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Finding our page:
- Click on Information For
- Click on Retirement Plans

Or simply type the URL: www.irs.gov/retirement

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Tax Information for Retirement Plans Community

Help with Choosing a Retirement Plan
Web guide to help you compare plans

File a Retirement Plan Return
Forms 5500, 5500-SF, 5330, 5558 and 8955-SSA

Form 2848 - More Changes
Use the March 2012 version to designate a representative for retirement plan issues.

Retirement Plans Phone Forums
Check out upcoming phone forums

Fix-It Guides
Find, Fix and avoid common mistakes in plans

Cost-of-Living Adjustments (COLAs)
Limits on contributions and benefits

Examinations and Enforcement
Audit guide, compliance check letters and other programs
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Geared toward retirement plan practitioners - attorneys, accountants, actuaries, and others - this newsletter presents information about retirement plans. View our current edition, browse the newsletter archive, or subscribe to future editions.

Retirement News for Employers
For employers, business owners and their tax advisors – the latest on retirement plan rules, forms, plain language publications from IRS and other federal agencies. View current or prior editions.

Governmental Plans Updates
Recent developments for governmental plans.

Browse the newsletter archive or subscribe to future editions.
“All’s well that ends well.”

— William Shakespeare, *All’s Well That Ends Well*
Topics Covered

• Plan Terminations
• Plan Funding / Funding & Reversions
• PBGC
• Notice of Intent to Terminate the Plan
Plan Terminations
IRS Concerns with Plan Termination

- Accelerated vesting - IRC § 411(d)(3)
- Accrual requirements - IRC § 411(b)
- Funding obligations - IRC § 412
- Reversion of assets to the employer (maybe excise tax - IRC § 4980)
- Continuing § 401(a) compliance - Revenue Ruling 89-87
Statutory Authority

- Regulations Section 1.416-1, T-4
  - defines terminated plan
  - distribution of assets should be made as soon as administratively feasible
  - administratively feasible = 1 year
What Happens with a Termination

- The date of termination must be set
- The participants’ benefits and other liabilities, must be determined up to the date of termination
- All plan assets must be distributed per the plan and as soon as administratively feasible
PBGC → responsible for administering ERISA Title IV

When is a DB Plan terminated? → depends on whether plan is covered by ERISA Title IV

- DB plan is covered by Title IV if it has:
  - a favorable DL from IRS or
  - in practice satisfied the qualification requirements of IRC § 401(a) for the preceding 5 plan years
DB Plan Termination

- If covered by Title IV
  - must comply with the procedures under ERISA § 4041

- If not covered by Title IV
  - effective termination date stated in the ERISA § 204(h) notice
  - If ERISA § 204(h) is not applicable, termination date is in employer adopted resolution
Date of Termination

- Fixes the date that benefits stop accruing
- Fixes value of assets
- Distributions – commence as soon as administratively feasible, accrued benefits are fully vested
- Date plan document to be updated through
- Sets final plan year for minimum funding
Title IV Date of Termination

- The termination date is established by:
  - standard termination – plan administrator
  - distress termination – plan administrator and agreed to by PBGC
  - involuntary termination – PBGC and agreed to by the plan administrator or court
Standard Termination

- Plan has enough assets to pay benefits
- ER files PBGC Form 500 & Schedule EA-S
- Participants receive 60 day notice
- PBGC has 60 days to review termination for compliance
Distress Termination

• A plan without enough assets to pay all benefits owed the participants and or beneficiaries.
Distress Termination

• Plan sponsor can initiate a distress termination by meeting one of these ERISA distress tests:
  • Reorganization Distress Test
  • Business Continuation Distress Test
  • Liquidation Distress Test
  • Pension Cost Test
Reorganization Distress Test

- A company must be in bankruptcy reorganization or insolvency proceedings; and
- Bankruptcy court must find that unless the plan terminates, the company cannot pay all its debts under a plan reorganization.
Business Continuation Distress Test

- The company must demonstrate to PBGC that unless a distress termination happens, the company cannot:
  - pay its debts when due; and
  - continue in business
Liquidation Distress Test

• The company must have filed or had filed against it, a petition seeking liquidation under federal or state law which has not been dismissed
Pension Cost Test

• The company must show the PBGC (to their satisfaction) the company’s cost of providing the pension benefits have become burdensome solely as a result of declining covered employment
• If a plan does not qualify for a distress termination PBGC will let the ER know they don’t meet the conditions and the plan will remain ongoing and monitored by PBGC
Distress Termination Granted

- ER must file PBGC *Form 601 with Schedule EA-D* on or before the 120th day after the proposed termination
- A 60 day advance notice is required to be given to the affected participants
Notice to Interested Parties

• Pension plan administrators must notify plan participants and alternate payees of any amendment that significantly reduces the rate of future benefit accruals
Notice to Interested Parties

• The notice must be delivered to interested parties as described in Reg. § 1.7476-2(c).
  • sent via electronic medium
  • delivered in person
  • posting to bulletin board
  • delivered by mail
Frozen Plan

- Not terminated
- Future benefits cease to accrue
- If underfunded, likely frozen not terminated
- Still subject to qualification
- Some exceptions with respect to
  - minimum coverage § 410(b)
  - participation requirements of § 401(a)(26)
Wasting Trust

- Plan terminated
- Assets not distributed within “administratively feasible” time
- Plan considered still active
- File Form 5500
Plan Funding / Reversions
Minimum Funding

- Still applies through year of termination
- Funding standard account is maintained through year of termination
- Does not apply for years after termination
- Does not relieve unpaid minimums
- May be a proration of funding (target normal cost, amortization installments) for partial years
Employer Reversion

