

MEMO# 30657

March 30, 2017

IRS Announces Temporary Excise Tax Relief Related to Fiduciary Rule

[30657] March 30, 2017 TO: ICI Members SUBJECTS: Pension RE: IRS Announces Temporary Excise Tax Relief Related to Fiduciary Rule

The IRS has issued Announcement 2017-4, providing relief from the excise taxes and related reporting requirements under section 4975 of the Internal Revenue Code (Code).^[1] The relief is intended to conform to the Department of Labor's temporary non-enforcement policy on the fiduciary rule described in Field Assistance Bulletin (FAB) 2017-01.^[2] The FAB indicated that DOL will not initiate enforcement actions relating to the failure to satisfy conditions of the fiduciary rule or prohibited transaction exemptions after the rule becomes applicable but before an announcement is made regarding the proposed delay (and for a reasonable period after an announcement not to delay). The FAB, however, did not address the application of excise taxes under Code section 4975 to such failures, which is under the jurisdiction of the IRS. Announcement 2017-4 explains that:

"Because the Code and ERISA contemplate consistency in the enforcement of the prohibited transaction rules by the IRS and the DOL, as further reflected in and facilitated by the statutory Reorganization Plan, the Treasury Department and the IRS have determined that it is appropriate to adopt a temporary excise tax non-applicability policy that conforms with the DOL's temporary enforcement policy described in FAB 2017-01. Accordingly, the IRS will not apply § 4975 and related reporting obligations with respect to any transaction or agreement to which the DOL's temporary enforcement policy, or other subsequent related enforcement guidance, would apply."

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endnotes

[1] Announcement 2017-4 is available at <https://www.irs.gov/pub/irs-drop/a-17-04.pdf>.

[2] See [ICI memorandum no. 30637](https://www.ici.org/committees/pension/memo30637), dated March 13, 2017. Available at <https://www.ici.org/committees/pension/memo30637>.

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