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PR Treasury Allows Certain Puerto Rico Qualified Retirement Plans to File Copy of Form 5500 Instead of Form 480.70(OE)

The Puerto Rico Treasury Department ("PR Treasury") recently issued Circular Letter No. 12-02 ("CL 12-02") giving the option to certain trusts funding Puerto Rico qualified retirement plans (including "dual-qualified" plans - plans that are qualified both in the U.S. and Puerto Rico) to file a copy of a plan's Form 5500, Annual Return/Report of Employee Benefit Plan, or Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan (hereinafter, collectively referred to as "Form 5500"), instead of PR Treasury Form 480.70(OE), Informative Return for Income Tax Exempt Organizations, in order to comply with the annual filing requirement imposed by the Puerto Rico Internal Revenue Code of 2011, as amended ("2011 PR Code"). A copy of CL 12-02 (in Spanish) is available at: <http://www.hacienda.gobierno.pr/downloads/pdf/cartas/12-02.pdf>.

What Plans?

Only plans that (i) are subject to Title I of the Employee Retirement Security Act of 1974, as amended ("ERISA"), and (ii) have been previously filed with the PR Treasury for qualification under the 2011 PR Code or the Puerto Rico Internal Revenue Code of 1994, as amended, have the option to file Form 5500 with the PR Treasury. Plans for self-employed individuals with no employees (i.e., "Keogh-type" plans) and plans that have not been submitted for qualification with the PR Treasury must continue to file Form 480.70(OE). Form 480.70(OE) for 2011 is available at:

[http://www.hacienda.gobierno.pr/downloads/pdf/planillas/480.70\(OE\).pdf](http://www.hacienda.gobierno.pr/downloads/pdf/planillas/480.70(OE).pdf).

How?

Taxpayers that elect to file Form 5500 must complete the trust's information on the first page of Form 480.70(OE) and attach to it a true and exact copy of the Form 5500 filed by the plan with the U.S. Department of Labor ("DOL"). Once a trust files a Form 5500 with the PR Treasury, it must obtain prior approval from the PR Treasury to file a Form 480.70(OE) in a later year.

When?

The option to file Form 5500 with the PR Treasury instead of Form 480.70(OE) is applicable for returns due for plan years beginning on or after January 1, 2011.

The due date to file Form 5500 with the PR Treasury is the same applicable to Form 480.70(OE), the last day of the 7th calendar month following the close of the plan year (i.e., July 31st for a plan with a calendar plan year). A trust may obtain a one-time extension of up to 2½ months (i.e., October 15th for a plan with a calendar plan year) to file Form 480.70(OE) or Form 5500 by filing PR Treasury Form SC 2644, Request for Extension of Time to File the Income Tax Return, on or before the normal due date of the return. Form SC 2644 is available at: <http://www.hacienda.gobierno.pr/downloads/pdf/formularios/SC%202644.pdf>.

Notwithstanding the foregoing, CL 12-02 provides that if the DOL approves an additional extension to a plan to file Form 5500 for any given year, the due date to file Form 5500 with the PR Treasury for the trust funding such plan is automatically extended to such extended due date. A copy of the approved DOL extension must be included when filing Form 5500 with the PR Treasury. This additional extension does not apply for the filing of Form 480.70(OE) with the PR Treasury.

Where?

Form 480.70(OE) or Form 5500 may be filed in person or by mail at the respective addresses provided in CL 12-02. Electronic filing for Form 480.70(OE) or Form 5500 with the PR Treasury is not yet available.

Failure to File

The PR Code imposes a \$500 penalty for failure to file Form 480.70(OE) or Form 5500, as applicable.

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