax and the donor and the donor's spouse elected to have gifts to third persons considered as made one-half by each, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for Chapter 41, 42, or 43 taxes involving a partnership or is for a partnership return, only one authorized partner need sign.

If this consent is for Chapter 42 taxes, a separate Form 872 should be completed for each potential disqualified person, entity, or foundation manager that may be involved in a taxable transaction during the related tax year. See Revenue Ruling 75-391, 1975-2 C.B. 446.

If you are an attorney or agent of the taxpayer(s), you may sign this consent provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.

If you are acting as a fiduciary (such as executor, administrator, trustee, etc.) and you sign this consent, attach Form 56, Notice Concerning Fiduciary Relationship, unless it was previously filed.

If the taxpayer is a corporation, sign this consent with the corporate name followed by the signature and title of the officer(s) authorized to sign.

---

## Instructions for Internal Revenue Service Employees

Complete the Division Executive's name and title depending upon your division.

If you are in the Small Business/Self-Employed Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Compliance Policy; Director, Compliance Services.)

If you are in Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

If you are in Appeals, enter the name and title of the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

\_\_\_\_\_  
*(Name(s))*

Taxpayer(s) of \_\_\_\_\_  
*(Number, Street, City or Town, State, Zip Code)*

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal \_\_\_\_\_ tax due on any return(s) made by  
*(Kind of tax)*

For the above taxpayer(s) for the period (s) ended \_\_\_\_\_

May be assessed at any time on or before \_\_\_\_\_ . However, if  
*(Expiration date)*

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

**MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.**

**YOUR SIGNATURE HERE** → \_\_\_\_\_  
*(Date signed)*

**SPOUSE'S SIGNATURE** → \_\_\_\_\_  
*(Date signed)*

**TAXPAYER'S REPRESENTATIVE SIGN HERE** → \_\_\_\_\_  
*(Date signed)*

**TRUST NAME** \_\_\_\_\_

**TRUSTEE(S) SIGN HERE** → \_\_\_\_\_ *(Title)* \_\_\_\_\_ *(Date signed)*

→ \_\_\_\_\_ *(Title)* \_\_\_\_\_ *(Date signed)*

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

\_\_\_\_\_  
*(Division Executive Name – see instructions)* Carol D. Gold \_\_\_\_\_  
*(Division Executive Title – see instructions)* Director, Employee Plans

**BY** \_\_\_\_\_ EP Group Manager, 0516 \_\_\_\_\_  
*(Signature and Title)* \_\_\_\_\_ *(Date signed)*

*(Signature Instructions are on the back of this form)*

Catalog Number 20755I

Form 872 (Rev. 1-2001)

---

## Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for gift tax and the donor and the donor's spouse elected to have gifts to third persons considered as made one-half by each, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for Chapter 41, 42, or 43 taxes involving a partnership or is for a partnership return, only one authorized partner need sign.

If this consent is for Chapter 42 taxes, a separate Form 872 should be completed for each potential disqualified person, entity, or foundation manager that may be involved in a taxable transaction during the related tax year. See Revenue Ruling 75-391, 1975-2 C.B. 446.

If you are an attorney or agent of the taxpayer(s), you may sign this consent provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.

If you are acting as a fiduciary (such as executor, administrator, trustee, etc.) and you sign this consent, attach Form 56, Notice Concerning Fiduciary Relationship, unless it was previously filed.

If the taxpayer is a corporation, sign this consent with the corporate name followed by the signature and title of the officer(s) authorized to sign.

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## Instructions for Internal Revenue Service Employees

Complete the Division Executive's name and title depending upon your division.

If you are in the Small Business/Self-Employed Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Compliance Policy; Director, Compliance Services.)

