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The IRS Mission

*Provide America's
Taxpayers top quality
service by helping them
understand and meet their
tax responsibilities and by
applying the tax law with
integrity and fairness to all.*

Understanding the Employee Plans Examination Process

The first part of this publication explains some of your most important rights as a taxpayer. The second part explains the Employee Plans examination, appeal and compliance resolution processes.

Declaration of Taxpayer Rights

I. Protection of Your Rights

IRS employees will explain and protect your rights as a taxpayer throughout your contact with us.

II. Privacy and Confidentiality

The IRS will not disclose to anyone the information you give us, except as authorized by law. You have the right to know why we are asking you for information, how we will use it, and what happens if you do not provide requested information,

III. Professional and Courteous Service

If you believe that an IRS employee has not treated you in a professional, fair, and courteous manner, you should tell that employee's supervisor. If the supervisor's response is not satisfactory, you should write to the IRS director for your area or the center where you file your return.

IV. Representation

You may either represent yourself or, with proper written authorization, have someone else represent you in your place. Your representative must be a person allowed to practice before the IRS, such as an attorney, certified public accountant, or enrolled agent. If you are in an interview and ask to consult such a person, then we must stop and reschedule the interview in most cases.

You can have someone accompany you at an interview. You may make sound recordings of any meetings with our examination, appeal, or collection personnel, provided you tell us in writing 10 days before the meeting.

V. Payment of Only the Correct Amount of Tax

You are responsible for paying only the correct amount of tax due under the law—no more, no less. If you cannot pay all of your tax when it is due, you may be able to make monthly installment payments.

VI. Help With Unresolved Tax Problems

The Taxpayer Advocate Service can help you if you have tried unsuccessfully to resolve a problem with the IRS. Your local Taxpayer Advocate can offer you special help if you have a significant hardship as a result of a tax problem. For more information, call toll free 1-877-777-4778 (1-800-829-4059 for TTY/TDD) or write to the Taxpayer Advocate at the IRS office that last contacted you.

VII. Appeals and Judicial Review

If you disagree with us about the amount of your tax liability or certain collection actions, you have the right to ask the Appeals Office to review your case. You may also ask a court to review your case.

VIII. Relief From Certain Penalties and Interest

The IRS will waive penalties when allowed by law if you can show you acted reasonably and in good faith or relied on the incorrect advice of an IRS employee. We will waive interest that is the result of certain errors or delays caused by an IRS employee.

The Employee Plans Examination Process

The TE/GE Mission

To provide Tax Exempt and Government Entities customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax law with integrity and fairness to all.

Introduction

The goal of Employee Plans (EP) Examinations is to promote voluntary compliance by reviewing the operation of retirement plans for consistency with plan terms and pension law. Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, explains the general rules and procedures the IRS follows in examinations. This document discusses general rules and procedures that EP follows in examinations. It explains what happens during an EP examination and how certain compliance problems can be corrected.

Examination of Returns

EP Examinations uses a centralized case selection and review process to enhance consistency of enforcement activities and to focus resources on the areas that have the most positive impact on retirement plans. Our activities include identifying areas of noncompliance, developing corrective strategies and assisting with those strategies.

Transfer to another Area Office. Generally, the Form 5500 return is examined by the IRS area office where the sponsoring employer is located. If, however, the return can be examined more quickly and conveniently by another area office, you may request to have the case transferred to that office.

Repeat Examinations. If we examined your return in either of the 2 previous years and proposed no change to the information reported, please contact us as soon as possible so we can determine if this examination should be discontinued.

The Examination

The examination usually begins when a specially trained agent notifies you by phone or letter that your plan has been selected. A letter confirming the audit will follow the initial contact. This letter includes a detailed list of items that you or your representative will be required to provide to complete the examination. If the items are well organized and complete, we can conduct the examination in a more efficient manner. We may request that you provide some items before our initial appointment.

You can have someone represent you during the examination. This person must be an attorney, accountant, enrolled agent, an enrolled actuary, or the person who prepared the return. If you choose to have someone represent you in your absence, you must furnish us with written authorization. You may use Form 2848, *Power of Attorney and Declaration of Representative*, for this authorization.

The examination may include a complete review of plan operations or may focus on specific issues.

The most common areas of review include—

1. **Eligibility, participation, and coverage—**Are eligible employees properly participating?
2. **Vesting—**Have service and vesting been properly credited?
3. **Discrimination—**Do contributions, benefits, rights or features improperly favor highly compensated employees?

