

October 11, 2001

RESEARCH MEMO

TIC INTERNATIONAL CORPORATION

To: MANAGERS, CONSULTANTS, OTHER PROFESSIONALS

FROM: DAVID LIVINGSTON, DIRECTOR OF RESEARCH

RE: **IRS RELEASES REVISED FORM 5300 FOR DETERMINATION LETTER REQUESTS**

Several days ago the IRS released a **revised Form 5300** on its website to be used by pension plans when requesting a determination letter. Some multiemployer plans will be submitting a determination letter request before the end of this year with submission of a restated plan including the GUST amendments.

Filing of the revised 5300 replaces filing of Form 5303 previously used by collectively bargained plans. **Form 5303 has been eliminated.**

A copy of the revised Form 5300, along with the Instructions for completion of the Form, is attached to this Memo. This Form and instructions were downloaded from the IRS website at:

<http://www.irs.gov> which will bring up a home page entitled "Digital Daily." Scroll down and click on "Forms and Publications" near the bottom of the page. Choose the format you prefer; then scroll down to "Form 5300" and "Instructions For Form 5300" preceded by the date of 0901.

According to John Schmidt, Director of the IRS Tax Form Development Center, the downloaded Form 5300 may be used "as is." It is **NOT** necessary to get a printed form from an IRS office.

SOME POINTS WORTH NOTING ABOUT THE NEW FORM 5300

Page 1 of the Instructions for Form 5300 states that: "**Filing of Schedule Q is no longer mandatory.**" (emphasis added) As you may recall, Schedule Q deals with nondiscrimination and minimum coverage requirements under Code section 410(b) and involves testing whenever a multiemployer plan covers noncollectively bargained employees.

Some of the questions previously asked on Schedule Q have been incorporated in the revised Form 5300. In addition, information about the coverage of noncollectively bargained employees is required under **Schedule T** of the revised Form 5500. As a result, the completion of Schedule Q in connection with a determination letter filing is strictly optional but if submitted, adds further credence to a plan's contention that it satisfies the minimum coverage requirements.

Item 7(c) on the revised Form 5300 asks: "Is this a collectively bargained plan? (See Regulations section 1.410(b)-9." Section 1.410(b)-9, in turn, refers to regulation section 1.410(b)-6(d)(2) entitled "Collectively bargained employees" **which contains special rules for multiemployer plans.** These special rules permit multiemployer plans to include certain noncollectively bargained employees in their count of collectively bargained employees to help such plans satisfy the 410(b) minimum coverage requirements.

It is suggested that whoever is responsible for completing the revised Form 5300 (usually fund counsel or the fund consultant) review these regulations carefully to assure that a particular multiemployer pension plan client qualifies for a "YES" answer to question 7(c).

A WORD OF ADVICE: Be sure to review carefully, the last page of Form 5300 which sets forth a useful checklist of the items which must accompany all filings requesting a determination letter in order to expedite the processing of such a request.

The fee for a plan filing for a letter of determination is **\$1,250** if it uses the 70% ratio percentage test, the average benefit test, or any other general test set forth in IRS Code section 410(b) to satisfy the minimum coverage requirements.

The filing fee for a multiemployer plan which benefits only collectively bargained employees or only non-highly compensated employees or no highly compensated employees, is **\$700**. For details on the applicable filing fees, see the instructions to Form 8717 attached to this Memo.

#