

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE: CASTLETON GROUP, INC.)	No. 07-02896-5-ATS
)	
IN RE: CASTLETON AFFILIATES, LLC)	No. 07-02894-5-ATS
)	
IN RE: CASTLETON ASSOCIATES, LLC)	No. 07-02895-5-ATS
)	(Jointly Administered)
)	
Debtors)	CHAPTER 7

**MOTION OF THE CASTLETON GROUP INC. 401(K) PLAN SUCCESSOR
TRUSTEE AND FIDUCIARY TO LIFT THE FREEZE TO ALLOW
CORRECTIVE TRANSACTIONS, TO ESTABLISH AN EXPENSE RESERVE
AND TO TERMINATE THE 401(K) PLAN**

COMES NOW Jeanne Barnes Bryant in her capacity as the Court-appointed Successor 401(K) Plan Trustee and Successor Fiduciary (hereafter the “Successor 401(K) Plan Trustee”) and **MOVES** this Court to lift the freeze established in Paragraph (c) of its Order Authorizing and Directing Certain Actions In Connection with the Administration and Termination of the Castleton 401(K) Plan, issued October 2, 2008, (the Termination Order). The Successor 401(K) Plan Trustee and Successor Fiduciary seek this relief to facilitate corrective transactions accepted by the Internal Revenue Service, to facilitate the termination of the 401(K) Plan, and to establish an expense reserve to defray closing and termination expenses.

1. Under the terms of the Court’s Order Authorizing and Removing Suzanne Clifton as Plan Trustee and the Appointment of Jeanne Barnes Bryant (the Removal and

Appointment Order) also issued October 2, 2008, the Successor 401(K) Plan Trustee has standing and authority to make this request on behalf of the Castleton Group Inc. 401(K) Plan (the "Plan"), specifically under Paragraph (c) of the Court's Removal and Appointment Order, as well as under the terms of the Amended Plan Document.

2. Pursuant to the provisions of Paragraph (d)(viii) of the Termination Order, the Successor 401(K) Plan Trustee, on March 10, 2010, submitted an application to the Voluntary Compliance Program under IRS Revenue Procedure 2008-50 (successor to Revenue Procedure 2006-27). This application set forth the qualification failures of the Plan, requests for relief, and proposed corrective transactions. The application further outlined the facts and circumstances surrounding compliance failures and the missing money (and the money's subsequent recovery). After significant work and cooperation from the Internal Revenue Service, on August 15, 2011, the IRS issued its Compliance Statement (attached hereto as **Exhibit 1**). The IRS granted the relief sought.

3. The Compliance Statement requires a number of transactions, including certain contributions and distributions, to occur no later than January 12, 2012. In addition to the corrective transactions, the Successor 401(K) Plan Trustee intends, if her motion is granted, to begin Plan termination transactions as well, so that Plan termination will be completed by December 31, 2011 or as soon as administratively possible thereafter. Assuming no audit is required, all that will remain is the issuance of applicable Forms 1099 and the filing of any applicable Forms 5500. The Successor 401(K) Plan Trustee may also be required to have an independent audit of the Plan performed for 2011 and

2012, and has requested a waiver from the U.S. Department of Labor for same. The U.S. Department of Labor has not yet responded to the audit waiver request. On September 8, 2011 a conference call was held with representatives of the participating employers explaining the corrective actions and transactions required by the IRS, the Plan termination transactions, the lifting of the stay, the expense reserve, and the time-frame for termination in anticipation of this Motion.

4. In connection with participant distributions, it is the Successor 401(K) Plan Trustee's position that no participant termination distribution will be processed prior to the date on which all corrective actions required by the IRS, including, without limitation, all corrective contributions and distributions, have occurred. Further, all distributions must be approved by the Successor 401(K) Plan Trustee prior to processing. All participant distributions will be processed through the Successor 401(K) Plan Trustee and not directly with Transamerica.

5. The Successor 401(K) Plan Trustee held a conference call with Transamerica representatives on September 8, 2011 in anticipation of this Motion and the corrective actions and transactions required by the IRS. She has received assurances from representatives of Transamerica that it will fully cooperate with her to achieve a timely process that will allow the Plan to meet its directives within the IRS's Compliance Statement timeline.

