Part III. – Administrative, Procedural and Miscellaneous

Additional Relief for Certain Employee Benefit Plans as a Result of Hurricane Katrina

Notice 2005-84

I. PURPOSE

The Internal Revenue Service, the Department of Labor's Employee Benefits Security Administration ("EBSA") and the Pension Benefit Guaranty Corporation ("PBGC") are providing relief in connection with certain employee benefit plans because of damage caused by Hurricane Katrina ("Katrina"). The relief provided by this notice is in addition to the relief already provided by the Service, the EBSA and the PBGC to victims of Katrina. This relief is provided in accordance with section 403(b) of the Katrina Emergency Tax Relief Act of 2005 ("KETRA"), Pub. L. No. 109-73.

II. BACKGROUND

Section 412(a) of the Internal Revenue Code ("Code") and § 302(a) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406 ("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 funding 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 June 30, 2005, the sponsor of the plan must have submitted an application by September 15, 2005.

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 2005 calendar year are April 15, 2005, July 15, 2005, October 15, 2005, and January 15, 2006.

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.

Section 7508A(b) of the Code provides 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. Parallel provisions are in Titles I and IV of ERISA.

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)). In addition, there are Title IV reporting and disclosure requirements arising from certain late contributions (e.g., 29 CFR § 4043.25, 29 CFR § 4011.10(b)(6)).

Section 403(b) of KETRA provides that, in the case of any taxpayer determined to be affected by the Presidentially declared disaster relating to Hurricane Katrina, any relief provided under § 7508A of the Code is extended to a period ending not earlier than February 28, 2006. In Notice 2005-60, 2005-39 I.R.B. 606, which was issued on September 2, 2005, the date for performing certain acts was extended to October 31, 2005.

III. RELIEF

As a result of the enactment of KETRA on September 23, 2005, the October 31, 2005, date described in Notice 2005-60 for compliance with specified Code requirements was extended to February 28, 2006. This notice provides corresponding extensions to February 28, 2006, for compliance with the ERISA requirements for which extensions were provided under Notice 2005-60. Accordingly, for any plan that is affected by Katrina (an "Affected Plan"), 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 falls within the period beginning on August 29, 2005, and ending on February 27, 2006, the date such contributions must be made is postponed to February 28, 2006. Additionally, if the date described in § 412(d)(4) of the Code and § 303(d)(1) of ERISA for applying for a waiver for an Affected Plan falls within the period beginning on August 29, 2005, and ending on February 27, 2006, then the date such waiver must be applied for is postponed to February 28, 2006.

The definition of an Affected Plan for purposes of this notice is the same as for purposes of Notice 2005-60. Thus, a plan is an Affected Plan only if any of the following were located at the time of Katrina in any of the parishes or counties declared by the President to be eligible for individual assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Pub. L. No. 93-288: the principal place of business of the employer that maintains the plan (in the case of a single-employer plan, determined disregarding the rules of § 414(b) and (c) of the Code); the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan (in the case of a plan covering employees of more than one employer, determined disregarding the rules of § 414(b) and (c)); the office of the plan or the plan administrator; the office of the primary recordkeeper serving the plan; or the office of the enrolled actuary or other advisor that had been retained by the plan or the employer at the time of Katrina to determine the funding requirements for which the due date falls between the period beginning on August 29, 2005, and ending on February 27, 2006. For purposes of the preceding sentence, the term "office" includes only the worksite of those individuals, and the location of any records, necessary to determine the plan's funding requirements for the relevant period.

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. In addition, 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 are treated as timely for purposes of any Title IV reporting and disclosure requirement if they are made on or before the extended § 412(c)(10)/§ 302(c)(10) date under this notice.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2005-60 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Michael Rubin 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 8:30 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll-free number). Mr. Rubin may be reached at (202) 283-9588 (not a toll-free number).