

May 2015

Tax Alert: June 2 Deadline Looming on IRS Penalty Relief Program For Late Retirement Plan Returns

Last year, the IRS announced the launch of a one-year temporary pilot program to help small businesses that have failed to timely file certain retirement plan returns. Now the deadline for seeking relief is right around the corner. Small businesses that qualify for the relief and file their late returns by June 2 stand to preempt steep penalties of as much as \$15,000 per return. Businesses that aren't eligible for the pilot program may qualify for relief under another program offered by the U.S. Department of Labor (DOL).

Filing obligations and potential IRS penalties

The Internal Revenue Code (IRC) and the Employee Retirement Income Security Act (ERISA) require certain retirement plans to file Form 5500 Series annual reports, including:

- Form 5500, *Annual Return/Report of Employee Benefit Plan*,
- Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*,
- Form 5500-EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*, and
- Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*.

Form 5500-EZ filers include one-participant plans that are exempt from ERISA.

Under the IRC, taxpayers that don't timely file an annual return of employee benefit plans or returns and reports for employee stock ownership plans are subject to a penalty of \$25 for each day the failure continues, up to \$15,000 per return or statement. The penalty for failing to timely file an actuarial report for employee benefit plans is \$1,000 for each failure. (No penalty will be imposed if the failure to timely file was due to reasonable cause.)

Pilot program eligibility

The pilot program provides penalty relief to plan administrators and plan sponsors of certain small business and business partnership retirement plans — known as “one-participant plans” — that aren't subject to ERISA for the plan year that's delinquent in filing. Certain foreign plans are also eligible. Applicants for relief need not pay any filing fee or other payment. Relief isn't, however, available if the IRS has already issued a penalty notice (CP 283 Notice, *Penalty Charged on Your 5500 Return*) to a plan sponsor or administrator for a late return.

For purposes of the pilot program, a one-participant plan is a plan with one or more participants that covers only the owner of the entire business (or the owner and the owner's spouse) or one or more partners (or partners and their spouses) in a partnership. The plan must not provide benefits

for anyone except the owner (or the owner and the owner's spouse) or one or more partners (or partners and their spouses).

The administrator or sponsor of a retirement plan maintained outside the United States for primarily nonresident aliens may also be eligible for penalty relief. The employer that maintains the plan must 1) be a domestic employer or a foreign employer with income derived from sources within the United States, including foreign subsidiaries of domestic employers, and 2) deduct contributions to the plan on its U.S. income tax return.

Relief requirements

To obtain penalty relief under the pilot program, a plan administrator or sponsor must submit a completed Form 5500 Series return to the IRS, including all required schedules and attachments, for each plan year for which relief is sought. Multiple returns — and returns for more than one plan — can be included in a single submission. Returns must be submitted through the mail; they can't be filed through the DOL's ERISA Filing Acceptance System 2 (EFAST2).

For late returns for 2008 plan years and earlier, the applicant must file the specific Form 5500 return that was required for the plan year. For returns for 2009 plan years and later, only the Form 5500-EZ appropriate for the plan year may be submitted.

Applicants must mark the top margin of the first page of each delinquent Form 5500 Series return submitted with red letters reading "Delinquent return submitted under Rev. Proc. 2014-32, Eligible for Penalty Relief." In the absence of such markings, the IRS may treat the return as ineligible for relief under the pilot program — and assess all applicable penalties if the plan administrator or sponsor can't establish that the failure to timely file was due to reasonable cause.

Relief for plans covered by ERISA

Although plans covered by ERISA aren't eligible for relief under the pilot program, they may qualify for reduced ERISA late-filing penalties under the DOL's Delinquent Filer Voluntary Compliance (DFVC) program. The IRS determined that, in certain circumstances, it would waive its own late-filing penalties for plans that use the DFVC program.

Act now

The IRS pilot program was established for only one year, and the IRS hasn't yet indicated that the program will be extended or made permanent. Get in touch with your advisor now if you've overlooked or fallen behind on the reporting requirements for your retirement plan so you can take advantage of the program before it expires.