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Retirement Amendment Deadlines Extended to Reflect SECURE Act, Miners Act, and CARES Act

Notice 2022-33

The IRS has extended the deadlines for amending a retirement plan or individual retirement arrangement (IRA) to reflect certain provisions of Division O of the Further Consolidated Appropriations Act, 2020, P. L. 116-94, known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), and Section 104 of Division M of the Further Consolidated Appropriations Act, 2020, known as the Bipartisan American Miners Act of 2019 (Miners Act). In addition, the IRS has extended the deadline for amending a retirement plan to reflect Section 2203 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P. L. 116-136.The extended amendment deadline for (1) a qualified retirement plan or Code Sec. 403(b) plan (including an applicable collectively bargained plan) that is not a governmental plan or (2) an IRA is December 31, 2025.

SECURE Act and Miners Act

The deadlines for amending a retirement plan or IRA to reflect the provisions of the SECURE Act or the Miners Act, as set forth in Notice 2020-68 and Notice 2020-86, are extended as follows:

- For a qualified plan (including an applicable collectively bargained plan) that is not a governmental plan within the meaning of Code Sec. 414(d), the deadline to amend a plan for provisions of the SECURE Act, or section 104 of the Miners Act is December 31, 2025.
- The plan amendment deadline for a qualified governmental plan, within the meaning of Code Sec. 414(d), is 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023.
- The deadline for a Code Sec. 403(b) plan (including an applicable collectively bargained plan) that is not maintained by a public school, as described in Code Sec. 403(b)(1)(A)(ii), to amend a plan for provisions of the SECURE Act or the regulations thereunder is December 31, 2025.
- The plan amendment deadline for a Code Sec. 403(b) plan that is maintained by a public school, as described in Code Sec. 403(b)(1)(A)(ii), is 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023.
- The deadline to amend a governmental plan under Code Sec. 457(b) for provisions of the SECURE Act or section 104 of the Miners Act is the later of (i) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023, or (ii) if applicable, the first day of the first plan year beginning more than 180 days after the date of notification by the Secretary that the plan was administered in a manner that is inconsistent with the requirements of Code Sec. 457(b).

- The deadline to amend the trust governing an IRA that is an individual retirement account or the contract issued by an insurance company with respect to an IRA that is an individual retirement annuity for provisions of the SECURE Act is December 31, 2025, or such later date as the Secretary prescribes in guidance.

Amendments to a retirement plan to reflect a provision of the SECURE Act that are made on or before the dates as extended will not cause the retirement plan to fail to satisfy the anti-cutback requirements of Code Sec. 411(d)(6) or section 204(g) of ERISA by reason of such amendments.

CARES Act

The deadlines for amending a retirement plan to reflect the provisions of section 2203 of the CARES Act are extended as follows:

- the deadline for amending a retirement plan that is not a governmental plan is December 31, 2025; and
- the deadline for amending a retirement plan that is a governmental plan is 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023, or, if later, with respect to a governmental plan under Code Sec. 457(b), the first day of the first plan year beginning more than 180 days after the date of notification by the Secretary that the plan was administered in a manner that is inconsistent with the requirements of Code Sec. 457(b).

Notice 2020-68, 2020-38 I.R.B. 567, and Notice 2020-86, 2020-53 I.R.B. 1786 are modified.

Final Regulations Remove Code Sec. 754 Election Signature Requirement

T.D. 9963

The Treasury and IRS have issued final regulations eliminating the signature requirement for making a Code Sec. 754 election (section 754 election). The regulations finalize 2017 proposed regulations (REG-116256-17), on which taxpayers were entitled to rely.

Election Signature Requirement

A partnership can make a section 754 election to adjust the basis of partnership property in the event the inside and outside bases are unequal. If the partnership files a section 754 election and there is a distribution of property, the basis of partnership property will be adjusted in the manner provided in Code Sec. 734. If the partnership files a section 754 election and there is a transfer of a partnership interest, the basis of partnership property will be adjusted in the manner provided in Code Sec. 743. The section 754 election applies to all distributions of property by the partnership and to all transfers of interests in the partnership

REFERENCE KEY

USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***

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during the tax year for which the election was filed and all subsequent tax years.