If you are in Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

If you are in Appeals, enter the name and title of the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

\_\_\_\_\_ (Name(s))

Taxpayer(s) of \_\_\_\_\_  
 (Number, Street, City or Town, State, Zip Code)

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal \_\_\_\_\_ tax due on any return(s) made by  
 (Kind of tax)

For the above taxpayer(s) for the period (s) ended \_\_\_\_\_

May be assessed at any time on or before \_\_\_\_\_ . However, if  
 (Expiration date)

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

**MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.**

**YOUR SIGNATURE HERE** → \_\_\_\_\_ (Date signed)

**SPOUSE'S SIGNATURE** → \_\_\_\_\_ (Date signed)

**TAXPAYER'S REPRESENTATIVE SIGN HERE** → \_\_\_\_\_ (Date signed)

**TRUST NAME** \_\_\_\_\_

**TRUSTEE(S) SIGN HERE** → \_\_\_\_\_ (Title) (Date signed)

→ \_\_\_\_\_ (Title) (Date signed)

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

Carol D. Gold \_\_\_\_\_ Director, Employee Plans  
 (Division Executive Name – see instructions) (Division Executive Title – see instructions)

**BY** \_\_\_\_\_ EP Group Manager, 0516 \_\_\_\_\_  
 (Signature and Title) (Date signed)

(Signature Instructions are on the back of this form)

Catalog Number 20755I Form 872 (Rev. 1-2001)

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## Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for gift tax and the donor and the donor's spouse elected to have gifts to third persons considered as made one-half by each, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

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If you are in Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

If you are in Appeals, enter the name and title of the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

## FORM 5330, OTHER THAN PROHIBITED TRANSACTIONS

1. The Amarillo Company Defined Benefit Pension Plan has a plan year ending December 31<sup>st</sup>. It terminated on July 31, 2000, and a reversion of plan assets occurred on September 15, 2000. The corporation that received the reversion has a year end of October 31<sup>st</sup>.

Which Code section applies?

When is the Form 5330 due?

What is the statute date if the Form 5330 is filed timely?

What is the statute date if the Form 5330 is filed on 12/31/00?

What is the statute date if the Form 5330 is not yet filed?

2. Mr. Parker is the CEO of Essex, Inc. Essex, Inc., a calendar year taxpayer, maintains a money purchase plan which has a plan year end of 6/30. Due to the shortage of funds, the company last funded and met the funding requirements of the plan for 199406. As of today's date, no Forms 5330 have been filed. Nor have contributions been made to the plan. Mr. Parker would like to fund the plan and file and pay all excise taxes due. Since this is not his area of expertise, he comes to you for help.

Which Code section applies?

When were/are the Forms 5330 due?

What are the statute dates on each of the Forms 5330?

3. Vance, Inc., 50 West Alpine Street, Philadelphia, Pa. 11111, experienced a windfall in profits for its tax year ending April 30, 1999. As a result, Ms. Taylor, the president of Vance, Inc. decided to shelter some of the excess profits in the Vance, Inc. Pension Plan, which has a plan year end of 9/30. Wanting to do what is right, upon discovering that excise tax is due on nondeductible contributions to qualified plans, Ms. Taylor decides to file the required Form 5330. Vance, Inc.'s EIN is 90-2222222 and Ms. Taylor's SSN is 000-00-3333.

Which Code section applies?

When is the Form 5330 due?

What is the statute date if the Form 5330 is filed timely?

Upon your review of the filed Form 5330, you determine that the return should be audited. Furthermore, after discussing the case with your manager, it was decided that you should solicit a Form 872 to extend the statute to February 28, 2003. Complete the Form 872 on the next page.



\_\_\_\_\_ (Name(s)) \_\_\_\_\_

Taxpayer(s) of \_\_\_\_\_  
 (Number, Street, City or Town, State, Zip Code)

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal \_\_\_\_\_ tax due on any return(s) made by  
 (Kind of tax)

For the above taxpayer(s) for the period (s) ended \_\_\_\_\_

May be assessed at any time on or before \_\_\_\_\_ . However, if  
 (Expiration date)

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

**MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.**

**YOUR SIGNATURE HERE** → \_\_\_\_\_ (Date signed)

**SPOUSE'S SIGNATURE** → \_\_\_\_\_ (Date signed)

**TAXPAYER'S REPRESENTATIVE SIGN HERE** → \_\_\_\_\_ (Date signed)

**CORPORATE NAME** \_\_\_\_\_

**CORPORATE OFFICER(S) SIGN HERE** → \_\_\_\_\_ (Title) (Date signed)

→ \_\_\_\_\_ (Title) (Date signed)

