

7/7/2004

ADVANCE COPY OF INTERNAL REVENUE BULLETIN ITEM

Attached is Revenue Procedure 2004-44, which outlines the procedure for a plan administrator or sponsor to request an extension of an amortization period.

This guidance will be published in Internal Revenue Bulletin 2004-31 on August, 2, 2004.

You may release this guidance immediately.

Communications Division

Part III

Administrative, Procedural and Miscellaneous

26 CFR 601.201: Rulings and determination letters.
(Also Part I, § 412.)

Rev. Proc. 2004-44

SECTION 1. PURPOSE

The purpose of this revenue procedure is to outline the procedure by which a plan administrator or a plan sponsor may request and obtain approval for an extension of an amortization period in accordance with § 412(e) of the Internal Revenue Code and section 304(a) of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 1974-3 C.B. 1, 42.

SECTION 2. BACKGROUND INFORMATION

.01 Statute—Section 412(e) of the Code and section 304(a) of ERISA provide that the period of years required to amortize any unfunded liability of any plan may be extended by the Secretary of Labor for a period of time (not in excess of 10 years).

.02 Reorganization Plan—Reorganization Plan No. 4 of 1978, 1979-1 C.B. 480, which became effective December 31, 1978, transferred the function described in subsection .01 to the Secretary of the Treasury.

SECTION 3. REQUESTS FOR APPROVAL TO EXTEND AN AMORTIZATION PERIOD

.01 Who may submit--Only a plan administrator, plan sponsor, or an authorized representative of either may submit a request for approval to extend the period of years required to amortize any unfunded liability. The request must be signed by the taxpayer maintaining the plan (hereinafter referred to as "applicant") or an authorized representative of the applicant who either must be identified in (a), (b), or (c) of subsection 9.02(11) of Rev. Proc. 2004-4, 2004-1 I.R.B. 125, or must be an enrolled actuary within the meaning of § 7701(a)(35) of the Code. Where an authorized representative signs the request or will appear before the Service in connection with the request, a Form 2848, Power of Attorney and Declaration of Representative, must be submitted with the request. For multiemployer plans, the request must be made by the Board of Trustees (which shall be deemed to be the applicant) or by an authorized

representative of the Board of Trustees. An individual is not an authorized representative of the applicant merely on account of being an administrator or trustee of the plan.

.02 Submission.--Requests for approval to extend an amortization period must be submitted to:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

The user fee required by Rev. Proc. 2004-8, 2004-1 I.R.B. 240, or its successors, must be sent with such requests.

.03 Necessary Procedural Documents.--A request will not be considered unless it complies with (1) through (3) below.

- (1) The request also must contain a declaration in the following form: "Under the penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the request are true, correct, and complete." This declaration must be signed by the applicant (e.g., an authorized officer of a corporation). The signature of an individual with a power of attorney will not suffice for the declaration. See section 9.02(13) of Rev. Proc. 2004-4, supra, at 142.
- (2) Because a request for an extension constitutes a request for a ruling, compliance with section 6110 of the Code is also required. Section 601.201 of the Statement of Procedural Rules sets forth the requirements applicable to requests for rulings and determination letters which are subject to section 6110. Section 601.201(e) furnishes specific instructions to applicants.

The applicant must provide with the request either a statement of proposed deletions and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted.

- (3) The applicant must provide a copy of a written notification to each employee organization representing employees covered by the plan, and each participant, beneficiary, and alternate payee of the plan, that an application for an extension of the amortization period under § 412(e) has been submitted to the Service. The original of the written notification must bear a signature by an appropriate

officer of the applicant and must be in substantially the form set forth in the Model Notice found in the Appendix A to this revenue procedure. The Service does not require the applicant to furnish any information in addition to that required by the Model Notice in the Appendix A to plan participants, beneficiaries, alternate payees, or employee organizations as part of the extension application process, but additional information may, of course, be provided by the applicant pursuant to the collective bargaining process or otherwise.

The application must state that such notice was hand delivered or mailed to the last known address of each employee organization, participant, beneficiary, and alternate payee (within the meaning of § 414(p)(8)) within 14 days prior to the date of the application. If the applicant makes a reasonable effort to carry out the provisions of this paragraph, failure of an employee organization, participant, beneficiary, or alternate payee to receive the notice will not cause the applicant to fail the notice requirement. However, merely posting the notice on a bulletin board is not sufficient to satisfy this requirement.

