



Topic: **Breaking News: "Heinz" Amendments Deadline Deferred to January 1, 2007**

IRS Grants NCCMP Request and Extends Deadline for Adoption of Heinz Amendments

EXECUTIVE SUMMARY:

IN RESPONSE TO THE NCCMP'S REQUEST OF SEPTEMBER 20, 2005, THE IRS RECENTLY EXTENDED TO JANUARY 1, 2007 THE DEADLINE BY WHICH A MULTIEMPLOYER PLAN MUST ADOPT AMENDMENTS THAT REFORM THE PLAN'S SUSPENSION OF BENEFITS RULES IN ACCORDANCE WITH THE CENTRAL LABORERS' PENSION FUND V. HEINZ DECISION (541 U.S. 739 (2004)). YOU MAY RECALL THAT, IN HEINZ, THE SUPREME COURT HELD THAT ERISA FORBIDS A PLAN TO APPLY ADDITIONAL TYPES OF PROHIBITED POST-RETIREMENT EMPLOYMENT UNDER ITS SUSPENSION OF BENEFIT RULES TO EARLY RETIREMENT BENEFITS THAT A PARTICIPANT HAD ACCRUED PRIOR TO THE CHANGE.

IN ITS REQUEST, NCCMP ARGUED THAT AN EXTENSION WAS NECESSARY BECAUSE THE IRS NEEDED TO CLARIFY THE RETROACTIVE APPLICATION OF CERTAIN PROVISIONS UNDER REVENUE PROCEDURE 2005-23. NCCMP'S REQUEST PERSUADED IRS THAT THE SERVICE WOULD NOT HAVE TIME TO PROVIDE THE NECESSARY CLARIFICATION TO ALL AFFECTED MULTIEMPLOYER PLANS - AND THOSE PLANS WOULD NOT HAVE TIME TO ADOPT THE APPROPRIATE AMENDMENTS OR PROVIDE THE REQUIRED NOTICES - UNDER THE DEADLINE IMPOSED BY REVENUE PROCEDURE 2005-23.

IRS THEREFORE EXTENDED THE OPERATIONAL COMPLIANCE DEADLINE TO JANUARY 1, 2007.

PURPOSE: **INFORMATIONAL**

CATEGORY: **REGULATORY**

ISSUER: **INTERNAL REVENUE SERVICE**

AUDIENCE: **TRUSTEES, PROFESSIONAL ADVISORS, SERVICE PROVIDERS**

SEND COMMENTS TO: **multi-elert@nccmp.org**

REFERENCE: **VOL. V, ISSUE 3**

FOR MORE INFORMATION: **IRS REV. PROC. 2005-76 AND NCCMP DEADLINE EXTENSION REQUEST**

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Via e-mail – Martin.L.Pippins@irs.gov

September 20, 2005

Martin L. Pippins
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Request for Extension of Deadline for Adoption of Heinz Reforming Amendments under Revenue Procedure 2005-23

Dear Marty,

This request for an extension of the deadline to comply with Revenue Procedure 2005-23 is submitted by the National Coordinating Committee for Multiemployer Plans (NCCMP). The NCCMP is the only national organization devoted exclusively to protecting the interests of workers, retirees, and their families who rely on multiemployer plans for retirement, health and other benefits. For the reasons discussed below, the NCCMP requests an extension of the deadline established in Revenue Procedure 2005-23 for adopting reforming amendments to comply with the Heinz decision. The requested extension is necessary to obtain additional clarification from the Service with respect to the requirements of Revenue Procedure 2005-23.

First, clarification is needed concerning which “original” amendments are subject to reforming amendments. Specifically, clarification is needed concerning the retroactive application of Revenue Procedure 2005-23. For example, does it apply to suspension of benefits amendments adopted after the effective date of ERISA when ERISA-compliant plans were adopted or after the issuance of the final regulations? The NCCMP raised this issue when it filed comments to the proposed 411(d)(6) on June 22, 2004. NCCMP also raised this issue after the issuance of Revenue Procedure 2005-23.

