

Retirement News for Employers

Helping Business Owners with Retirement Plans

Internal Revenue Service Tax Exempt and Government Entities

Volume 1, Spring 2004

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Welcome to the premiere edition of *Retirement News for Employers* – the IRS retirement plan newsletter for business owners.

Hello, I'm Carol Gold, Director, Employee Plans of the IRS. First of all, thank you for choosing to provide a retirement plan for your business and its employees. That kind of foresight not only reflects the value you place on your talented workforce but also the careful consideration you give to business decisions. We want to do our part to make sure your sound decision is supported by our products and programs.

In this brand-new quarterly publication we'll deliver retirement plan information geared for you, the business owner. We aim to bring you timely and relevant information about all things retirement-related. We'll cover the practical effects of new tax laws and recent guidance. By "practical," we mean:

- What does this do for my business and me?
- How do I account for this in my plan?
- Do I have to make changes to my plan because of this?

For instance, in our first issue of *Retirement News for Employers* you'll read about military reservists and National Guard units that return to civilian employment. We'll tell you about some of the things that the law provides for re-employed veterans and the companies they work for. We'll also tell you where to find answers to your questions about returning veterans.

Another one of our articles tells you about some new retirement plan products. For example, there's a CD-ROM available that informs retirement plan sponsors about self-correcting problems in their plans. Another new product is a publication describing 401(k) plans for small businesses.

Enjoy reading the newest Employee Plans publication. We hope that you find the articles here helpful and informative.

Finally, we welcome your comments about this new publication. Please let us know if there are ways we can serve you better. Contact us at RetirementPlanComments@irs.gov. ■



How to Subscribe to Retirement News for Employers

The Retirement News for Employers will be issued only through IRS e-mail. For your free subscription, please go to the Retirement Plans Web page at www.irs.gov/ep and subscribe on-line by selecting "Newsletters" under the "Related Topics" section. All editions of the Retirement News for Employers will be archived at www.irs.gov/ep.

For your convenience, we have included Internet links to referenced materials throughout the electronic version of Retirement News for Employers. These links are identified on the printed version by the underlined text. The electronic version may be found at www.irs.gov/ep.



We're With the Government, and We're Here to Help You

"Check-Up for Your SEP, SIMPLE or Similar Plan" tools are now available to help business owners who sponsor IRA-based retirement plans develop a better understanding of the requirements for their plans. The goal of the Check-Up is increased awareness by business owners of the need to properly operate their plans, pointing them to further information and services.

Mark O'Donnell, Director, Employee Plans Customer Education and Outreach, said, "We started this initiative because we wanted business owners to be aware of the responsibilities they undertake when they establish a retirement plan. These Check-Up tools are designed to be helpful reminders to them of those responsibilities."

Each Check-Up contains:

- A checklist of basic operational questions for each of three IRA-based plans: a [SIMPLE IRA Plan Checklist](#), a [SEP Checklist](#) or a [SARSEP Checklist](#). **Note:** Each online checklist includes links to expanded explanations for each question.
- [Publication 4224](#), *Retirement Plan Correction Programs* brochure.

The centerpiece of each Check-Up is a one-page checklist highlighting some of the basic requirements for operating the plan. Mr. O'Donnell said, "The checklists address what we believe are some of the most common problems that arise in these plans based on feedback from our Examinations and Voluntary Compliance programs. We are trying to put into the hands of business owners tools to help them comply with their plans' requirements." The checklist is not a comprehensive list of all the requirements for operating a plan. Use of the checklist is voluntary and sponsors are not to send it to the IRS. Explanations of each question are posted on the Retirement Plans Web site.

After reviewing the plan and completing the appropriate checklist, a business owner may find an error in the operation of the plan. Any error can likely be corrected using the Employee Plans Compliance Resolution System (EPCRS) described in the [Retirement Plan Correction Programs brochure](#). EPCRS allows business owners to correct plan errors (often without contacting the IRS) and thereby continue providing employees with retirement benefits on a tax-favored basis.

