



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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CC:PA:APJP:02MWMendelsohn  
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MEMORANDUM FOR: Richard Wickersham, Manager EP Technical Guidance and  
Quality Assurance, T:EP:RA:G

FROM: Assistant Chief Counsel  
(Administrative Provisions & Judicial Practice)  
CC:PA:APJP

SUBJECT: Application of I.R.C. Section 6081

This memorandum is in response to your request for assistance regarding the application of section 6081 of the Internal Revenue Code, which provides the Service with the authority to grant filing extensions. You ask whether section 6081 applies to forms in the Form 5500 series. If so, you ask whether extensions granted by the field to taxpayers affected by disasters apply to forms in the Form 5500 series. It is our understanding that in most cases the News Release or other guidance granting the extension does not include any specific reference to the Form 5500 series.

#### FACTS

News Releases are frequently issued by field offices to provide automatic filing and payment extensions for persons affected by natural disasters. For example, News Release SEA-2001-31 (copy attached) was issued to announce relief for persons affected by the Washington state earthquake of February 28, 2001. That News Release granted approval for automatic extensions to file returns and pay tax "as authorized by IRC Sections 6081 and 6161." The News Release makes no specific mention of forms in the Form 5500 series.

#### LAW AND DISCUSSION

The Internal Revenue Service (IRS) and the Department of Labor have developed annual information returns/reports to be filed by employers and plan administrators of pensions or welfare benefit plans under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6057(a) and 6058(a) of the Internal Revenue Code. These forms are commonly referred to as the Form 5500 series.

Plans and group insurance arrangements (GIA) are required to file all forms and attachments by the last day of the seventh calendar month after the end of the plan year (not to exceed twelve months in length). Direct filing entities (DFE), other than GIAs, are required to file the forms and attachments no later than nine and one half months after the end of the DFE year. However, a plan or GIA may obtain a one-time extension of time to file (up to two and one half months) by filing a Form 5558, Application for Extension of Time To File Certain Employee Plan Returns. This form must be filed by the normal due date, not including extensions, of the return/report.

In addition, under certain circumstances, an automatic extension of time to file Form 5500 until the due date of the Federal income tax return will be granted. Specifically, the extension will be granted if all of the following conditions are met: (1) the plan year and the employer's tax year are the same; (2) the employer has been granted an extension of time to file its Federal income tax return to a date later than the normal due date for filing the Form 5500; and (3) a copy of the application for extension of time to file the Federal income tax return is attached to the Form 5500. An extension granted using the automatic procedure cannot be extended further by filing a Form 5558. Further, an extension for time to file a DFE is not permitted under the above described method.

Section 6058(a) requires every employer who maintains a pension, annuity, stock bonus, profit sharing or other funded plan of deferred compensation to file an annual return stating "such information as the Secretary may by regulations prescribe with respect to the qualifications, financial condition, and operations of the plan. . ." The regulations outline which plans are subject to the reporting requirements, what information is required, who must file, and the time for filing. See Treas. Reg. § 301.6058-1(a)(1)-(4) and (b)(1). The regulations also provide rules regarding extensions of time for filing. Specifically, the regulations provide a cross-reference to section 6081 and the accompanying regulations as well as the instructions to the forms prescribed by section 6058(a) (Form 5500 series). See Treas. Reg. § 301.6058-1(c)(1).

Section 6081 provides that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by the Internal Revenue Code or by regulations. This language provides the Secretary with broad authority to grant extensions; the only stated limitation relates to the length of the extension, which generally cannot exceed 6 months. Forms in the Form 5500 series are information returns and are documents required by the Internal Revenue Code. Thus, the Service clearly has authority under section 6081 to extend the filing of these forms.

Further, when the Service exercises its authority to grant extensions under section 6081 for taxpayers affected by a disaster, we believe the extension would generally include all returns, declarations, statements, or other documents required by the Code

or regulations. However, the Service has the discretion to include or exclude any of the items listed in section 6081. When the Service grants a broadly-worded extension for tax forms that does not specifically exclude forms in the Form 5500 series, these forms are covered by the extension.



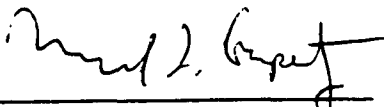
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CONCLUSION

Based on Treas. Reg. § 301.6058-1(c) and the broad grant of authority in section 6081, we believe that section 6081 applies to the Form 5500 series. An extension granted under section 6081 for taxpayers affected by a disaster applies to all documents required by the Code and regulations unless they are specifically excluded. Thus, unless the extensions granted by the field under section 6081 specifically exclude forms in the Form 5500 series, the extensions automatically apply to these forms.

Please let us know if your office would favor excluding the Form 5500 series from future News Releases and other guidance providing disaster relief. For questions concerning this memorandum, please contact Marcy W. Mendelsohn at 202-622-4940.

Curtis G. Wilson

By:   
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