

# Instructions for Form 5310

(Revised May 1991)

## Application for Determination Upon Termination

(Section references are to the Internal Revenue Code.)

**Paperwork Reduction Act Notice.**—We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file the forms listed below will vary depending on individual circumstances. The estimated average times are:

	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling, and sending the form to IRS
<b>Form 5310</b>	52 hrs., 8 min.	3 hrs., 37 min.	7 hrs., 2 min.
<b>Form 6088</b>	7 hrs., 10 min.	42 min.	51 min.

If you have any comments concerning the accuracy of these time estimates or suggestions for making these forms more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0202), Washington, DC 20503. Do NOT send these forms to either of these offices. Instead, see **Where To File** below.

### Changes You Should Note

The notice of mergers, consolidations or transfers of plan assets or liabilities is no longer reported on Form 5310. This reporting is now done on **Form 5310-A**, Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities. Form 5310 is only used for an application for a determination letter for plan terminations.

### Purpose of Form

Form 5310 is used by plans, other than multiemployer plans covered by PBGC insurance, to apply for a determination upon termination of a plan under section 401(a).

If you want a determination letter for a multiemployer plan described above, request it from IRS on **Form 5303**, Application for Determination for Collectively Bargained Plan.

### Public Inspection

The application is open to public inspection if there are more than 25 participants. Therefore, it is important that the total number of participants be shown on line 4e. See the instructions for line 4e for a definition of participant.

### Disclosure Requested by Taxpayers.

The Tax Reform Act of 1976 permits you to request IRS to disclose and discuss your return and/or return information with any person(s) you designate in a written request. Use **Form 2848**, Power of Attorney and Declaration of

Representative, for this purpose. However, you may submit privately designed authorization forms instead, but they must contain the basic requirements regarding the scope of authority granted and specify the tax matter to which the authority relates. The privately designed form must contain the following:

1. Your name, address, employer identification number, and plan number(s).
2. The name, address, telephone number(s), and social security number(s) of the person or persons whom you are authorizing to receive return information.
3. A paragraph that clearly and explicitly describes the return and/or the return information that you authorize IRS to disclose.
4. Your signature as the taxpayer making the authorization.

### General Instructions

To save you time from having to resubmit a corrected Form 5310, please be sure to enter a response for each required line item. Here are some tips to help you complete the form correctly:

1. N/A (not applicable) is accepted as a response only if an N/A block is provided.
2. If an item requests a numeric response, a number must be entered.
3. If an item has a choice of boxes to be checked, only one box should be checked unless instructed otherwise.

4. If an item has a box to be checked, written responses are not acceptable.

5. All applications for a determination letter must include the appropriate user fee and a **Form 8717**, User Fee for Employee Plan Determination Letter Request.

6. The IRS may, at its discretion, require additional information any time it is deemed necessary.

### A. Who May File

Any sponsor or plan administrator of any pension, profit-sharing or other deferred compensation plan (other than a multiemployer plan covered under PBGC insurance) may file this form to ask the IRS to make a determination on the plan's qualification status upon the plan's termination.

**Note:** Those wishing to file requesting a determination as to the plan's qualification status upon a partial termination should file **Form 5300**, Application for Determination for Employee Benefit Plan, or Form 5303, as applicable. Do NOT file Form 5310.

**Note:** Any sponsor or plan administrator of any pension, profit-sharing or other deferred compensation plan who requests a determination letter on the plan's qualification status upon termination when the sponsor or plan administrator intends on continuing the maintenance of the trust, may NOT use Form 5310. Instead, use either Form 5300 or Form 5303.

### B. What To File

**1. User Fee.**—All applications for determination letters must be accompanied by the appropriate user fee and Form 8717. Form 8717 may be obtained by calling 1-800-829-3676.

**2. Application for determination letter.**—To request a determination letter on the qualification of a plan upon termination, file the following:

- (i) Form 5310.
- (ii) One copy of Form 6088.
- (iii) A copy of the plan document.
- (iv) Copy of all amendments made since the last determination letter.
- (v) A statement explaining how the amendments affect or change this plan or any other plan maintained by the employer.

