



employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

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EP Participates in Tax Forums

New Tax Law Impacts Retirement Plans

The tax legislation enacted by Congress in June, the Economic Growth and Tax Relief Reconciliation Act of 2001 (“[EGTRRA](#)”), changed many of the Code’s requirements for qualified plans and IRAs. What are the major changes for plan sponsors and individuals? And what will Employee Plans require of plan sponsors to comply with EGTRRA?

Qualified Plans and Other Employer Retirement Plans

There are many changes in the new law that will impact plan sponsors. Here are a few of the most important ones:

■ **Increases in plan limits.** The maximum benefit limitations under section 415 are increased: the defined benefit plan dollar limit is raised from \$140,000 to \$160,000, and the defined contribution plan dollar limit is raised from \$35,000 to \$40,000. As under prior law, the new limits are indexed for the cost of living. The reduction in the defined benefit dollar limit for early retirement will now begin at age 62 rather than 65. In addition, the defined contribution plan percentage limitation is increased from 25% to 100%.

Limitations other than 415 are also increased: the limit under section 401(a)(17) on compensation that may be taken into account under the plan is raised from \$170,000 to \$200,000 (indexed). The section 402(g) limit on elective deferrals to 401(k), 403(b) and 457 plans is increased (from \$10,500 for 401(k) and 403(b) and \$8,500 for 457) to \$11,000 in 2002, with increases of \$1,000 each year up to \$15,000 (indexed) in 2006. And the SIMPLE elective contribution limit is increased from \$6,500 to \$7,000 in 2002, with increases of \$1,000 each year up to \$10,000 (indexed) in 2005. Finally, the deduction limits under section 404 for profit-sharing and stock bonus plans is increased from 15% to 25% of aggregate compensation. In addition, in 2002 the maximum exclusion allowance of 403(b)(2) disappears. These changes will enable plan sponsors to help employees save more for retirement on a tax-favored basis.

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NEWS**

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► For your convenience, we have included Internet links to referenced materials throughout the electronic version of *Employee Plans News*. These links are identified on the paper version by underlined text. The electronic version may be found at www.irs.gov/ep.

■ **Enhanced portability.** EGTRRA amended the Code so that a participant will be able to roll over his or her benefit among not only qualified plans but also 403(b) plans, some section 457 plans, and IRAs. This will enable more mobile employees to better manage their retirement benefits throughout their career.

■ **Section 401(k) plan changes.** In addition to increasing the elective deferral limit under section 402(g), EGTRRA made several other changes that will affect 401(k) plans. These include easing of the hardship distribution rules, allowing participants 50 years of age or older to make additional “catch-up” contributions, requiring faster vesting of employer matches, and repealing the multiple use test and the “same desk” rule. And, beginning in 2006, 401(k) plans can provide for “Roth” accounts, i.e., after-tax elective contributions plus earnings that can be distributed tax free.

Employee Plans intends to issue sample amendments for qualified plans to adopt in order to facilitate implementation of EGTRRA. Our goal is to help plan sponsors develop qualified plan language that will reflect the new law and actual plan operation, even though Employee Plans agents will not be reviewing the EGTRRA amendments as part of our current determination letter program. As provided in [Notice 2001-42](#), qualified plans are required to have “good faith” EGTRRA amendments in effect for 2002 and later plan years for any required plan changes, and for any other changes that a plan sponsor wants to make. In general, any language that represents a reasonable effort to take into account all of the requirements of an EGTRRA provision, and that isn’t an unreasonable or inconsistent interpretation, is a good faith amendment. On the other hand, a plan amendment that merely incorporates by reference an EGTRRA change to the Code is not a good faith EGTRRA amendment, if incorporation by reference is not allowed for that Code requirement. The sample language will automatically satisfy the good faith amendment requirement.

What reliance does a good faith EGTRRA amendment give to a qualified plan sponsor? As described in Notice 2001-42, plan provisions that are amended timely by good faith EGTRRA amendments have a remedial amendment period that won’t end any earlier than the end of the 2005 plan year. As we issue guidance under EGTRRA, a plan sponsor may have to amend its plan further to continue to comply with the qualification requirements, but the good faith amendments will protect the plan for the years before the guidance is issued and effective.

And, finally, what effect does EGTRRA have on the GUST determination letter program? None. Because we feel it is important to avoid further delays in amending plans for GUST, EGTRRA amendments will not be reviewed under the GUST program.

IRAs

Perhaps the biggest change for individuals is the increase in the IRA contribution limits from the current limit of \$2,000. Like many of the changes under EGTRRA, the IRA increase is phased in over several years. Beginning in 2002, an individual will be able to contribute up to \$3,000. The limit will go up again in 2005 to \$4,000, and to \$5,000 in 2008. After that, the IRA limits will be adjusted for cost of living. The increased limits will apply to both traditional and Roth IRAs. In addition, an IRA owner who is 50 years or older will be able to contribute an extra \$500 each year (\$1,000 beginning in 2006) to his or her traditional or Roth IRA as a “catch-up” contribution.

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New Tax Law *continued from page 2*

Another new provision under EGTRRA provides a nonrefundable tax credit, beginning next year and ending after 2006, for IRA contributions or elective contributions made to an employer-sponsored plan. The credit, up to 50% of the amount contributed, will be available to individuals with adjusted gross income up to \$25,000 (\$37,500 for heads of households and \$50,000 for joint filers). The credit is designed to encourage lower income taxpayers, who tend not to have adequate retirement savings, to take advantage of tax-favored retirement savings vehicles.

Finally, EGTRRA will allow plan sponsors to establish IRA programs in their qualified plans, and allow employers to accept rollovers of IRA benefits from their employees into their workplace retirement plans. ■

Simplification of Determination Letter Procedures

(Announcement 2001-77)

Economic Growth and Tax Relief

Reconciliation Act of 2001 (EGTRRA) Plan Amendment Procedures

(Notice 2001-42)

On June 28, 2001, the IRS released [Announcement 2001-77](#) and [Notice 2001-42](#).

Announcement 2001-77 explains how the Service is modifying its procedures and forms to simplify the determination letter process, including allowing adopters of pre-approved plans to obtain reliance without a determination letter.

Notice 2001-42 provides guidance regarding the amendment of qualified plans for the Economic Growth and Tax Relief Reconciliation Act of 2001 ([EGTRRA](#)).

