Transcript for Form 5330

Note - Any federal tax advice contained in this transcript is intended to apply to the specific situation described and should not be considered official guidance independent of the presentation. The tax advice and statements contained herein should not be relied upon for retirement planning purposes without first consulting a tax or retirement planning professional. This transcript has been edited for technical accuracy and may differ slightly from the audio recording of the Form 5330 phone forum. This information is current as of March 24, 2011. Since changes may have occurred, no guarantees are made concerning the technical accuracy after that date.

Moderator: Welcome to the Form 5330 Phone Forum. At this time, all participants are in a listen-only mode. As a reminder, today's conference is being recorded. I would now like to turn the conference over to your host, Ms. Anita Bower. Please go ahead.

A. Bower: Hello everyone. I'm Anita Bower from IRS Employee Plans Customer Education and Outreach. Welcome to our Form 5330 Phone Forum. Today, we'll be hearing from the following Employee Plans personnel: Betty McClernan, Examinations Programs and Review Area Manager; Carla Smith, Compliance Unit Manager; Sherry Whitaker, Submission Processing Programs Manager; and David Boyd, Examinations Mandatory Review Manager.

I would like to point out a couple of things before we start. Everyone registered for this forum will receive a certificate of completion by e-mail approximately one week after the forum. You must attend the entire live forum to receive a certificate. Enrolled agents, enrolled retirement plan agents, and enrolled actuaries are entitled to continuing education credit for this session. Other types of tax professionals should consult their licensing organization to see if this session qualifies for continuing professional or educational credit.

I also want to point out our two free electronic newsletters. You can subscribe to these newsletters, or view the current archived edition, by visiting www.irs.gov/retirement. The link for newsletters is in the left- hand navigation bar. The two newsletters are the *Retirement News for Employers* for small employers sponsoring a retirement plan and the *Employee Plans News* for retirement plan professionals.

Without further delay, here are our speakers.

B. McClernan: Thank you. My name is Betty McClernan, the Area Manager, Employees Plans Examination Programs and Review. I would like to also welcome you to this presentation. We have a group of presenters who represent the processing of Form 5330 from the campus and field perspective. This presentation is intended to provide a general overview of the Form 5330 processing and suggestions for making the filing of the forms flow more smoothly. We received a number of questions ahead of today's phone forum and have worked the answers to some of them right into the presentation. We will also include a brief session at the end of our presentation to address some other questions.

As with any presentation, please note that the comments expressed by each speaker should not be considered official guidance, independent of this presentation. Any statement should not be relied upon for retirement planning purposes without first consulting a tax or retirement planning professional.

I would now like to turn the presentation over to Sherry Whitaker.

S. Whitaker: Hi. This is Sherry Whitaker. I am the manager of the Submission Processing Program. I'd like to share with you some tips when preparing your Form 5330s to prevent any unnecessary delays in processing of your form or you receiving any additional correspondence from missing or incomplete information. If you have a 5330 in front of you, and would like to follow along with me, we will be covering the entity information.

Item number one would be item A on the form, name and address of the filing. This is pretty self-explanatory

Item B: Filer's Identification Number. This is where you would enter your nine-digit employer identification number, the EIN, which is assigned to the plan sponsor employer, entity, or the individual on whom the tax is imposed. The identification number of an individual, other than the sole proprietor with an EIN, is his or her social security number, referred to as the SSN. The identification number of all others is their EIN. This is one of the highest error rates that we see when processing a Form 5330, the information is either left blank, or the SSN and the EIN is mixed up and reported in the incorrect box.

Item C: Name of plan. This also is self-explanatory. However, if a plan covers only the employees of one employer, enter the employee's name or enough information to identify the plan.

Item D: Name and address of the plan sponsor. This is self-explanatory; however, ensure that you include the suite, room, or other unit numbers after the street number.

Item E: Plan sponsor's EIN. Enter the nine-digit EIN assigned to the plan sponsor.

Item F: Plan year ending. The plan year ending means, the calendar or fiscal year on which the record of the plans are kept.

