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Part III - Administrative, Procedural, and Miscellaneous

Section 6039D Reporting Requirements

Notice 2002- 24

PURPOSE

This notice suspends the filing requirement imposed on specified fringe benefit plans by section 6039D of the Internal Revenue Code and modifies and supersedes Notice 90-24, 1990-1 C. B. 335.

BACKGROUND

Section 6039D of the Code, as enacted by Pub. L. 98-611, §1, 98 Stat. 3176 (1984), required employers maintaining group legal services plans described in section 120, cafeteria plans described in section 125, and educational assistance programs described in section 127 to file an annual information return with the Internal Revenue Service. Announcement 86-20, 1986-7 I.R.B. 34, required the return for these plans to be filed on the Form 5500 Series Annual Return/Report. Section 1151(h) of the Tax Reform Act of 1986 (TRA '86), amended section 6039D and expanded the reporting requirement to group-term life insurance plans described in section 79, accident and health plans described in sections 105 and 106, and dependent care assistance programs described in section 129. Section 1601(h)(2)(D)(iii) of the Small Business Job Protection Act of 1996 added adoption assistance programs described in section 137 to the list of specified fringe benefit plans required to file annual returns under section 6039D.

Notice 90-24 suspended the filing requirement for those fringe benefit plans added to section 6039D by the TRA '86. The notice stated that, until the Service provides further guidance, employers maintaining plans under sections 79, 105 and 106, or 129, are not required to file information returns pursuant to section 6039D. However, the notice instructed employers maintaining plans under sections 120, 125 or 127 to continue to file the return for these plans on the Form 5500 Series Annual Return/Report. Current filing instructions provide that plans described in sections 125, 127 and 137 are considered fringe benefit plans and must file Schedule F attached to a completed Form 5500 to satisfy the annual return requirement of section 6039D. The IRS is evaluating whether this method of reporting the information required by section 6039D is appropriate.

RELIEF FROM FILING REQUIREMENTS AND EFFECTIVE DATE

Employers maintaining specified fringe benefit plans under sections 125, 127 or 137 are relieved from the requirement to file annual information returns (Schedule F) attached to a completed Form 5500 pursuant to section 6039D. This notice is effective upon publication and applies to all plan years for which information returns have not been filed. Any future reporting obligations under section 6039D will apply only to plan years beginning on or after the date of publication of further guidance.

This notice does not affect annual reporting requirements under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), or relieve administrators of employee benefit plans from any obligation to file a Form 5500 and any required schedules (other than the Schedule F) under that title. For further information on annual reporting requirements applicable to employee benefit plans under Title I of ERISA, see the instructions for the Form 5500 Annual Return/Report and the Department of Labor's

regulations. The Form 5500 instructions may be obtained by calling 1-800-TAX FORM, or may be viewed at www.efast.dol.gov or www.irs.gov.

DRAFTING INFORMATION

The principal author of this notice is Felix J. Zech of the Office of Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, please contact Mr. Zech at (202) 622-6080 (not a toll-free number).