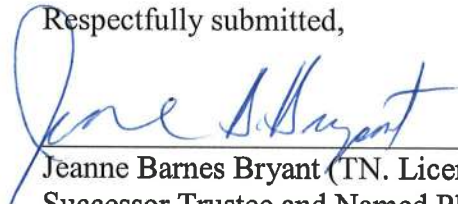
6. To allow for an equitable assessment of remaining termination costs of the Successor 401(K) Plan Trustee and those employed by her, the Successor 401(K) Plan Trustee proposes an expense reserve be created for expenses incurred after October 1, 2011. Reports and Fees will continue to be filed, but funds to pay expenses will be drawn from this reserve. The reserve amount is calculated such that it will pay costs associated with the Successor 401(K) Plan Trustee's expenses and potential audits for plan years 2011 and 2012. Reserves that remain after all expenses are paid will be re-allocated back to the Plan participants in an equitable manner, as follows: remaining distributable expense reserve amounts will be allocated pro-rata to the account of each Plan participant on the basis of each participant's account's asset value versus the total value of the trust. Notwithstanding Internal Revenue Code Section 402(f), the Successor 401(K) Plan Trustee requests this Court to authorize her to be able to rely on the directions given in benefit election forms and transfer forms relating to participants' distributions when paying later amounts (if any) in connection with final termination of the Plan, as allowed under Treas. Reg. 1.401(a)(31)-1, Q&A #12 (treating the multiple distributions, if they occur, as a series of periodic distributions). Per Treas. Reg. 1.401(a)(31)-1, Q&A #12, participants' direct rollover notices and benefit election forms shall state that the elections made therein shall apply to any subsequent distribution(s) from the Plan, unless the participant changes the election, in writing, and delivers same to the Successor 401(K) Plan Trustee before the subsequent distribution(s).

7. Based on the foregoing, the Successor 401(K) Plan Trustee moves the Court to lift the freeze indicated in Paragraphs (c) and (d)(i) of the Termination Order to allow

corrective distributions and transactions, termination transactions, and the expense reserve. If there are no objections filed within fifteen (15) days of the filing of this motion by any party or the Court, the Successor 401(K) Plan Trustee would respectfully ask that this Motion be deemed approved.

Dated Sept 20, 2011

Respectfully submitted,



Jeanne Barnes Bryant (TN. License 5835)
Successor Trustee and Named Plan Fiduciary
Castleton Group Inc. 401(K) Plan
783 Old Hickory Blvd., Ste 255
Brentwood, TN 37027
Telephone: 615-370-0051
Fax: 615-373-4336

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion has been or will be mailed by U.S. Mail and/or faxed if number available by the 20th day of Sept, 2011 to the parties noted below

Robert M. Lewis, Jr.
Office of the Solicitor
U.S. Dept. of Labor
61 Forsyth St., SW, Rm. 7T10
Atlanta, GA 30303
Counsel to the U.S. Department of Labor

The Castleton Group, Inc.
c/o Hugh Davis
Poyner Spruill LLP
P.O. Box 1801
Raleigh, NC 27602-1801
Counsel to Chapter 7 Trustee Richard Sparkman

Christopher T Graebe
Graebe Hanna & Welborn, PLLC
4350 Lassiter at North Hills, Ste 375
Raleigh, NC 27609
Counsel to Plan Participating Employers Dr. Lane & Associates, DDS,
Revels Turf and Tractor, Family Medical Supply, Inc. and XS, Inc.

I hereby certify that a true and correct copy of the foregoing Motion has been or will be posted to the website of Receivership Management, Inc. (www.receivermgmt.com) and that notice of filing and posting has been mailed by U.S. Mail by the 20th day of Sept, 2011 to the parties noted below

1-800-Pack-Rat, LLC
Attn: Don Platt
6400 Goldsboro Rd Ste 300
Bethesda, MD 20817

Albemarle Propane
Attn: Alec Natt
PO Box 1831
Statesville, NC 28687-1831

Alternate Access, Inc.
Attn: Adrienne Lumpkin
5623 Duraleigh Rd, Suite 111
Raleigh, NC 27612

Apex Veterinary Hospital Equine, P.A.
Attn: Karin Prince & Dr. Richard Cochrane
1600 E. Williams Street
Apex, NC 27539

Ascom Wireless Solutions
Attn: Nancy Duffy
598 Airport Blvd, Suite 300
Morrisville, NC 27560