.04 Necessary Information.--The applicant must furnish appropriate evidence that the extension of the amortization period is needed to continue the plan or to prevent a substantial curtailment of pension benefit levels or employee compensation, and that a denial of the extension would be adverse to the interests of the plan participants in the aggregate. What constitutes appropriate evidence will depend on the facts and circumstances of each case. A response must be furnished for each of the paragraphs (1) through (6) below. In certain cases, some of the material described in paragraphs (1) through (6) may be inapplicable, unavailable, inappropriate or burdensome to furnish. In such cases, the applicant should furnish a statement indicating why the material for a particular paragraph is inapplicable, unavailable, inappropriate or burdensome.

(1) General facts concerning the employer.

A brief statement should be submitted concerning: (a) the history of the employer and its primary business; (b) the ownership of the employer and any recent or contemplated changes (such as acquisitions, mergers, discontinuances of operations) which might have a bearing on the employer's organization or financial condition; (c) whether the employer is aggregated with any other entity for purposes of § 414(b), (c), (m) or (o); and (d) whether the plan is also maintained by employers described in (c) above or any other employers.

(2) The financial condition of the employer.

For plans other than multiemployer plans, the latest available annual financial report of the employer and each of the other entities included within the controlled group of which the employer is a member. This submission must include at least the balance sheet, profit and loss statement, cash flow statement, and notes to the financial statement. Recent interim financial reports for each of

the controlled group members, if available, should also be submitted along with an interim financial report covering the corresponding period for the previous year. If the employer submits financial reports to the Securities and Exchange Commission, these reports should be submitted for the same period as the annual financial report. Preferably, the financial report should include certified financial statements. If certified financial statements have not been prepared, an uncertified report is acceptable. If neither certified nor uncertified reports are available, a copy of the company's latest available federal income tax return, including all of the supporting schedules, must be submitted.

For multiemployer plans, the financial information described in the above paragraph must only be submitted for employers who either (1) are represented on the Board of Trustees or (2) made or were required to make five percent or more of the total required contributions under the collective bargaining agreements relating to the plan for which the extension is requested. In addition, the applicant must submit a general description of the financial state of the industry in which employees covered by the plan are employed. Regardless of whether any employer makes more than five percent of the total contributions, a general description of the financial state of the industry in which employees covered by the plan are employed is required. For purposes of this paragraph, a multiple employer plan for which the plan administrator did not make an election under § 413(c)(4)(B) of the Code is required to submit the same information as a multiemployer plan. Financial information of employers contributing to a multiemployer plan (identified by name of plan and plan number) must be submitted directly from the contributing employers to the Service at the same time that the submission is made to the following address:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

- (3) Information concerning the extension of the amortization period. Information concerning the extension of the amortization period should include the following.
 - (a) The unfunded liability for which an extension of the amortization period is requested.
 - (b) The reasons why an extension of the amortization period is needed.
 - (c) The length of the extension of the amortization period desired (up to a maximum of 10 years).

- (d) Information concerning the actions taken by the applicant to reduce the plan's unfunded liability before the request for an extension has been made. Such actions would include the reduction of future plan benefit accruals and increases in employer contribution rates. Also describe any benefit reductions, contribution rate increases, or other actions that are intended to be taken in the future.
- (e) Projections of (i) funding standard account credit balance/accumulated funding deficiencies, (ii) actuarial value of assets and market value of assets, (iii) current liabilities, and (iv) funding ratios, for the length of the extension of the amortization period requested and for the period ten (10) years afterwards. For example, if the applicant requests an extension of ten (10) years, the projections should be for a 20-year period. These projections must be prepared by an enrolled actuary.
- (f) The plan year for which the extension is requested, i.e., the first plan year for which the extension of the amortization period will be reflected in the determination of the minimum funding standard for the plan (e.g., 1/1/2004—12/31/2004).

The Service may request additional information as needed.

- (4) Facts concerning the pension plan. For each pension plan for which an extension is requested, the following information should be supplied.
 - (a) The name of the plan, the plan's identification number, and file folder number (if any).
 - (b) The date the plan was adopted.
 - (c) The effective date of the plan.
 - (d) The classes of employees covered.
 - (e) The number of employees covered.
 - (f) A copy of the current plan document and the most recent summary plan description.
 - (g) A copy of the most recent determination letter issued to the plan.
 - (h) A brief description of all plan amendments adopted during the year for which the extension is requested and the previous four years which affect plan costs, including the approximate effect of each amendment on such costs.