Highlights of Announcement 2001-77

- Allows adopting employers of nonstandardized master and prototype (M&P) plans or certain volume submitter plans to rely on a favorable opinion or advisory letter for most qualification requirements without requesting a determination letter.
- Allows an employer maintaining a multiple employer plan to rely on a favorable determination letter for the plan for most qualification requirements without submitting a separate Form 5300.
- Makes the filing of Schedule Q optional. Plan sponsors can elect to have a plan reviewed for compliance with form requirements only, or for form, coverage, and nondiscrimination requirements under IRC sections 401(a)(4), 401(a)(26), and 410(b).
- Provides a list of the revised determination application forms and the effective dates and transition rules for their implementation and use. The Service has posted draft Forms 5300, 5307, 5310, 6406, and Schedule Q to www.irs.gov/ep under Determination Letter Program.
- Indicates the intention of the Service to make available, during the second half of 2001, a list of M&P plans and volume submitter specimen plans that were submitted to the Service for GUST advisory and opinion letters by December 31, 2000, in compliance with [Rev. Proc. 2000-20](#). The period of extension of the GUST remedial amendment period under Section 19

On July 6, 2001, Employee Plans issued a [Special Edition](#) to alert the pension community to the release of important guidance impacting the determination letter program. For your convenience, the text of this special edition follows at right.

The following IRS employees are contributors of this edition of the *Employee Plans News*

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Special Edition *continued from page 3*

of Rev. Proc. 2000-20 for M&P and volume submitter plan adopters is 12 months. As noted below, Notice 2001-42 provides that the 12-month period shall be treated as not ending before December 31, 2002.

- Allows plan sponsors to request determination letters that take into account the final regulations on cross testing, beginning August 22, 2001.

Highlights of Notice 2001-42

- Provides that the GUST remedial amendment period for individually designed plans is not being extended. However, a separate and later remedial amendment period is being provided for EGTRRA.
- Treats the GUST remedial amendment period provided to M&P and volume submitter plan adopters under [Rev. Proc. 2000-20](#) section 19 as not expiring earlier than December 31, 2002. This change will simplify the determination of the GUST amendment deadline for these plans and facilitate the timely amendment of the plans for GUST and EGTRRA.
- Provides guidance regarding “good faith” EGTRRA plan amendments. Before the end of August 2001, the Service will publish sample EGTRRA plan amendments that plan sponsors and sponsors of pre-approved plans can adopt or use in drafting individualized plan amendments. Timely “good faith” EGTRRA amendments will have a remedial amendment period ending no earlier than the end of the 2005 plan year in which any needed retroactive remedial EGTRRA plan amendments may be adopted. Notice 2001-42 *does not extend the GUST remedial amendment period.*
- Provides that individually designed plans submitted for GUST determination letters may include EGTRRA amendments and that pre-approved plans submitted for GUST determination letters may include EGTRRA amendments in the form of a separate, clearly identified addendum to the plan. However, until further notice, our determination, opinion, and advisory letters will not consider the EGTRRA changes. ■

Treasury Appoints First IRS Advisory Committee on Tax Exempt and Government Entities (ACT)

On May 8, 2001, the Secretary of Treasury, at the recommendation of Commissioner Rossotti and Evelyn Petschek, appointed 18 people from across the country for two-year terms on the first Advisory Committee on Tax Exempt and Government Entities (ACT). ACT will serve as an organized public forum for the Service and customers with an interest in employee plans, exempt organizations, tax-exempt bonds, Indian tribal governments, and federal, state, and local governments. Through ACT, the IRS will receive regular input on administrative policy and programs that may affect these customers. In addition, ACT offers TE/GE the opportunity to supplement the many informal partnerships it already has with the private sector. ACT's inaugural meeting was a working session held in Washington, DC, on June 25 and 26, 2001. New ACT members in the Employee Plans subgroup of the overall committee follow:

Brian L. Anderson of Madison, WI, attorney and CPA, is a shareholder in the Madison law firm DeWitt Ross & Stevens S.C. He is Chair of the IRS Great Lakes Area TE/GE Council.

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Advisory Committee *continued from page 4*

Mary Beth Braitman of Indianapolis, IN, is a partner in the law firm of Ice Miller, where her clients include various governmental retirement systems in ten states.

Jonathan Barry Forman of Norman, OK, is a professor of law at the University of Oklahoma, who teaches courses on income taxation of corporations and individuals, pension, and employee benefit plans, tax policy, procedures, and welfare law.

Craig Hoffman of Jacksonville, FL, is Vice President and General Counsel of SunGard Corbel. He is President-Elect of the American Society of Pension Actuaries, where he has also served on the Board of Directors, as Vice President, and as Co-Chair of the Government Affairs Committee.

John W. Schroeder of Santa Clara, CA, is Senior Tax Benefits Counsel for Intel Corporation. He was a founding director of the Silicon Valley Benefits and Compensation Association.

Donald J. Segal of New York, NY, is Senior Vice President and Actuary with The Segal Company. He serves as Chair of the American Academy of Actuaries Pension Committee and on the Board of Governors of the Society of Actuaries. ■

**EP Connections:
Interview with Preston Butcher**

Preston Butcher, Director, Employee Plans Examinations, has worked for the Service since 1972 in a variety of positions within the former Employee Plans and Exempt Organizations Division. Mr. Butcher most recently served as Assistant Director of the Midwest District (Milwaukee, WI). He has also held the positions of Chief, District Office Research and Analysis in the South Florida District; Assistant Chief (EP/EO) in the Western Key District Office; and Assistant Chief (Examination) in the Los Angeles District prior to his graduation from the Executive Development Program in 1998. He holds a BA in accounting from Cedarville College and a MBA in financial management from George Mason University.

1. It has been over a year since your selection as Director, EP Examinations. What challenges have you experienced in establishing a national EP Examination Program under the new Employee Plans design?

The first challenge is obtaining a dedicated commitment of resources to EP examination activities. When I assumed the role of Director, EP Examinations, my first involvement was with a lot of people involved in the design process. Meanwhile, people back in the Area offices were wearing multiple hats trying to keep business running normally. The IRS Commissioner often uses the example of building a house while living in it; that is exactly what we are confronting. Also, we are now faced with the continued commitment of resources to examination work vis-a-vis the determination letter process. That has been a challenge. EP examiners are very experienced, well trained and highly talented with many demands on their abilities.