The regulations under Code Sec. 754 require a section 754 election to be made in a written statement (section 754 election statement) filed with the partnership return for the tax year during which the distribution or transfer occurs. The requirement of a written statement applies to returns filed either electronically or on paper. For the election to be valid, the return must be filed by the due date for the return, including extensions.

The amended regulation, which is identical to the 2017 proposed amendment, removes a requirement that the section 754 election statement be signed by one of the partners. Under the regulation before its amendment, a partnership filing an unsigned section 754 election statement with its partnership return failed to make a valid section 754 election. An unsigned statement is valid under the amended regulation if it meets the remaining requirements.

The regulation, as amended, retains two requirements. It continues to provide that a taxpayer making a section 754 election must file a statement with its return that:

- sets forth the name and address of the partnership making the section 754 election, and
- contains a declaration that the partnership elects under section 754 to apply the provisions of Code Sec. 734(b) and Code Sec. 743(b).

Effective and Applicability Dates

The amendment eliminating the signature requirement is effective August 5, 2022, and applies to tax years ending on or after the date of publication of the final regulation in the Federal Register. Taxpayers may, however, apply the amendment to tax years ending before that date.

IRS Issues Statement on CP-14 Notices

The IRS was aware that some payments made for 2021 tax returns were incorrectly applied to joint taxpayer accounts. These taxpayers received erroneous balance due notices (CP-14 notices) or notices showing the incorrect amount. These payments were made by the spouse (second taxpayer listed) on a joint return submitted through their Online Account. Some other taxpayers may also be affected outside of this group.

Taxpayers who received a notice but paid in a timely manner should not respond to the notice at this time. The IRS will provide an update as soon as possible. Taxpayers who partly paid reported balances due on their 2021 joint return, should pay the balance or follow instructions on the notice. Taxpayers could confirm previous payments by checking Online Account under the Social Security number that made the payment. Any assessed penalties and interest will be automatically adjusted when payments were applied correctly.

Programming affected certain returns. It did not move the payment to the married filing jointly account when the payment was (1) not electronic and made by the secondary spouse; and (2) electronic, made by the secondary spouse and posted before the joint return indicator was present to identify the primary taxpayer.

AICPA Offers Comments on Green Book Trust and Estate Tax Proposals

The American Institute of CPAs offered up suggestions to Congress, focused on the trust and estate proposals found within the fiscal year 2023 revenue proposal, as the legislative branch considers the White House Budget request.

In a July 28, 2022, letter sent to Democrat and Republican leadership on both the Senate Finance Committee and the House Ways and Means Committee, AICPA outlined a number of proposals across four areas, including strengthening taxation of high-income taxpayers; modifying estate and gift taxation; and improving tax administration and compliance.

The White House budget revenue proposals were published in March 2022 in the so-called "Green Book."

With regards to strengthening taxation of high-income taxpayers, AICPA noted that it is "currently concerned that some of the provisions in the 2023 Treasury Green Book … regarding valuation rules for certain transfers of assets are inconsistent with well-established valuation principles and could result in valuations that do not reflect the true economic value of transferred assets. These inconsistencies could, in turn, unjustly negatively affect taxpayers."

Specifically, it raised concerns with treating transfers of appreciated property by gift or on death "as realization events," which could alter how the property is valuated and could put taxpayers at a disadvantage for not having complete access to different valuations.

In the tax administration section, AICPA expressed concern that proposed reporting requirements, the organization expressed concern that reporting requirements for tax year would apply to each trust whose estimated total value on the last day of the tax year exceeds $300,000 or whose gross income for the tax year exceeds $10,000, along with what may be overly burdensome informational reporting requirements.

"These low thresholds would capture a substantial number of trusts – many of which are likely of lower risk to the IRS due to the lowers dollars at stake," the letter states.

