

[4830-01-p]

Published July 19, 2002

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 601

TD 9006

RIN 1545-AY68

Notice to Interested Parties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the notice to interested parties requirement. Before the IRS can issue an advance determination regarding the qualification of a retirement plan, a plan sponsor must provide evidence that it has notified all persons who qualify as interested parties that an application for an advance determination will be filed with the IRS. These regulations set forth standards by which a plan sponsor may satisfy the notice to interested parties requirement. The final regulations affect retirement plan sponsors, plan participants and other interested parties with respect to a determination letter application, and certain representatives of interested parties.

DATES: Effective Date: These regulations are effective on July 19, 2002.

Applicability Date: These regulations apply to applications made on or after January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard, (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR parts 1 and 601 under section 7476 of the Internal Revenue Code of 1986 (Code). On May 21, 1976, final regulations (TD 7421) under section 7476 were published in the **Federal Register** (41 FR 20874). These final regulations provide guidance on the nature and method of giving notice to interested parties. On January 17, 2001, a notice of proposed rulemaking (REG-129608-00) was published in the **Federal Register** (66 FR 3954), setting forth the proposed new standards for delivery of the notice to interested parties. No public hearing was requested or held. Written comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

A. Overview

Section 7476(b)(2) provides that, with respect to a pleading filed by a petitioner for a request for a determination on the qualified status of a retirement plan under section 7476(a), the United States Tax Court may find the pleading to be premature unless the petitioner establishes to the satisfaction of the Court that he has complied with the requirements prescribed by the regulations of the Secretary regarding the notice to interested parties of the filing of the request for a determination. Section 3001(a) of the Employee Retirement Income

Security Act of 1974 (ERISA) provides that before issuing an advance determination regarding the qualification of a retirement plan, the Secretary of Treasury shall require that an applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who qualifies as an interested party of the application for a determination. The final regulations amend §§1.7476-2 and 601.201 regarding the nature and method of giving notices to interested parties. The final regulations generally adopt the standards in the proposed regulations. These final regulations provide that the notice may be provided by any method reasonably calculated to ensure that each interested party is notified of the application for determination. Whether a particular method of delivery satisfies this standard is determined on the basis of all the facts and circumstances. The final regulations retain the safe harbor provided in the proposed regulations for plans using an electronic medium to deliver the notice to interested parties. Under that safe harbor, a plan sponsor will be treated as satisfying the requirements under §1.7476-2(c)(1) if the plan sponsor delivers the notice using an electronic medium under a system that satisfies the requirements of §1.402(f)-1 Q&A-5.

B. Application of the Notification Requirement to Governmental Plans

Section 1.7476-1(b)(7) provides that §1.7476-1(b), relating to the definition of interested parties, applies only to retirement plans filing an application for advance determination with the IRS that are subject to the requirements under section 410. Section 1.7476-1(c)(5) provides that in the case of an organization described in section 410(c)(1),

which includes governmental plans within the meaning of section 414(d), section 410 will be considered to apply to a plan year of such organization for any plan year in which section 410(c)(2) applies to the plan.

Section 410(c)(1)(A) provides that the provisions of section 410 (other than section 410(c)(2)) do not apply to governmental plans within the meaning of section 414(d). Section 410(c)(2) provides that a governmental plan will be treated as meeting the requirements under section 410 for purposes of section 401(a). Prior to 1997, section 410(c)(2) provided that, in order to be treated as satisfying the requirements of section 410, a governmental plan must meet the requirements under section 401(a)(3) as in effect on September 1, 1974, relating to minimum participation standards. Section 1505(a)(1) of the Taxpayer Relief Act of 1997 (TRA '97) (Public Law 105-34, 111 Stat. 788) added section 401(a)(5)(G), which provides that the nondiscrimination and minimum participation requirements under section 401(a)(3) and (4) do not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof). Thus, section 410 no longer applies to such governmental plans.

One commentator requested clarification that the notice to interested parties requirement under section 7476 no longer applies to governmental plans after TRA '97. Section 1.7476-1(b)(7) of the regulations limits the applicability of the notice to interested parties requirement to retirement plans that are subject to section 410 of the Code. Because a governmental plan established and maintained by a State or local government or political

subdivision thereof (or agency or instrumentality thereof) is not subject to section 410 of the Code, it is also not subject to the notice to interested parties requirement.