Second is integrating a customer market segment approach into our examination program. In the past, the examination program had many general cases to work. The design blueprint allowed us to apply a customer segment focus and address emerging market segments that have the greatest impact on participants' retirement benefits.

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Third is upgrading our training and automation to support our goals for the examination program and to support use of current technology.

Finally, there is the challenge of bringing together the various examination activities of the former key district offices into a national examination program. Our theme is to think nationally and to work together.

**2. What examination initiatives are underway or being planned over the next year?
Does EP Examinations conduct any research activities?**

Four initiatives are underway in our current work plan in various stages of development and evolution.

- a. Multiemployer plans.
- b. 403(b) and 457 plans – We just kicked-off IRC 457 training for our examiners.
- c. 401(k) plans – We want to follow-up on results from prior IRS studies of 401(k) plans. We recently increased our examination units to 600 because of increased Congressional interest.
- d. A more in-depth look at plans of larger corporations with a team audit approach including subject matter experts, computer audit specialists, etc.

There are three other projects that we are contemplating seriously for next year:

- a. Non-Filers– These are either people who filed for a while and stopped, or never filed, or filed incomplete returns to minimize their exposure to an EP examination thinking that they have satisfied their filing requirements.
- b. SEP adopters – We've gotten a lot feedback of problems with compliance.
- c. Service Providers – This is my number one source of practitioner feedback: we ought to be involved in looking at the quality of service being provided by third-party service providers.

3. Recognizing that no one wants to be selected for an examination, what is your office doing to enhance customer satisfaction with the examination process?

First, an EP examination should be with an agent who is well trained in customer service techniques. Let me emphasize that we are not talking about kinder and gentler. We are not talking about walking away from any noncompliance. What we are saying is that the agent will be well trained and will provide customer service that is polite and courteous. We currently get high marks on this customer service element. Second, we need to minimize the disruption our examination causes taxpayers. A leading source of feedback is based on our need to improve timeliness. And the feedback that I receive during outreach indicates that there are gaps in processing examinations. A taxpayer will hear from an agent and then hear nothing for a period. We have to minimize these gaps, and ensure that agents clearly explain taxpayer rights and the process – the findings, results, and any adjustments.

4. Is the role of an EP examiner limited to conducting examination activity?

Many EP examiners are involved in working determination letter cases. Also, EP examiners are the main instrument of customer service and are involved in local outreach. Thus, EP examiners must possess many skills.

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EP examiners are best suited to provide customer education and be involved in local outreach as they are the main contact for our customers and deal with operational issues on a daily basis.

Another source of current information regarding the EP Examination Program is our Internet Web site: the EP Corner (www.irs.gov/ep)

5. Why are EP examiners best suited to provide customer education?

EP examiners are the main contact for our customers and deal with operational issues on a daily basis.

6. How do EP examiners maintain their expertise when high determination letter receipts cause a shift of personnel to support the EP Determination Program?

First, they maintain expertise by receiving just-in-time training on the latest nuances of the body of law they are working. However, in the past the switch to determinations work has had an extremely detrimental effect on their ability to apply effective audit techniques to develop issues. It is very easy for examiners to become “verifiers.” When examiners become “verifiers” then compliance suffers. EP examiners need to hone their skills and techniques to become “investigators” rather than “verifiers.” The shift to determinations hinders the EP examiners’ ability to maintain their examination skills. It also reduces overall examination presence. A recent GAO study indicated that examination presence is essential to maintaining pension plan compliance.

Our intent reflected in our work plan is to “fence off” resources for our examination initiatives in order to promote continuity, commitment, and specialty training.

7. There has been a considerable amount of examination activity relating to 403(b) annuities over the past few years. What issues have you seen from these examinations? What future examination activity is planned with respect to 403(b) annuities?

As far as technical issues, we are seeing the maximum exclusion allowance issue and universal availability issue. Two other phenomena that we are seeing is first the impact on training. Last years’ 403(b) Annuities Workshop assisted in improving the overall quality of the examinations. This shows the benefit of specialty training. The other area is the impact of the Service’s policy with respect to the imposition of sanctions under the Audit Closing Agreement Program (“Audit CAP”). It should be noted that the primary objective in examining these plans is the proper and timely correction of all identified plan failures rather than the imposition of sanctions. Agents are reminded that meaningful attempts by a plan sponsor to self-correct 403(b) failures are an important factor to consider in determining an appropriate sanction amount, regardless of when the examination was initiated.

We also have a plan for baselining and measuring the impact of our examination activities. Our efforts in 403(b) are a useful example for other examination initiatives.

As far as 457, we now have examination jurisdiction. We have recently completed 457 training for our examiners. As with 403(b), we will be baselining and measuring our impact.

8. If I wanted to find out more about the EP Examination Program, what sources of information are available?

We are keeping current information on our Internet Web site: the EP Corner (www.irs.gov/ep). In addition, we are planning to provide periodic articles in the new EP newsletter, *Employee Plans News*, enhanced training products and multimedia products.

For a complete transcript of the entire interview with Preston Butcher, see www.irs.gov/ep ■

New Required Minimum Distributions Model Amendment

Has your plan begun minimum distributions this year under the “old” 1987 proposed regulations? Do you want to switch and use the new simplified proposed regulations? Check out [Announcement 2001-82](#) for a model amendment that will allow you to make this switch.

Check out our Web site for [Q & A's](#) relating to the Section 401(a)(9) required minimum distributions, too. ■

GUST Remedial Amendment Period: Sample Certification of Intent to Adopt a Pre-Approved Plan

The GUST remedial amendment period for a plan generally ends on the last day of the 2001 plan year. However, the period may be extended if the plan is a pre-approved plan (that is, a master and prototype (M&P) or volume submitter plan) or if the employer timely certifies its intent to amend or restate the plan for GUST by adopting a pre-approved plan. A certification of intent to adopt a pre-approved plan is timely if it is executed no later than the last day of the 2001 plan year. These rules are contained in section 19 of [Rev. Proc. 2000-20](#), 2000-6 I.R.B. 553, as modified by [Notice 2001-42](#), 2001-30 I.R.B. 70, and in [Announcement 2001-12](#), 2001-6 I.R.B. 526.

