

IRS Amnesty Program for Late Annual Reporting by Non-ERISA Plans Made Permanent

Effective June 3, 2015, the IRS offers a permanent program of filing penalty relief for retirement plans that are not eligible for reduced penalties under the DOL's Delinquent Filer Voluntary Compliance program. Non-ERISA owner-only, partner-only and certain foreign plans for which US tax deductions are taken are eligible for the IRS program.

Background

In May 2014, the IRS established a temporary one-year pilot amnesty program addressing the penalties applicable under the Code for late retirement plan Forms 5500 (for certain pre-2009 filings) and 5500-EZ filings due from plan administrators and plan sponsors of:

- Plans covering only the owner of a business (or owner and spouse)
- Plans covering partners (or partners and their spouses)
- Certain foreign plans maintained outside the US primarily for nonresident aliens if the employer deducts contributions to the plan on its US income tax return

The program was only available to retirement plans that are not subject to the reporting requirements of Title I of ERISA for the plan year that the annual return is delinquent. The relief granted under the pilot program was not available if the IRS had issued a CP 283 Notice (Penalty Charge on Your Form 5500 Return) to a plan sponsor or plan administrator for the late Form 5500/5500-EZ. The program was one of several IRS efforts to spur Form 5500 compliance as described in our [June 16, 2014 For Your Information](#).

The pilot program expired June 2, 2015.

Program Now Permanent

In [Revenue Procedure 2015-32](#), the IRS had made this relief program permanent.

Under the permanent relief program, a complete Form 5500 series return must be filed for each year for which relief is requested. A complete return consists of a signed, filled-out paper version of the



Form 5500-EZ return, including all required schedules and attachments. The return must be marked “Delinquent Return Submitted Under Rev. Proc. 2015-32, Eligible for Penalty Relief” in red in the top margin.

Unlike the pilot, the permanent program imposes a penalty. The penalty for each submission is \$500 for each delinquent return for each plan, up to a maximum of \$1,500 per plan. The penalty is a flat amount, not adjusted for the number of days the filing is late. If the filing is less than 20 days late, it will generally be less costly to pay the \$25 per day penalty rather than filing under this new program.

To apply for relief under the program, the administrator or plan sponsor files the form and submits the penalty check with Form 14704. As with the pilot, relief is not available for a delinquent return if the IRS has issued a CP 283 Notice (Penalty Charge on Your Form 5500 Return) to a plan sponsor or plan administrator for the late Form 5500/5500-EZ.

As an alternative to seeking relief under this program, delinquent filers can still request IRS penalty relief if the late filing was due to “reasonable cause.” A reasonable cause relief request must be mailed to the address specified in the current version of the 5500-EZ filing instructions, and must include a detailed explanation that is certified under penalty of perjury. It can either be submitted along with the delinquent return or in a separate mailing. Revenue Procedure 2015-32 clarifies that if a request for relief under reasonable cause is declined, the delinquent filer will receive a CP 283 Notice and will not be able to obtain penalty relief under Revenue Procedure 2015-32.

In Closing

The permanent program offers these non-ERISA retirement plan administrators and sponsors an alternative for bringing plan Form 5500 filing obligations into compliance in a cost-effective way. Plan sponsors may wish to confirm that all filings have been done and catch up now on any outstanding delinquencies, preferably before IRS asserts a penalty assessment.

Authors

Marjorie Martin, EA, FSPA, MAAA
Fred Farkash, CEBS, Fellow-ISCEBS

Produced by the Knowledge Resource Center of Buck Consultants at Xerox

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@xerox.com.

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.