AICPA also called the taxing of estates the same as trusts for many of the provisions in the Green Book "problematic. The AICPA recommends that estates be treated similar to married filing separately for all estate provisions in the Green Book, as well as existing law (such as income tax and net investment income tax). This recommendation would restore estates to their federal tax position from 1954-1986."

New Mexico Disaster Notice Updated

A May 10, 2022 notice granting relief to victims of wildfires and straight-line winds that began on April 5, 2022, in parts of New Mexico was updated by the IRS on August 1, 2022, to change the ending deadline date to September 30, 2022 and change the incident name to include flooding, mudflows, and debris flows directly related to the wildfires. Additionally, the notice was updated on August 4, 2022, to include Los Alamos and Sandoval counties.

New Mexico Disaster Relief Notice (NM-2022-05)

Procedures to Create Special Statistical Studies and Compilations for Return Information Updated

Rev. Proc. 2022-29

The IRS has updated the procedures for other government agencies or members of the public to request the Service create special statistical studies and compilations involving return information pursuant to Code Sec. 6108(b). The IRS has also set forth the criteria for determining reasonable fees for costs associated with the creation of the special statistical studies and compilations. This guidance is effective on August 1, 2022.

Procedures For Requesting Special Statistical Studies And Compilations

Requests for special statistical studies or compilations (involving either new projects or changes in recurring projects) must be submitted in writing with specifications as complete and definite as practical. Specifications should include the source and availability of data and content, manner of presentation (for example, particular medium or application) and timing of results (for example, scheduling).

All requests for special statistical studies or compilations must be addressed to the Director, SOI and emailed to SIS@IRS.GOV or mailed to the following address: Director, Statistics of Income Division, Internal Revenue Service, 1111 Constitution Avenue, NW Room K-4100, Washington, DC 20224, Attention: RAAS, Statistics of Income.

Rev. Proc. 2006-36, 2006-38 I.R.B. 498 has been modified and superseded.

Victims of Kentucky Severe Storms, Flooding, Landslides, and Mudslides Granted Tax Relief

Kentucky Disaster Relief Notice (KY-2022-06)

The president has declared a federal disaster area in Kentucky. The disaster is due to severe storms, flooding, landslides, and mudslides that began on July 26, 2022. The IRS has postponed certain deadlines for taxpayers who reside or have a business in the disaster area. For instance, certain deadlines falling on or after July 26, 2022, and on or before November 15, 2022, have been postponed to November 15, 2022. This includes deadlines for filing most tax returns (including individual, corporate, estate and trust income tax returns; partnership and S corporation returns; estate, gift, and generation-skipping transfer tax returns; and employment and certain excise tax returns) or to make tax payments, including estimated tax payments, that have either an original or extended due date occurring on or after July 26, 2022 and on or before November 15, 2022.

- Breathitt;
- Clay;
- Floyd;
- Johnson;
- Knott;
- Leslie;
- Letcher;
- Magoffin;
- Martin;
- Owsley;
- Perry;
- Pike; and
- Wolfe.

Taxpayers who live or have a business in the disaster area may qualify for tax relief.

Kentucky Filing Deadlines Extended

The IRS extended certain deadlines falling on or after July 26, 2022, and before November 15, 2022, to November 15, 2022. This extension includes filing for most returns, including:

- individual, corporate, estate, and trust income tax returns;
- partnership and S corporation income tax returns;
- estate, gift, and generation-skipping transfer tax returns;
- the Form 5500 series returns;
- annual information returns of tax-exempt organizations, and employment and certain excise tax returns.

However, the extension does not include information returns in the Form

W-2, 1094, 1095, 1097, 1098, or 1099 series or Forms 1042-S, 3921, 3922, or 8027.

Kentucky Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after July 26, 2022, and before November 15, 2022. Taxpayers have until November 15, to perform other time-sensitive actions due on or after July 26, 2022 and before November 15, 2022.

The IRS excused late penalties for employment and excise tax deposits due on or after July 26, 2022, and before August 10, 2022. But, the taxpayer must make the deposits by August 10, 2022.