The Service has been asked to provide a sample certification that meets the requirements of Rev. Proc. 2000-20. Although the Service’s procedures do not prescribe a format, the certification should indicate the employer’s intent to amend or restate a specific plan by adopting a specific M&P or volume submitter specimen plan that was submitted to the Service for a GUST opinion or advisory letter by December 31, 2000. The certification must be signed and dated by both the employer and the M&P sponsor or volume submitter practitioner by the last day of the 2001 plan year. The employer should keep the certification with its other plan records. The certification is not binding.

The following sample certification meets the requirements of Rev. Proc. 2000-20:

_____ (name, address and EIN of employer) certifies that it intends to adopt _____ (name of M&P or volume submitter specimen plan and file folder number, if available), sponsored by _____ (name, address and EIN of M&P or volume submitter practitioner), as approved for GUST by a favorable opinion or advisory letter. This plan will amend or restate _____ (name and plan number of the employer’s plan being amended or replaced) and will be adopted within the extended GUST remedial amendment period under Rev. Proc. 2000-20 as modified by Notice 2001-42.

_____ (name of M&P or volume submitter practitioner) certifies that an application for a GUST opinion or advisory letter for the M&P or volume submitter specimen plan identified above was filed with the IRS by December 31, 2000.

Employer’s signature

Date

Sponsor’s or practitioner’s signature

Date

The GUST remedial amendment period for a plan generally ends on the last day of the 2001 plan year. However, the period may be extended if the plan is a pre-approved plan.

Amendment Period *continued from page 8*

To be entitled to the extension of the remedial amendment period under Rev. Proc. 2000-20, as modified, an employer may be required to request a determination letter within the extended period. In general, this will be the case if the employer's GUST-amended or restated plan is an individually designed plan or an M&P or volume submitter plan that has been modified in any way other than by the choice of options permitted under the document. See section 19 of Rev. Proc. 2000-20 and [Announcement 2001-77](#), 2001-30 I.R.B. 83, for additional details. An employer that certifies its intent to amend or restate a plan by adopting a pre-approved plan must include a copy of the certification with any request for a GUST determination letter for the plan that is filed after the end of the 2001 plan year. ■

Modification to DB LRM 40

(Section 415 Sample Plan Language)

Employee Plans has revised LRM 40 (Section 415) of the 02-2000 version of the Defined Benefit Listing of Required Modifications and Information Package (LRMs). A significant change in the revised LRM 40 (made in response to requests from practitioners) is the expansion of the methodology used to determine whether benefits of participants with RPA '94 Old-Law Benefits satisfy the limitations of § 415(b). Now an employer has a choice of using any one of the three methods described in Q&A-14 of [Revenue Ruling 98-1](#).

The adoption agreement language in the revised LRM 40 includes specific elections for employers to provide RPA '94 Old-Law Benefits and the associated RPA '94 Freeze Dates and RPA '94 Final Implementation Dates. Corresponding language in the basic plan document has been expanded and clarified. In addition, the revised LRM 40 provides that, unless a different group of employees is elected in the adoption agreement, benefit increases resulting from the repeal of § 415(e) are provided to all current and former participants (with benefits limited by § 415(e)) who have an accrued benefit under the plan immediately before the first day of the first Limitation Year that began in 2000.

Other changes include – a change in terminology from “maximum permissible amount” and “highest average compensation” to, respectively, “maximum permissible benefit” and “high three-year average compensation;” “defined benefit compensation limitation” is defined; “welfare benefit fund” language is expanded; and elective reductions under § 132(f)(4) are included in “Compensation” for limitation years beginning after December 31, 2000 (or an earlier date specified in the adoption agreement).

See www.irs.gov/ep for the complete DB LRM. ■

It's Time to File the 2000 Form 5500 and Form 5500-EZ

As you begin to prepare your filings for the 2000 plan year, we offer the following...

EFAST Processing Tips (taken from the 2000 Instructions to Form 5500)

To reduce correspondence and penalties:

- Paper forms must be obtained from the IRS or printed using software from an EFAST approved software developer.
- Use original forms. Photocopies may be rejected. If the form is difficult to read, correspondence for additional information may be required.
- All information should be in the specific fields or boxes provided on the form and schedules. Information entered outside of the fields or boxes may not be processed.
- Do not use felt tip pens or other writing instruments that can cause signatures or data to bleed through to the other side of the form. One-sided documents should have no markings on the reverse side.
- The form must be clean, without glue or other sticky substances.
- Do not staple the form. Use binder clips or other fasteners that do not perforate the paper.
- Do not submit extraneous material or information, such as arrows used to indicate where to sign, notes between preparers of the report, notations on the form, e.g., "DOL copy."
- Do not submit unnecessary or blank schedules. Except for certain Schedule SSA filings specifically permitted by the instructions, schedules should be submitted only with a Form 5500 or in response to correspondence from the Pension and Welfare Benefits Administration (PWBA) regarding the processing of your return/report.
- Manual entries on a machine print form are not permitted.

Once You File Your Return/Report (taken from the PWBA's Troubleshooters Guide to Filing the ERISA Annual Report - Form 5500)

When the 2000 Form 5500 is received by PWBA, it will undergo a number of computerized edit checks. Computerized checks have been developed to identify errors or omissions on your return/report. Results of these checks will provide the basis for correspondence to you. Correspondence will explain reasons for filing failures, how to submit missing or corrected information, and will include a reminder that failure to respond or to provide requested information may result in enforcement action, including the assessment of civil penalties, by the Department of Labor and/or the Internal Revenue Service.

Edit Testing

The 2000 Form 5500 and schedules will be subjected to computerized edit checks that concentrate on ten major areas:

- **Mandatory answer/invalid data.** Checks identify if you have failed to answer a required question, failed to check an appropriate box, or entered invalid information.
- **Math consistency.** Checks apply to financial statements that ensure that totals and subtotals equal the sum of their component amounts.



NEW TELEPHONE ASSISTANCE FOR COMPLETING FORMS 5500 OR 5500-EZ

Call PWBA toll-free at (866) 463-3278 for assistance in completing Forms 5500 or 5500-EZ; responding to correspondence from PWBA about EFAST processing of your Form 5500 or 5500-EZ filing; and understanding EFAST. This telephone service is available M-F, 8:00 a.m. through 8:00 p.m. Eastern Standard Time.

