

Relief in Connection With Employee Benefit Plans Because of the September 11, 2001, Terrorist Attack

Notice 2002-7

I. PURPOSE

The Internal Revenue Service, the Department of Labor's Pension and Welfare Benefits Administration ("PWBA") and the Pension Benefit Guaranty Corporation ("PBGC") provide relief in connection with employee benefit plans because of the September 11, 2001, terrorist attack.

This notice supplements and expands the tax relief granted by the Service under § 7508A of the Internal Revenue Code ("Code") in Notice 2001-61 (2001-40 I.R.B. 305) and Notice 2001-68 (2001-47 I.R.B. 504) for taxpayers affected by the September 11, 2001, terrorist attack ("Terrorist Attack"). On January 23, 2002, the President signed into law the Victims of Terrorism Tax Relief Act of 2001 (the "Act"). Section 112 of the Act amended § 7508A of the Code to provide that, in the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster or a terroristic or military action, the Secretary of the Treasury may prescribe a period of up to 1 year which may be disregarded in determining the date by which any action is required or permitted to be completed. No plan shall be treated as failing to be operated in accordance with its terms solely because the plan disregards any period by reason of such relief. Section 112 of the Act made parallel changes to Titles I and IV of the Employee Retirement Security Act of 1974, Pub. L. No. 93-406 ("ERISA").

II. BACKGROUND

Section 412(a) of the Code and § 302(a) of ERISA provide that, in order for a plan to meet the minimum funding standards of the Code and ERISA, the plan must not have an accumulated fund-

ing deficiency as of the end of each plan year. Section 412(c)(10) of the Code and § 302(c)(10) of ERISA provide that, for purposes of satisfying the minimum funding requirements of the Code and ERISA, any contributions for a plan year made by an employer by the end of the 8½-month period following the end of such plan year are deemed to have been made on the last day of the year.

Section 412(d) of the Code and § 303 of ERISA provide for waivers of the minimum funding requirements in the event of temporary substantial business hardship. In order for a plan other than a multiemployer plan to receive such a waiver, § 412(d)(4) of the Code and § 303(d)(1) of ERISA provide that an application for such a waiver must be submitted no later than the 15th day of the 3rd month beginning after the close of the plan year for which the waiver is sought. Thus, for example, in order for a plan to receive a waiver of the minimum funding requirements for the plan year ending on December 31, 2000, the sponsor of the plan must have submitted an application by March 15, 2001.

Section 412(m)(1) of the Code and § 302(e)(1) of ERISA require that, with respect to certain plans with a funded current liability percentage of less than 100 percent, a higher rate of interest be charged on any unpaid required quarterly installments. Section 412(m)(5) of the Code and § 302(e)(5) of ERISA increase the required quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a plan with a calendar-year plan year, the due dates for the required installments for the 2001 calendar year are April 15, 2001, July 15, 2001, October 15, 2001, and January 15, 2002.

Section 412(n)(1) of the Code and § 302(f)(1) of ERISA provide that, with respect to certain plans with a funded current liability percentage of less than 100 percent, if the required installments or any other payment required under those sections are not made to the plan before the due date for such installment or other payment, and if the aggregate unpaid balance of such installments or other payments exceeds \$1,000,000, then there

shall be a lien in favor of the plan. The lien may be perfected by the PBGC.

Under the PBGC's premium regulations, contributions may be taken into account for determining a plan's unfunded vested benefits for a premium payment year or a plan's entitlement to the full funding limit exemption from the variable-rate premium for a premium payment year if the contributions (1) are for a plan year before the premium payment year and (2) are made on or before the earlier of (a) the due date for payment of the variable-rate premium or (b) the date the variable-rate premium is paid (29 CFR §§ 4006.4(b)(2)(iv) and 4006.5(a)(5)).

III. RELIEF

A. For all plans:

1. If the dates described in § 412(c)(10) or 412(m) of the Code and § 302(c)(10) or 302(e) of ERISA for making contributions fell within the period beginning on September 11, 2001, and ending on September 23, 2001, then the date such contributions must be made is postponed to September 24, 2001.

2. If the date described in § 412(d)(4) of the Code and § 303(d)(1) of ERISA for applying for a waiver fell within the period beginning on March 15, 2001, and ending on February 28, 2002, then the date such waiver must be applied for is postponed to March 1, 2002.

B. In addition to the relief in Section III.A., above, for plans that are directly affected by the Terrorist Attack, if the date described in § 412(c)(10) or 412(m) of the Code and § 302(c)(10) or 302(e) of ERISA for making contributions fell within the period beginning on September 11, 2001, and ending on February 11, 2002, then the date such contributions must be made is postponed to February 12, 2002.

C. For purposes of the notice, a plan will be considered to be directly affected by the Terrorist Attack if any of the following were located at the time of the attack in the area consisting of the five New York counties of Bronx, Kings, New York, Queens, and Richmond: the principal place of business of any employer that maintains the plan; the office of the plan

or the plan administrator; the office of the primary recordkeeper serving the plan; or the office of an attorney, enrolled actuary, certified public accountant or other advisor retained by the plan or the employer at the time of the Terrorist Attack to determine the funding requirements described in section III.B above for the period described in such section. A plan will also be considered to be directly affected by the Terrorist Attack if the enrolled actuary for the plan was killed or injured or is missing as a result of the Terrorist Attack.

D. The following rule applies under Title IV of ERISA for purposes of determining a plan's unfunded vested benefits for a premium payment year or entitlement to the full funding limit exemption from the variable-rate premium for a premium payment year. For any plan for which this notice extends a date described in § 412(c)(10) of the Code and § 302(c)(10) of ERISA, contributions for any plan year before the premium payment year may be taken into account if they are made on or before the earlier of (1) the extended § 412(c)(10)/§ 302(c)(10) date under this notice or (2) the date of the plan's variable-rate premium filing (or, if applicable, amended variable-rate premium filing) for the premium payment year.

DRAFTING INFORMATION

The principal authors of this notice are James E. Holland, Jr. and Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500, between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll-free number). Mr. Holland may be reached at (202) 283-9699 (not a toll-free number).