Item G: Plan number. Enter the three-digit number that the employer or the plan administrator has assigned to the pan. This is one of the highest elements that causes delay or additional correspondence. If the plan number is not provided or provided and is invalid, it will cause a delay, additional correspondence, and a possibility of an incorrect posting.

Item H: Amended return. This is self-explanatory, but very key if you are amending your return.

Filer signature: To reduce the possibility of correspondence and penalties, please sign and date the form. This is the second highest error rate that has been identified in processing. If you do not sign the return, the filing will be suspended, and you will receive additional correspondence requesting a signature.

On page 2 of the Form 5330, it is also asking for preparer's SSN or PTIN. For all Form 5330s filed in year 2011, we are asking that you provide the PTIN if you have one available. If you need additional questions or information concerning the IRS PTIN, please contact the information center at (877) 613-7846.

I would like to thank you for your time and turn it over to Carla.

C. Smith: Good afternoon. My name is Carla Smith. I'll be discussing some issues that we have found while running some projects in the EP Compliance Unit, involving the review of Forms 5330 returns.

The first project I'll discuss involves returns filed to reflect tax under Internal Revenue Code Section 4975, which are excise taxes on prohibited transactions. This project started in 2005, and it ended in 2009. Prohibited transactions encountered in this project originated from a variety of dealings. These included late deferrals, improper loans or investments, improper distributions, excess or improper compensation paid to disqualified persons for services, and other similar items.

Internal Revenue Code Section 4975, and the related income tax regulations, imposes excise taxes on certain events defined as prohibited transactions or PTs, which involve employee benefit plans. PT's involve plan assets and certain persons with responsibility for those assets, have ownership, or hold officer positions for the plan sponsors for certain highly compensated employees. This action requires an initial excise tax—currently at the rate of 15%—on the value of direct and indirect transfers or uses of plan assets between the plan and disqualified persons. The code requires correction of prohibited transactions. Failure to correct the PT could cause a second tier of excise tax to apply, which equals 100% of the amount involved.

Now, some common errors we discovered through working this 5330 project include the following: an incorrect determination of discrete versus continuing transactions. For every prohibited transaction, you need to determine if it is discrete or continuous in nature. This affects how the excise tax is calculated. There are some statutory exemptions for items such as leasing of office space, participant loans, qualifying employer securities, and certain pooled investments on transactions.

Discrete transactions are a single act or a one-time occurrence such as the sale of property or a non-cash contribution for plans subject to the minimum funding rules under Section 412 such as the contribution of a bus to meet funding obligations. Continuing transactions are of an ongoing or recurring nature such as a loan, extension of credit, or a lease. 401(k) deferrals contributed late to the plan are treated as loans as long as there are no self-sealing violations under Section 4941.

We also found errors where the amount involved was overstated because the entire deferral dollar amount was used instead of the lost earnings or interest amount. This greatly overstates the amount of tax due. The amount involved, generally, is the greater of the fair rental value—or in the case of a loan, fair interest rate—or the amount paid for such use. The fair market value is determined at the time the PT occurs, including each pyramiding year. Whereas for purposes of the 100% tax, the fair market value is the highest fair market value during the entire taxable period.

For a loan, the amount involved is the value of the use of the money, and not the entire loan amount. The amount involved is determined by applying the greater of the stated interest rate or the fair market value. The fair market value rate to be used is the highest rate at any time during the taxable period, and generally, this is from the date the transaction occurs until the date of correction.

Methods of determining the fair market value include the interest rate available from local banks, property values from real estate agents, car dealers, and independent third-party appraisals from engineers or economists. The amount involved for a discrete transaction is the same for each year during the entire taxable period. It is not prorated for corrections occurring during the year. The Form 5330 is due for each year the transaction remains outstanding as of the first day of the taxable period, and ending when the PT is corrected or the statute of limitations expires.

The excise tax is computed based on the entire amount involved. In contrast, the amount involved for a continuing transaction is prorated from the beginning of the taxable period to the date of correction. For example, where deferrals were contributed one month late, the amount of interest calculated on the total dollar amount of late deferrals is calculated for the one-month period, and not calculated for the entire year.