Access the EFAST Web page at www.efast.dol.gov

Time to File *continued from page 10*

- **Missing schedules.** Checks verify that schedules are actually attached when you mark “yes” to one or more of the questions on Form 5500 or its schedules that require the attachment of other schedules, or when information on the financial statements indicates that schedules are required to be attached.
- **Financial activity.** Checks identify if you answered the appropriate narrative questions when certain financial activity took place.
- **Missing amount.** Checks identify if you failed to indicate dollar amounts in space provided after marking “yes” to questions or marking appropriate box(es) on Form 5500.
- **Nonexempt.** Checks identify if you failed to answer narrative questions on Schedules H or I.
- **Missing specify/explain information.** Checks determine that when “specify “ or “explain” are indicated on the Form 5500 and schedules, a narrative explanation has been provided with the filing.
- **Large plan/DFE financial/transaction information.** Checks identify if the plan/DFE provided required information when the report of an independent accountant is required to be part of the annual report.
- **Final report.** Checks identify if the report is actually a final filing based on answers to certain questions.
- **Entity control.** Checks identify whether consistent identifying data is reported each year for a particular filer in order to maintain accurate year-to-year records for each filer. The following information is used in entity control testing: employer identification number (EIN), plan number (PN), plan name, sponsor name, effective date of plan, total assets (beginning and end of year) and whether this is the first return/report filed for the plan or DFE.

Potential Filing Errors and How to Avoid Them

As explained previously, the 2000 Form 5500 will be subjected to review to determine its compliance with the filing requirements. The PWBA, IRS and PBGC want to minimize correspondence being sent to plan administrators for deficient filings.

The errors considered most likely to be made by you are: 1) omitting information; 2) failing to answer multiple-part questions; 3) attaching supplemental information to forms instead of completing the necessary line items; 4) attaching information improperly completed and labeled; and 5) failing to use acceptable forms, and failing to enter information correctly on the forms.

► Omitting Information

Forms are subjected to review that includes checking specific data elements; omissions, such as missing signature, missing financial data, missing independent qualified public accountant’s report; and missing fiscal year beginning and ending dates. *All items on the forms must be completed as required by the instructions.* To enter none for monetary amounts, you may enter a zero (0) or leave the line blank, unless the instructions require that a “0” be entered.

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OOPS . . .

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If you downloaded the August 7th version of the white paper on The Future of the Employee Plans Determination Letter Program, please delete or discard it and replace it with the corrected August 8th white paper now available at: www.irs.gov/ep. Sorry for any inconvenience.

Time to File *continued from page 11*

▶ Failing to Answer Multiple-Part Questions

For all multiple-part questions, you must answer all parts as directed. The computerized edit program is designed to identify any multiple-part questions that have not been completely answered.

▶ Attaching Supplemental Information to Forms

Unless specifically permitted in the instructions, under the new computerized edit system, use of the phrase “see attached,” or similar wording, is not an acceptable answer in place of entering required information on the forms.

▶ Attaching Information Improperly Completed or Labeled

All information submitted with Form 5500 must identify the plan or DFE name, sponsor’s EIN, PN, type of attachment, associated schedule, and line number.

▶ Failing to Use Acceptable Forms and Failing to Enter Information Correctly on the Forms

Under the new EFAST processing system, all forms submitted must meet certain minimum standards, including entering data only in the space provided in accordance with the Form 5500 instructions. See the EFAST Web page at www.efast.dol.gov for more information. ■

The Future of the EP Determination Letter Program

Employee Plans is in the process of considering the long-term future of the determination letter program. Guided by the goals of service and efficiency, the project seeks to find if there is a better alternative to the current determination letter program that provides a more efficient way to enhance up-front compliance and allows EP to carry out its other program responsibilities and provide high-level service.

Options have been identified as possible alternatives to the present program. These options will be presented as an invitation to practitioners and other stakeholders to enter into a dialogue on the future of the determination letter program. You can find the white paper describing these options at: www.irs.gov/ep ■

ESOPs – an Employee’s Right to Demand Distribution of Employer Securities

Section 409(h)(1)(A) of the Code requires an ESOP to ensure that a participant who is entitled to a distribution from the plan has the right to demand that his or her benefit be distributed in the form of employer securities. Some plans are written in a way that limits the distribution of employer securities to the portion of a participant’s account that is actually invested in these securities. Unless the exceptions described below are applicable, an ESOP must permit a participant to receive a distribution that consists entirely of employer securities.

Certain plans have language that states that only amounts attributable to the “Company Stock Account” will be distributed in the form of employer securities, while the “Other Investments Account” is distributed in cash. Both the Company Stock Account and the

Other Investments Account are subject to the requirements of Code section 409(h)(1)(A), and the plan should not limit the right to demand employer securities to assets held in the Company Stock Account. While few participants may actually elect to have their total accounts distributed in the form of employer securities, an ESOP is still required to contain language that conforms to the requirements of Code sections 401(a)(23), 409(h) or 4975(e)(7). ESOPs must be amended to either modify or delete provision limiting the distribution of employer securities to the portion of a participant's account that is invested in employer securities.

The exceptions to this requirement include Code section 409(h)(7), which exempts the portion of a participant's account that was diversified in accordance with section 401(a)(28)(B), and Code section 409(h)(2), which provides that an ESOP may distribute cash in the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust qualified under section 401(a). Section 1506 of the Taxpayer Relief Act of 1997 extended this exception to include S Corporations, effective for tax years beginning after December 31, 1997.

The right of an ESOP participant to demand that his or her ESOP benefits be distributed in the form of employer securities may present problems for small, closely-held employers that wish to restrict the ownership of company stock to certain employees or a trust. If a participant does request a distribution in the form of employer securities, the number of shares of company stock available to satisfy the request may not be sufficient. Some plans contain language that would allow the plan to delay the distribution (subject to the minimum distribution requirements of Code section 401(a)(9)) until the plan can acquire a sufficient number of shares. ■

Tips for Expediting the Determination Letter Process – Part II


Our first edition of *Employee Plans News* (Volume I, Spring 2001) included an article providing tips on steps you can take to facilitate the processing of your determination letter request. We set out more tips below that will speed up the determination letter process and help us improve our service to you. These tips are organized according to the applicable form or schedule. See www.irs.gov/ep for a complete list of tips for expediting the determination letter process.