Many plans were amended after the suspension of benefits regulations were finalized in December, 1981, effective January 1, 1982. Notice 82-23 provided that amendments to collectively bargained plans to comply with the suspension of benefits regulations could be adopted as late as December 31, 1984. The final regulations included provisions that were not included in the statute. Therefore, if a plan included suspension of benefits provisions, amendments were required to comply with those regulations.

Second, clarification is needed concerning application of Section 3.04(2) of Revenue Procedure 2005-23. In order for a plan to obtain the treatment provided in the Revenue Procedure a participant described in Section 3.04(2) must be given the opportunity to elect retroactively to

commence benefits. A participant who is eligible for this option is one who (a) at any time after the date of the original amendment was eligible to commence the receipt of benefits under the plan without regard to the suspension of benefits provisions of the original amendment, (b) at the same time engaged in section 203(a)(3)(B) service for which benefits were not permitted to commence as determined under the original amendment, and (c) did not apply for benefits. Please confirm that this does not apply to a participant who did not separate from service with an employer maintaining the plan or otherwise meet the plan requirements defining separation from service for purposes of receiving a benefit from the plan. Such a participant would not have been eligible to commence receipt of a benefit. In many cases, such a distribution would constitute an in service distribution in violation of the Internal Revenue Code. In addition, since this is a retroactive commencement of a benefit, is a plan required to adopt a provision for retroactive annuity starting date in order to comply with this requirement?

The requested clarifications are needed before Plans can comply with the requirements of Revenue Procedure 2005-23. Plans cannot draft the reforming amendments or provide the required notice without these clarifications. Since the deadline for compliance is rapidly approaching, NCCMP requests an extension of the compliance deadline to permit the issuance of the clarifications and dissemination to affected plans.

If you have any questions or wish to discuss this request, please feel to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randy G. DeFrehn".

Randy G. DeFrehn
Executive Director

Part III.--Administrative, Procedural, and Miscellaneous
26 CFR 601.201: Rulings and determination letters.
(Also, Part I, § 7805; § 301.7805-1.)
Rev. Proc. 2005-76

SECTION 1. PURPOSE

The purpose of this revenue procedure is to extend the date by which a qualified retirement plan must be in operational compliance with a reforming plan amendment in order to be eligible for the treatment described in section 3.02 of Revenue Procedure 2005-23, 2005-18 I.R.B. 991, relating to the Supreme Court decision in *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (2004).

SECTION 2. BACKGROUND

Section 3.01 of Rev. Proc. 2005-23 provides that a qualified plan will not be treated as having failed to satisfy the requirements of § 401(a) of the Internal Revenue Code merely because an amendment that was adopted before June 7, 2004, violated § 411(d)(6) by adding or expanding a provision under which a suspension of benefits occurs. This treatment applies only if a reforming amendment is adopted and the plan complies operationally with the reforming amendment. Section 3.03(1) of Rev. Proc. 2005-23 provides that the reforming amendment must provide for the payment of retroactive benefits to an affected plan participant with respect to benefits that had accrued as of the applicable amendment date for the original amendment. Section 3.03(2) of Rev. Proc. 2005-23 provides that the plan must be in operational compliance with the reforming amendment by January 1, 2006, with respect to benefits payable through December 31, 2005. Pursuant to section 3.04 of Rev. Proc. 2005-23, the plan must also provide an eligible participant, as described in section 3.04(2), with the opportunity to elect retroactively to commence the payment of benefits. The plan must provide notice of such election to each eligible participant on or before January 1, 2006.

SECTION 3. EXTENSION OF TIME TO SATISFY SECTION 7805(b) CONDITIONS

The date by which a plan must be in operational compliance with the reforming amendment in order to be eligible for certain treatment described in section 3.01 of Rev. Proc. 2005-23 is extended to January 1, 2007. Accordingly, the date as of which a plan must provide for the payment of retroactive benefits (as described in section 3.03(2) of Rev. Proc. 2005-23) is extended to January 1, 2007. In addition, the date on or before which a plan must provide notice to certain participants as described in section 3.04(4) of Rev. Proc. 2005-23 is extended to January 1, 2007.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2005-23 is modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective December 12, 2005.

DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division. Ms. Herrmann may be reached at (202) 283-9888 (not a toll-free number).