Also, in a continuing transaction, a new transaction is deemed to occur on the first day of each subsequent taxable year or portion of a year. This is also known as pyramiding. This amount is reported and taxed in the originating year, and again in each subsequent year, until the originating transaction is corrected, or the statute of limitations expires. If repayments are being made, as in the case of a loan, the amount involved calculation is based on the outstanding principle on the date that the transaction occurred or is deemed to occur.

The use of unreasonable rates of interest was another error we found. The interest rate for underpayments described in Section 6621(a)(2) on the date of the prohibited transaction is considered an appropriate rate to use in calculating the amount involved. We also saw incorrect pyramiding of the tax, where either there was no pyramiding for continuing transactions, or incorrect dollar amounts were used, or not all of the deemed transactions were included in the calculations.

There were also errors in the correction method used, where inadequate dollar amounts were contributed to the plan or it was corrected late and an additional Form 5330 was due. Correction means to undo or unwind the transaction to the extent possible to restore the plan to the same condition as it was before, or in a financial position that is not worse.

The Internal Revenue Code and Regulations under Section 4975 were modeled after the private foundation self-sealing provisions of Section 4941. Therefore, additional guidance is contained in Treasury Regulation Section 53.4941, General Counsel Memorandum numbers 38862, 38279, and 39475, and Treasury Regulations 141.4975-13 all provide additional information. We have included in the handouts Revenue Ruling 2006-38, which provides an example of the excise tax calculation involving late deferral deposits. It is located on page 80 of the bulletin that was sent out as part of your handout. The Revenue Ruling is currently posted on the EP Phone Forum Web page, individually.

Now, we'll review the sample Form 5330 for the section 4975 excise tax. You will begin by making sure that the tax year is completed at the top. Fill in all the entity information that we've already gone over in items A through G. For a prohibited transaction, you would enter the amount of the tax on line 3a. For this example, we have a prohibited transaction that involves the sale of new real estate between an owner of a company and the plan. The property is valued at $100,000 with a 15% amount of excise tax, which would equal $15,000. That would be placed on item 3a, and again 7 under Part I on the return. Then on page 2, it would also be entered on items 17 and 19 in Part II, where the tax is due. Please remember to sign the return and paid preparers should complete that section as appropriate.

Then you would also go to page 4 under Schedule C, item 1; you need to check whether it's discrete or other than discrete. In this situation, it's a discrete transaction, so item 1a is checked. Then under section 2, row (i), you can see where the columns have been completed. Column (b) involves the date of the transaction; (c) involves a description of the PT; (d) involves the amount involved, which is $100,000; and (e) is the initial tax of $15,000. That amount is also reflected under item 3, toward the bottom of the page. Item 4 indicates whether you have corrected the PT or not. If you have corrected it—in this case we indicated yes—but if you have not corrected the transaction, you should attach a statement.

Then on page 5, we continue with the description of the correction. Under item 1, column (b), we show the name and the address of the disqualified person. Column (c) has the EIN, or in this case, social security number. Item (d) is the date of correction, and item (e) is a description of the correction.

Now we will move on to projects that the unit has run involving Section 4971 excise taxes, which are under the minimum funding rules. This project began in 2005 and is currently active. Section 4971(a) provides an excise tax in the case of a single employer plan at the rate of 10% of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of the plan year ending with or within the taxable period. Section 4971(b) provides an additional excise tax of 100%, which applies to the applicable minimum funding requirements that remain unsatisfied for a certain period of time.

Common errors that we discovered during this project include incorrect minimum funding contribution due dates where people misunderstood that they can make contributions up to eight and a half months after the end of the plan year. For a calendar plan year, the due date would be September 15th. These contributions can be considered towards meeting your minimum funding requirements.

We also found where accumulated funding deficiencies were reported for a single year, when additional deficiencies remaining uncorrected from other years were not included. We also found where the excise tax return was filed late. The return is due seven months after the end of the employer’s tax year or eight and a half months after the last day of the plan year that ends with or within the filer’s tax year.