**Note:** A multiple-employer plan must submit a Form 6088 for each employer who adopts the plan.

## C. Where To File

File this form as follows:

(i) **Single Employer Plans.**—Send the forms to the District Director, EP/EO Division, for the key district in which the employer's principal place of business is located.

(ii) **Plan Maintained by More Than One Employer.**—Send the forms to the District Director, EP/EO Division, for the key district in which the principal place of business of the plan sponsor or administrator is located. This means the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of those who established or maintain the plan.

If entity is in this IRS District	Send fee and request for determination letter to this address
Albany, Augusta, Boston, Brooklyn, Buffalo, Burlington, Hartford, Manhattan, Portsmouth, Providence	Internal Revenue Service EP/EO Division P.O. Box 1680, GPO Brooklyn, NY 11202
Baltimore, District of Columbia, Newark, Philadelphia, Pittsburgh, Richmond, Wilmington, any U.S. possession or foreign country	Internal Revenue Service EP/EO Division P.O. Box 17288 Baltimore, MD 21203
Cincinnati, Cleveland, Detroit, Indianapolis, Louisville, Parkersburg	Internal Revenue Service EP/EO Division, P. O. Box 3159, Cincinnati, OH 45201
Albuquerque, Austin, Cheyenne, Dallas, Denver, Houston, Oklahoma City, Phoenix, Salt Lake City, Wichita	Internal Revenue Service EP/EO Division Mail Code 4950 DAL 1100 Commerce Street Dallas, TX 75242
Atlanta, Birmingham, Columbia, Ft. Lauderdale, Greensboro, Jackson, Jacksonville, Little Rock, Nashville, New Orleans	Internal Revenue Service EP/EO Division P.O. Box 941 Atlanta, GA 30370
Anchorage, Boise, Honolulu, Laguna Niguel, Las Vegas, Los Angeles, Portland, Sacramento, San Francisco, San Jose, Seattle	Internal Revenue Service EP Application Receiving Room 5127 P.O. Box 536 Los Angeles, CA 90053-0536
Aberdeen, Chicago, Des Moines, Fargo, Helena, Milwaukee, Omaha, St. Louis, St. Paul, Springfield	Internal Revenue Service EP/EO Division 230 S. Dearborn DPN 20-6 Chicago, IL 60604

**Signature.**—The application must be signed by the employer, plan administrator or an authorized representative. An application made by a representative on behalf of an employer or plan administrator must comply with the Power of Attorney requirements above. See "Disclosure Requested by Taxpayer" on page 1.

## Specific Instructions

The following instructions are keyed to the line items on the form.

**1a.** Enter the name, address, and telephone number of the plan sponsor. If the Post Office does not deliver mail to the street address and the sponsor has a P.O. box number, show the P.O. box number instead of the street address. "Plan sponsor" means:

**(1)** in the case of a plan that covers the employees of one employer, the employer;

**(2)** in the case of a plan sponsored by two or more entities required to be aggregated under section 414(b), (c), or (m), one of the members participating in the plan; or

**(3)** in the case of a plan that covers the employees and/or partner(s) of a partnership, the partnership.

The plan sponsor should be the same name as was used or will be used on Form 5500 series return/reports filed for the plan.

**1b.** Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor. This should be the same EIN that was used or will be used when the Form 5500 series returns/reports are filed for the plan. (Please do not use a social security number.) You may apply for an EIN by filing **Form SS-4**, Application for Employer Identification Number, which may be obtained by calling 1-800-829-3676.

The plan of a group of entities required to be aggregated under section 414(b), (c), or (m) whose sponsor is more than one of the entities required to be aggregated, should enter only the EIN of one of the sponsoring members. This EIN must be used in all subsequent filings of determination letter requests for this plan. This is also the EIN used for filing annual returns/reports unless there is a change of sponsor.

**1c.** Enter the two digits representing the month the employer's tax year ends. This is the employer whose EIN was entered in item 1b. Enter "N/A" for plans of more than one employer.

**2.** Enter the name, address, and telephone number of the person to contact for additional information if other than the applicant. However, you may leave blank any items that are the same as line 1a. This person will receive copies of all correspondence as authorized in a power of attorney or other written designation. Complete each entry in item 2a. A reference such as "see attached" is not acceptable. If the only person to contact is the same person that is listed in item 1a, please leave this item blank. You may request IRS to disclose and discuss your return and/or return information with any person(s) you designate in a written

request. If you want to designate a person or persons to represent you before the IRS in connection with an application for a determination, see "Disclosure Requested by Taxpayer" on page 1.