Further information on and other resources for each of the following IRA-based plans is available by visiting the Retirement Plans Web page at www.irs.gov/ep and clicking on "Retirement Source for Plan Sponsors/Employers" and by selecting:

- Payroll Deduction IRAs
- SIMPLE IRAs
- SEPs
- SARSEPs

Feedback on the Check-Ups can be sent to us at RetirementPlanComments@irs.gov. ■

Veterans, Employers and Retirement Plans

USERRA protects employment and benefit rights of Americans who are absent from civilian jobs to serve in the uniformed military branches.

With thousands of the citizens serving in U.S. military reserve and National Guard units ordered to active federal duty for extended periods of time, a lot of questions have arisen over both employee rights and employer obligations. This article summarizes retirement plan rights and benefits that may be available to veterans after their return to civilian employment.

The Uniformed Services and Reemployment Rights Act (USERRA) was signed into law in 1994, with amendments made in 1996, 1998, and 2000. USERRA protects employment and benefit rights of Americans who are absent from civilian jobs to serve in the uniformed military branches. USERRA applies to virtually all employers, including federal, state, and local governments and their agencies.

Below is a discussion of some frequent issues that arise concerning the reemployment of veterans and the restoration of retirement plan benefits.

Employer Contributions

What is the basic rule for employers reemploying veterans? Employers must fund pension benefits that a reemployed participant did not receive due to qualifying military service.

How does that work for profit-sharing or money purchase pension plans?

Employers must make the nonelective employer contributions that would have been made during the military service period.

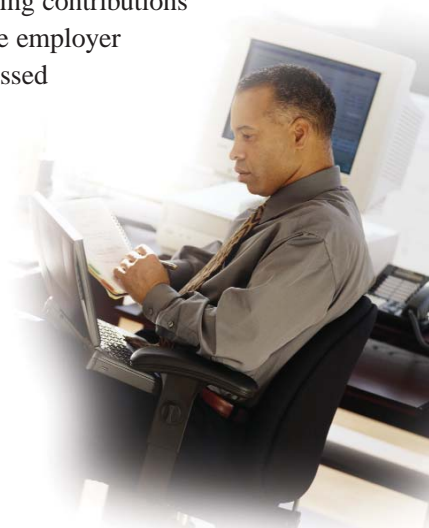
How is compensation determined for this purpose? To calculate the makeup contributions and allocations due, assume the rehired employee earned compensation at the same rate they would have received during the military service period.

How long do employers have to make these makeup contributions? Employers do not have to begin the makeup contributions until after the veteran returns to civilian employment with the same employer; employers may fund makeup contributions over a period of three times the military service period, not to exceed five years.

What about employer matching contributions? If matching contributions are required because of employee elective contributions, the employer match must occur as soon as the rehired veteran pays in missed elective contributions.

Are there special rules for forfeitures or lost earnings?

A rehired employee is not entitled to missed allocations for any forfeitures that occurred during the military service period, nor lost earnings on makeup contributions.





Employee Contributions

Are there rules for contributory defined benefit plans? A rehired veteran must be permitted to make up missed contributions required to earn a benefit accrual for the military service period.

How long do rehired veterans have to make up elective contributions? A rehired veteran has up to three times the period of service – not to exceed five years – to make up missed employee contributions. The amount of makeup contributions is subject to the limits that would have applied during the military service period.

Further information

USERRA is administered by the Department of Labor, through the Veterans Employment & Training Service (VETS). Information and a USERRA Resource Guide are available at www.dol.gov/vets. In addition, a list of frequently asked questions (including ones on the continuation of health care for reservists and their families) may be found at: www.dol.gov/ebsa/faqs/faq_911_2.html.

Questions specific to the effects of USERRA on retirement plans may be directed to IRS at (877) 829-5500, or by visiting the Customer Account Services section of the Retirement Plans Web page at www.irs.gov/ep. ■

Small Business Week 2004

The U.S. Small Business Administration's (SBA) annual National Small Business Week commemoration, SBA Expo '04, will be held in Orlando, FL, May 19-21 at the Orange County Convention Center. IRS Employee Plans will be exhibiting with IRS Small Business/Self-Employed at SBA Expo '04. If you are attending, please visit the IRS Exhibit Booth.

