

Benefits Update



IRS Releases New Form For Extension Of Time

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Last month, the IRS released an updated version of Form 5558, "Application for Extension of Time to File Certain Employee Plan Returns." In prior versions, the Form 5558 was used to provide either a one-time extension of the due date for the filing of a Form 5500 Series Return for a plan (meaning a Form 5500, a Form 5500-SF or a Form 5500-EZ Return), or to request an extension of time for filing of a Form 5330 to report excise taxes associated with an employee benefit plan.

As was the case in prior versions, no signature is required if the Form 5558 is used to extend the due date for filing of a Form 5500 Series Return. For a Form 5330 extension request, however, a signature is still required. You must also still provide an explanation on the Form 5558 as to why you need an extension of time.

It's worth mentioning that the Form 5558 *does not* extend the due date for the payment of any excise taxes due; only the reporting of the excise taxes. Once a Form 5558 is submitted, the IRS will grant only a reasonable extension of time (not to exceed 6 months) for filing of the Form 5330, and only if you are unable to file the Form 5330 timely due to circumstances beyond your control.

The instructions to the Form 5558 indicate that a request for an extension of time to file Form 5330 should be filed "in sufficient time for the IRS to consider and act on it before the return's normal due date." It's also worth noting that in an effort to go paperless, the instructions indicate that the IRS will no longer return stamped copies of the Form 5558 in connection with a Form 5330 to filers who request an extension of time to file. Instead you will be sent a computer-generated notice confirming whether the extension was approved or denied. For that reason, the IRS is asking that a photocopy of the computer-generated notice be attached to the Form 5330 when filed.

What's Visibly Different?

The form itself has not changed dramatically, but can now also be used to extend the due date for the filing of the new Form 8955-SSA. Now, as has been the case if using the Form 5558 to extend the due date for filing of a Form 5500 Series Return, the IRS will grant an automatic one-time, two and one-half month extension of the time for filing of the Form 8955-SSA. This means that if a Form 5558 is filed on or before the last day of the seventh month following the plan year end being reported, the Form 5500 or Form 8955-SSA will be provided with an automatic extension until the 15th day of the third month following the normal due date for the filing. To which you say ... example please!

Okay, say your plan is operated on a calendar year basis, and you want to file the Form 5500 and Form 8955-SSA for the 2010 Plan Year. Provided you file a Form 5558 to request an extension of the due date for these forms on or before July 31, 2010 (or actually, August 1 since the normal due date falls on a weekend), you will be granted an automatic extension for these forms until October 17, 2011 (again, it should be October 15, but that's a weekend!).

The Form 5558 instructions do outline two additional important points pertinent to the filing of the new Form 8955-SSA. First, they note that the Form 5558 *cannot* be used to extend the due date of the Form 8955-SSA for the 2009 and 2010 plan years if the 2010 plan year ends before April 1, 2011 because these returns have already been granted an automatic extension of the due date until January 17, 2012. Second, while the IRS will automatically grant a request for extension of the filing due date for a Form 8955-SSA, a plan sponsor must sign and date the Form 5558. This bears repeating. Again, a Form 5558 filed to extend a Form 8955-SSA due date must be signed and dated, but a Form 5558 used to extend a Form 5500 Series Return does not have to be signed.

If you have questions regarding the updated Form 5558, or how and when to complete it, please contact any member of the Employee Benefits Practice Group.

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