Casualty Losses

Affected taxpayers may obtain relief by claiming their disaster-related casualty losses on their 2021 or 2022 federal income tax return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2021 or 2022 return should write the disaster designation:

"Kentucky Severe Storms, Flooding, Landslide and Mudslide"

at the top of the return. This will allow the IRS to speed refund processing.

The IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return, and submit it to the IRS.

Victims of U.S. Virgin Islands Seagrass Influx Granted Tax Relief

Virgin Islands Disaster Relief Notice (VI-2022-01)

The president has declared a federal disaster area in U.S. Virgin Islands. The disaster is due to a water shortage and the health impact from an unprecedented sargassum seagrass influx that began on July 15, 2022. The disaster area is the island of St. Croix. Taxpayers who live or have a business in the disaster area may qualify for tax relief.

U.S. Virgin Islands Filing Deadlines Extended

The IRS extended certain deadlines falling on or after July 15, 2022, and before November 15, 2022, to November 15, 2022. This extension includes filing for most returns, including:

- individual, corporate, estate and trust income tax returns;
- partnership and S corporation income tax returns;
- estate, gift, and generation-skipping transfer tax returns;
- the Form 5500 series returns;
- annual information returns of tax-exempt organizations; and
- employment and certain excise tax returns.

However, the extension does not include information returns in the Form W-2, 1094, 1095, 1097, 1098, or 1099 series or Forms 1042-S, 3921, 3922, or 8027.

U.S. Virgin Islands Payment Deadlines Extended

The relief includes extra time to make tax payments. This includes estimated tax payments due on or after July 15, 2022, and before November 15, 2022. Taxpayers have until November 15, 2022, to perform other time-sensitive actions due on or after July 15, 2022, and before November 15, 2022.

The IRS excused late penalties for employment and excise tax deposits due on or after July 15, 2022, and before August 1, 2022. But, the taxpayer must make the deposits by August 1, 2022.

Casualty Losses

Affected taxpayers may obtain relief by claiming their disaster-related casualty losses on their 2021 or 2022 federal income tax return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2021 or 2022 return should write the disaster designation at the top of the return:

"U.S. Virgin Islands Water Shortage and Health Impact from Unprecedented Sargassum Seagrass Influx"

This will allow the IRS to speed refund processing.

Also, the IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should:

- add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return; and
- submit it to the IRS.

IRS Advises Tax Professionals on Signs of Identity Theft

IR-2022-144

The IRS and Security Summit partners have urged tax professionals to be vigilant and look out for the signs of data theft perpetrated by identity thieves and take critical action to protect data. Tax professionals should watch out for the following critical signs:

- e-filed returns were rejected because the Social Security number was already used on another return;
- more e-filing acknowledgements were received than returns filed by the tax professionals;
- taxpayers responded to emails not sent by their tax professional; and
- slow or unexpected computer or network responsiveness, computer cursor moves or changes numbers without touching the mouse or keyboard and getting locked out of a network or computer.

Tax professionals should immediately contact the local IRS stakeholder liaison if they become aware of signs of data theft. Tax preparers can also be pro-active with taxpayers and suggest they obtain an IP PIN or complete the Form 14039, Identity Theft Affidavit.

GAO Reports on Tax Equity

GAO Report: Tax Equity—Enhanced Evaluation Could Improve Outreach to Small Business Owners (GAO-22-104582)

The Government Accountability Office (GAO) issued a report on tax equity. This report estimated the use of selected COVID-19 tax provisions by race, ethnicity, and sex of small business owners. Additionally, it evaluated potential barriers in accessing COVID-19 tax provisions among small businesses. GAO analyzed data from IRS, the U.S. Census Bureau, and the Social Security Administration; reviewed literature on analytical methods; and interviewed representatives of small business organizations and agency officials.