The celebration honors America's leading entrepreneurs and includes the announcement of the National Small Business Person of the Year. Special events this year will include a small business expo, a business matchmaking event, business seminars, a town hall meeting, and award ceremonies honoring female entrepreneurs and state and national small business winners. Business Matchmaking allows small business owners the chance to schedule one-on-one meetings with buyers from federal, state and local governments as well as larger corporations, cutting through the red tape that is too frequently part of the contracting process. Other highlights will include business industry leaders and speakers from trade associations, and the states and federal government.

"This year's Small Business Week promises to be an outstanding event,"



“SBA Expo '04 will be an opportunity for small business owners from across the country to gather together, learn from each other, compete for contracts, and participate in three full days of events that can help them grow their own businesses.”

Administrator Hector V. Barreto said. “SBA Expo '04 will honor America's small business owners and their contributions to our economy and our country. It will also be an opportunity for small business owners from across the country to gather together, learn from each other, compete for contracts, and participate in three full days of events that can help them grow their own businesses. We've packed a lot into a three day conference, from business sessions to a town hall meeting to roundtable discussions to a session of our tremendously successful Business Matchmaking. We expect as many as 3,000 small business owners to attend. I think that every one of them will be glad they came when they see the chances for learning, networking, acquiring government contracts, and identifying ways to grow their businesses.”

SBA Expo '04 culminates national and regional events held to commemorate the SBA's 50th anniversary, which was launched in September 2003, at the SBA's National Entrepreneurial Conference & Expo (NECE) in Washington, DC. More than 3,000 participants from across the nation marked the agency's 50th anniversary. A highlight of NECE was the inauguration of the SBA's “Hall of Fame,” which honored nationally known companies that started with SBA assistance.

To note the 50th anniversary, the agency conducted from January to April a nationwide “SBA's Economic Growth Tour: Listening to America's Job Creators.” The tour enabled local entrepreneurs to discuss small business issues with Administrator Barreto, as well as their local bankers, venture capitalists, resource and trade partners, and local SBA office.

For more information about all of the SBA's programs for small businesses, visit the SBA's Web site at www.sba.gov. ■

Retirement Plan Products

To help small business owners who sponsor retirement plans – or, who are considering a retirement plan – the IRS has developed a plethora of informational products. These tools come in a variety of formats, including publications, CD-ROMs and on-line information. Included are:

Small Business Tools:

■ Joint IRS and DOL Products:

- [Publication 3998](#), *Choosing a Retirement Plan for Your Small Business*, provides an overview of retirement plans available to small businesses.
- [Publication 4222](#), *401(k) Plans for Small Businesses*, highlights advantages of sponsoring a 401(k) plan and important considerations when establishing and operating a plan.



Contacting Employee Plans

The *Retirement News for Employers* welcomes your comments about this edition and/or your suggestions for future articles.

Send comments/suggestions to:

EP Customer Education & Outreach
SE:T:EP:CEO Room 4C3
1111 Constitution Avenue, N.W.
Washington, DC 20224
Fax: (202) 283-9525

e-mail:

RetirementPlanComments@irs.gov

For EP Taxpayer Assistance

For retirement plans technical and procedural questions:

Please call (877) 829-5500 or visit the EP Customer Account Services section of the Retirement Plans Web page at www.irs.gov/ep.

For questions relating to retirement income, IRAs, Roth IRAs, educational IRAs, medical savings accounts and section 125 cafeteria plans:

Please call (800) 829-1040

For further Retirement Plan Information

Please go to the Retirement Plans Web page at www.irs.gov/ep.

Form 5500

■ IRS Products:

- [Publication 4118](#), *Lots of Benefits*, discusses the stages involved in the Retirement Plan Life Cycle.
- [Publication 560](#), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*.
- [Publication 590](#), *Individual Retirement Arrangements (IRAs)*.
- Publication 3207, *Small Business Resource Guide 2004 CD-ROM*.