C. Miscellaneous Comments

Proposed regulations under §601.201(o)(3)(xv) provide that when the notice is given other than by mailing, it should be given not less than 7 days nor more than 21 days prior to the date that the application for a determination is made. When the notice is provided by mailing, prior final regulations under §601.201(o)(3)(xv) provide that the notice be given not less than 10 days nor more than 24 days prior to the date that the application for a determination is made. One commentator requested clarification on whether the time period for providing notice by electronic mail is the same time period for when notice is given by a means other than postal mailing. In the interest of simplification, the final regulations provide a single time period for providing the notice. Under these final regulations, the notice must be given not less than 10 days nor more than 24 days prior to the date that the application for a determination is made. This time period applies to all methods of delivering the notice to interested parties. Taxpayers may continue to rely on the prior time periods until the applicability date of this Treasury decision.

Section 601.201(o)(3)(xvii) describes the procedures for providing additional informational material required by §601.201(o)(3)(xviii), (xix), and (xx), to the extent that such information is not provided in the notice to interested parties. Such materials may include an updated copy of the plan and related trust agreement or the determination letter application.

One commentator suggested that §601.201(o)(3)(xvii) be revised to provide that any reasonable delivery method should be available for providing additional information to interested parties. The final regulations amend §601.201(o)(3)(xvii) to clarify that the procedure for making materials related to an application for determination available to interested parties may include any delivery method or a combination thereof that reasonably ensures accessibility to all interested parties.

Section 601.201(o)(3)(xxi) provides that the notice to interested parties will be deemed given when it is given in person, posted as prescribed in the regulations under section 7476, or received through the mail. One commentator suggested that §601.201(o)(3)(xxi) be revised to reflect the new standards by which a plan sponsor may satisfy the notice to interested parties requirement. The final regulations amend §601.201(o)(3)(xxi) to clarify that the notice to interested parties required by §601.201(o)(3)(xiv) shall be deemed given when the notice is posted or sent to the person in the manner prescribed in the regulations under section 7476.

Effective date

These regulations apply to applications made on or after January 1, 2003. For applications made prior to that date, taxpayers may continue to rely on the standards set forth in the prior final regulations or the proposed regulations published in the **Federal Register** on January 17, 2001 (66 FR 3954).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 601

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 601 are amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.7476-1 is amended by adding paragraph (e) to read as follows:

§1.7476-1 Interested parties.

* * * * *

(e) Effective date. The provisions of this section apply to applications referred to in paragraph (a) of this section made on or after June 21, 1976.

Par. 3. Section 1.7476-2 is amended as follows:

1. Paragraphs (b), (c), and (d) are revised.
2. Paragraph (e) is added.

The revisions and addition read as follows:

§1.7476-2 Notice to interested parties.

* * * * *

(b) Nature of notice. The notice required by this section shall--

(1) Contain the information and be given within the time period prescribed in §601.201(o)(3) of this chapter; and

(2) Be given in a manner prescribed in paragraph (c) of this section.

(c) Method of giving notice. (1) In the case of a present employee, former employee, or beneficiary who is an interested party, the notice may be provided by any method

reasonably calculated to ensure that each interested party is notified of the application for a determination. If an interested party who is a present employee is in a unit of employees covered by a collective-bargaining agreement between employee representatives and one or more employers, notice shall also be given to the collective-bargaining representative of such interested party by any method that satisfies this paragraph. Whether the notice is provided in a manner that satisfies the requirements of this paragraph is determined on the basis of all the relevant facts and circumstances. Because the facts and circumstances differ depending on the interested party, it may be necessary to use more than one method of delivery in order to ensure timely and adequate notice to all interested parties.

(2) If the notice to interested parties is delivered using an electronic medium under a system that satisfies the requirements of §1.402(f)-1 Q&A-5, the notice is deemed to be provided in a manner that satisfies the requirements of paragraph (c)(1).

(d) Examples. The principles of this section are illustrated by the following examples:

Example 1. (i) Employer A is amending Plan C and applying for a determination letter. Plan C is not maintained pursuant to one or more collective bargaining agreements and is not being terminated. As part of the determination letter application process, Employer A provides the notice required under this section to interested parties. For present employees, Employer A provides the notice by posting the notice at those locations within the principal places of employment of the interested parties which are customarily used for employer notices to employees with regard to employment and employee benefit matters.

(ii) In this Example 1, Employer A satisfies the notice to interested parties requirement described in this section.

Example 2. (i) Employer B is amending Plan D and applying for a determination letter. As part of the determination letter application process, Employer B provides the notice

required under this section to interested parties.

(ii) Employer B has multiple worksites. Employer B's employees located at worksites 1 through 4 have reasonable access to computers at their workplace. However, Employer B's employees located at worksite 5 do not have access to computers.

