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Deadlines for Form 5500 and Employer Tax Returns Revised; Excess Pension Asset Transfers Extended

The latest transportation funding legislation from Congress changes the filing deadlines for Form 5500, certain employer tax returns (1065 and 1120), Form 990 series forms (for tax-exempt entities), and FinCEN Report 114 (also known as FBAR). It also extends the sunset date for transfers of excess pension assets to retiree health accounts under Section 420 of the Code until December 31, 2025.

Background

Several unrelated topics affecting employee plans and plan sponsors have been singled out as revenue-raisers in the latest transportation funding law. Parting company with other transportation funding laws in recent years (such as MAP-21 and HATFA) that primarily affected employee benefit plans by changing the rules for pension funding, the current law affects a grab bag of other employee benefit plan areas such as:

Annual reports. Employee benefit plans are required to file annual reports (Form 5500) by the end of the seventh month following the end of the plan year, with a 2 ½ month extension available. For calendar year plans, the initial due date is July 31, and the extended due date is October 15 for those filing Form 5558 prior to the initial due date, July 31.

Tax returns. The IRS tax return filing deadlines for employers vary for different types of businesses (partnerships, Subchapter C Corporations, Subchapter S Corporations, and tax-exempt organizations). Certain qualified retirement plans' deadlines are related to their plan sponsors' tax return filing deadlines.

FBAR. The Bank Secrecy Act requires US persons who have signature or other authority over a foreign bank or financial account to file an annual "FBAR" report. This report is filed on Financial Crimes Enforcement Network (FinCEN) Form 114, and currently must be submitted electronically for each calendar year by the following June 30.

Section 420 transfers. Section 420 of the Internal Revenue Code (Code) allows certain transfers of excess assets from overfunded defined benefit pension plans to fund retiree health or life insurance accounts without the transfer disqualifying the plan, and without it being considered a taxable reversion or prohibited transaction.

Changes to Filing Deadlines

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 changes the tax return filing deadlines for corporations, partnerships and tax-exempt entities. It also calls for a change to the Form 5500 extended due date and the FinCEN Report 114 (also known as FBAR).

Form 5500

The new transportation law directs the Secretary of Treasury to modify the maximum automatic extension period for employee benefit plans filing Form 5500 (Annual Return/Report of Employee Benefit Plan) to 3 ½ months (the period ending on November 15 for calendar year plans) for plan years beginning after December 31, 2015. The current 2 ½ month automatic extension period (ending on October 15 for calendar year plans) will continue to apply for the 2015 plan year (due dates in 2016).

> **Comment.** We anticipate that a number of filing deadlines that are coordinated with the date the Form 5500 is filed will be revised to correspond with the change. Although we cannot offer any guarantee, we expect that the deadline for IRS Form 8955-SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits) will be adjusted to reflect an additional month for filing. We also expect the deadline for furnishing the summary annual report (SAR) to participants and beneficiaries will remain two months after the Form 5500 due date (including extensions), that is, 12 ½ months after the end of the plan year (rather than 11 ½ months) for plans applying for an extension. It remains to be seen whether the initial deadline will change for direct filing entities — such as master trusts, common collective trusts and pooled separate accounts (which do not currently have an extension available).

Employer Tax Returns

The law changes the due dates for entities taxed as partnerships and Subchapter C Corporations, and also changes the length of the filing extension available for these employers. A change has also been made to the process for extending the due date for the Form 990 series for tax-exempt entities. Subchapter S Corporation deadlines remain the same. The changes will first affect deadlines for the 2017 tax season — the time for filing 2016 returns.

C Corporations filing Form 1120. For taxable years that begin in 2016 and later, the initial filing deadline for the Form 1120 (US Corporation Income Tax Return) will now be the 15th day of the fourth month after the end of the corporation's tax year. Previously the initial deadline was the 15th day of the third month after the end of the corporation's tax year. For example, a C Corporation that is a calendar year taxpayer will now have an initial filing deadline of April 15 rather than March 15.

Through the end of the 2025 tax year, the automatic extension period for C Corporations (other than those with fiscal years that end on June 30) that properly pay estimated taxes will be shortened from six to five months. This means that for calendar year taxpayers, the extended filing deadline will remain September 15, until the deadline for the 2026 tax year, when it will shift to October 15.

C Corporations with a taxable year ending on June 30 are subject to special rules. They will have a delayed effective date, so that their initial tax return due date will remain the same (that is, the 15th day of the third month after the end of the fiscal year — September 15) until taxable years beginning after December 31, 2025. However, C Corporations with a June 30 taxable year will have a seven-month extension period available for taxable years beginning before 2026. (This means that until the taxable year beginning in 2026, the extended due date will shift from March 15 to April 15). For taxable years beginning in 2026 and later, the initial due date will become October 15 with an automatic extension available through April 15.

Partnerships (including Limited Liability Companies taxed as partnerships) filing Form 1065, and S Corporations filing Form 1120S. For taxable years that begin in 2016 or later, the initial filing deadline for the Form 1065 (US Return of Partnership Income) will be the 15th day of the third month after the end of the partnership's taxable year. Previously, it was the 15th day of the fourth month after the end of the taxable year. (For example, for a partnership that is a calendar year taxpayer, the initial tax filing deadline will be March 15 instead of April 15.)

