

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

The IRS is beginning a one-year pilot program on June 2, 2014, to help individuals and partnerships that failed to file one or more 5500-EZ forms. Such filers will be able to be relieved from paying the maximum penalty of \$15,000 per year for failing to file a Form 5500-EZ by filing such non-filed form or forms. The IRS announced this special program in Revenue Procedure 2014-32 as published on May 16. This relief will apply to 5500-EZ forms filed during the period of June 2, 2014 until June 2, 2015. Forms filed after June 2, 2015 will not be entitled to the relief.

Since 1995 the Department of Labor (DOL) has had a correction program available to employers of plans covering multiple participants. It is called the Delinquent Filer Voluntary Compliance (DFVC) program. Sponsors of multiple participant plans use the DFVC correction program to come into compliance with the law on a voluntary basis by filing the missed forms and by paying a correction fee much less than the amount owed if the DOL and/or the IRS discovered the failure to file the 5500 forms.

In 2002, the IRS adopted the administrative practice that it would not impose applicable tax penalties (*in addition to the DOL penalties*) on an employer for it not filing the Form 5500 as long as the filer was eligible to use the DOL's DFVC program and satisfied the requirements of such program by filing the non-filed 5500 forms.

Until now, the IRS has not had a correction program for One-Person plans. The DOL has no authority over One-Person plans except for the prohibited transaction topic.

Under this special IRS relief program, an individual with a One-Person plan will not be required to pay any fee for participating in the IRS pilot program. The IRS is asking the public if this pilot program should be adopted on a permanent basis, and, if so, how the correction amount or fees, should be determined.

Individuals who are not in compliance will generally want to take advantage of this special opportunity. The IRS has said that the pilot program will end on June 2, 2015. CWF will prepare such a filing for \$150 per plan.

For discussion purposes, assume that 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 \$280,000 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 \$325,000 and the 2013 Form 5500-EZ showing a year-end balance of \$365,00. 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.

The tax penalty is \$25 per day to a maximum of \$15,000 per return. The \$15,000 is reached when a filer is 600 days late. Many times this 600th day is reached as many times the IRS has not yet determined that the employer had not filed a required form. For example, in the Sarah example, since her plan had never exceeded the \$250,000 limit, the IRS did not know that she had missed a required filing.

When is a filing required for a One-Person plan which was terminated during the year? Always is the IRS position. However, the IRS has done a poor job of communicating this position.

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The IRS discusses in Revenue Procedure 2014-32 that notwithstanding the PPA 2006 provision that a One-Person plan with assets of \$250,000 or less at the end of the year are not required to file Form 5500-EZ, the IRS has “determined” that a filing is required when a plan is terminated and all of the assets have been distributed. The IRS does not cite any legal authority for its position. An individual who has failed to file a Form 5500-EZ has two courses of action. He or she may file under this pilot program or may use the general rule that such penalty is to be waived if the IRS finds the individual had a reasonable cause as to why the form was not filed. A request for relief for reasonable cause may be attached to the delinquent return or it maybe filed separately. A reason must be given explaining why the return is late. It is not be filed with the IRS office where the most current Form 5500-EZ is to be mailed