Now we’ll look at the example of the 5330 completed for section 4971 excise tax. Again, the tax year and the entity information need to be completed at the top. Then under Section B, item 8a, you would put the amount of the tax. In this situation, we have a funding deficiency of $100,000. Ten percent of the tax would be $10,000. That would be completed under item 8a, and again under item 12. If you turn to page 2, that dollar amount would also be reflected under Part II, item 17 and item 19. Again, please remember to sign the return and paid preparers complete that section as appropriate.

Then you would also need to turn to page 5 of the return and complete Section D, applying to failure to meet the minimum funding standards. Item 1 would be completed with the amount of the unpaid required contribution or accumulated funding deficiency—in this case, $100,000. Item 2 indicates the amount multiplied by 10%. Five percent for multiemployers, this is a single-employer plan. So it is $10,000. That completes the review for that plan.

Now the next project I will discuss is currently being run in the Employee Plans Compliance Unit, and it involves the review of Forms 5330 that were filed for the section 4979 excise tax. This excise tax is a 10% tax on certain excess contributions made on behalf of highly compensated employees. The employer would be subject to this tax, involving a cash or deferred arrangement enacted with a plan. Excess contributions and excess aggregate contributions are those defined under section 401(k)(8), 408(k)(6), 501(b)(18), and 401 (m)(6).

Some common errors that we discovered include using a method which differs from the plan document. The plan must state whether the prior year or current year method will be used in calculating the average deferral percentage (otherwise known as ADP) or average contribution percentage (otherwise known as ACP) testing. These tests are defined under sections 401(k)/401(m) of the Code and the related regulations.

We have found situations where a method was used which differed from the method indicated in the plan document We also found incorrect highly compensated employees (HCE's) and non-highly compensated employees (NHCE's) classifications. Section 401(k) (5) indicates that the term highly compensated employee is defined under Section 414(q). Generally, this includes 5% owners and those earning certain amounts of compensation. When reviewing the payroll records, we found employees that were misclassified. This changes the numerical results of the ADP/ACP testing, which subsequently changes the amount of tax that needs to be reflected on the Form 5330.

We also found where eligible employees were excluded from the testing. The eligible employees that terminated during the plan year and those employees not participating were incorrectly excluded from the testing. So you need to remember that even if somebody has opted to not make the deferral, if they're eligible, they still need to be included in the ADP/ACP testing. We also found where certain plans incorrectly maintained qualified cash or deferred arrangements. These include defined benefit plans, which are not permitted to have a CODA.

We also found where excise tax returns are filed reflecting 4979 excise tax for multiple tax years. A separate Form 5330 is due for each applicable tax year. We also found where the 10% excise tax calculation was incorrectly made after considering earnings and losses on the initial amount of the excess contribution and excess aggregate contributions. This is not correct.

Now we'll review a sample from the 5330, 4979 excise tax. Again, you complete the tax information at the top of the form, along with the entity information. Now we'll look to section C at the bottom of page 1, item 13; that would reflect the amount of tax that is due. Now in this situation, we have $16,853 as the amount of excess contributions and excess aggregate contributions for the plan. So the 10% tax amount is entered on items 13, of page 1, and then on page 2, Part II, under Tax Due item 17 and 19 would include the amount $1,685. Again, remember to sign the return, and paid preparers complete that section accordingly.

Then you would turn to page six, and under Schedule H, Tax on Excess Contributions to Certain Plans, you would complete that section. Item 1 contains the amount of the total excess contributions under the cash or deferred arrangement—in this situation, $16,853. Item 2 contains the amount of tax, which is 10%, and that amount, $1,685, should be entered there.

This concludes the discussion of the issues that we have found in the projects run by the EP Compliance Unit. Now, we'll hear some information in case you're contacted by the campus. Thank you.

S. Whitaker: We'd like to now go over some of the common errors that have been identified when processing of the Form 5330 received at the Ogden campus. Some of the common errors that have been identified are when you are using a single Form 5330 to report two or more excise taxes that do not have the same filing due date. Excise taxes with different due dates cannot be filed on the same form 5330.