Bes-Pak, Inc.
Attn: Steve Whitt
2306 Cedar Run Place
Wilson, NC 27896

Carolina Safety Sports International, LLC
Attn: Tammy Joyce
124 Sunrise Center Drive
Thomasville, NC 27360

Cenplex Building Services, Inc
Attn: Dwight. Riley & Chelle Ritchey
2400 Reliance Avenue
Apex, NC 27539

DB Management Company
Attn: Joseph & Diane Bastian
5850 Fayetteville Road, #205
Durham, NC 27713

Dogwood Veterinary Hospital & Pet Resort
Attn: Dr. Linda Sands
51 Vickers Rd
Chapel Hill, NC 27517

ducduc, LLC
Attn: Jodi Cheek
116 N. West St, Ste 200
Raleigh, NC 27603

The Executive Staffing Group
Attn: Matt Savage
324 South Academy St
Cary, NC 27511

E & E Farm Equipment
Attn: Cheryl Ellington
70 John Deere Road
Henderson, NC 27537

Family Medical Supply, Inc.
Attn: Joey Tart
1120 W. Broad Street
Dunn, NC 28334

Fortner Insurance Agency, Inc
Attn: William Shurley
311 Oak Avenue, P.O. Box 39
Spruce Pine, NC 28777

Furndex.com
Attn: Jimmy Redmond
604 Sunset Drive
High Point, NC 27262

Galaxy Travel dba Prestige Travel of NC
Attn: Aaron Spaulding
5400 Glenwood Avenue, Suite 200
Raleigh, NC 27612

Harnett Tractor Company, Inc
Attn: David Lewis
PO Box 1152
Dunn, NC 28334

Cabinets by Horizon, LLC
PO Box 466
Garner, NC 27529

Indoor Storm, LLC
2300 Westinghouse Blvd., Ste. 110
Raleigh, NC 27604

Jamakin Cakes dba Edible Art
Attn: Michelle Holcomb & Bobby Reynolds
3801 Hillsborough Street, Suite 405
Raleigh, NC 27607

Klein Decisions, LLC
Attn: Robert Padgette & Sally Atwater
PO Box 13628, 68 TW Alexander Dr
RTP, NC 27709-3628

L&J Hardwood
Attn: Joe Amundson
3554 State Route 125
Bethal, OH 45106

Materials Innovation Technologies, LLC
Attn: Jim Stike & Bill Austin
320 Rutledge Road
Fletcher, NC 28732

MBA Software Technologies, Inc.
Attn: Pete Meyer
48 McKinney Road
Etowah, NC 27607

McLamb's LP Gas & Supply Co., Inc
3469 NC 242 South
Benson, NC 27504

Media Research Planning & Placement, Inc.
Attn: Sheila Ogle
201 West Chatham St. Ste 202
Cary, NC 27511

Mike Hensley
3948 Browning Place, Suite 200
Raleigh, NC 27609

MMI Associates Consulting, Inc.
Attn: Patricia Briguglio
223 E. Chatham St
Cary, NC 27511

NorTex Communications, Inc. dba Response Point
Attn: Brian Gossett
111 Corning Rd, Suite 116
Cary, NC 27518

Personnel Management Services dba Lane & Associates, D.D.S., P.A.
Attn: Phillip Butts
12450 Cleveland Rd Ste 203
Garner, NC 27529

Revels Tractor Company, Inc.
Attn: Turner Revels
2217 N Main St
Fuquay Varina, NC 27526

Stewart Physical Therapy Clinic, Inc.
Attn: Eddie Stewart
1713 Vaughn Rd
Burlington, NC 27217

The Animal Hospital of Wilkes, P.A.
Attn: John Stinson & Stephanie Stinson
1609 Curtis Bridge Road
Wilkesboro, NC 28697

Triangle Cable Splicing Co., Inc.
Attn: Randal Roch
200 Powell Dr., Ste 108
Raleigh, NC 27606

Triangle Compounding Pharmacy
Attn: Joe Cabaleiro
550 New Waverly Place, Suite 110
Cary, NC 27518

TriSure Corporation
Attn: John Cramer
4325 Lake Boone Trail #200
Raleigh, NC 27607

US Armored, LLC
Attn: Michael D. Field
410 North Boylan Ave, Ste 83
Cary, NC 27603