4. **Top heavy requirements—**Have minimum contributions and benefits, and accelerated vesting, been provided?
5. **Contribution and benefit limits—**Are contributions and benefits within applicable limits?
6. **Funding and deductions—**Are contributions correct and timely, and deductions within applicable limits?
7. **Distributions—**Are distributions correctly calculated, properly made and timely and accurately reported?
8. **Trust activities—**Is the trust operated for the exclusive benefit of participants and in accordance with fiduciary standards?
9. **Plan and trust documents—**Does the form of the plan and trust meet applicable tax law?
10. **Returns and reports—**Were federal returns and reports timely and accurately filed?

Initial Interview. To begin the examination you will be asked to explain the plan's administrative practices and procedures, as well as the general organizational structure and operation of the taxpayer's business. This will help the examiner understand your plan, focus the review, and complete the examination in a shorter time.

Information Review. The examiner will analyze your information, perform tests, and sample data for particular compliance issues. Based on this review the examiner may expand the analysis to include additional details and larger samples. The agent is expected to continue the examination until it is reasonably certain that the operation of the plan satisfies the requirements for qualification.

Requests for Additional Information. The examiner may require additional information or corrective action prior to concluding the examination. If so, the examiner will explain the reason for the request, describe the information, and provide a reasonable response time.

Closing Interview. When the initial field work is concluded, the examiner will explain the areas that may require your attention or corrective action.

Review Process. The examiner's work is subject to a random review process for technical and procedural accuracy. If your plan is selected for review, you may experience a delay and may be required to provide additional information.

Closing Letter. The final step is a letter that explains the conclusions reached by the examiner. Issues that arise are usually resolved at the examination level. An EP examination can result in a tax liability for related entities and/or individuals; and may require coordination with other business units within the IRS.

Appeal Rights. Any issues that cannot be resolved by agreement may be appealed. An Appeals hearing may be requested. See Publication 1020, *Appeal Procedures for Employee Plans Examinations*.

Resolving Qualification Issues - The EP Compliance Resolution System (EPCRS)

A failure to comply with plan terms and applicable pension law may result in loss of tax-favored status of the plan, which includes the loss of tax-exempt status for the trust, loss of tax deductions for the employer, and unanticipated taxable income to participants. In most examinations, however, EP will

propose alternatives that preserve the tax qualified status of the plan. EPCRS is a comprehensive system of correction programs that permit plan sponsors to correct most qualification failures. These programs are generally not available where the law provides for tax consequences other than loss of tax-favored status of the plan, such as excise taxes.

EPCRS includes the following programs for plans that are under examination—

Self-Correction Program (SCP). A plan sponsor that has established compliance practices and procedures may, at any time (including during the examination), correct insignificant operational failures without paying any fee or sanction. In addition, in the case of a qualified plan that is the subject of a favorable determination letter from the IRS, or in the case of a 403(b) plan, the plan sponsor may be able to correct even significant operational failures without payment of any fee or sanction, if the correction has been substantially completed by the time you are notified that the plan has been selected for examination. All years involved must be corrected, even years not under examination or beyond the statute of limitations.

Audit Closing Agreement Program (Audit CAP). If a qualification failure has not been corrected and is not eligible for correction under SCP, the plan sponsor may be able to enter into an agreement with the IRS regarding correction of the failure and payment of a sanction. The sanction will bear a reasonable relationship to the nature, extent and severity of the failure, taking into account the extent to which correction occurred before the examination.

Comments and Suggestions

We welcome your comments and suggestions about this document and your suggestions for future editions. You can e-mail us with your comments while visiting our web site at www.irs.gov/ep.

Useful Items-IRS Publications

556	Examination of Returns, Appeal Rights, and Claims for Refund
560	Retirement Plans for Small Business
571	Tax-Sheltered Annuity Programs for Employees of Public Schools and Certain Tax-Exempt Organizations
575	Pension and Annuity Income
590	Individual Retirement Arrangements (IRAs)
1020	Appeal Procedures for Employee Plans Examinations
3998	Choosing a Retirement Solution for Your Small Business
4050	Retirement Plans Correction Program (CD-ROM)

Tax Information

TE/GE provides a great deal of free information. The following are sources for forms, publications, and additional information.

EP Questions: 877-829-5500

Forms and Publications: 800-829-3676

Internet: www.irs.gov/ep

Treasury Inspector General for Tax Administration: If you want to confidentially report misconduct, waste, fraud, or abuse by an IRS employee, you can call **1-800-366-4484** (1-800-877-8339 for TTY/TDD). You can remain anonymous.