Math error or incorrect calculations or incorrect or incomplete returned: Schedule C has a higher rate of incomplete information when filed. Another common error is when using an older version of the Form 5330. Always use the current version, no matter what your filing tax year. The current version available is April 2009.

Some of the notices and letters that you could receive as a follow up to the incorrect Form 5330 would be a Letter 3938C. This is general sent when the signature is missing, or when the form does not identify the type of prohibited transaction for which the Section 4975 tax applies. Or when the filing does not show the date of the Section 4975 prohibited transaction, or when the filing does not indicate the calendar year in which Section 4977 excise fringe benefits were paid, or when the form does not report the date of the reversion of the qualified plan assets for the Section 4980.

Another letter that you may receive would be the 3875C. This is generated when the EIN is missing or incomplete. The CP116 Notice is a math error notice and is generated when there is a balance due on the return.

When you receive notices and letters as a follow up to your filing, it is strongly suggested that you call the number provided on the notice or letter, (877) 829-5500, to resolve the problem or clarify any questions that you may have.

I will now turn the time over to David Boyd.

D. Boyd: Thank you, Sherry. I'm David Boyd. I'm the manager of EP Mandatory Review, and what I want to do is go over some questions that have been submitted by the attendees prior to this conference. I have seven questions to go over. There are some additional questions that came in and from my review of them, it looks like the answers to those questions are going to be included in the answers to these questions.

We also had some additional questions that came in after I posted these, and I'm going to make sure that we get those questions answered also. So we will make sure that when all the answers to the question are posted, they're going to include not only these seven, but also the additional ones that came in after the 18th. So I just wanted to give you all a heads up on that.

I want to start off by saying just to make sure you all understand, as Betty commented earlier, my responses do represent my personal views based on my understanding and interpretation of the questions as they were submitted, and they do not constitute an official view of the IRS and should not be considered as such. What I want to do here is, to start off, I'm going to go ahead and read the questions, and then go through an answer—the answer that I prepared. One thing also, if you have a Form 5330, a blank one, handy, you might want to pull it out for question study because I am going to be referring to that quite a bit.

Question number one is as follows: "I have a question about Form 5330: Reporting the delay for admittance of participant's contributions and loan repayments. Please consider the following hypothetical. So $10,000 in participants contributions and loan repayments, which should have been remitted to a 401(k) plan's trust on January 1, 2010, but they were not remitted until March 1, 2010. Then the employer deposited to related lost earnings based on the Department of Labor's online calculator on June 1, 2010.

I have interpreted Revenue Ruling 2006-38 as follows: the excise tax on the $10,000 is calculated from January 1, 2010 until June 1, 2010. That is because June 1, 2010 is the date on which the issue had been fully corrected. As of that date, contributions and all lost earnings thereon have been remitted to the plan's trust. However, I have recently run into professional firms that have counsel who have said that the excise tax on the $10,000 is calculated from January 1, 2010 until only March 1, 2010, and then one must calculate an excise tax on the lost earnings only, not the $10,000 from January 1, 2010 until June 1, 2010. The excise tax will be higher under my approach. Which approach is correct?"

The answer: This is going to result in two prohibited transactions. This scenario results in the payment of the trust of $10,000 on March 1, 2010, and that ensures that the earnings on the principle from March 1, 2010 to the earnings payment date of June 1, 2010. The trust, however, is not considered whole for the earnings from January 1, 2010 through March 1, 2010, and the earnings on those earnings from March 1, 2010 through June 1, 2010. The earnings become a separate prohibited transaction when not paid on March 1, 2010.

Now in this example, we have two prohibited transactions. The first one results in the late payment of the $10,000. The calculation of that would be the $10,000 times—and we're going to go ahead and use the DOL rate of 4%—and that's going to be for two months. That's going to be from January 1, 2010 through March 1, 2010 or 0.17, and that's going to give you an amount involved of $66.67. Now to calculate the excise tax on that, you're going to multiply that $66.67 times 15%, which is going to result in an excise tax with $10.