- (i) The most recent actuarial report plus any available actuarial reports for the preceding two plan years. Also, if not shown in that report, the present value of accrued benefits, present value of vested benefits, and fair market value of assets (excluding contributions not yet paid).
 - (j) A description of how the plan is funded (i.e., trust fund, individual insurance policies, etc.).
 - (k) A list of the contributions actually paid in each month, from the twenty-fourth month prior to the beginning of the plan year for which the extension is requested through the date of the request and the plan year to which the contributions were applied, with the employee contributions and the employer contributions listed separately.
 - (l) The approximate contribution required to meet the minimum funding standard. For defined benefit plans, this amount should be determined by the plan's enrolled actuary.
 - (m) A copy of the most recently completed Annual Return/Report of Employee Benefit Plan (Form 5500 series, as applicable) and in the case of a defined benefit plan, a copy of the corresponding Actuarial Information schedule (Schedule B of Form 5500).
 - (n) A copy of each ruling letter that waived the minimum funding standard during the last 15 plan years, a statement of the amount waived for each plan year, and a statement of the outstanding balance of the amortization base for each waived funding deficiency. The outstanding balance of the amortization base for each waiver is to be calculated as of the first day of the plan year for which an extension is being requested.
 - (o) A copy of each ruling letter that granted, under § 412(e) of the Code and section 304(a) of ERISA, an extension of time to amortize any unfunded liability which became applicable at any time during the last 15 plan years.
- (5) Other pension, profit-sharing, or stock bonus plans. If the employer maintains more than one plan, an outline of the essential facts for each such plan should be submitted. This should include:
- (a) A brief description of the plan, including the name of the plan and its plan year.
 - (b) The number of employees covered.
 - (c) The classes of employees covered.
 - (d) The approximate annual contribution required.

- (e) The amount of contributions that have been made, or are intended to be made, for any plan year of such other plan commencing in, or ending in, the plan year for which the extension is requested.
 - (f) A statement as to whether a request for a waiver of the minimum funding standard or an extension of an amortization period is contemplated for the plan.
- (6) Other information.
- (a) Describe the nature of any matters pertaining to the plan which are currently pending or are intended to be submitted to the Service, the Department of Labor or the Pension Benefit Guaranty Corporation.
 - (b) Furnish details of any existing arbitration, litigation, or court procedure which involves the plan.

.05 Checklist.--A checklist has been provided in Appendix B for the convenience of the taxpayer submitting the request. This checklist should be signed, by the taxpayer or authorized representative, and dated and placed on top of the request.

SECTION 4. DEADLINE FOR REQUESTING AN EXTENSION OF THE AMORTIZATION PERIOD

All extension requests should be submitted by the last day of the plan year for which the extension is intended to take effect. The Service will consider applications for extensions submitted after this date only upon a showing of good cause. In seeking an extension of an amortization period with respect to a plan year which has not yet ended, the applicant may have difficulty in furnishing sufficient current evidence in support of the request. For this reason it is generally advised that a request not be submitted earlier than 180 days prior to the end of the plan year for which the extension is requested.

SECTION 5. GENERAL

Employers who have difficulty in furnishing the information specified in this revenue procedure may call the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free number), or write for guidance to the following address:

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA:T:A

1111 Constitution Avenue, N.W.
Washington, D.C. 20224

In appropriate instances, pre-submission conferences may be afforded in addition to conferences available under Rev. Proc. 2004-4.

SECTION 6. BANKRUPTCY PETITIONS

If the applicant or a significant number of controlled group members file a bankruptcy petition after the request for an extension of an amortization period is submitted to the Service, the applicant must provide to the Service an update to the information required to be submitted in section 3 of this revenue procedure, especially the financial information in section 3.04(2).

SECTION. 7. EFFECTIVE DATE

This revenue procedure is effective for all ruling requests received after August 2, 2004, the date of its publication in the Internal Revenue Bulletin.

SECTION 8. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2004-4 is modified to the extent that this revenue procedure provides special procedures for issuing rulings with respect to requests for an extension of an amortization period.

Rev. Proc. 79-61, 1979-2 C.B. 575, is superseded

SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. section 3507) under control number 1545-1890.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 3 and Appendix B. This collection of information is required to evaluate, process and obtain approval of the request for an extension of an amortization period. This information will be used to make determinations on extensions of the amortization period under §

412(e) of the Code. The likely respondents are businesses or other for-profit institutions and nonprofit institutions.

The estimated total annual reporting/recordkeeping burden is 2500 hours.

The estimated annual burden per respondent/recordkeeper varies from 71 to 129 hours, depending on individual circumstances, with an estimated average burden of 100 hours. The estimated number of respondents/recordkeepers is 25.