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

Carol D. Gold \_\_\_\_\_ Director, Employee Plans  
 (Division Executive Name – see instructions) (Division Executive Title – see instructions)

**BY** \_\_\_\_\_ EP Group Manager, 0516 \_\_\_\_\_  
 (Signature and Title) (Date signed)

(Signature Instructions are on the back of this form)

Catalog Number 20755I Form 872 (Rev. 1-2001)

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## Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for gift tax and the donor and the donor's spouse elected to have gifts to third persons considered as made one-half by each, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for Chapter 41, 42, or 43 taxes involving a partnership or is for a partnership return, only one authorized partner need sign.

If this consent is for Chapter 42 taxes, a separate Form 872 should be completed for each potential disqualified person, entity, or foundation manager that may be involved in a taxable transaction during the related tax year. See Revenue Ruling 75-391, 1975-2 C.B. 446.

If you are an attorney or agent of the taxpayer(s), you may sign this consent provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.

If you are acting as a fiduciary (such as executor, administrator, trustee, etc.) and you sign this consent, attach Form 56, Notice Concerning Fiduciary Relationship, unless it was previously filed.

If the taxpayer is a corporation, sign this consent with the corporate name followed by the signature and title of the officer(s) authorized to sign.

---

## Instructions for Internal Revenue Service Employees

Complete the Division Executive's name and title depending upon your division.

If you are in the Small Business/Self-Employed Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Compliance Policy; Director, Compliance Services.)

If you are in Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

If you are in Appeals, enter the name and title of the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

**FORM 5330, PROHIBITED TRANSACTIONS**

- Alpine Corporation of 117 Duval Street, Hollywood, Ca. 55525, having a little cash flow problem, sold its corporate Malibu beach property to the Alpine Corporation Defined Benefit Pension Plan for three million dollars on February 5, 1999. You were assigned and are auditing the 9909 Form 5500. You determine that the transaction results in a Prohibited Transaction. Alpine Corporation timely files all Forms 5500 and has a tax year end of December 31<sup>st</sup>. Calculate the statute date for the 1999 and 2000 tax years if the transaction was adequately disclosed on the Form 5500. Alpine Corporation's EIN is 10-0000000. William Grand is the President and majority shareholder of Alpine Corporation.

<b>Tax Year</b>	<b>Date of Transaction</b>	<b>Plan year in which PT occurred</b>	<b>Due date of Form 5500</b>	<b>SOL Expiration Date</b>

Assume that the date is now on or around March 15, 2003, and you expect the agreed case to close out of the group on or around July 1, 2003. After discussing the matter with your manager, you decide to solicit statute extensions. Complete the Form 872 found on the next page.

If, rather than auditing the 199909 Form 5500, you were auditing the 200309 Form 5500 in May of 2004, would you recommend to your manager that statute extensions be solicited for this transaction? Why or why not?

If the transaction was not adequately disclosed on the Form 5500, what are the statute dates?

\_\_\_\_\_ (Name(s)) \_\_\_\_\_

Taxpayer(s) of \_\_\_\_\_  
 (Number, Street, City or Town, State, Zip Code)

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal \_\_\_\_\_ tax due on any return(s) made by  
 (Kind of tax)

For the above taxpayer(s) for the period (s) ended \_\_\_\_\_

May be assessed at any time on or before \_\_\_\_\_ . However, if  
 (Expiration date)

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

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**YOUR SIGNATURE HERE** → \_\_\_\_\_ (Date signed)

**SPOUSE'S SIGNATURE** → \_\_\_\_\_ (Date signed)

**TAXPAYER'S REPRESENTATIVE SIGN HERE** → \_\_\_\_\_ (Date signed)

**CORPORATE NAME** \_\_\_\_\_

**CORPORATE OFFICER(S) SIGN HERE** → \_\_\_\_\_ (Title) (Date signed)

→ \_\_\_\_\_ (Title) (Date signed)

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

Carol D. Gold \_\_\_\_\_ Director, Employee Plans  
 (Division Executive Name – see instructions) (Division Executive Title – see instructions)

**BY** \_\_\_\_\_ EP Group Manager, 0516 \_\_\_\_\_  
 (Signature and Title) (Date signed)

(Signature Instructions are on the back of this form)

Catalog Number 20755I Form 872 (Rev. 1-2001)

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## Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

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If you are an attorney or agent of the taxpayer(s), you may sign this consent provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.