**3a.** Section 3001 of the Employee Retirement Income Security Act of 1974 states that the applicant must provide evidence that each employee who qualifies as an interested party has been notified of the filing of the application. If you check "Yes," it means that you have notified each employee as required by Regulations under section 7476 or you have a one person plan. Rules defining "interested parties" and providing for the form of notification are contained in the regulations. An example of an acceptable format is found in Rev. Proc. 91-10, 1991-5 I.R.B. 6. Do not check "No" or leave this item blank, or your application will be returned.

**3c.** If a determination letter has been received, check "Yes" and attach a copy of the latest determination letter to this application. If you do not have a copy of the latest determination letter, explain this in the cover letter.

**3e.** If your plan contains provisions for a cash or deferred arrangement (CODA) under section 401(k), or for employee or matching contributions described in section 401(m), check "Yes." Otherwise, "No" must be checked.

**4a.** Enter the name you designated for your plan.

**4b.** Enter the 3-digit number that the employer or plan administrator has assigned to the plan. This number should be the same as the 3-digit number entered on the latest Form 5500 series returns/reports filed for this plan. This numbering differentiates your plans. The number that is assigned to a plan must not be changed or used for any other plan.

**4c.** Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept. Enter four digits in month-day order. For example, March 31 would be 0331.

**4d.** Enter the date the plan originally became effective. Enter six digits in month-day-year order.

**4e.** Enter on this line the total of: (1) the number of employees who are participating in the plan including employees under a section 401(k) qualified cash or deferred arrangement who are eligible, but do not make elective deferrals, (2) retirees and other former employees who are receiving benefits under the plan or will at some future date receive benefits under the plan, and (3) beneficiaries of retirees or other former employees who are receiving benefits under the plan. (This means one beneficiary for each former employee regardless of the number of individuals receiving benefits. For

example, payment of a former employee's benefit to three children is considered a payment to one beneficiary.)

**5a.** If this is a defined benefit plan, enter the number for the type of benefit in the box at the left margin.

**5b.** If this is a defined contribution plan, enter the number for the type of plan in the box at the left margin.

**6.** If the plan sponsor is a member of a controlled group of corporations, trades or businesses under common control, or an affiliated service group, all employees of the group will be treated as employed by a single employer for purposes of certain qualification requirements such as coverage. If the plan sponsor is a member of such a group, attach a statement showing in detail all members of the group, their relationship to the plan sponsor, the type of plans each member has, and the plans common to all members.

**6a.** If the employer is a member of an affiliated service group, enter 1. If not, enter 2. If you are uncertain as to whether or not you are a member of an affiliated service group, attach the following information:

**(1)** A description of the nature of the business of the employer. Specifically state whether it is a service organization or an organization whose principal business is the performance of management functions for another organization, including the reason for performing the management function or service.

**(2)** The identification of other members (or possible members) of the affiliated service group.

**(3)** A description of the nature of the business of each member (or possible member) of the affiliated service group describing the type of organization (corporation, partnership, etc.) and indicating whether such member is a service organization or an organization whose principal business is the performance of management functions for the other group member(s).

**(4)** The ownership interests between the employer and the members (or possible members) of the affiliated service group (including ownership interests as described in section 414(m)(2)(B)).

**(5)** A description of services performed for employers by the members (or possible members) of the affiliated service group, or vice versa. Include the percentage of each member's (or possible member's) gross receipts and service receipts provided by such services, if available, and data as to whether their services are a significant portion of the member's business and whether or not, as of December 13, 1980, it was unusual for the services to be performed by

employees of organizations in that service field in the United States.

**(6)** A description of how the employer and the members (or possible members) of the affiliated service group associate in performing services for other parties.

**(7)** A description of management functions, if any, performed by the employer for the member(s) (or possible member(s)) of the affiliated service group, or received by the employer from any other member(s) (or possible member(s)) of the group (including data as to whether such management functions are performed on a regular and continuous basis) and whether or not it is unusual for such management functions to be performed by employees of organizations in the employer's business field in the United States.

