



GAC alert

Extended Deadline for § 436 Amendments

The Internal Revenue Service (IRS) issued Notice 2012-70 on November 21, 2012 to extend the deadline to adopt interim amendments for Internal Revenue Code (Code) section 436. The Notice provides that the deadline to adopt an interim amendment for Code section 436 is extended to the latest of:

- The last day of the first plan year that begins on or after January 1, 2013;
- The last day of the plan year for which Code section 436 is first effective for the plan; or
- The due date, including extensions, of the employer's tax return for the tax year that contains the first day of the plan year for which Code section 436 is first effective for the plan.

However, if an application for a determination letter for an individually designed plan is filed on or after February 1, 2013 (or, if later, the first day of the plan year for which Code section 436 is first effective for a plan described in section 104 or 105 of the Pension Protection Act of 2006), the restated plan must incorporate an amendment for Code section 436.

The Notice also provides that a plan amendment that is adopted for Code section 436 that eliminates or reduces a Code section 411(d)(6) protected benefit does not cause the plan to fail to meet the anti-cutback requirements of Code section 411(d)(6) if the amendment is adopted by the deadline described in the Notice and the elimination or reduction is made only to the extent necessary to enable the plan to meet the requirements of Code section 436.

A copy of IRS Notice 2012-70 is available here. [[Click Here](#)]