

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

REMINDER: Abusive Transaction Settlement Initiative Open Until January 23, 2006

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

On October 27, the IRS issued [Announcement 2005-80](#), which provides a one-time opportunity for taxpayers to voluntarily come forward and resolve certain listed and potentially abusive transactions. This initiative is open until January 23, 2006.

“People entered into these deals often at the behest of lawyers and accountants peddling flaky tax products,” said IRS Commissioner Mark W. Everson. “Times have changed. The IRS has acted to shut down these deals, as has the Congress, in passing stiffer disclosure requirements and promoter penalties last fall. We’re offering taxpayers a quick, quiet and cost effective way to put these deals behind them.”

Under the settlement terms, participants, both individuals and companies, will be required to pay 100 percent of the taxes owed, interest and, depending on the transaction, either a quarter or a half of the accuracy-related penalty the IRS would otherwise seek on the underpayment of tax related to the transaction. There is penalty relief for transactions properly disclosed to the IRS under [Announcement 2002-2](#) or in certain circumstances where the taxpayer received and relied on a tax opinion from an independent tax advisor. Transaction costs, including promoter fees and fees paid for accounting, appraisal, and legal services, actually paid by the taxpayer who settles under this initiative will be allowed to be treated as a loss. The loss will be limited to the amount of transaction costs less the tax benefits claimed in earlier years barred by the statute of limitations.

Four of the 21 transactions eligible for settlement under this initiative are related to retirement plans:

1. [Rev. Rul. 2004-20](#), Situation 1: Pension plan fails to satisfy section 412(i) where amounts accumulated under life insurance contracts and annuities held by the plan exceed benefits payable under plan terms; and Situation 2: Employer contributions to pension plan are not currently deductible when used to pay premiums on life insurance contracts that provide for death benefits in excess of the participant’s death benefit under the terms of the plan. Also, [Rev. Rul. 2004-21](#): Pension plan fails to satisfy nondiscrimination requirements due to differences in the value of participants’ rights to purchase life insurance contracts from the plan;
2. [Rev. Rul. 2004-4](#): Transactions that involve segregating the business profits of an employee stock ownership plan (ESOP)-owned S corporation in a qualified subchapter S subsidiary, so that rank-and-file employees do not benefit from participation in the ESOP;
3. [Rev. Rul. 2003-6](#): Certain arrangements involving the transfer of ESOPs that hold stock in an S corporation for the purpose of claiming eligibility for the delayed effective date of section 409(p); and
4. Management S Corporation ESOP Transactions: Transactions where the taxpayer has claimed that it is entitled to exclude income of an operating business by asserting, incorrectly, that the taxpayer had established, on or before March 14, 2001, an employee stock ownership plan entitled to an exemption from unrelated business income and an S corporation that is a management corporation, and whatever actions that were taken to attempt to establish an employee stock ownership plan and a management S corporation were taken on or before March 14, 2001.

Settlement Initiative Open Until January 23, 2006 *continued from page 1*

There are three other transactions eligible for settlement that may be of interest to the retirement plans community:

1. **Notice 2004-8**: Abusive Roth IRA Transactions;
2. **Notice 2003-24**: Tax Problems Raised by Certain Trust Arrangements Seeking to Qualify for Exception for Collectively Bargained Welfare Benefit Funds under section 419A(f)(5); and
3. **Notice 95-34**: Tax Problems Raised by Certain Trust Arrangements Seeking to Qualify for Exemption from section 419.

Visit www.irs.gov for:

- An **overview** of Announcement 2005-80;
- The **actual text** of Announcement 2005-80;
- A **fact sheet** on the settlement initiative; and
- **Form 13750**, Election to Participate in Announcement 2005-80 Settlement Initiative.

“The goal of the IRS and Employee Plans is unwinding **all** abusive transactions,” said Carol Gold, Director of Employee Plans. “That being said, we will continue to identify and examine abusive activities. Failure to participate in this one-time settlement initiative will likely result in additional tax liabilities and penalties as well as additional costs associated with the audit process and potential litigation. I strongly recommend that eligible taxpayers apply for this settlement initiative.”

For further information regarding this announcement, questions can be sent to Settlement.Initiative@irscounsel.treas.gov or contact Joe Spires of the Office of Chief Counsel at (202) 622-4284 (not a toll-free call). •

More Relief for Hurricane Victims

The IRS, DOL and PBGC have issued joint guidance on relief – including filing and funding relief; loan and hardship distribution provisions; and re-contribution rules – provided in the Katrina Emergency Tax Relief Act (KETRA). See this and all the recent information on disaster relief due to the spate of deadly hurricanes in the Gulf Coast at the [Retirement Plans Community web page](#).

There’s information on provisions related to Hurricanes Katrina, Rita and Wilma. You’ll also find links to relevant newsletter articles, official IRS guidance and other government agencies.

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