Tips for Form 5300 and 5307 filers:

1. Multiple Applications – A common concern of practitioners is that when a practitioner submits multiple applications, the applications are assigned to different agents who sometimes work in different offices. To help us address this, group the applications together, and identify the group of plans in the cover letter submitted with the applications.

2. Prior Determination Letter – Include the last favorable determination letter issued to the plan sponsor with the application. If you don't have a prior letter, provide a signed and dated copy of the initial plan document or adoption agreement (with the volume submitter advisory letter, M&P opinion letter, or Regional Prototype notification letter, as applicable) and all subsequent amendments.

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We have set out more tips in Part II of this article that will speed up the determination letter process and help us improve our service to you.

Expediting Letter Process *continued from page 13*

3. Notice to Interested Parties – Item 10 of the determination letter tip article in the first edition of *Employee Plans News* stated – “Include a copy of the notice and certify that it was provided to all employees.” After publication, it was noted that this procedure has been changed. If you answer “yes” to the applicable “Notice to Interested Parties” question on the application form, a copy of the notice is not required to be submitted with the application.

4. Expediting Agent Requested Amendments – When a practitioner has submitted several plans for determination letters and has been contacted by an agent requesting amendments to a specific plan, the practitioner should also correct its master plan document for the agreed upon changes/corrections so that future submissions will not require contact for the same issues.

5. Multiple Plan Information (Form 5307 line 9) – If answered in the affirmative, the file should contain a statement listing the name, type, form, and number of the plan; whether each plan has received a determination letter or has an application pending; and whether there are paired plans. If applicable, indicate the serial number of the letter issued for the paired plan.

Tips for Form 5310 filers:

1. Board of Director Resolution – Include a copy of the resolution or other appropriate documentation formally terminating the plan. The date of the resolution must precede the date of termination.

2. Separated participants without full vesting (5310 line 13b(6)) – If the response indicates participants separated without full vesting in the current year or any of the past 5 years, include in the application the following information: name of participant, SSN, date of hire, date of termination, vesting percentage, account balance or accrued benefit as of the date of separation, reason for separation, and the date and amount of distribution.

3. Plan Distributions (5310 line 17) – The application file should contain a statement that all consents, notices, etc., related to plan distributions, will be secured in accordance with plan language. If the plan requires a joint and survivor annuity to be offered, indicate this fact even if no one is expected to take a distribution in this form.

Schedule Q filing tips:

1. Schedule Q line 5 - 410(b) coverage – If a plan contains a 401(k) and/or 401(m) provision, lines 5(l) and 5(m) must be completed to the extent necessary. Line 5(m) is completed only for plans with a 401(k) provision (line 5(m)(1)) or a 401(m) provision (line 5(m)(2)). When applicable, line 5(l) is completed for all types of plans.

2. Schedule Q line 5(o) – As indicated in the instructions, if the ratio percentage indicated in lines 5(l), 5(m)(1), and/or 5(m)(2) is 70% or greater, line 5(o) should generally be answered with “A”. In some cases, applicants have answered line 5(o) with a “B” and answered line 9 with a “B”. Note that line 5(o) pertains to IRC section 410(b) and line 9 pertains to IRC section 401(a)(4); the two items are unrelated, even if the Average Benefit Test is being used to permit one or more rate groups established under the General Test to satisfy coverage. Depending upon the answer to line 6, a “B” response in line 5(o) may require a Demo 5 and higher user fee. See the fee structure on Form 8717 line 5.

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3. Schedule Q line 5(o) answered “B” and line 6 answered “No”, and/or line 7 and line 9 answered “No” – Note that a Schedule Q prepared for a terminating plan may not be answered as indicated unless a favorable determination letter that considered the Average Benefit Test and/or General Test was issued for the plan during the preceding three years, and there has been no change in the material facts on which that determination was based. ■

Recurring Plan Issues in Determination Case Review

With the close of the GUST remedial amendment period rapidly approaching, Employee Plans is preparing for the massive influx of determination letter requests that is anticipated for the final quarter of 2001 and throughout most of 2002. As part of IRS overall commitment to provide efficient, high-quality customer service, Employee Plans is currently involved in a broad-based effort to streamline determination case processing at every level, from a major redesign of the forms used to apply for determination letters to an expansion of reliance on opinion and advisory letters issued for master and prototype and volume submitter plans that will reduce the number of employers who have to file a determination letter request. See [Announcement 2001-77](#).

Employee Plans would like to ensure that employers receive their determination letters in correct form and as quickly as possible, but if we have to request corrections to plan provisions, the process is delayed. In an attempt to avoid these delays, we have identified frequently recurring defects in plan language that require corrective amendments and delay case closure:

- 1.** Defined benefit plans fail to properly apply sections 415(b)(2)(E) and 417(e) of the Code. See criteria under [Revenue Ruling 98-1](#).
- 2.** Plans fail to include proper effective dates for GUST provisions.
- 3.** Plans fail to provide verification of compliance with prior laws, including TRA '86, UCA '92 (401(a)(31)), and OBRA '93 (401(a)(17)).
- 4.** Plans fail to amend the definition of “eligible rollover distribution” to exclude hardship distributions under section 401(k)(2) for distributions after 12/31/99.
- 5.** Plans subject to 401(k) and/or 401(m) fail to provide that the dollar leveling method will be used to determine how excess contributions and excess aggregate contributions are distributed. If an amendment is made, it cannot eliminate the ratio leveling method, which is still used to determine the amount of excess contributions or excess aggregate contributions.
- 6.** The definition of “highly compensated employee” fails to specify if the top-paid group election and/or calendar year data election is actually being made in operation. Also, family aggregation requirements are not deleted.
- 7.** The top-heavy definition of “required aggregation group” fails to include plans that terminated within the 5-year period ending on the determination date.
- 8.** The definition of “top-heavy ratio” fails to exclude employees who have not performed an hour of service in the 5-year period ending on the determination date (rather than employees who have not received compensation during this period).

With the close of the GUST remedial amendment period rapidly approaching, Employee Plans is preparing for a massive influx of determination letter requests. As part of IRS overall commitment to provide efficient, high-quality customer service, Employee Plans is currently involved in a broad-based effort to streamline determination case processing at every level.

