

Extension of Date for Multiemployer Plans to Elect Relief under Sections 204 and 205 of WRERA

Notice 2009-42

I. Background and extension of date for making election

On March 27, 2009, the Service issued Notice 2009-31, 2009-16 I.R.B. 856, providing guidance to multiemployer plans making elections described in sections 204 and 205 of the Worker, Retiree, and Employer Recovery Act of 2008, P.L. 110-458 (WRERA). Section IV.1 of the Notice provided the following deadlines for making these elections:

Pursuant to the authority granted to the Secretary and his delegate under section 204(c)(1)(A) of WRERA to prescribe the time and manner for making an election, an election under section 204 must be made by the later of April 30, 2009 and the date that is 30 days after the due date of the annual certification of section 432 status for the election year. * * *

Pursuant to the authority granted to the Secretary and his delegate under section 205(b)(1) to prescribe the time and manner for making an election under section 205, such an election must be made by the last day of the plan year as of which the election is being made, or, if earlier, by the date a funding improvement plan, rehabilitation plan, or update is adopted that takes into account the election. However, in no event is the election required to be made earlier than April 30, 2009.

Some sponsors of multiemployer plans have identified a legitimate need for additional time to make these elections in particular situations. Accordingly, this Notice hereby substitutes “June 30, 2009” for each reference to “April 30, 2009” in Section IV.1 of Notice 2009-31.

In addition, if (1) as of the otherwise applicable deadline (i.e., the deadline for a plan as modified by this notice) for making an election under section 204 or 205, a plan sponsor has been unable to reach agreement as to whether to make the election, so that the decision must be resolved through an arbitration process; (2) the plan sponsor makes an election by the otherwise applicable deadline that is contingent on the resolution of the arbitration; and (3) the resolution is to not make an election, then the IRS will automatically approve a request to revoke the election.

II. Effect on other guidance

Notice 2009-31 is hereby modified.

Drafting information

The principal author of this Notice is Diane S. Bloom of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this Notice, please contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 (a toll free number) or e-mail Ms. Bloom at RetirementPlanQuestions@irs.gov.