(iii) For present employees with reasonable access to computers (worksites 1 through 4), Employer B provides the notice by posting the notice on Employer B's web site (Internet or intranet). Employees at worksites 1 through 4 customarily receive employer notification with regard to employment and employee benefit matters from the Employer B's web site. For present employees without access to computers (worksite 5), Employer B provides the notice by posting the notice at worksite 5 in a location that is customarily used for employer notices to employees with regard to employment and employee benefit matters.

(iv) Employer B also sends the notice by e-mail to each collective-bargaining representative of interested parties who are present employees of Employer B covered by a collective-bargaining agreement between employee representatives and Employer B, using the e-mail address previously provided to Employer B by such collective-bargaining representative.

(v) In this Example 2, Employer B satisfies the notice to interested parties requirement described in this section.

Example 3. (i) Employer C is terminating Plan E and applying for a determination letter as to whether the plan termination affects the continuing qualification of Plan E. As part of the determination letter application process, Employer C provides the notice required under this section to interested parties.

(ii) All of Employer C's employees have reasonable access to computers. Each employee has an e-mail address where he or she can receive messages from Employer C. Employees of Employer C customarily receive employer notices regarding employment and employee benefit matters by e-mail.

(iii) For present employees, Employer C provides the notice by sending the notice by e-mail.

(iv) Employer C also sends the notice by e-mail to each collective-bargaining representative of interested parties who are present employees of Employer C covered by a collective-bargaining agreement between employee representatives and Employer C, using

the e-mail address previously provided to Employer C by such collective-bargaining representative.

(v) In addition, Employer C sends the notice by e-mail to each interested party who is a former employee or beneficiary, using the e-mail address previously provided to Employer C by such interested party. For any former employee or beneficiary who did not provide an e-mail address, Employer C sends the notice by regular mail to the last known address of such former employee or beneficiary.

(vi) In this Example 3, Employer C satisfies the notice to interested parties requirement described in this section.

(e) Effective date. (1) The provisions of this section shall apply to applications referred to in §1.7476-1(a) made on or after January 1, 2003.

(2) For applications made on or after June 21, 1976 and before January 1, 2003, §1.7476-2 (as it appeared in the April 1, 2002 edition of 26 CFR part 1) applies.

PART 601--STATEMENT OF PROCEDURAL RULES

Paragraph 4. The authority citation for part 601 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 601.201 is amended as follows:

1. In paragraph (o)(3)(xv), the first two sentences are removed and a new sentence is added in their place.

2. In paragraph (o)(3)(xvi), the introductory text is revised.

3. Paragraph (o)(3)(xvii) is revised.

4. In paragraph (o)(3)(xxi), the second sentence is revised.

The revisions and addition read as follows:

§601.201 Rulings and determination letters.

* * * * *

(o) * * *

(3) * * *

(xv) When the notice referred to in paragraph (o)(3)(xiv) of this section is given in the manner set forth in §1.7476-2(c) of this chapter, such notice must be given not less than 10 days nor more than 24 days prior to the date the application for a determination is made.

* * *

(xvi) The notice referred to in paragraph (o)(3)(xiv) of this section shall be given in the manner prescribed in §1.7476-2 of this chapter and shall contain the following information:

* * * * *

(xvii) The procedure referred to in paragraph (o)(3)(xvi)(i) of this section whereby the additional informational material required by paragraphs (o)(3)(xviii), (xix), and (xx) of this section will (to the extent not included in this notice) be made available to interested parties, may consist of making such material available for inspection and copying by interested parties at a place or places reasonably accessible to such parties, or supplying such material by using a method of delivery or a combination thereof that is reasonably calculated to ensure that all interested parties will have access to the materials. The procedure referred to in paragraph (o)(3)(xvi)(i) of this section must be immediately available to all interested parties and must be designed to supply them with such additional informational material in time for

them to pursue their rights within the time period prescribed, and must be available until the earlier of the filing of a pleading commencing a declaratory judgment action under section 7476 with respect to the qualification of the plan or the ninety-second day after the day the notice of final determination is mailed to the applicant.

* * * * *

(xxi) * * * The notice to interested parties required by paragraph (o)(3)(xiv) of this section shall be deemed given when the notice is posted or sent to the person in the manner prescribed in §1.7476-2 of this chapter. * * *

* * * * *

Deputy Commissioner of Internal Revenue.

Approved:

Acting Assistant Secretary of the Treasury (Tax Policy).