



April 15, 1975

Dear :

This is in response to your letter of March 6, 1975, in which you posed the following questions pertaining to the Employee Retirement Income Security Act of 1974:

1. Does section 404(c) of the Act exempt all "earmarked" transactions made in compliance with the terms of an employee benefit plan? (We assume that by the term "earmarked" transactions you mean a transaction which involves the exercise of control by a participant or beneficiary over assets in his account in an individual account plan which permits such exercise of control).
2. Will the excise taxes of section 4975 of the Internal Revenue Code of 1954 be levied in respect of a transaction which falls within section 404(c) of the Act?

With regard to your first question, section 404(c) does not provide a blanket exemption from all of the provisions of the Act for transactions which involve an exercise of control by a participant or beneficiary over the assets in his or her own account in an individual account plan which permits such exercise of control. However, section 404(c) does absolve plan fiduciaries of liability under Part 4 of Title I "for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control." In addition, it provides that the participant or beneficiary is not to be deemed a fiduciary by reason of such exercise.

Your second question, relating to the imposition of excise taxes imposed under section 4975 of the Code, is a matter within the jurisdiction of the Internal Revenue Service. Accordingly, your inquiries in that regard should be addressed to the Internal Revenue Service.

Sincerely,