If you are acting as a fiduciary (such as executor, administrator, trustee, etc.) and you sign this consent, attach Form 56, Notice Concerning Fiduciary Relationship, unless it was previously filed.

If the taxpayer is a corporation, sign this consent with the corporate name followed by the signature and title of the officer(s) authorized to sign.

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## Instructions for Internal Revenue Service Employees

Complete the Division Executive's name and title depending upon your division.

If you are in the Small Business/Self-Employed Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Compliance Policy; Director, Compliance Services.)

If you are in Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

If you are in Appeals, enter the name and title of the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

2. Cleo Calhoun, the fiduciary as defined under IRC section 4975(e)(3) of the Austin Corporation Profit Sharing Plan, borrows money from the profit sharing plan on 5/1/99 - \$2.5 million to be exact. (The Form 5500 for the 199908 plan year is under examination. Gertrude, the revenue agent, determines the loan is a prohibited transaction. Cleo is a calendar year taxpayer. Calculate the statute dates for all years for which a Form 5330 is due, assuming the date is August 1, 2002. Assume all Forms 5500 were timely filed and the PT was sufficiently disclosed on the Forms 5500. The transaction has not been corrected to date.

If a Form 872 were required to extend the statute that expires on 3-31-03, what name(s) and period should be reflected on the Form 872?

## PROCEDURAL ITEMS

1. The Form 895 is used by the group manager to notify the agent of those assigned returns where the period of limitations will expire within \_\_\_\_\_.
2. The Form 895 should be returned by the agent to the manager within \_\_\_\_\_ days to confirm notification of receipt of the Form 895.
3. List the only three items that may be used to verify the statute expiration date for TEQMS purposes for a Form 5500 (Standard Element 7C):
4. When may one Form 872 be used to obtain consents for more than one taxable year?
5. What are the three components to TEQMS Element 1.A, Aspect 3?

## SOLUTIONS TO EXERCISES

### FORM 5500

Calculate the Form 5500 statute date for the following:

1. The plan has a year end of 200012. A Schedule P was filed.

**Answer**

7/31/04

2. The plan has a year end of 200012. No Schedule P was filed, but the trustee signed the Form 5500 and is indicated as such. There is sufficient data on the return to calculate the tax liability of the trust.

**Answer**

7/31/04

3. The plan has a year end of 200012. No Schedule P was filed. The trustee signed the Form 5500 and is indicated as trustee on the Form. There is not sufficient data on the return to calculate the tax liability of the trust.

**Answer**

Has **not** started.



**CODE SECTION 644**

You are examining the Douglas Corporation Profit Sharing Plan that has a year end of 200011. During the audit, you determine that the plan is not qualified under IRC section 401(a) and does not qualify for a closing agreement. Your only option is to disqualify the plan retroactively to December 1, 1996. You further determined that as of today's date of February 1, 2002, the plan remains disqualified. The plan has not regained its qualified status. The plan has been in effect since December 1, 1994. Douglas Corporation's tax year is the calendar year.

- a. List all qualified and nonqualified trust years.

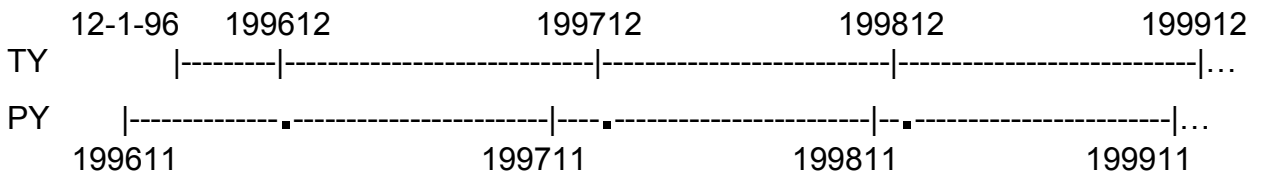
**Answer**

Qualified Years	Nonqualified Years
199511	199612 - (Short tax year of one month - IRC section 644)
199611	199712 – (And each calendar year thereafter until plan either regains qualified status or terminates and distributes assets)

- b. Calculate the statute of limitations for each year. Assume the Form 5500 returns were timely filed with Schedule P attached.