You also have, on the lost earnings, a separate prohibited transaction. That's going to be on the amount of $66.67, and we're going to use the same Department of Labor interest rate of 4%. That's going to be over a three month period. That's going to be from March 1, 2010 through June 1, 2010, or 0.25. You multiply that out and it gives you an amount involved of $ 0.67. The $0.67 times 15% is going to give you an excise tax of $0.10. So the entire excise tax for this example is going to be $10.10.

Now there's also a correction that needs to be made, and that was made on June 1, 2010. That's going to be the correction of the $66.67 of earnings on the $10,000, plus the earnings on the earnings. That's going to be another $0.67. So the correction that would be made on June 1, 2010 is going to be $67.34.

Question two talks about lost earnings. It says, "I have a question on how to properly file Form 5330 when lost earnings for late employee contributions pertaining to the 2006 plan year did not get remitted until 2008. For example, if lost earnings for 2006 were $500, would we need to file Form 5330 for 2006, 2007, and 2008—year loss earnings were paid to participants. Would the 2006 Form 5330 include the $500 of lost earnings, while the 2007 Form 5330 includes the $500 plus the $500 interest that was for the second year the prohibited transaction occurred? Any advice would be greatly appreciated. Thank you."

The answer to that—and yes, you would need to file a Form 5330 for each year— 2006, 2007, and 2008. In this situation, the lost earnings would be the amount involved. Even though it wasn't stated here in the question, we're going to go ahead and assume that it was paid off on June 30, 2008 for purposes of this example. In this situation, in the first year of 2006, you're going to have a principle amount of $500. Once again, we're going to assume an interest rate of 5%. We've got an entire year here, so it's going to be $500 x 5%, or $25. That's going to be the amount involved for the first year. Remember also, this is considered a loan. It's a continuous transaction;therefore it's going to be pyramided.

For the second year, you've got the principal amount of $500 plus the $25 from the year before. So you've got a total principal amount of $525. Once again, you multiply this by 5% for the full year, you're going to get an amount involved of $26.25.

Then once again for the third year—for the final year you're going to have $500 plus the earnings amount for the prior two years—$551.25. You multiply that times 5%,, and that's only going to be—remember, we paid this loan off on June 30, 2008. So you're only going to have half a year of interest here. That's going to result in an amount involved of $13.78.
So we can go ahead and do the calculations of the first year excise tax under 4975. For the 2006 year, you have the $25 times 15%, or $3.25. In the 2007 year, you have not only the $25 from the previous year that's pyramided—carried forward—but you also have the current year of $26.25, which gives you a total of $51.25. You multiply that times 15%, and you come up with $7.69 of excise tax.

Then for the 2008 year, you've got the prior two years, so $25 and $26.25, and you also have the half year of interest of $13.78. That gives you a total of $65.03. Multiplying that times 15% would give you a total excise tax of $9.75. So these are going to be the amounts that are going to be shown on each of the returns for those three years.

Question 3: "Please confirm that there is no de minimis exception to the excise tax, the Form 5330 should be filed and the tax paid, regardless of the amount of excise tax due."

The simple answer to that is that there is no site to quote for *de minimis* exception to the excise tax. At this time and in all the years I've been with the IRS, we have not deviated from this stance. There is no de minimis exception to the excise tax, no matter how small it is.

Question 4: For every transaction that's not discovered in time to file the Form 5330 within the seven-month time frame, please confirm that 1) there is nothing to check on the form to indicate a late filing. Two, the appropriate filing procedure is to (i) file as soon as possible, even if late, (ii) report under part ,I 3a or b, even though reported later than the seventh month after the end of the year, and (iii) the IRS will send the taxpayer a bill for any interest and penalties due as a result of the return being filed late.

The answer to question one is that - there is nothing to check on the form to indicate a late filing. That is correct. We will notice that the return is late when the return comes in.

To answer question 2, (i) file as soon as possible even if late. That is correct. (ii) Report under part I, 3a or b even though reported later than the seventh month after the end of the year, and that is also correct. (iii) The IRS will send the taxpayer a bill for any interest and penalties due as a result of the return being filed late. The IRS will send the taxpayer a balance due notice for penalties and any interest as a result of the return being filed late. And that's going to be coming from the Campus.

