

IMPORTANT TAX INFORMATION PROVIDED VIA THE NRS PORTAL

NRS clients please note: This month we will be sending a Portal related email notification to all defined contribution clients. The email notification contains a link to the NRS Portal permitting access and retrieval of an explanatory message and a newly updated *Special Tax Notice*. This Portal message will discuss the IRS's new required *Special Tax Notice* for defined contribution plan benefit distributions. The new *Special Tax Notice* is meant to immediately replace the prior (2009) notice provided when participants receive retirement plan distribution paperwork. Upon receipt later this month, please follow the instructions in the Portal notification to access the message and its attachment from the Portal. NRS clients with questions or clients needing help accessing the Portal should contact their Account Manager.

NRS PORTAL ONLINE DATA COLLECTION AND CENSUS

We have received great feedback regarding using our NRS Portal for completing Data Collection and Census reporting. Based on client suggestions we have enhanced the NRS Portal to streamline the process of participant data entry and adding new participants. We have also added more notifications to help during census editing and additional warnings regarding missing information. We continue to improve the NRS Portal and welcome any and all comments.

COVERAGE OR NON- DISCRIMINATION FIXES AFTER PLAN YEAR END: "11(G) AMENDMENTS"

An "11(g) Amendment" is a specifically authorized

retroactive amendment designed to cure certain failures that may occur in a given plan year. As most folks familiar with tax qualified retirement plan administration know, there are very specific rules that these plans must follow concerning the breadth of plan coverage among the employer's work force. Other rules exist to make sure that benefits do not unduly favor Highly Compensated Employees to the detriment of other participants. These requirements are key elements for a plan to maintain its tax favored status, thus benefiting both the employer and the covered employees. Failure to meet these requirements is referred to as a "demographic failure" by the Internal Revenue Service and the failures frequently become evident only *after* the close of the plan year in which they occur. Fortunately, the "11(g) Amendment" rules anticipate this problem and make special provisions for its solution.

The "11(g) Amendment" rules are located deep within the non-discrimination regulations in a subsection titled *Corrective Amendments* 1.401(a)(4)-11(g). It sets out rules governing how an employer with a retirement plan demographic failure is provided the opportunity to retroactively amend the plan to fix the failure. This type of amendment is particularly useful in a cross-tested defined contribution plan since these tax driven plans are sensitive to demographic changes in the ages of individual participants. The amendment can retroactively add participants, increase allocated employer contributions, or increase employer provided defined benefit plan benefit accruals. In addition, an 11(g) Amendment may make a benefit, right, or feature (such as participant loans or participant investment direction) available to participants who did not possess it earlier. However, the amendment may *not* reduce any benefit already accrued by any participant, even Highly Compensated Employees.

An 11(g) Amendment is effective as of the first day

of a plan year and must be adopted no later than 9.5 months after the close of the plan year containing the failure being corrected. The amendment can be drafted to correct any of the following requirements that were not met during the year: (a) coverage under Code 410(b), (b) non-discrimination under Code 401(a)(4), (c) minimum participation requirements for defined benefit pension plans under Code 401(a)(26), or (d) the non-discriminatory availability of benefits, rights, and features. While the amendment is permitted to grant additional benefits or allocated contributions to specifically identified individuals, it may not give benefits to non-vested terminated participants since this violates a requirement that the additional benefits “have substance.” However, amendments that provide additional benefits to non-vested or partially vested *active* participants are permitted and can correct the demographic failure being addressed. This is true even if the participant becomes vested solely because the 11(g) amendment specifies such vested status.

The 11(g) Amendment is best described by examples:

Example 1: An employer maintains a profit sharing plan that covers all employees who have attained age 21 and completed at least one Year of Service. Employer contributions are allocated only to participants who remain employed with the employer until the last day of the plan year. During a particular plan year, ten individuals were eligible for plan participation, including the owner who was the only Highly Compensated Employee. Three of the non-owner participants terminated before the end of the year and so received no allocation of employer contributions. The plan could not pass the Average Benefits Test of Code 410(b) and the coverage ratio was $6/9 = 67\%$ for the Non-Highly Compensated Employees. This is lower than the minimum required 70%. No later than 9.5 months after the close of the plan year, the employer adopted an 11(g) Amendment that made Samuel,

one of the three terminated employees, eligible for an additional contribution that the employer made at the time the amendment was adopted. Samuel was partially vested, although the other two terminated participants were not vested at all. The amendment had substance because Samuel was partially vested and the plan passed Code 410(b) coverage requirements because the revised coverage ratio was $7/9 = 78\%$.

Example 2: The calendar year plan of the employer in *Example 1* provides that annual employer contributions are allocated to individual participants on a basis determined at the employer’s discretion. The employer made plan contributions on March 14, 2015 and allocated these contributions for the 2014 plan year. On May 17, 2015, the employer’s Third Party Administrator (“TPA”) determined that the allocations of employer contributions did not satisfy the non-discrimination requirements of Code 401(a)(4). An 11(g) Amendment was adopted on August 31, 2015 that made one of the non-owner participants eligible for an additional employer contribution in an amount that the TPA determined was necessary to satisfy the non-discrimination requirements. The employee in question was fully vested in his Plan benefits.

As illustrated by the above examples, the ability to adopt an “11(g) Amendment” provides a very useful tool for employers to avoid plan disqualification due to demographic failures.

REMINDERS FOR FEBRUARY

February 15 (Sunday) – Minimum funding requirements for defined benefit plan years ended 05/31/14 must be met by February 15 in order to avoid excise taxes. Electronic transfer must be completed or a check mailed by this date.

February 17 – Retirement plan employer contributions are due in order to be **deducted** on employer tax returns due to be filed February 17.

February 17 – **Form 5500 Series/8955-SSA** – Forms that are on extension are due for the Plan Year ending 04/30/14.

March 2 – **Form 5500 Series/8955-SSA** – Forms that are not on extension are due for the Plan Year ending 07/31/14.

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 OUR WEBSITE AT WWW.NRSERVICES.COM, OR FOR SALES SUPPORT, PLEASE CONTACT:

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