Correction Programs Tools:

- [Publication 4224](#), *Retirement Plan Correction Programs Pamphlet*. This guide gives a brief synopsis of IRS, DOL and PBGC correction programs. This tool is an excellent awareness document for plan sponsors and explains the help available for a variety of plan problems.
- Publication 4050, *Retirement Plan Correction Programs CD-ROM*. This CD-ROM provides an in-depth guide to the correction programs sponsored by the IRS, DOL and the PBGC.
- Online version of the materials on the *Retirement Plans Correction Programs CD-ROM*.

These and other products are available by visiting the Retirement Plans Web page at www.irs.gov/ep and clicking on “Retirement Source for Plan Sponsors/Employers.”

So whether you already have a retirement plan and want to know more about it or you’re thinking about sponsoring a plan and want to get a feel for how they work, the IRS has information to help you. ■

And the #1 Helpful Filing Tip for Form 5500 is ...

Through the untiring efforts of our colleagues at the Department of Labor and the IRS Call Site, Top 12 Filing Tips (no mere Top 10) for Form 5500 filings have been developed. Although some of the tips may seem to be common sense, they include extra insight and advice.

For example, do you know about the “80-120” participant rule? Or, that electronic filers **must** keep a signed copy of the form and **all** schedules and attachments on file? Maybe you continue to use an old business code or never understood how to properly assign a plan number. Do you know that to be considered a final return, a filer must check Form 5500, Part I, Line B(3) and have no assets or participants remaining at the end of the plan year?

The list of filing tips can be found at www.irs.gov/ep by selecting “Retirement Source for Plan Sponsors/Employers” and then “Form 5500 Information.” A quick review of this list just might be all that’s required to assure that you have error-free filings for 2003. ■

Short Stories

Here are some of the “best in brief”

Use of abusive tax transactions could result in a substantial liability for income taxes, excise taxes and penalties. Be aware and be wary.

Abusive Tax Shelters and Retirement Plans – You know the old saying, “If it sounds too good to be true, then it probably is?” Well, it applies in the retirement world, too. The IRS has been hearing a lot of stories about business owners getting offers relating to retirement plans that sound “too good to be true.” These offers usually involve ways to shelter all or most of the employer’s business income from tax or delay recognition of income tax. So, if it sounds too good to be true, then it might be an abusive tax transaction.

The IRS is spending serious resources to identify and examine abusive tax transactions. Oftentimes, when promoters of these abusive tax transactions – or, “listed transactions” – are identified, the IRS gets a list of participants in these transactions. Use of abusive tax transactions could result in a substantial liability for income taxes, excise taxes and penalties. Be aware and be wary.

Retirement Source for Plan Sponsors/Employers – New to the Retirement Plan Web page? Well, the IRS has made it easy for plan sponsors to find the retirement information you need by creating the “Retirement Source for Plan Sponsors/Employers.” A one-page index, the Source will lead you to any small business retirement plan topic within the Retirement Plans Web page.

For more information on Short Stories and other retirement plan topics, check us out by visiting the [Retirement Plans](#) Web page and clicking on the “Retirement Source for Plan Sponsors/Employers.” ■

Conducting Audits at a Taxpayer’s Place of Business

Preston Butcher, Director of Employee Plans Examinations, recently discussed the IRS policy of conducting audits of retirement plans at a taxpayer’s place of business and what the IRS hopes to accomplish by following the policy. Mr. Butcher said, “Our efforts are focused on conducting effective and efficient high quality audits. In this regard, we have discussed with our agents the need for audits to generally be conducted at the taxpayer’s place of business, unless facts and circumstances dictate otherwise.”

Mr. Butcher said, “First, we don’t want to use our authority to enforce the place of audit simply for the sake of demonstrating that we can. Instead, we want to insure our agents’ time is efficiently used, by having access to source documents where they are stored, which is generally at the taxpayer’s place of business.”