The estimated annual frequency of responses is one.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is John C. Heil of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding how this revenue procedure applies to employee plans matters, contact the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free call). Mr. Heil's telephone number is (202) 283-9694 (not a toll-free call).

APPENDIX A

MODEL NOTICE OF APPLICATION FOR AN EXTENSION OF AN AMORTIZATION PERIOD TO EMPLOYEE ORGANIZATIONS (UNIONS), PARTICIPANTS, BENEFICIARIES, AND ALTERNATE PAYEES

This notice is to inform you that an application for an extension of an amortization period for unfunded liability under § 412(e) of the Internal Revenue Code (Code) and section 304 of the Employee Retirement Income Security Act of 1974 (ERISA) has been submitted by **[INSERT APPLICANT'S NAME]** to the Internal Revenue Service (Service) for the **[INSERT PLAN NAME]** for the plan year beginning **[INSERT DATE]**.

Under § 412(f)(4)(B) of the Code and section 304(a) of ERISA, the Service will consider any relevant information submitted concerning this application for an extension of the amortization period for unfunded liability. You may send this information to the following address:

Director, Employee Plans
Internal Revenue Service
Attn: SE:T:EP:RA:T:A
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Any such information should be submitted as soon as possible after you have received this notice. Due to the disclosure restrictions of § 6103 of the Code, the Service can not provide any information with respect to the extension request itself.

In accordance with section 104 of ERISA and section 2520.104b-10 of the Department of Labor Regulations (29 C.F.R. Part 2520), annual financial reports for this plan, which include employer contributions made to the plan for any plan year, are available for inspection at the Department of Labor in Washington, D.C. Copies of such reports may be obtained upon request and upon payment of copying costs from the following address:

Public Disclosure Room
Room N-5507
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

As required by section 104(b)(2) of ERISA, copies of the latest annual plan report are available for inspection at the principal office of the plan administrator, who is located at **[INSERT ADDRESS]**. Copies of the annual report may be obtained upon request and

upon payment of a copying charge of **[INSERT CHARGE]** by writing to the plan administrator at the above address.

The following information is provided pursuant to § 412(f)(4)(A) of the Code and section 303(e)(1) of ERISA:

Present Value of Vested Benefits \$ _____

Present Value of Benefits, calculated as though the plan terminated \$ _____

Fair Market Value of Plan Assets \$ _____

The above present values were calculated using an interest rate or rates of **[INSERT INTEREST RATE(S)]**.

[SIGNATURE OF APPROPRIATE OFFICER OF THE PLAN SPONSOR]
[INSERT NAME]
[INSERT TITLE]

Appendix B

REQUEST FOR EXTENSION OF AN AMORTIZATION PERIOD CHECKLIST IS YOUR SUBMISSION COMPLETE?

Instructions

The Service will be able to respond more quickly to your request for an extension of an amortization period if it is carefully prepared and complete. To ensure your request is in order, use this checklist. Answer each question in the checklist by inserting Y for yes, N for no, or N/A for not applicable, as appropriate, in the blank next to the item. **Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.**

You must submit a completed copy of this checklist with your request. If a completed checklist is not submitted with your request, substantive consideration of your submission will be deferred until a completed checklist is received.

- _____ 1. If you want to designate an authorized representative, have you included a properly executed Form 2848 (Power of Attorney and Declaration of Representative)?
- _____ 2. Have you satisfied all the requirements of Rev. Proc. 2004-4 or its successors (especially concerning signatures and penalties of perjury statement)? (See section 3.03(1))
- _____ 3. Have you included statement of proposed deletions? (See section 3.03(2))
- _____ 4. Have you included the user fee required under Rev. Proc. 2004-8 or its successors? (See section 3.02)
- _____ 5. Have you included a copy of the written notification that an application for an extension of an amortization period has been submitted and a statement that such notice was hand delivered or mailed to each employee organization, participant, beneficiary and alternate payee? (See section 3.03(3) and Appendix A)
- _____ 6. Have you included the general facts concerning the employer? (See section 3.04(1))
- _____ 7. Have you included a description of the employer's financial condition? (See section 3.04(2))

- _____ 8. Have you included information concerning the extension of the amortization period? (See section 3.04(3))
- _____ 9. Have you included information concerning the pension plan? (See section 3.04(4))
- _____ 10. Have you included information concerning other pension, profit-sharing, or stock bonus plans of the employer? (See section 3.04(5))
- _____ 11. Have you included information concerning other matters pertaining to the plan? (see section 3.04(6))

Signature

Date

Title or Authority

Typed or printed name of person signing checklist