

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

815 16TH STREET, N.W., WASHINGTON, DC 20006 ☐ PHONE 202-737-5315 ☐ FAX 202-737-1308



EDWARD C. SULLIVAN
CHAIRMAN

RANDY G. DEFREHN
EXECUTIVE DIRECTOR
E-MAIL: RDEFREHN@NCCMP.ORG

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