

Part III. -- Administrative, Procedural, and Miscellaneous

Relief From Internal Revenue Code Late Filer Penalties

Notice 2002-23

PURPOSE

This notice provides administrative relief from the penalties under §§ 6652(c)(1), (d), (e), and 6692 of the Internal Revenue Code (the "Code") for failure to timely comply with the annual reporting requirements under §§ 6033(a), 6057, 6058, 6047, and 6059 of the Code. This administrative relief applies to late filers who both are eligible for and satisfy the requirements of the Delinquent Filer Voluntary Compliance Program ("DFVC Program"), which is administered by the Department of Labor's ("DOL") Pension and Welfare Benefits Administration ("PWBA"). The DFVC Program was published on April 27, 1995, in the Federal Register (60 FR 20874). A modification of the DFVC Program was published on March 28, 2002.

BACKGROUND

Plan administrators who fail to file Form 5500 annual returns/reports on a timely basis can be subject to civil penalties under both Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") and the Code. The Secretary of Labor has the authority under section 502(c)(2) of ERISA and 29 CFR 2575.502c-2 to assess civil penalties of up to \$1,100 per day against plan administrators who fail or refuse to file complete and timely annual reports.

Pursuant to 29 CFR 2560.502c-2 and 29 CFR 2570.60 *et seq.*, PWBA maintains an administrative program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing late annual reports may be assessed a penalty of \$50 per day for each day of noncompliance. Plan administrators who fail to file an annual report may be assessed a penalty of \$300 per day, up to \$30,000 per year, until a complete annual report is filed.

In addition to the civil penalties that may be assessed by DOL under section 502(c)(2) of ERISA, the Internal Revenue Service (the "Service") may assess penalties under §§ 6652(c)(1), (d), (e) and 6692 of the Code for the failure to satisfy the annual reporting requirements. Section 6652(c)(1) generally provides that in the case of any failure to file a return under § 6033(a), the exempt organization shall pay an amount equal to \$20 for each day during which the failure continues, not to exceed the maximum amount specified under the Code. Section 6652(d)(1) generally provides that in the case of any failure to file an annual registration statement under § 6057(a), the late filer shall pay, upon notice and demand, a penalty of \$1 for each participant with respect to whom there is a failure to file for each day the failure continues, up to \$5,000 for any plan year. Section 6652(d)(2) generally provides that in the case of any failure to file a notification of change of status, the late filer shall pay, upon notice and demand, a penalty of \$1 for each day the failure continues, up to \$1,000. Section 6652(e) generally provides, in part, that in the case of any failure to file a return or statement required under §§ 6058 or 6047(e), the late filer shall pay, upon notice and demand, a penalty of \$25 for each day the failure continues, up to \$15,000 per return or statement. Section 6692 generally provides that in the case of any failure to file a report required by § 6059, the late filer shall pay a penalty of \$1,000 for each failure.

DOL ADMINISTRATIVE RELIEF FROM PENALTY

In order to encourage voluntary compliance with the annual reporting requirements by late filers, DOL implemented the DFVC Program. Plan administrators who are subject to the assessment of civil penalties for failing to file a timely annual report and who are eligible for the DFVC program may pay reduced civil penalties by voluntarily complying with the terms of the DFVC Program.

ADMINISTRATIVE RELIEF FROM CERTAIN INTERNAL REVENUE CODE PENALTIES FOR DFVC PROGRAM PARTICIPANTS

The Service will not impose the penalties under §§ 6652(c)(1), (d), (e), and 6692 (as these sections relate to the filing of a Form 5500) on a person who is eligible for and satisfies the requirements of the DFVC Program with respect to the filing of a Form 5500. Once the late filer satisfies the requirements of the DFVC Program, including paying the reduced civil penalty under section 502(c)(2) of ERISA, the relief under this notice will apply. The late filer need not file a separate application for relief with the Service. The Service will coordinate with DOL in determining which late filers are eligible for the relief under this notice.

INAPPLICABILITY OF THE ABOVE RELIEF FOR CERTAIN FILERS

The relief under this notice is available only to the extent that a Form 5500 is required under Title I of ERISA. Therefore, for example, Form 5500-EZ filers and Form 5500 filers for plans without employees (as described in 29 CFR 2510.3-3(b) and (c)) are not eligible for the relief in this notice. Because such plans are not subject to Title I of ERISA, they are ineligible to participate in the DFVC Program.

DRAFTING INFORMATION

The principal drafters of this notice are Steven J. Linder of the Employee Plans, Tax Exempt and Government Entities Division and Pamela Kinard of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, please contact Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday. Mr. Linder may be reached at (202) 283-9888; Ms. Kinard may be reached at (202) 622-6060. The telephone numbers in the preceding sentence are not toll-free.