VectorCSP, LLC
Frank Holman
405 E Main St
Elizabeth City, NC 27909

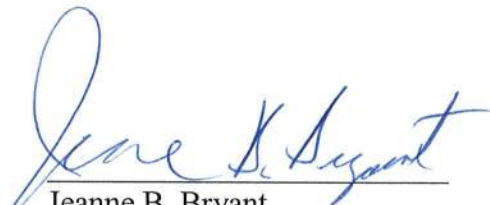
VEETech, P.C.
Attn: Dene Perry & Amitava Sarkar
113 Centrewest Ct
Cary, NC 27513

Vein Clinic of Charlotte
10502 Park Road, Ste. 120
Charlotte, NC 28210

Wake Forest Urgent Care
2115-A South Main Street
Wake Forest, NC 27587

Worldwide Express
Attn: Brian Tribble
116 N. West St, Ste 200
Raleigh, NC 27603

XS, Inc
Attn: Thad Armbruster
1500 Perimeter Park Dr, Ste 300
RTP, NC 27560



Jeanne B. Bryant



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Local contact address:
Internal Revenue Service
SE:T:EP:RA:VC:Group 7553
1100 Commerce Street
Mail Code 4922 DAL
Dallas, Texas 75242

Date:

Bynum M. Tudor III
5123 Virginia Way
Suite B-23
Brentwood, TN 37027

Re: Compliance Statement for: The Castleton Group, Inc. 401(k) Plan
Control Number: 911693409
Employer Identification Number: 56-1321082
Plan No.: 333

Dear Mr. Tudor:

The enclosed documents are sent to you under the provisions of a power of attorney currently on file with the Internal Revenue Service.

If you have any questions, please contact Patricia Friend, ID# 75-17287, by phone at (214) 413-5714 or by fax at (214) 413-5507.

Sincerely,

Keith Ruprecht

Keith Ruprecht
Manager, Voluntary Compliance Group #7553

Enclosures:

Copy of Letter to Taxpayer
Copy of Compliance Statement





TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date:

Jeanne Barnes Bryant
Successor Trustee and Plan Administrator
783 Old Hickory Boulevard, Suite 255
Brentwood, TN 37027

Local contact address:
Internal Revenue Service
SE:T:EP:RA:VC:Group 7553
1100 Commerce Street
Mail Code 4922 DAL
Dallas, Texas 75242

Re: Compliance Statement for: The Castleton Group, Inc. 401(k) Plan
Control Number: 911693409
Employer Identification Number: 56-1321082
Plan No.: 333

Dear Ms. Bryant:

Enclosed is your compliance statement. A compliance statement constitutes an enforcement resolution solely with respect to certain failures of an employee retirement plan that is intended to satisfy the requirements of the Internal Revenue Code. It does not constitute a ruling letter within the meaning of Revenue Procedure 2011-4, 2011-1 I.R.B 123, or a determination letter within the meaning of Revenue Procedure 2011-6, 2011-1 I.R.B. 195.

The compliance statement should not be construed as affecting the rights of any party under any other law, including Title I of the Employee Retirement Income Security Act of 1974.

At a later date, you may be required to verify that the correction of the failures and any modification of administrative procedures (upon which your enforcement resolution is conditioned) have been timely made.

Copies of this compliance statement and of this letter have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions, please contact Patricia Friend, ID# 75-17287, by phone at (214) 413-5714 or by fax at (214) 413-5507.

Sincerely,

Keith Ruprecht, Manager
Voluntary Compliance Group #7553

Enclosure(s):
Compliance statement
cc: Bynum Tudor

**APPENDIX D
VCP SUBMISSION**

PART I. PLAN INFORMATION

1. APPLICANT'S NAME: Jeanne Barnes Bryant, Successor Trustee and Plan Administrator
2. APPLICANT'S ADDRESS: 783 Old Hickory Boulevard, Suite 255, Brentwood, TN 37027
3. APPLICANT'S TELEPHONE NO. _____ 4. FAX NO. _____
(optional) (optional)
5. APPLICANT'S EIN: 56-1321082 (Primary Plan Sponsor EIN) 6. PLAN NO.: 333
7. PLAN NAME: The Castleton Group, Inc. 401(k) Plan

8. TYPE OF SUBMISSION

- REGULAR SUBMISSION
- REGULAR SUBMISSION - ANONYMOUS
- REGULAR SUBMISSION - MULTI-EMPLOYER PLAN
- REGULAR SUBMISSION - MULTIPLE EMPLOYER PLAN
- GROUP SUBMISSION