- 9.** The top-heavy minimum contribution fails to be based on a non-key employee's compensation for the entire plan year, even if compensation for other plan purposes is limited to the portion of the year in which an employee actively participates.
- 10.** Defined contribution plans fail to replace the linkage of the defined contribution dollar limit of section 415(c) to the defined benefit dollar limit of section 415(b) ("or, if greater, one-fourth of the defined benefit dollar limitations") with the cost of living adjustments described in section 415(d), effective for limitation years beginning after 1994.
- 11.** The definition of employer fails to include all entities that are required to be aggregated with the plan sponsor pursuant to sections 414(b), (c), (m), and (o).
- 12.** The plan fails to state that the waiver of the joint and survivor annuity must designate a specific beneficiary and form of benefit (unless the spouse has executed a general consent).
- 13.** The plan fails to require notice of the joint and survivor annuity to be provided at least 30 days, but no more than 90 days, prior to the annuity starting date.
- 14.** Fail-safe provisions that are intended to remedy coverage failures do not describe the ratio percentage test in sufficient detail. Since section 401(a)(26) is no longer applicable to defined contribution plans, any reference to it should be deleted.
- 15.** The definition of annual additions fails to refer to an individual medical account defined in section 415(l)(2) which is part of a pension or annuity plan, whether or not a defined benefit plan.
- 16.** Plans fail to incorporate elective deferrals and amounts contributed pursuant to Code sections 125 and 457 into section 415 compensation for limitation years after 1997.

The deletion of section 415(e) and the family aggregation requirements of section 401(a)(17) is not mandatory. However, an existing plan document which retains this language may fail to satisfy the nondiscrimination requirements of section 401(a)(4) on the basis of a safe-harbor allocation or benefit formula. For more guidance on amending a plan to eliminate section 415(e), see [Notice 99-44](#).

Plans may retain the pre-GUST required beginning date for distributions under section 401(a)(9). However, the plan must be amended in order for distributions to non-5% owners to commence only after retirement and not upon attaining age 70^{1/2}. Any participant who attained age 70^{1/2} but did not retire from employment before the start of a calendar year beginning after the adoption of the amendment must be offered the opportunity to begin receiving distributions at age 70^{1/2}. This age 70^{1/2} distribution option is subject to the anti-cutback rules of section 411(d)(6), and it cannot be eliminated except in accordance with regulations under section 411(d)(6).

Another pre-GUST provision that may be retained is the \$3,500 cash-out limit of sections 411(a)(11) and 417. If a plan is amended to increase the limit to \$5,000, the effective date of the increase must be the later of the first day of the plan year beginning after August 5, 1997, or the date on which the \$5,000 limit was first applied in operation.

If you are preparing to submit a determination letter application to IRS, please make every effort to ensure that the submission contains none of the discrepancies noted above. Also, if you have been contacted by an agent with regard to changes needed to a particular document, that plan document should be updated to include agreed upon changes prior to submitting it for another client. This will greatly reduce the need for requests for additional information and allow the application to be processed in a quick, efficient manner. ■



CONTACTING EMPLOYEE PLANS

The *Employee Plans News* welcomes your comments about this edition and/or your suggestions for future articles.

Send comments/ suggestions to:

- EP Customer Education & Outreach T:EP:CEO Room 4C3
1111 Constitution Ave., NW
Washington, DC 20224
- FAX: (202) 283-9525
- E-mail:
RetirementPlanQuestions@irs.gov

For EP Customer Account Services

(for technical and procedural questions):

- Please call (877) 829-5500
- E-mail:
RetirementPlanQuestions@irs.gov

Please provide your phone number in your e-mail message so that we can respond to your question(s).

For further Employee Plans Information:

- Please go to the Employee Plans Corner at: www.irs.gov/ep

The Use of Electronic Data on EP Examinations

Those of you who have experienced employee plans audits know that the first piece of correspondence you receive from the EP Examiner is either an Appointment letter or Form 4564, "Information Document Request" (IDR). These documents contain a list of items needed to conduct the audit. Usually this information is provided to the examiner as paper documents. Historically, this method has worked for you, your representative, and the Service.

However, as the business world changes, more and more information is being generated and maintained electronically. IRS/Employee Plans is modernizing also. Nationwide, each Employee Plans agent uses a lap top computer with Microsoft Office software during the examination of a plan. This software includes Microsoft Excel and Access programs, which are compatible with various other software programs used in the business world. As a result, the EP Examiner can now use electronically prepared reports, such as the ADP/ACP test, participant summary, and W-2 information, to conduct the audit.

You may have noticed that auditors are already requesting that some of the information listed on the Appointment letter or IDR be presented in electronic format. As more agents are trained in the use of Excel and Access, you can expect that requests for documents in electronically prepared format will increase. The EP Examiner can use the electronic copy in the same manner as he or she can use a paper copy. Electronic data can be sorted and sampled more efficiently, testing can be conducted using spreadsheets, and report accuracy can be verified. The EP Examiner may still request back-up documentation, but the use of electronic data will greatly facilitate the audit process.

Practitioners involved with large retirement plans are familiar with providing Employee Plans agents with electronic data to document plan operations. Electronic data is now more usable by EP agents doing a review of mid-sized and smaller retirement plans. In fact, some agents use an electronic format for all of their cases to assist them in the review of plan books and records.

It may never be possible to get rid of all the paper from an audit; however, if agents, employers, and representatives work together to get the information needed in the most efficient format, everyone benefits. ■

Rewrite of Publication 571 is Now Available

[Publication 571](#), *Tax-Sheltered Annuity Plans (403(b) Plans)*, has been substantially rewritten and was republished in June 2001. For the first time, Publication 571 contains a dedicated section with information for those taxpayers who participate in both a 403(b) and 457 plan at the same time. In addition, there is a section that discusses excess contributions and what to do about them.

Bearing in mind that the Economic Growth and Tax Relief Reconciliation Act of 2001 ([EGTRRA](#)) made significant changes to the 403(b)/457 areas, most of which are effective for tax years beginning after December 31, 2001, it is anticipated that a revised Publication 571 containing these changes will be available in January 2002. ■



For a complete list of
Employee Plans Published
Guidance see our Web site
at www.irs.gov/ep

Significant Employee Plans Published Guidance

(March 2001 - July 2001)

Revenue Rulings

[Rev. Rul. 2001-30, 2001-29 I.R.B. 46](#)

Specific conditions are set forth for a defined benefit replacement allocation to meet the requirements of §1.401(a)(4)-8(b).