Question 5: "It would be great if details on how to calculate the amount involved in the prohibited transaction for Section 4975. I have seen situations where the preparers have believed that they can use the same amount that is calculated by the Department of Labor online calculator that a plan sponsor can use to determine lost earnings due to participants when 401(k) deferrals are not timely deposited."

In that situation, I will refer you back to question and answer two, where we went through the calculations for the pyramiding of an excise tax for the three years—for the 2006, 2007, and 2008 lost earnings for late employee contributions.

Question 6 deals again with late deferrals. The question is, "Client had late deferrals. The earnings calculated on that amount totaled $1.70, which is allocated to participant. When it comes to the 5330 though, is there a de minimis amount on what the IRS wants to receive the checks for. When I complete the Form 5330 through our software, it rounds the excise tax on this to zero. So obviously, it's less than a dollar. Does that mean we should file Form 5330, but there would be no check to be sent in?"

As I stated in question three above, there is no site to quote for de minimin exception to the excise tax. In this situation, you have a couple of options. One is you could either manually input the Form 5330 to reflect the proper tax, or you could submit a Form 5330 with zero tax. At that point, the campus has guidelines to correspond for balance due when appropriate. So just keep that in mind, and as I said before, we're not going to open that door up and offer some sort of *de minimis* level at which you don't have to file.

Now question 7 asked, "Please provide an example for late deposits, including deposit for lost earnings. What numbers should be used on the form?"

I'm going to go ahead and refer you back to question and answer one. If you have a 5330, go ahead and pull that out and go to Schedule C, on page four. In this situation, remember, we had late deferrals that were paid, I think, on March 1, 2010. In that situation, if you go to Schedule C, on line 1, and of course this is going to be "other than discrete", which is a lease or a loan. Then on line two, you're going to have the late payment for deferrals, and the amount involved is going to be the $66.67. The tax on that's going to be times 15%—it's going to give you the $10. You're also going to have an entry on there and it has a date of March 1, 2010, and it's going to be the late payment of lost earnings. The amount involved in that is going to be the $0.67. I'm referring back to example one, which is the $66.67 times the interest rate of 4% times 3/12, (three months out of the year). That's going to result in an excise tax of $0.10. So your total excise tax is going to be the $10.10. That's going to put on line 3 of the Schedule C.

Something else that's important with prohibited transactions is that you complete line 4, which is "Have you corrected all of the prohibited transactions that you are reporting on this return?" Now, we're going to assume in this situation that yes they have been. So you're going to check yes, and then you're going to go to line 5.

Line 5 on page 5 of the 5330, you're going to have two entries there. One is going to be the payment of the trust of $10,000 on March 1, 2010, and then you're going to have another entry for the date of correction that's going to be on June 1, 2010. That's going to be the payment to the trust for the loss and the earnings on the earnings. Which was $67.34 .

So once you've completed all this, then we'll go back to Part I of the 5330 in Section A, and you're going to have an entry on 3a of $10.10, and then you're going to have on line 7 the total Section A taxes, which is going to be $10.10. So that's how you need to complete the return for a late deposit, including deposits for lost earnings. And those are the numbers that would show up given example one.

As I said before, we are going to post all these questions and answers and also any other questions that came in late, I'm going to get the answers to those, and we'll post those also.

I'll turn it back over to, I guess at this time, Betty?

B. McClernan: Thank you, David. We have a couple of other questions that we're going to cover that have come in. One of the questions that I would like to direct to Sherry Whitaker is if she could just talk a little bit about the timing issues of processing the 5330s at the campus.

S. Whitaker: Generally, when a Form 5330 is received at the campus, it takes approximately eight to ten weeks for filing to be processed. That's from the time it is received at the door at the campus until it posts to the IRS records, the filing has posted and accounted for. That is if the return is perfect. When I say perfect, I'm saying all of the information provided by the filer is correct and accurate.

