

IRS ISSUES FINAL PROGRAM FOR FORM 5500-EZ LATE FILERS

As published in our June 2014 Newsletter, we described a temporary amnesty program for sponsors of “owners only” qualified retirement plans with late Form 5500-EZ filings. That amnesty program expired June 2, 2015 and has now been replaced with a new and permanent program. As anticipated, the total elimination of any late filing penalty contained in the temporary program does not carry forward into the permanent program. However, the permanent program financial sanctions represent a fraction of the \$25 per day penalty, up to a \$15,000 maximum, imposed for late filers whose delinquent filing is discovered by the IRS or the Department of Labor.

Details of the new permanent program are provided in Revenue Procedure 2015-32, issued on May 29, 2015. The program is available for plans filing IRS Form 5500 EZ, covering only owners of the entire business and their spouses or certain plans subject to IRS annual reporting that are maintained outside the U.S. primarily for non-resident aliens. The notice pointedly mentions that employers who have received a delinquency notice from the Government (labeled CP 283 *Penalty Charged on Your Form 5500 Return*) are not eligible for the program for the plan year mentioned in the CP 283. In addition, late returns filed under the program may *not* be filed electronically, so only paper submissions are accepted.

Relief is provided on a per plan basis and late returns must be submitted separately for each affected plan. All delinquent returns for a single plan may be submitted together. Generally, the late returns filed under the program are Form 5500-EZ for the year or years being filed, although late returns for years prior to 1990 may use the Form 5500-EZ for the current year. The fee is \$500 per return, but with a \$1,500 maximum per plan. This

fee compares somewhat favorably to the \$750 per 5500 EZ (annual return/report) with a \$1,500 per plan maximum charged by the DOL for late Form 5500 series returns voluntarily submitted under the DOL amnesty program. Employers who submit delinquent plans to the IRS must use a Form 14704 that serves as a transmittal for the submission.

Employers who have a reasonable cause for their late filing may wish to avoid this delinquent filer program and instead send in a delinquent filing with an attached statement describing the reasonable cause for the untimely return. Employers who chose to follow this approach are cautioned that taking this action makes them ineligible for the \$500/\$1,500 fee otherwise available if they submit under the delinquent filing program.

We applaud the IRS for establishing what appears to be a reasonable and fair approach to the problems faced by late 5500-EZ filers who are categorically ineligible for the Department of Labor late filer program. NRS can assist clients who may be faced with delinquent filing concerns.

SAMPLE PLAN LANGUAGE ISSUED FOR PRE-APPROVED CASH BALANCE PLANS

The IRS recently took another step towards implementing pre-approved plan documents for cash balance plans by issuing Revenue Procedure 2015-36. This document extends the June 30, 2015 deadline for submitting draft pre-approved documents to October 30, 2015. The IRS also released sample language for these types of plans.

The move to pre-approved plan documents for cash balance plans is particularly helpful in the small to mid-size retirement plan marketplace because the costly and time consuming submission to the IRS

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for individual plan document review and approval is eliminated. Also, employers that will use pre-approved cash balance documents, instead of individually designed documents, are not required to restate their cash balance plan documents until the new pre-approved documents are ready. This assumes an IRS Form 8905 *Certification of Intent to Adopt a Pre-Approved Plan* is completed before the next restatement deadline. Based on prior experience, it is likely that the IRS will launch defined benefit plan restatements for pre-approved documents (including cash balance plans) starting in 2017 with an employer document execution deadline in 2019.

The new release of sample plan language answers some questions as to what sort of cash balance plan designs will *not* be able to use pre-approved documents. For example, the following cash balance plan provisions will not be accommodated by pre-approved documents:

- Hybrid benefit formulas that are not cash balance formulas, such as “pension equity plans”.
- Crediting Hypothetical Interest to Hypothetical Accounts based on rates of return that are subject to participant choice.
- Crediting Hypothetical Interest to Hypothetical Accounts based on the actual return of plan assets.

NRS has been coordinating with clients that sponsor cash balance plans concerning the conversion to pre-approved documents and completion of Form 8905. It is anticipated that the majority of NRS clients with cash balance plans will be able to switch to the more economical pre-approved documents.

JULY 2015 REMINDERS

July 15 – Forms 5500 series and Form 8955-SSA are due for Plan Years ending September 30, 2014 if they are on a (Form 5558) extension.

July 15 – Retirement plan employer contributions are due if contributions are claimed as deductions on tax returns due July 15, 2015, including returns on extension.

July 15 – Minimum funding requirements for defined benefit, money purchase, and target benefit plan years ended October 31, 2014 must be met by July 15 in order to avoid excise taxes.

July 31 – Forms 5500 series and Form 8955-SSA are due for **calendar year plans**, unless an extension applies.

July 31 – Form 5558, “Application for Extension of Time to File Certain Employee Plan Returns” is due for calendar year plans that need additional time to file their Form 5500 Series returns.

HOW ARE WE DOING? PLEASE COMPLETE THE NRS CLIENT SATISFACTION SURVEY!

We are grateful and thankful for the strong response to our Client Satisfaction Survey! In an effort to maintain high level client satisfaction, we need client feedback! The content of these replies will be sent directly to Executive Management. This survey takes less than 2 minutes to complete. To access the Client Satisfaction Survey, [please click here.](#)

As always, NRS truly values your continued business!

**FOR MORE INFORMATION OR TO REQUEST A PROPOSAL, PLEASE VISIT
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