9. TYPE OF PLAN (CHECK ONE ONLY):

- | | |
|---|--|
| <input type="checkbox"/> 01 PROFIT SHARING | <input type="checkbox"/> 09 CASH BALANCE |
| <input checked="" type="checkbox"/> 02 401(k) | <input type="checkbox"/> 10 GOVERNMENTAL PLAN (§ 414(d)) |
| <input type="checkbox"/> 03 MONEY PURCHASE | <input type="checkbox"/> 11 SEP |
| <input type="checkbox"/> 04 DEFINED BENEFIT | <input type="checkbox"/> 12 SARSEP |
| <input type="checkbox"/> 05 ESOP | <input type="checkbox"/> 13 SIMPLE |
| <input type="checkbox"/> 06 TARGET BENEFIT | <input type="checkbox"/> 14 STOCK BONUS |
| <input type="checkbox"/> 07 403(b) | <input type="checkbox"/> 15 KSOP |
| <input type="checkbox"/> 08 457 | <input type="checkbox"/> 16 OTHER (specify): _____ |

10. DATE (month and day) ON WHICH PLAN YEAR ENDS: December 31

11. NUMBER OF PARTICIPANTS IN THE PLAN AS PROVIDED ON THE MOST RECENTLY FILED FORM 5500 SERIES (See Rev. Proc. 2008-50, section 12.07.): 1081

12. ASSETS IN THE PLAN AS PROVIDED ON THE MOST RECENTLY FILED FORM 5500 SERIES (ROUND TO NEAREST DOLLAR): \$14,767,218.00 (2006)
(See Rev. Proc. 2008-50, section 12.07.)

**APPENDIX D
VCP SUBMISSION**

Plan Name: The Castleton Group, Inc. 401(k) Plan
EIN: 56-1321082 Plan #: 333

If the Applicant is being represented by someone in connection with this matter or wishes to authorize someone to receive information from us in connection with this matter, submit a completed Form 2848 or Form 8821 and complete items 13 through 18.

13. NAME OF APPLICANT'S REPRESENTATIVE: Bynum E. Tudor III

14. NAME OF REPRESENTATIVE'S FIRM: Berry & Tudor, P.C.

15. REPRESENTATIVE'S ADDRESS: 5123 Virginia Way, Suite B-23, Brentwood, Tennessee
37027

16. REPRESENTATIVE'S PHONE NO.: (615) 726-1000 17. FAX NO.: (615) 370-0077

18. REPRESENTATIVE'S E-MAIL ADDRESS: btudor@berrytudor.com
(optional)

PART II. APPLICANT'S DESCRIPTION OF FAILURES

Attach additional pages, as needed. Label attachment "PART II. APPLICANT'S DESCRIPTION OF FAILURES." List and number each failure separately. Please include the plan name, the plan sponsor's EIN, and the plan number on each page.

PART III. APPLICANT'S DESCRIPTION OF THE PROPOSED METHOD OF CORRECTION

Attach additional pages, as needed. Label attachment "PART III. APPLICANT'S DESCRIPTION OF THE PROPOSED METHOD OF CORRECTION." Describe the correction method applicable to each failure listed in Part II. Please include the plan name, the plan sponsor's EIN, and the plan number on each page.

PART IV. APPLICANT'S PROPOSED REVISION TO ADMINISTRATIVE PROCEDURES

Attach additional pages, as needed. Label attachment "PART IV. APPLICANT'S PROPOSED REVISION TO ADMINISTRATIVE PROCEDURES." Please include the plan name, the plan sponsor's EIN, and the plan number on each page.

**APPENDIX D
VCP SUBMISSION**

Plan Name: The Castleton Group, Inc. 401(k) Plan
EIN: 56-1321082 Plan #: 333

PART V. REQUESTS RELATED TO EXCISE TAXES, ADDITIONAL TAX, AND TAX REPORTING

- The Applicant requests that the Service not pursue the following taxes under the Internal Revenue Code (attach supporting rationale as required by Section 6.09), labeled "PART V. REQUESTS RELATED TO EXCISE TAX, ADDITIONAL TAX, AND TAX REPORTING.")
 - Excise tax under § 4972 with respect to failure(s) # _____.
 - Excise tax under § 4973 with respect to failure(s) # _____.
 - Excise tax under § 4974 with respect to failure(s) # 10-13.
 - Excise tax under § 4979 with respect to failure(s) # 1.
 - Imposition of additional tax under § 72(t) with respect to failure(s) _____.