**Answer**

Tax Year	Plan Year within which last day of tax year falls	Due Date of timely filed Form 5500	SOL Expiration Date
199612	199711	6-30-98	6-30-01
199712	199811	6-30-99	6-30-02
199812	199911	6-30-00	6-30-03



- – Indicates PY within which the TY falls.

- c. If today's date were February 14, 2002, for what year or years would you obtain extensions?

**Answer**

199712

- d. For all other years, why would you NOT secure extensions?

**Answer**

199612 – The SOL has already expired.

199812 and later – There is still enough time on the SOL such that extensions are not necessary.

- e. Complete the appropriate Form(s) 872 for the year or years for which you would secure an extension. Forms 872 are provided in the following pages. You may not need all of the Forms 872 provided. Be sure to review each form before filling them out to ensure you are using the correct form. The following additional information may be helpful for completing the form(s):

Douglas Corporation's address –

125 Douglas Boulevard, Suite E;  
San Antonio, Texas 78000

Douglas Corporation EIN – 90-1234500  
Douglas Corporation Profit Sharing Plan Trust EIN – 90-2345600

Reminder: For the new "Expiration date" on the Form 872, be sure to follow the 180 days/one year requirements as outlined in IRM 4.71.9.2(6).

Douglas Corporation Profit Sharing Plan Trust  
*(Name(s))*

Taxpayer(s) of 125 Douglas Boulevard, Suite E; San Antonio, Texas 78000  
*(Number, Street, City or Town, State, Zip Code)*

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal Income tax due on any return(s) made by  
*(Kind of tax)*

For the above taxpayer(s) for the period (s) ended December 31, 1997

May be assessed at any time on or before October 31, 2003 . However, if  
*(Expiration date)*

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

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YOUR SIGNATURE HERE → \_\_\_\_\_  
*(Date signed)*

SPOUSE'S SIGNATURE → \_\_\_\_\_  
*(Date signed)*

TAXPAYER'S REPRESENTATIVE SIGN HERE → \_\_\_\_\_  
*(Date signed)*

TRUST NAME Douglas Corporation Profit Sharing Plan Trust

TRUSTEE(S) SIGN HERE	<input checked="" type="checkbox"/> _____ <i>(Title)</i>	<input checked="" type="checkbox"/> _____ <i>(Date signed)</i>	<input checked="" type="checkbox"/> _____ <i>(Date signed)</i>
	<input type="checkbox"/> _____ <i>(Title)</i>	<input type="checkbox"/> _____ <i>(Date signed)</i>	<input type="checkbox"/> _____ <i>(Date signed)</i>

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

Carol D. Gold	Director, Employee Plans
<i>(Division Executive Name – see instructions)</i>	<i>(Division Executive Title – see instructions)</i>

BY \_\_\_\_\_ EP Group Manager, 0516 \_\_\_\_\_  
*(Signature and Title)* *(Date signed)*

*(Signature Instructions are on the back of this form)*

Catalog Number 20755I

Form 872 (Rev. 1-2001)

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## Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for gift tax and the donor and the donor's spouse elected to have gifts to third persons considered as made one-half by each, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

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If this consent is for Chapter 42 taxes, a separate Form 872 should be completed for each potential disqualified person, entity, or foundation manager that may be involved in a taxable transaction during the related tax year. See Revenue Ruling 75-391, 1975-2 C.B. 446.

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## Instructions for Internal Revenue Service Employees

Complete the Division Executive's name and title depending upon your division.

If you are in the Small Business/Self-Employed Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Compliance Policy; Director, Compliance Services.)

