

IRS Extends Year-End Deadline for Defined Benefit Plan Amendment

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Last week the IRS issued Notice 2011-96, which extended (to Dec. 31, 2012, or later) the deadline for amending defined benefit pension plans to comply with Code Section 436. The notice also provided sample plan amendment language.

Background

The Pension Protection Act of 2006 added Section 436 to the Internal Revenue Code. Section 436 provides a series of limitations on the accrual and benefit payments associated with an underfunded defined benefit pension plan, and is generally effective for plan years that begin on or after Jan. 1, 2008. Delayed effective dates may apply to plans subject to collective bargaining agreements and plans sponsored by certain tax exempt organizations (“eligible charity plans”).

Although Code Section 436 generally required plans to comply operationally starting in 2008, an extended deadline applied for amending plans to reflect the new rules. Specifically, the IRS previously set the deadline for adopting an interim Section 436 amendment to the last day of the first plan year that begins on or after Jan. 1, 2011. (See, IRS Notice 2010-77.) This meant plans operating on a calendar year basis needed to be amended by Dec. 31, 2011.

Analysis

New Notice 2011-96 further extends the deadline to the latest of:

- The last day of the first plan year that begins on or after Jan. 1, 2012 (i.e., Dec. 31, 2012, for a calendar year plan);
- The last day of the plan year for which Code Section 436 is first effective for the plan; or
- The due date (including extensions) of the sponsoring employer’s tax return for the tax year that contains the first day of the plan year for which Code Section 436 is first effective for the plan.

The IRS also noted that if a plan is submitted for a favorable determination letter, then it must generally incorporate an interim amendment with respect to Code Section 436. As a result, filing an application for a favorable determination letter before the extended deadline would effectively accelerate the deadline for adopting an amendment for Code Section 436.

In addition to the welcome news of the deadline extension, Notice 2011-96 includes

detailed sample plan amendment language. This is doubly good news, since employers and their advisors now have at least a year to review the IRS sample language and thoughtfully craft the necessary amendment.

Action Steps

Employers who sponsor defined benefit pension plans should determine whether they have already adopted an interim amendment to satisfy Code Section 436. If they have not, they should discuss the matter with their plan advisors and establish a schedule for adopting an amendment within the next year.

If a plan sponsor has already adopted an amendment, they should still speak with their advisors to determine whether the guidance expressed in the IRS sample language merits a change to the previously adopted amendment.

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