- The Applicant requests that the Service grant the following with respect to plan loan failures as described in section 6.07 of Rev. Proc. 2008-50:
 - With respect to failure(s) _____, that a deemed distribution corrected pursuant to this VCP submission not be required to be reported on Form 1099-R and that repayments made by such correction not result in the affected participant having additional basis in the plan for purposes of determining the tax treatment of subsequent distributions from the plan.

 - With respect to failure(s) ##5, 14, and 16, that a deemed distribution be reported on Form 1099-R with respect to affected participant(s) for the year of correction instead of the year of the failure.

**APPENDIX D
VCP SUBMISSION**

Plan Name: The Castleton Group, Inc. 401(k) Plan
EIN: 56-1321082 Plan #: 333

PART VI. APPLICANT'S REPRESENTATIONS

(Note: Since the representations include the penalty of perjury statement, the representations under Part VI of this Appendix D must be signed by the Plan Sponsor, not the plan representative.)

A. Under Examination

To the best of my knowledge:

- 1) The subject plan is not currently under examination of either an Employee Plans Form 5500 series return or other Employee Plans examination,
- 2) The Plan Sponsor is not under an Exempt Organizations examination (that is, an examination of a Form 990 series return or other Exempt Organizations examination),
- 3) Neither the Plan Sponsor nor any of its representatives has received verbal or written notification from the Tax Exempt and Government Entities Division of the Internal Revenue Service of an impending examination or of any impending referral for such examination, nor is the plan in Appeals or litigation for any issues raised in such an examination, and
- 4) The subject plan is not currently under investigation by the Criminal Investigation Division of the Internal Revenue Service.

B. Abusive tax avoidance transaction (check box that applies)

- Neither the plan nor the Plan Sponsor has been a party to an abusive tax avoidance transaction as defined in section 4.13(2) of Rev. Proc. 2008-50.
- The plan or the Plan Sponsor has been a party to an abusive tax avoidance transaction. Details of the transaction(s) are provided in a separate statement which has been included with the submission.

C. Compliance Fee

The Applicant will neither attempt to amortize, deduct, or recover from the Internal Revenue Service any compliance fee paid in connection with this compliance statement nor receive any Federal tax benefit on account of payment of such compliance fee.

**APPENDIX D
VCP SUBMISSION**

Plan Name: The Castleton Group, Inc. 401(k) Plan
EIN: 56-1321082 Plan #: 333

D. Penalties of Perjury

Under penalties of perjury, I declare that I have examined this submission, including accompanying documents and representations. To the best of my knowledge and belief, the facts and information presented in support of this submission are true, correct, and complete.

Signed: *Jeanne B. Bryant* Date: *7-1-11*

Name (printed): *Jeanne B. Bryant* Title: *Successor Trustee and Administrator*

**APPENDIX D
VCP SUBMISSION**

Plan Name: The Castleton Group, Inc. 401(k) Plan
EIN: 56-1321082 Plan #: 333

PART VII. ENFORCEMENT RESOLUTION (to be completed by IRS only)

The Service will not pursue the sanction of revoking the tax-favored status of the plan under §§ 401(a), 403(b), 408(k) or 408(p) on account of the failure(s) described in this submission. This compliance statement considers only the acceptability of the correction method(s) and the revision(s) of administrative procedures described in the submission and does not express an opinion as to the accuracy or acceptability of any calculations or other material submitted with the application. In no event may this compliance statement be relied on for the purpose of concluding that the plan or Plan Sponsor (as defined in Rev. Proc. 2008-50) was not a party to an abusive tax avoidance transaction. The compliance statement should not be construed as affecting the rights of any party under any other law, including Title I of the Employee Retirement Income Security Act of 1974.

This compliance statement is conditioned on (1) there being no misstatement or omission of material facts in connection with the submission and (2) the completion of all corrections described within one hundred fifty (150) days of the date of the compliance statement.