• The amount of cash and the fair market value of other property received by an employer from a qualified plan
Reversion – Excise Taxes

• 50% excise tax
• 50% may be reduced to 20% if:
  • Chapter 7 Bankruptcy
  • Plan amended to increase benefits 20%
  • 25% of excess assets transferred to new plan – like 401(k)
Reversions

• Termination/Reestablishment and Spinoff/Termination
  • Treated same as reversion
  • 414(l)(2) – allocation of assets in spinoff, etc must be satisfied
    • Must allocate % of surplus to spinoffs
Reversion – Termination/Reestablishment

• A termination/reestablishment occurs when:
  • Plan is terminated
  • Assets are distributed or annuities purchased
  • A new defined benefit plan is established
  • Employer receives reversion
A spinoff/termination occurs when:
- A defined benefit plan is split into two (or more) plans:
  - One for retirees – with surplus assets
  - One for actives
- Retiree plan is terminated
- Employer receives a reversion
Reversion – Implementation Guidelines

• All benefits were vested upon termination
• Accrued benefits – annuity purchases or lump sums provided to all
• No distributions to active employees covered by the ongoing portion of the plan who have not attained NRA
• All employees notified of termination in advance
Overfunded Plans – Limited Circumstances

• Contributions can’t be returned to the employer once they’ve been made, except in these limited circumstances:
  • mistake of fact,
  • disallowance of deduction,
  • plan fails to initially qualify under IRC § 401(a), or
  • reversion of assets upon plan termination
Overfunded Plans – Reversion of Surplus Assets

• Before surplus assets can revert to the employer, the plan terms must allow it.

• If reversion is from defined benefit plan:
  • plan terms must have permitted it for 5 calendar years before the termination date
  • the reversion must have been due to an “erroneous actuarial computation” under Treas. Regs. § 1.401-2
Overfunded Plans - IRC § 4980

Excise Tax on the Reversion

- In addition to any income taxes due:
  - employer must file Form 5330 and pay excise tax on the last day of the month following the month of the reversion
  - excise tax = 20% of amount reverted back to the employer from a qualified plan (IRC § 4980)
Underfunded Plans

• For an underfunded plan to terminate via a standard termination, there are two options:
  • provide supplemental employer contributions to make the plan whole
  • forego benefits for the majority owner
Overfunded Plans – Supplemental Employer Contributions

• The employer may make a sufficient contribution to the plan prior to distribution so the assets equal the amount of the liabilities.
Underfunded Plan – Forego Benefits

• An underfunded plan may permit:
  • a participant who is a majority owner in excess of 50% of the employer (with spousal consent) to “forego receipt” of all or part of his benefit until all other participants’ liabilities are met, or
  • assets to be allocated upon plan termination on a pro rata basis
Overfunded Plans – Waiver of Benefits

- A participant cannot “waive” his or her accrued benefit. This violates IRC Sections 411(d)(6), 411(a) & 401(a)(31)
- Plan amendment waivers violate the Code’s prohibition against the reduction of an accrued benefit by plan amendment
Pension Benefit Guaranty Corporation
The Pension Benefit Guaranty Corporation (PBGC) administers Title IV of ERISA.

Guarantees certain level of benefits for terminating defined benefit plans.
Notable plans *not* covered

- professional service employers with no more than 25 plan participants
- Plans covering only substantial owners
- Governmental, Church, and Defined Contribution Plans
PBGC Plan Requirements

• Make annual premium payments
  • Fixed and “variable” for underfunded
  • Filed with the Form 1 (electronic starting in 2010)

• Disclose reportable events
  • Failure to pay benefits
  • Liquidation
PBGC Plan Requirements

• Give a Notice of Intent to Terminate
• File PBGC Form 500 (Standard Term Notice) and Schedule EA-S (Standard Term Certification of Sufficiency)
  • Due 180 days after proposed termination date
IRS Audits & PBGC

• Terminations should be in process with the PBGC – coordinate with them

• Form 1 premiums should have been filed

• Review Notice of Intent to Terminate for timeliness and required content.

• Determine if a referral to the PBGC is warranted. Form 6533 - Examination Referral Checklist
Notice of Intent to Terminate the Plan
Written Notice of Intent to Terminate

• Written Notice must be issued to all affected parties at least 60 days and no more than 90 days before the proposed termination date.

• 204(h) Notice – amendment to significantly reduce the rate of future benefit accruals. Must be given to plan participants 15 days before the effective date of the amendments.
IRS – Form 5310

• Use Form 5310, Application for Determination for Terminating Plan, to apply for a determination letter upon termination of a plan.
IRS – Submission Requirements

• Form 8717 with user fee
• Copies of (if applicable):
  • Complete plan document(s) and all amendments since last favorable DL
  • Last favorable DL
  • Latest opinion or advisory letter
  • Records of actions taken to terminate the plan
  • Required attachments and statements
Timeliness of Application

- File Form 5310 by the later of one year from:
  - the effective date of the termination, or
  - the adoption date of the resolution to terminate the plan
IRS – Why File?

- Assurance for trustees transferring assets
- Extension to distribute prior to PBGC notification
- Some certainty plan is qualified upon termination
- Helps identify any issues prior to distribution
- Proof for IRAs that rollover from qualified plan
- Prevents potential issues for plans with excess assets (overfunded)
DOL – Form 5500

- The employer must continue to file the Form 5500, Annual Report of Employee Benefit Plans, until all the assets of the trust have been distributed.