If you are in Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

If you are in Appeals, enter the name and title of the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

## FORM 5330, OTHER THAN PROHIBITED TRANSACTIONS

1. The Amarillo Company Defined Benefit Pension Plan has a plan year ending December 31<sup>st</sup>. It terminated on July 31, 2000, and a reversion of plan assets occurred on September 15, 2000. The corporation that received the reversion has a year end of October 31<sup>st</sup>.

Which Code section applies?

**Answer**

4980

When is the Form 5330 due?

**Answer**

10/31/00

What is the statute date if the Form 5330 is filed timely?

**Answer**

10/31/03

What is the statute date if the Form 5330 is filed on 12/31/00?

**Answer**

12/31/03

What is the statute date if the Form 5330 is not yet filed?

**Answer**

Not yet started.

2. Mr. Parker is the CEO of Essex, Inc. Essex, Inc., a calendar year taxpayer, maintains a money purchase plan which has a plan year end of 6/30. Due to the shortage of funds, the company last funded and met the funding requirements of the plan for 199406. As of today's date, no Forms 5330 have been filed. Nor have contributions been made to the plan. Mr. Parker would like to fund the plan and file and pay all excise taxes due. Since this is not his area of expertise, he comes to you for help.

Which Code section applies?

**Answer**

4971

When were/are the Forms 5330 due?

**Answer**

By the later of the last day of the 7th month after the end of the employer's tax year or 8½ months after the last day of the plan year that ends with or within the employer's tax year, or 7-31-96 and on. (The first year that had a funding deficiency was 199506.)

What are the statute dates on each of the Forms 5330?

**Answer**

Essex, Inc. has not filed yet. Therefore, statutes have not started running.

3. Vance, Inc., 50 West Alpine Street, Philadelphia, Pa. 11111, experienced a windfall in profits for its tax year ending April 30, 1999. As a result, Ms. Taylor, the president of Vance, Inc. decided to shelter some of the excess profits in the Vance, Inc. Pension Plan, which has a plan year end of 9/30. Wanting to do what is right, upon discovering that excise tax is due on nondeductible contributions to qualified plans, Ms. Taylor decides to file the required Form 5330. Vance, Inc.'s EIN is 90-222222 and Ms. Taylor's SSN is 000-00-3333.

Which Code section applies?

**Answer**

4972

When is the Form 5330 due?

**Answer**

11/30/99, the last day of the 7<sup>th</sup> month after the end of the **TAX YEAR** of Vance, Inc.

What is the statute date if the Form 5330 is filed timely?

**Answer**

11/30/02

Upon your review of the filed Form 5330, you determine that the return should be audited. Furthermore, after discussing the case with your manager, it was decided that you should solicit a Form 872 to extend the statute to February 28, 2003. Complete the Form 872 on the next page.

Vance, Inc  
 (Name(s))

Taxpayer(s) of 50 West Alpine Street, Philadelphia, Pa. 11111  
 (Number, Street, City or Town, State, Zip Code)

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal Excise tax due on any return(s) made by  
 (Kind of tax)

For the above taxpayer(s) for the period (s) ended April 30, 1999

May be assessed at any time on or before February 28, 2003. However, if  
 (Expiration date)

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

**MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.**

YOUR SIGNATURE HERE → \_\_\_\_\_ (Date signed)

SPOUSE'S SIGNATURE → \_\_\_\_\_ (Date signed)

TAXPAYER'S REPRESENTATIVE SIGN HERE → \_\_\_\_\_ (Date signed)

CORPORATE NAME Vance, Inc.

CORPORATE OFFICER(S) SIGN HERE	<input checked="" type="checkbox"/> _____ (Title)	<input checked="" type="checkbox"/> _____ (Title)	<input checked="" type="checkbox"/> _____ (Date signed)
	<input type="checkbox"/> _____ (Title)	<input type="checkbox"/> _____ (Title)	<input type="checkbox"/> _____ (Date signed)

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

Carol D. Gold Director, Employee Plans  
 (Division Executive Name – see instructions) (Division Executive Title – see instructions)

BY \_\_\_\_\_ EP Group Manager, 0516 \_\_\_\_\_  
 (Signature and Title) (Date signed)



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## Instructions

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The signature and title line will be signed and dated by the appropriate authorized official within your division.