Notices

[Notice 2001-37, 2001-25 I.R.B. 1340](#)

Model amendment as a result of the change in the definition of compensation in §132(f).

[Notice 2001-42, 2001-30 I.R.B. 70](#)

Plan amendments and remedial amendment periods for GUST and for [EGTRRA](#) of 2001.

[Notice 2001-46, 2001-32 I.R.B.](#)

Additional extension of relief from nondiscrimination rules for certain governmental and church plans.

Announcements

[Announcement 2001-18, 2001-10 I.R.B. 791](#)

Correction to model amendment in proposed minimum distribution regulations.

[Announcement 2001-23, 2001-10 I.R.B. 791](#)

Description of supplements to Publications 575 and 590 necessitated by proposed minimum distribution regulations.

[Announcement 2001-63, 2001-25 I.R.B. 1344](#)

Expansion of M&P and volume submitter programs to consider alternatives in Q&A-14 of Rev. Rul. 98-14 and changes to § 417(e)(3).

[Announcement 2001-77, 2001-30 I.R.B. 83](#)

Description of changes in the determination letter program for GUST plan amendments.

[Announcement 2001-82, 2001-32 I.R.B.](#)

Alternative model amendment for simplified required minimum distributions.

Regulations

[Section 420 Regulations -](#)

T.D. 8948, 66 Fed. Reg. 32897 (June 19, 2001),
2001-28 I.R.B. 27

These regulations, which finalize regulations proposed on Jan. 5, 2001, relate to the minimum cost requirement under § 420, which permits the transfer of excess assets of a defined benefit pension plan to a retiree health account.

[Section 401\(a\)\(4\) Regulations -](#)

T.D. 8954, 66 Fed. Reg. 34535 (June 29, 2001),
2001-29 I.R.B. 47

These regulations, which finalize regulations proposed on October 6, 2000, provide guidelines for cross-testing new comparability plans under §1.401(a)(4)-8.

GO TO

**[Questions and Answers](#)
from the Cincinnati
Benefits Conference**

New Educational Products Available for IRC 403(b) and 457 Plans

To assist sponsors of IRC 403(b) and IRC 457 Plans, Employee Plans has developed two educational outreach products:

IRC 403(b)/457 Resource Guide – this guide contains Publication 571, examination guidelines and other helpful guidance. You can download this resource guide at www.irs.gov/ep.

IRC 403(b)/457 Educational Video – This 28 minute video highlights 403(b)/457 compliance problems that have been identified during IRS examinations and in the voluntary compliance programs. Effective after September 17, 2001, a free copy can be ordered from the IRS by calling (800) 829-3676. Please ask for IRS Publication 3768 when ordering your copy. A copy of the video can also be ordered at www.irs.gov/ep under Outreach Products.

Both of these products reflect the latest law changes of the Economic Growth and Tax Relief Reconciliation Act of 2001 ([EGTRRA](#)). ■

2001 Calendar of EP Benefits Conferences

UPCOMING CONFERENCES:

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Further Information, Please Contact
Los Angeles Benefits Conference	09/13/01-09/14/01	Los Angeles, CA	American Society of Pension Actuaries (ASPA)	www.aspa.org or ASPA Meeting Department (703) 516-9300
SWBA/IRS 12th Annual Employee Benefits Conference	10/22/01-10/23/01	Dallas, TX	SouthWest Benefits Association (SWBA)	www.swba.org or SWBA (972) 478-8138

RECENT CONFERENCES:

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Information, See
Great Lakes Benefits Conference (Formerly Midstates Benefits Conference)	04/30/01-05/01/01	Chicago, IL	American Society of Pension Actuaries (ASPA)	www.irs.gov/ep
10th Annual Employee Benefits Conference (Sponsored by Mid-Atlantic and Gulf Coast Areas)	05/30/01-05/31/01	Baltimore, MD	Employee Benefits Conference, Inc.	
14th Annual Cincinnati Employee Benefits Conference	06/07/01-06/08/01	Cincinnati, OH	Department of Labor & Cincinnati Bar Association	
Northeast Benefits Conference (2 Locations)	06/14/01-06/15/01	Boston, MA White Plains, NY	American Society of Pension Actuaries (ASPA) & Northeast Area's Pension Liaison Group	

2001 Employee Benefits Conferences (for more information, see www.irs.gov/ep)

**September 13-14
Los Angeles**

Conference info - www.aspa.org or call ASPA Meeting Department at (703) 516-9300.

Topics:

- up-to-date discussions on the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)
- issues in IRS audits
- changes in the distribution rules
- IRS and DOL correction programs
- IRC 401(k) investments
- cash balance plans

Hilton Universal City and Towers
555 Universal Terrace Parkway
Universal City, CA 91608
(818) 506-2500

**October 22-23
Dallas (SWBA/IRS)**

Conference info - www.swba.org or call SWBA (972) 478-8138.

Topics:

- Discussion of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)
- Anatomy of an IRS and DOL Audit
- Rev. Proc. 2001-17 Correction Programs
- Determination Letter Update
- IRC 401(k) and 403(b) Plans
- Welfare Plan & Cafeteria Plan Update
- Mergers and Acquisitions

Renaissance North Hotel
4099 Valley View Lane
Dallas, TX 75244
(972) 385-9000

Employee Plans Participates in Tax Forums

This summer Employee Plans employees will participate in IRS Nationwide Tax Forums by presenting the following topic:

Don't Make Retirement a "Taxing Event": Retirement Plan Tax Benefits – Learn how to maximize your usage of retirement plans and minimize risk of noncompliance because of complicated pension rules. Learn about navigating the contribution, distribution and filing requirements of retirement plans

such as IRAs, SIMPLEs and 401(k)s. Keep your retirement funds safe from unnecessary taxes and penalties.

Tax Forums are scheduled for the following dates:

- ▶ September 4, 2001 - Cleveland, OH
- ▶ September 18, 2001 - Las Vegas, NV

For more information on the Tax Forums, see <http://www.paintl.com/files/brochure.pdf>



Department of the Treasury
Internal Revenue Service

www.irs.gov

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