- The Service will treat the failure to adopt interim amendments or amendments for optional law changes, as described in section 6.05(3)(a) of Rev. Proc. 2008-50 as if they had been adopted timely for the purpose of making available the extended remedial amendment period currently set forth in Revenue Procedure 2007-44, 2007-28 I.R.B. 54, or its successors. However, this compliance statement does not constitute a determination as to whether any such plan amendments, as drafted, comply with the applicable changes in qualification requirements.
- The Service will not pursue the following on account of the qualification failure(s) described in this submission:
 - Excise tax under § 4972.
 - Excise tax under § 4973.
 - Excise tax under § 4974.
 - Excise tax under § 4979.
- With respect to the loan failure(s) described in this submission:
 - The Service will not require deemed distributions under § 72(p) to be reported on Forms 1099-R with respect to the participant(s) affected by the failure(s), and repayments made pursuant to the correction of such loan(s)

**APPENDIX D
VCP SUBMISSION**

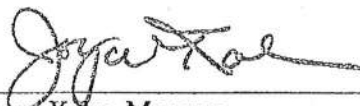
Plan Name: The Castleton Group, Inc. 401(k) Plan
EIN: 56-1321082 Plan #: 333

will not result in an affected participant having additional basis in the plan for the purpose of determining the tax treatment of subsequent distributions from the plan to such participant(s).

The Service will require deemed distributions under § 72(p) to be reported on Form 1099-R with respect to the participant(s) affected by the failure(s). However, the plan will be permitted to report deemed distributions on Form 1099-R in the year of correction, instead of the year of the failure.

With respect to the Overpayment failures described in this submission that were corrected by removing improper distributions from the IRA(s) of the affected participant(s) and returning those distributions to the plan, the Service will not pursue _____ % of the 10% additional income tax under § 72(t).

Approved: _____


Joyce Kahn, Manager
Employee Plans Voluntary Compliance
Tax Exempt and Government Entities Division

Date: _____

AUG 15 2011

**APPENDIX D
VCP SUBMISSION**

Plan Name: The Castleton Group, Inc. 401(k) Plan
EIN: 56-1321082 Plan #: 333

ATTACHMENT FOR PART II. APPLICANT'S DESCRIPTION OF FAILURES

Background Information.

The Castleton Group, Inc. ("Castleton") is a professional employer organization (PEO) with its principal place of business in Raleigh, North Carolina. As part of its business, Castleton maintained the Plan for the benefit of its employees and the employees of its clients. Castleton is the primary Plan sponsor. Since 2005, approximately 41 employers have adopted and maintained the Plan as participating employers.

Prior to 2008, Castleton generally administered the Plan as follows. After Castleton had prepared its clients' payroll runs, it would inform each client how much money needed to be transferred to the Plan to fund the clients' share of salary deferral and matching contributions and plan loan payments for the period. Pursuant to their PEO Agreements, each client granted Castleton authority to debit the clients' operating accounts for their respective Plan obligations. Castleton would give each client 24 hours notice of the debit, then would instruct the client's financial institution to transfer the appropriate amount of funds to a Castleton bank account. Once it had received all of the clients' payments in the bank account, Castleton would make a single funds transfer (for all participating employers for the applicable period) to Transamerica, the insurer who holds the Plan's assets and the Plan's recordkeeper.

Castleton received approximately \$262,000.00 in salary deferral contributions, matching contributions, and plan loan payments from its clients for their obligations to the Plan associated with the payrolls for November 21 to 30, 2007 and for December 1 to 18, 2007, but never transferred the funds to the Plan. Castleton did not process any payrolls after December 18, 2007. The Applicant acknowledges that Section 4.12 of Rev. Proc. 2008-50 states that SCP, VCP, and Audit CAP are not available to correct failures relating to the diversion or misuse of plan assets, and this application does *not* seek relief for such failures. Rather, the Applicant mentions this issue because it is pertinent to some of the corrections stated herein. Fortunately, during the first and second quarters of 2011, the Plan has received or expects to receive approximately \$310,000.00 from ERISA bond and fiduciary liability insurers and from Castleton's bankruptcy estate to replace such missing funds and to reimburse the Plan for a portion of its administrative expenses incurred since December 2007.

On or about December 22, 2007, Castleton filed a voluntary petition in bankruptcy in the United States Bankruptcy Court for the Eastern District of North Carolina. Castleton's chief executive officer and chief financial officer also filed voluntary petitions in bankruptcy. At that time, Castleton's business operations (including payroll processing for its clients) and its