**FORM 5330, PROHIBITED TRANSACTIONS**

1. Alpine Corporation of 117 Duval Street, Hollywood, Ca. 55525, having a little cash flow problem, sold its corporate Malibu beach property to the Alpine Corporation Defined Benefit Pension Plan for three million dollars on February 5, 1999. You were assigned and are auditing the 9909 Form 5500. You determine that the transaction results in a Prohibited Transaction. Alpine Corporation timely files all Forms 5500 and has a tax year end of December 31<sup>st</sup>. Calculate the statute date for the 1999 and 2000 tax years if the transaction was adequately disclosed on the Form 5500. Alpine Corporation's EIN is 10-0000000. William Grand is the President and majority shareholder of Alpine Corporation.

**Answer**

<b>Tax Year</b>	<b>Date of Transaction</b>	<b>Plan year in which PT occurred</b>	<b>Due date of Form 5500</b>	<b>SOL Expiration Date</b>
<b>199912</b>	<b>2-05-99</b>	<b>199909</b>	<b>4-30-00</b>	<b>4-30-03</b>
<b>200012</b>	<b>1-01-00</b>	<b>199909</b>	<b>4-30-00</b>	<b>4-30-03</b>

Assume that the date is now on or around March 15, 2003, and you expect the agreed case to close out of the group on or around July 1, 2003. After discussing the matter with your manager, you decide to solicit statute extensions. Complete the Form 872 found on the next page.

If, rather than auditing the 199909 Form 5500, you were auditing the 200309 Form 5500 in May of 2004, would you recommend to your manager that statute extensions be solicited for this transaction? Why or why not?

**Answer**

No. The sale of the property is a discrete act. Even though the excise tax is imposed annually, there is only one period of limitations applicable to all the tax attributable to the discrete act. Therefore, extensions must be secured by 4-30-03. Otherwise, the statute for that and all subsequent years has already expired.

If the transaction was not adequately disclosed on the Form 5500, what are the statute dates?

**ANSWER**

The 6 year SOL applies — therefore 4-30-06

Alpine Corporation  
(Name(s))

Taxpayer(s) of 117 Duval Street, Hollywood, Ca. 55525  
(Number, Street, City or Town, State, Zip Code)

and the Commissioner of Internal Revenue consent and agree to the following:

(1) The amount of any Federal Excise tax due on any return(s) made by  
(Kind of tax)

For the above taxpayer(s) for the period (s) ended December 31, 1999 and December 31, 2000

May be assessed at any time on or before January 15, 2004. However, if  
(Expiration date)

a notice of deficiency in tax for any such period(s) is sent to the taxpayer(s) on or before that date, then the time for assessing the tax will be further extended by the number of days the assessment was previously prohibited, plus 60 days.

(2) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 months after this agreement ends.

**MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.**

YOUR SIGNATURE HERE → \_\_\_\_\_ (Date signed)

SPOUSE'S SIGNATURE → \_\_\_\_\_ (Date signed)

TAXPAYER'S REPRESENTATIVE SIGN HERE → \_\_\_\_\_ (Date signed)

CORPORATE NAME Alpine Corporation

CORPORATE OFFICER(S) SIGN HERE	→	<u>X</u>	→	<u>X</u>	→	<u>X</u>
		(Title)		(Title)		(Date signed)
						(Date signed)

**INTERNAL REVENUE SERVICE SIGNATURE AND TITLE**

Carol D. Gold Director, Employee Plans  
(Division Executive Name – see instructions) (Division Executive Title – see instructions)

BY EP Group Manager, 0516  
(Signature and Title) (Date signed)

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## Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for gift tax and the donor and the donor's spouse elected to have gifts to third persons considered as made one-half by each, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for Chapter 41, 42, or 43 taxes involving a partnership or is for a partnership return, only one authorized partner need sign.

If this consent is for Chapter 42 taxes, a separate Form 872 should be completed for each potential disqualified person, entity, or foundation manager that may be involved in a taxable transaction during the related tax year. See Revenue Ruling 75-391, 1975-2 C.B. 446.

