

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

Winter Flurry of Guidance

The onset of winter has brought with it a flurry of activity in the form of retirement plan guidance. Guidance topics range from “deemed IRAs” to rollover waivers to the application of nondiscrimination rules to governmental plans.

Rev. Proc. 2003-13 – An EGTRRA provision creates “deemed IRAs”. Plans can be amended to set up, beginning in 2003, a separate account or annuity in the plan that is treated as an IRA. These “deemed IRAs” must meet the applicable Code requirements for IRAs and Roth IRAs. This revenue procedure requires that, except for 2003, the plan document must provide for the “deemed IRAs” before accepting contributions from participants.

Rev. Proc. 2003-16 – As provided for in EGTRRA, the IRS has developed a procedure for participants to request a waiver of the requirement that any plan distribution be transferred to an eligible retirement plan no later than the 60 days after it is received to avoid being taxed as income. This waiver is granted if a participant applies for and is granted a hardship exception and is only for distributions occurring after December 31, 2001. A user fee is required for the hardship determination.

Notice 2003-10 – The IRS is asking for help from the public on guidance for plan amendments that eliminate or reduce contingent benefits or subsidies. In general, the guidance will apply to unpredictable events such as plant shutdowns and involuntary separation and will be applied prospectively.

Rev. Rul. 2003-11 – This revenue ruling is the result of another EGTRRA provision. In general, the revenue ruling holds that a plan amendment reflecting the EGTRRA-provided increase in the compensation limit of Code section 401(a)(17) - for years beginning after December 31, 2001 - and that applies the increase to all former employees (or former employees who retain accrued benefits) will satisfy the applicable nondiscrimination and coverage rules.

Notice 2003-3 – Notice 2002-27 is clarified by providing that a trustee is not required to use the same reporting method (either *Alternative 1* or *2* of Notice 2002-27) for all its IRA customers. Rather, a trustee can use one method for some of its customers and the other method for the remainder of its customers. Also, in response to public comment, required statements to IRA owners may be furnished electronically.

Rev. Rul. 2003-6 – This ruling concerns what the IRS considers an abusive tax shelter involving employee stock ownership plans (ESOPs) that hold stock in shell S corporations. The ESOPs in question were being used in an effort to claim eligibility for the delayed effective date of Code section 409(p), as provided for by EGTRRA.

Notice 2003-2 – The IRS intends to issue regulations on the minimum distribution requirements for defined benefit plans and annuity contracts. The notice describes three transition rules expected to be in the future regulations that taxpayers may rely on pending the issuance of future regulations. Also, the regulations are expected to provide a special effective date for governmental plans.

Notice 2003-6 – The IRS intends to issue regulations on the affect of nondiscrimination rules on certain governmental plans. It is anticipated that future regulations will provide a special prospective effective date for the application of those rules to such plans. Public comment on this topic is requested.

Rev. Proc. 2003-10 – Issued in conjunction with Notice 2003-2, this procedure modifies Rev. Proc. 2002-29 to postpone until the end of the EGTRRA remedial amendment period the time by which defined benefit plans must be amended to comply with the section 401(a)(9) regulations issued on April 17, 2002. This procedure does not postpone the time for amending defined contribution plans (the end of the 2003 plan year).

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In the coming weeks, the IRS anticipates publishing several more pieces of guidance. Guidance areas that the IRS is working on include:

- A new EPCRS Revenue Procedure
- A revised determination letter program White Paper
- Deemed IRA regulations

For all the latest guidance developments, check the Retirement Plans web page at www.irs.gov/ep.

New Form 5500 and Form 5500-EZ Available on Internet

Earlier this month, the Pension and Welfare Benefits Administration (PWBA) and the IRS posted the 2002 Form 5500-series forms, schedules and certain instructions on their respective web sites.

This collection of material includes informational copies of the “hand-print” version of the Forms 5500 and 5500-EZ, along with all the necessary schedules. The *2002 Instructions for the Form 5500* are currently available, but the *2002 Instructions for the Form 5500-EZ* are not expected to be posted until January 31, 2003.

Although this material can be downloaded and printed, it is not suitable for filing. Copies of these forms and schedules (for printing) and instructions will be available from the IRS on February 28, 2003 by calling 1-800-TAX-FORM. In addition, the annual mail out packages for both Form 5500 and Form 5500-EZ filers of record are scheduled to be mailed the first week of March 2003.

The informational copies of this material, along with information about the ERISA Filing Acceptance System (EFAST) and EFAST-approved software can be found at www.efast.dol.gov. The informational copies and other IRS forms and publications can also be found at the Retirement Plans web page at www.irs.gov/ep.

Heads Up

In our Winter 2003 edition, we omitted the 16th Annual Cincinnati Employee Benefits Conference in our benefits conference calendar on page 16. Please note that the conference takes place on June 19 and 20. Look for further details in the Spring 2003 edition of *Employee Plans News*.

Coming in our 2nd Anniversary Edition of *Employee Plans News*

Upcoming topics include:

- An interview with Mark O’Donnell, Director of EP CE & O
- Spring Benefits Conferences “Roundup”
- An update on new outreach products

... and much more. Look for us in your email box in March.

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