Another goal for conducting the audit at the taxpayer’s place of business is to provide an opportunity for agents to familiarize themselves with the business operations by



Contributors

IRS employees contributing to this edition of the *Retirement News for Employers* are:

Preston Butcher, Evelyn DeWald, Charlene Goins, Carol Gold, Larry Isaacs, Peter McConkey, Todd Newman, Mark O’Donnell, Nancy Payne, Donna Prestia, John Schmidt, Brenda Smith-Custer, Susan Taylor and Teresa Williams

inspecting the premises. Without dealing with someone from the business who knows about its daily operations, agents often cannot resolve their questions.

Another important reason to conduct the audit at the taxpayer's place of business is the need to evaluate the internal controls that are in place for plan operations.

For these reasons, EP agents will request to hold the audit at the taxpayer's place of business. "However, when determining the site of an audit, it is important for us to be aware of the potential burden on small businesses that an audit may represent," said Mr. Butcher. "We're aware that many small businesses may maintain most or all of their records at the office of their accountant or representative. Holding the audit at the place of business may cause a disruption to normal business operation due to, for example, a lack of suitable working space, making inquiries of individuals who do not possess sufficient pension plan knowledge, etc."

In such instances, Mr. Butcher said that performing the audit at the office of the practitioner will often be more appropriate. "Even when audits are conducted at the office of the taxpayer's representative, it may be necessary to hold a telephone interview with the taxpayer to resolve questions regarding business operations," said Mr. Butcher. He added that it may also be necessary to visit the business site for a walk through to resolve questions developed from a review of the records.

"We are confident that our agents and their managers will use appropriate business and professional judgment in determining where and when the audit will take place and when it is appropriate to request a walk through of the business premises." ■

Want an Employer Identification Number Fast?



The IRS has rolled out another way to apply for an employer identification number (EIN). It is the new [Online EIN Application](#). It is available 24/7 and there's no paperwork to send to the IRS.

Once the online form is completed, a preliminary validation is performed that lets you know if any information the IRS needs wasn't included. An EIN will be issued after the successful online submission of the completed Form SS-4.

You're urged to print your SS-4 application after the EIN is assigned and keep a paper copy for your records. To do this, just click the "Print Form" button after receiving the EIN. *This provisional EIN may be used immediately* to file tax returns. The IRS will review the application for completeness and verify that a new EIN is needed. You will receive a confirmation notice, CP 575, within two weeks.

Third Parties: Your third party administrator may request EINs via the Internet on your behalf. However, your third party administrator *must* keep a copy of the Form SS-4, signed by you, in their business files.

Please note that there are a few limitations. The Internet application is not available for the following types of requests:

- Requests from addresses outside the continental USA, Alaska and Hawaii
- Limited Liability Companies without type of entity
- Real Estate Mortgage Investment Conduits (REMIC)
- State and Local Governments
- Federal Government/Military
- Indian Tribal Governments or Enterprises







To apply online, just click on [Online EIN Application](#). Note: There is no limit to the number of EIN requests that can be requested at one time. ■

Let's Just Take It One Three-Month Period at a Time

-  = conference
-  = contribution
-  = file forms

Operating a retirement plan can be a time-consuming job. There are deadlines, not just for reports and forms but also for making contributions. There are conferences and seminars. And then there is information you need to give participants.

So to help you navigate the retirement plan timeline, here is our month-by-month look at some of the important moments in the months to come. Please note that all of the filing dates below are for calendar-year plans – adjust the dates for non-calendar year plans:

-  **May 19–21:** [SBA Expo '04](#), Orlando, FL.
-  **July 6-8:** [2004 IRS Nationwide Tax Forums](#), Atlantic City, NJ.
-  **July 15:** Second quarterly contribution due date for 2004 calendar-year defined benefit plans.
-  **July 20–22:** [2004 IRS Nationwide Tax Forums](#), Orlando, FL.
-  **July 31:** “Form 5500 Day” – **File** [2003 Form 5500](#), *Annual Return/Report of Employee Benefit Plan*, or [Form 5500-EZ](#), *Annual Return of One-Participant Pension Retirement Plan*, with DOL/EFAST
or
-  **File** [Form 5558](#), *Application for Extension of Time to File Certain Employee Plan Returns*, with IRS to request a 2½-month extension (October 15, 2004) to file the Form 5500 or Form 5500-EZ. ■