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IRS reminder: Plans retroactively adopted after the end of the plan year have no 2020 Form 5500 filing requirement

The IRS today issued a release as a reminder that plans retroactively adopted after the end of the plan-year have no Form 5500 filing requirement for 2020.

According to the [IRS transmittal message](#), a provision of the “Setting Every Community Up for Retirement Enhancement Act of 2019” (SECURE Act) permits an employer to adopt a retirement plan after the close of the employer’s tax year (by the due date, including extensions, for filing its tax return for the tax year) and elect to treat the plan as having been adopted as of the last day of the tax year. This provision applies to plans adopted for tax years beginning after December 31, 2019.

If an employer adopts a plan during the employer’s 2021 tax year (but not later than the due date, including extensions, for filing the employer’s 2020 tax return) and the employer elects to treat the plan as having been adopted as of the last day of the employer’s 2020 tax year, then the plan sponsor will not be required to file a Form 5500 with respect to the plan for the plan year that begins during the employer’s 2020 tax year.

Instead, the first Form 5500 required to be filed with respect to the plan will be Form 5500 for 2021. However, the plan sponsor will be required to check a box on the 2021 Form 5500 indicating that the employer elects to treat the plan as retroactively adopted as of the last day of the employer’s 2020 tax year.

Additionally, if the plan is a defined benefit plan, the employer will be required to attach a 2020 Schedule SB to the 2021 Form 5500 or Form 5500-SF, in addition to a 2021 Schedule SB. The instructions for the 2021 Form 5500 will further explain the filing requirements for plans adopted retroactively.

The IRS concluded that it anticipates similar rules will apply to the retroactive adoption of a plan pursuant the SECURE Act after an employer’s 2021 tax year.

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