Report Findings

GAO found that the IRS does not collect data on taxpayers, including small business owners, regarding their race, ethnicity, or sex. GAO used data from other federal agencies, other taxpayer information and specific analytical methods to help identify taxpayers' respective demographic characteristics. GAO found limited use of COVID-19 tax provisions by small businesses. Less than 7 percent of eligible small businesses within the study population used the employer and self-employed leave credits or payroll tax deferrals. Most small business organizations identified a poor understanding of the tax provisions as a potential cause of the limited use. Further, GAO identified information and recordkeeping requirements as a potential barrier contributing to limited use. Finally, GAO determined that the IRS's measures to evaluate its outreach did not provide relevant and complete information.

Recommendations

GAO recommended the IRS to evaluate its outreach efforts to very small businesses and owners with diverse backgrounds, using relevant and complete information, to inform future outreach. The IRS agreed with this recommendation, noting the complexity of evaluating outreach in the absence of demographic data.

TAX BRIEFS

Computational Adjustment

The IRS's adjustment to a married couple's tax return was properly characterized as a computational adjustment, attributable to a partnership item. The additional tax assessed was the result of the computational adjustment because the refund claim was attributable to the partnership item. The court agreed with *Bush v. United States*, 655 F.3d 1323, 1329 (2011), and held that the IRS was not required to adjust the treatment of a partnership item at the partnership level prior to issuing a computational adjustment at the partner level. The issuance of a No Adjustments Letter did not preclude the IRS from issuing a computational adjustment.

R.J. Ivanhoe, DC Conn., 2022-2 USTC ¶50,185

Consolidated Group

A corporation was the default successor and agent for another corporation and its subsidiaries for a consolidated group for two tax years at issue. As the default successor and agent for the other corporation and its subsidiaries consolidated group, the corporation was the proper party to execute and submit the Form 872, Consent to Extend the Time to Assess Tax, for each of those tax years.

Chief Counsel Advice Memorandum 202231014

Controlled Corporations

The IRS ruled that the true up payment from a bank to a distributing entity in the form of distributing debt paid within 365 days after the date of the proposed distribution would be treated as part of the debt-for-equity exchange. Further, the distributing entity would recognize no gain or loss, or deductions or items of income, on the debt-for-equity exchange, other than (i) the amount of gain on any true up payment paid in cash from the bank to the distributing entity equal to the lesser of: (a) the amount of cash received; or (b) the amount of gain that would have been realized if the transferred shares had been sold, (ii) deductions attributable to the fact that the distributing debt may be redeemed at a premium, (iii) income attributable to the fact that the distributing debt may be redeemed at a discount, and (iv) interest expense accrued with respect to the distributing debt.

IRS Letter Ruling 202231004;

The IRS held that a controlled contribution, together with an external distribution, would qualify as a reorganization and distribution within the meaning of Code Sec. 368(a)(1)(D) and 355. The distributing and controlled entities would each be a party to a reorganization within the meaning of Code Sec. 368(b). No gain or loss will be recognized by the distributing entity on the controlled contribution and no gain or loss will be recognized by the controlled entity on the controlled contribution. Among other rulings, it was also decided that following the external distribution, the controlled entity would not be a successor of the distributing entity. Therefore, the controlled entity and its direct and indirect subsidiaries that were includible corporations and satisfied the ownership requirements would be members of an affiliated group of corporations eligible to file a consolidated income tax return with the controlled entity as the common parent.

IRS Letter Ruling 202231013

Deductions

An individual was denied deductions for car and other expenses for failure to satisfy the strict substantiation requirements of Code Sec. 274(d). The taxpayer did not prove locations allegedly visited in connection with either his Schedule C1 or his Schedule C2 business. The taxpayer failed to convince the court that he purchased items listed on documents.

Eze, TC, Dec. 62,093(M)

Exempt Organization

An organization was denied tax-exempt status because it failed to establish that it was organized or operated exclusively for exempt purposes under Code Sec. 501(c)(3). Its activities consisted of organizing and operating an adult volleyball league which did not pass the operational test.

IRS Letter Ruling 202231015

Whistleblower

A joint motion to remand sought by a whistleblower and the IRS was granted by the Tax Court. The Tax Court had discretion to remand the whistleblower's claims to the Whistleblower Office for further consideration without retaining jurisdiction.

Whistleblower 769-16w, TC, Dec. 62,092