The extended deadline for partnerships applying for an extension will be the same — the 15th day of the ninth month after the end of the taxable year, so that the length of time that the extension provides a partnership in 2016 or later will increased from five to six months.

The initial and extended filing deadlines for Subchapter S Corporations filing Form 1120S will not change, and will now be the same deadlines that apply to partnerships. The initial return will still be due on the 15th day of the third month after the end of the taxable year, with a six-month extension available.

Tax-exempt entities filing Form 990 series forms. Tax-exempt entities (other than church or governmental entities that are not required to file) are generally required to file annual returns using IRS 990 series forms by the 15th day of the fifth month after the end of the fiscal year. Voluntary Employee Benefit Associations (VEBAs) and Supplemental Unemployment Benefit Plans (SUBs) are required to file Form 990 series returns and will be affected by this change. Such plans, and qualified retirement plans, file Form 990-T to report unrelated business taxable income by the 15th day of the fourth month after the end of the taxable year of the trust (that is, by April 15 for calendar year plans). If a tax-exempt entity is expected to owe unrelated business income tax, filing an extension for the 990-T does not change its obligation to file and pay estimated tax in a timely manner.

For taxable years beginning in 2016 and later, tax-exempt trusts can obtain an automatically approved six-month extension for their 990 series filings (including Form 990-T). Before 2016, such trusts were eligible for an automatically approved three month extension, but a second three month extension was not available unless the organization filed a second extension request with an adequate explanation of the need for additional time to complete the filing. (Tax-exempt entities set up as not-for profit corporations are already eligible for an automatically approved six-month extension).

Related Changes

Certain employee benefit plan deadlines may change because they are related to the deadline for filing the employer's tax return (including extensions). These include the following deadlines for making:

Interim amendments to a qualified retirement plan. Under IRS Revenue Procedure 2007-44 interim amendments must be adopted by the later of the due date for the sponsoring employer's tax return (including extensions) or the last day of the plan year in which the remedial amendment period begins.

Deductible contributions to a qualified retirement plan. Generally, for an employer to deduct a pension plan contribution for the prior year, it must be made by the due date for filing the employer's tax return for that year (including extensions). The changes to the initial filing deadline for partnerships, LLCs and C Corporations described above may affect the contribution timing.

Employer contributions to a qualified defined contribution plan (or 403(b) plan) and having it count as a prior year annual addition under Section 415(c) of the Code. The IRS rules for counting employer contributions amounts as annual additions for a particular limitation year under a defined contribution plan require such amounts to be credited "as of" a date during that limitation year and generally require the contribution to be made no later than 30 days after the due date of the employer's tax return (including extensions) for the employer's taxable year ending with or within the limitation year.

FinCEN Report 114 (FBAR) Filings

Under the Bank Secrecy Act, US persons who have a financial interest or signature authority over a foreign financial account worth $10,000 or more in the aggregate at any time during the calendar year must file a return. See our June 12, 2014 *For Your Information* for details about how this regulation applies to certain employee benefit plans. The transportation law accelerates the initial filing due date for the FinCEN filing from June 30 after the end of the calendar year to April 15 after the end of the calendar year, but also makes a six-month extension available to October 15. Furthermore, the law allows the Secretary of the Treasury to waive late-filing penalties for first-time FinCEN 114 filers if they fail to submit a timely extension request.

More Deadline Changes

As part of its effort to combat fraudulent tax refunds, IRS plans to eliminate the automatic 30-day extension currently available for filing certain information returns with the IRS such as the W-2 series forms (other than W-2G for gambling proceeds), and forms in the 1099 and 1042-S categories. After the change, a non-automatic 30-day extension would still be available, but only if the filer certifies under penalty of perjury that the extension is needed due to extraordinary circumstances or a catastrophe that prevents timely filing (such as a fire or natural disaster). The new rules also expand the list of forms subject to these extension rules to include Forms 3921 (Exercise of Incentive Stock Options), 3922 (Transfer of Stock Acquired Through an Employee Stock Purchase Plan), 1094-C (Employer Transmittal of Health Insurance Offer and Coverage Information), 1095-B (Health Coverage) and 1095-C (Employer Provided Health Insurance Offer and Coverage).

The **initial change** will just apply to W-2 series returns (other than W-2G) due after December 31, 2016. **Proposed rules** removing the automatic extension for all of the other information returns mentioned above would apply those changes for returns due on or after the January 1 following the finalization of the rule.

Code Section 420 Transfer Deadline Extended through 2025

Section 420 of the Code allows certain excess assets from overfunded defined benefit pension plans to be transferred to retiree health or life insurance accounts without the transfer disqualifying the plan, and without it being considered a taxable reversion or prohibited transaction. Prior to enactment, the deadline for such transfers was December 31, 2021. The law extends the deadline until December 31, 2025.

In Closing

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 provides a number of changes that affect employee benefit plans. Stay tuned for additional guidance that may be issued to clarify some of the ambiguities in the legislation.

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