If at any time through the processing … additional correspondence or it has to be suspended for additional research for incomplete or invalid information provided, the return could be delayed up to an additional 16 weeks to have that return processed. You can see why it is so critical that even though the small information such as the signature or the plan number be accurate and completed in order to prevent any delays of that Form 5330 being processed or additional correspondence sent to the filer.

B. McClernan: Thank you, Sherry. Carla is going to handle another question, and I would ask Carla to go ahead and jump in.

C. Smith: The question is, "Could you explain why late deposits of employee contributions are considered as a loan, and under the foundation excise tax regulations it covers use of funds or use of money, and that's why it's considered a loan in a continuing transaction instead of a discrete transaction. … also got a question in on the Schedule C asking, "Should it be characterized as loans and be considered other than discrete?" So prohibited transactions to late deferral contributions—as we've already talked about this afternoon—when they're submitted to the plan, the Schedule C, the line number 1, yes. It does have to characterize those late deferral deposits as other than discrete. So you would check that line item there too.

Back to you Betty.

B. McClernan: Thank you. This was the follow up on a question that David spoke about. David, this was the one where the system was automatically rounding it to zero. Someone has followed up with a question that says, "Well if they were to go ahead and round it up to a dollar, does the service have a problem with that?"

D. Boyd: I would not think so. I don't think anybody's going to have a problem with rounding up. Nobody's going to send something back to you if you round it up. If that's the simplest thing for you to do for your system, that shouldn't be a problem, but there again, I think Sherry may want to address this situation as far as the tolerances are concerned —if that's within tolerance they shouldn't cause a problem as far as ….

S. Whitaker: And David, you are correct. When you talk about rounding either up or down, that will not trigger a notice or a letter to generate out.

B. McClernan: One other situation that I know that we faced quite often in the service that I want to throw out to ask for some opinions as to how best to process this. This deals with the situation where the taxpayer or the practitioner is actually already dealing with an Employee Plans agent, there is an ongoing examination of a plan, and it is determined that a 5330 is due—for whatever section it happens to be due for. But is there a recommendation as to whether it is more beneficial for the taxpayer rep to make sure that they provide the 5330 to the agent—and the processing begins that way. Or is there any problems if they were to send in the 5330 directly to the campus? Which preferred method would we recommend to someone in that situation?

David, I'll ask you to take a stab at that one.

D. Boyd: Yes. I'll take a stab at that one. I think, I know as a field agent you would like to be at least—if the practitioners are going to file directly with the service center, which is okay, at least give the agent a heads up as soon as you're done and a supply the agent with a copy of the return that you submitted. The agent would really prefer that you submit it through them so they can have better control over it and go ahead and process it through the Campus. But either way, it would be acceptable as long as the agent has been informed as soon as you file that return with the Campus, and like I said, make sure that they have a copy of what you filed for their records. So they can make sure that it's properly posted. Another thing that the agent can do—if you submit the return to the agent, the agent can look it over and make sure it's accurate. It's just another check. So that might be beneficial to go ahead and file it straight with the agent out on the audit.

C. Smith: I would also like to add that in the projects run by the EP Compliance Unit, we do require that some … be submitted to the person on the letter. So we do request that those come into our units instead of going directly to the service center. That way we can fix any entity information or errors that we may see on the return before it … for submission.

B. McClernan: Thank you all. One last thing I'd like to mention is that additional information can also be found at irs.gov—on 5330. You would go to, of course, the irs.gov Retirement Plans Community. What I did was I just typed in search 5330, and it will come up with some information. Of course the forms and the instructions are there. There is also additional information on the EPCU projects that were discussed by Carla. There is some information about the common errors that were discussed by Sherry, and there is some additional information that is on that Web site that can be very beneficial and give you information that you can actually look at as you are trying to resolve some of your questions.

So what I would like to do is thank you all for participating in this phone forum. We hope that we have been able to provide you with some helpful information, or at least point you in the right direction. And we would like to close by saying we hope everyone has a great day.

Moderator: That does conclude our conference for today. Thank you for your participation and for using AT&T Teleconference Service.