

## **IRS Adopts Permanent Penalty Relief Program for Sponsors of One Person Plans Who Failed to File One or More 5500-EZ Forms, Including For a Terminated Plan**

The IRS had a special tax relief program which ended on June 2, 2015. It was adopted to help individuals and partnerships that failed to file one or more 5500-EZ forms. By filing the missed Form 5500-EZ filings by June 2, 2015 a taxpayer was able to be relieved from paying the maximum penalty of \$15,000 per year. In fact, no penalty amount was required to be paid. The IRS is normally not this forgiving. The IRS had announced this special program in Revenue Procedure 2014-32 as published on May 16, 2014.

In the May 2014 Pension Digest two articles discussed the special temporary program. One article was titled, "Confusion Exists for Completing IRS Form 5500-EZ for Terminated One-Person QP Plans." The other article was titled, "IRS Grants Temporary Relief to Sponsors of One-Person Plans Who Failed to File One or More 5500-EZ Forms, Including for a Terminated Plan."

Now in Revenue Procedure 2015-32 the IRS has adopted a permanent program allowing an employer to pay a modest penalty amount and thereby the employer will no longer be liable for the \$15,000 per missed year penalty amount. Until now, the IRS has not had a permanent correction program for one-person plans.

An employer must pay the proper correction payment amount. The amount is \$500 per delinquent return up to a maximum of \$1,500 per submission. Multiple delinquent returns for a single plan may be submitted in a single submission. For example, an employer with four delinquent returns would file all four returns and pay \$1500. Form 14704 must be completed along with a check for \$1500.

This correction relief applies on a per plan basis. An employer with two plans would need to make two submissions. For example, an employer delinquent with respect to both a profit sharing plan and a money purchase plan must make two submissions.

This relief is unavailable if the IRS has already furnished to the plan sponsor or administrator a CP 283 Notice, Penalty Charged on Your Form 5500 Return for an applicable delinquent year.

### **IRS Submissions Contents.**

The applicable Form 5500-EZ for each missed or delinquent year must be completed, signed by the sponsor and submitted. A complete return includes all applicable schedules. A complete return consists of a signed, filled-out paper version of Form 5500-EZ for the year the filer is delinquent. It is impossible for an individual to make his or her filing by using the DOL's EFAST2 filing system. A Form 5500-SF may not be filed as a substitute for the missed Form 5500-EZ. The IRS warns a sponsor that any attempt to use the DOL's EFAST2 filing system would subject the filer to the \$25 per day penalty to a maximum of \$15,000.

The paper version of Form 5500-EZ may either be ordered from the IRS or the electronic version may be printed from the IRS website. A special procedure will need to be used for years prior to 1990.

The submission should be mailed to: Internal Revenue Service, 1973 North Rul on White Blvd., Ogden, Utah, 84404-0020. An applicant may choose to use a private delivery service rather than the U.S. postal service. An applicant would need to comply with the special IRS rules for using an eligible private delivery service.

Each delinquent return must be marked to put the IRS on notice that the return is being submitted under Revenue Procedure 2015-32. "The applicant must mark in red letters in the top margin of

the first page (above the title of the form): Delinquent return submitted under Rev. Proc. 2015-32, Eligibility for Penalty Relief.” Failing to mark the return in the manner, allows the IRS to return the submission and then assess all of the applicable penalties.

The IRS has created a new Form, 14704. It must be completed and attached to the front of each delinquent return. For example, if a submission is for delinquent years 2010- 2013, the Form 14704 must be attached to the 2010 return. Again, failing to follow the instructions allows the IRS to return the submission and then assess all of the applicable penalties.

Who will want to use or consider using this special correction program? Those individuals have failed to file a Form 5500-EZ for a specific year(s) will generally want to use this new procedure to obtain tax certainty

For example, Sarah Andrews, a sponsor of a one person profit sharing plan failed to file a 2011 Form 5500-EZ even though her profit sharing plan had a balance of \$255,000 as of December 31, 2011. Sarah forgot that a filing was required when the plan balance exceeded \$250,000 as of any December 31st. She did file the 2012 Form 5500-EZ showing a year-end balance of \$295,000 and the 2013 Form 5500-EZ showing a yearend balance of \$335,00. Sarah will wish to use this special pilot program to file her missed 2011 Form 5500-EZ and avoid the penalty amount due of \$15,000.

Another example, if John Doe terminated his profit sharing plan in 2011, but he did not file the 2011 Form5500-EZ because it only had plan assets of \$135,000, he may find it worthwhile to eliminate any tax uncertainty by filing the 2011 Form 5500-EZ using the procedures set forth in Rev. Procedure 2015-32.

In summary, the IRS has created a permanent relief program allowing individuals who did not file a Form 5500-EZ for one or more years when required to file such form(s) to pay a correcting payment amount. In the termination situation, arguments can be made whether the IRS has the authority to require the filing of the form. Rather than having tax uncertainty or having to litigate the issue with the IRS, some individuals and employers may find it easiest for them to simply file the non-filed form and pay the \$500, \$1,000 or \$1,500 as applicable.

Form <b>14704</b> (May 2015)	Department of the Treasury - Internal Revenue Service <b>Transmittal Schedule – Form 5500-EZ</b> <b>Delinquent Filer Penalty Relief Program</b> <b>(Revenue Procedure 2015-32)</b> <i>(Attach to Oldest Delinquent Return in this Submission)</i>	OMB Number 1545-0956
1. Applicant's name <i>(plan sponsor or plan administrator)</i>		
2. Applicant's street address		
3. City or town, state and zip code <i>(include foreign country name, province/county and zip code, if applicable)</i>		
4. Applicant's Employer Identification Number <i>(do not use a Social Security Number)</i>		5. Applicant's telephone number
6. Plan number	7. Plan name	
8. Indicate the last day of the plan year for each delinquent return included in this submission <i>(enter MM/DD/YY)</i>		
9. Check the applicable box below for the amount of payment		
Number of Delinquent Returns in this Submission		Amount of Payment <i>(choose one)</i>
(a) One delinquent return		<input type="checkbox"/> \$500
(b) Two delinquent returns		<input type="checkbox"/> \$1,000
(c) Three or more delinquent returns		<input type="checkbox"/> \$1,500