If you are an attorney or agent of the taxpayer(s), you may sign this consent provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.

If you are acting as a fiduciary (such as executor, administrator, trustee, etc.) and you sign this consent, attach Form 56, Notice Concerning Fiduciary Relationship, unless it was previously filed.

If the taxpayer is a corporation, sign this consent with the corporate name followed by the signature and title of the officer(s) authorized to sign.

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## Instructions for Internal Revenue Service Employees

Complete the Division Executive's name and title depending upon your division.

If you are in the Small Business/Self-Employed Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Compliance Policy; Director, Compliance Services.)

If you are in Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

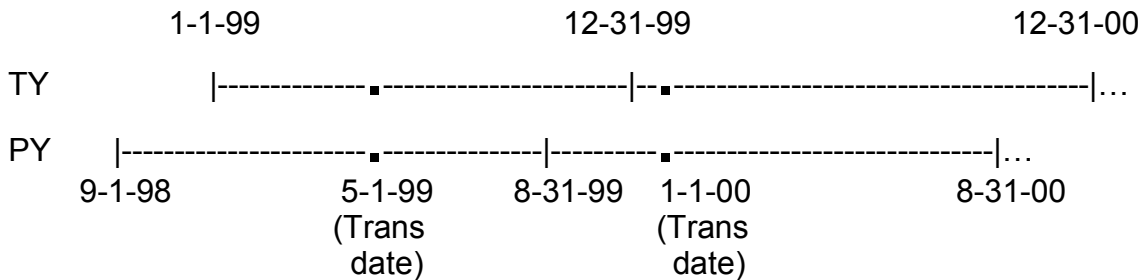
If you are in Appeals, enter the name and title of the appropriate Director, Appeals Operating Unit.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

2. Cleo Calhoun, the fiduciary as defined under IRC section 4975(e)(3) of the Austin Corporation Profit Sharing Plan, borrows money from the profit sharing plan on 5/1/99 - \$2.5 million to be exact. (The Form 5500 for the 199908 plan year is under examination. Gertrude, the revenue agent, determines the loan is a prohibited transaction. Cleo is a calendar year taxpayer. Calculate the statute dates for all years for which a Form 5330 is due, assuming the date is August 1, 2002. Assume all Forms 5500 were timely filed and the PT was sufficiently disclosed on the Forms 5500. The transaction has not been corrected to date.

**Answer**

Tax Year	Date of Transaction	Plan year in which PT occurred	Due date of Form 5500	SOL Expiration Date
199912	5-01-99	199908	3-31-00	3-31-03
200012	1-01-00	200008	3-31-01	3-31-04
200112	1-01-01	200108	3-31-02	3-31-05
200212	1-01-02	200208	3-31-03	3-31-06



Note: Cleo is required to file a Form 5330 for the tax year ending 200212. The PT has not been corrected as of August 1, 2002. The return is not due, however, until July 31, 2003. If Cleo does not wish to file the form early, Gertrude's report should indicate that a Form 5330 is due in July of 2003.

If a Form 872 were required to extend the statute that expires on 3-31-03, what name(s) and period should be reflected on the Form 872?

**Answer**

Name: Cleo Calhoun  
Period ended: December 31, 1999

## PROCEDURAL ITEMS

1. The Form 895 is used by the group manager to notify the agent of those assigned returns where the period of limitations will expire within 210 days.
2. The Form 895 should be returned by the agent to the manager within 10 days to confirm notification of receipt of the Form 895.
3. List the only three items that may be used to verify the statute expiration date for TEQMS purposes for a Form 5500 (Standard Element 7C):

### Answer

An EMFOL-T print  
An Employee Plans Classification Sheet  
An original filed return from the Service Center

4. When may one Form 872 be used to obtain consents for more than one taxable year?

### Answer

When the taxpayers and restricted issue(s) are identical in the years covered and the date to which the extensions are made is the same for all years covered.

5. What are the three components to TEQMS Element 1.A, Aspect 3?

### Answer

Verification of the date the controlling return was filed.  
Pre-audit analysis to ascertain the proper statute expiration date.  
Documentation in the case file reflecting the preceding two requirements.