**(8)** If management functions are performed by the employer for the member(s) (or possible member(s)) of the affiliated service group, describe what part of the employer's business constitutes the performance of management functions for the member(s) (or possible member(s)) of the group (including the percentage of gross receipts derived from management activities as compared to the gross receipts from other activities).

**(9)** A brief description of any other plan maintained by the member(s) (or possible member(s)) of the affiliated service group, if such other plan(s) is designated as a unit for qualification purposes with the plan for which a determination letter has been requested.

**(10)** A description of how the plan(s) satisfies the coverage requirements of section 410(b) if the member(s) (or possible member(s)) of the affiliated service group is considered part of an affiliated service group with the employer.

**6b.** If the employer is a member of a controlled group, enter 1. If not, enter 2.

**7.** Enter 1 if this is a governmental plan or church plan that is not subject to ERISA.

Enter 2 if this is a multiple employer plan described in section 413(c). A multiple employer plan is a plan maintained by more than one employer, but which is NOT maintained according to a collective bargaining agreement. Under this plan type, contributions from each group employer must be available to pay benefits of any participant, even if employed by another employer. In addition, enter the number of employers adopting the plan.

Enter 3 if this plan is not described above. Most plans will enter 3.

**8.** Attach copies of records of all actions taken to terminate the plan, such as board of directors' resolutions, notification to participants, notification to trustees, etc.

**8b.** Assets must be distributed as soon as administratively feasible after the date of termination. See Rev. Rul. 89-87, 1989-2 C.B. 81.

**8c.** Check "No" only if you are certain that there will be no reversion of plan assets to the employer.

**10.** Check the reason you are terminating your plan.

**10d.** If you checked reason to terminate **d**, adverse business conditions, attach an explanation detailing the conditions that require termination of the plan.

**10e.** If you checked reason to terminate **e**, adoption of new plan, attach an explanation describing the new plan.

**10f.** If you checked reason to terminate "other," attach an explanation.

**13a.** Enter an "X" to indicate whether or not your plan meets one of the coverage tests.

**13b.** The requirement that an employer notify IRS that it intends to treat a line of business as a separate plan under Code section 414(r) has been waived until further notice from IRS. See IRS Notice 90-57, 1990-38 I.R.B. 28.

**13c.** Enter the date of the current plan year and the dates of the prior 5 plan years. Then enter the number of participants requested by lines (i) through (vi).

For line 13(c)(v), if 13(c) is required to be completed separately for more than one single "employer" under the plan, in addition to completing this line for the entire plan on the form, on an attached sheet show this information for each such single "employer" in the same format as 13(c)(v).

For line 13(c)(vi), enter the number of employees separated from service with less than 100% vesting in their accrued benefit account balance. If more than 10, enter "10 plus." Only consider vesting in employer contributions. Attach a schedule with the following information for each employee who has separated from service with less than 100% vesting: name, social security number, vesting percentage, years of participation, vesting at separation, date of hire and date of termination, account balance/accrued benefit at separation from service and reason for termination of participant.

If there is a 20% reduction in participants over 2 consecutive years (or less) explain why this would not constitute a partial termination.

**14.** Enter the number of participants and claimants as requested.

**15b.** Regulations section 1.401(a)-20, Q&A-2, provides, in part, that the requirements of sections 401(a)(11) and 417 apply to the payments under the annuity contracts, not to the distributions of the contracts.

**15c.** The accrued benefits of a plan participant may not be reduced on plan termination. This means that a plan amendment that effectively eliminates or reduces an early retirement benefit or a retirement type subsidy with respect to benefits attributable to pre-amendment service is treated as reducing the accrued benefit of a participant if subsequent to termination the participant could satisfy the condition necessary to receive such benefits. See section 411(d)(6) and Regulations section 1.411(d)-3 and Rev. Rul. 85-6.

**15d.** Answer "Yes" if any funds were contributed in the form of, or invested in, obligations or property of the employer of any group of corporations or group of trades or businesses under common control.

**15e.** Answer "Yes" if the distribution includes property other than cash, and attach an explanation.

**15f.** If your plan is a defined benefit plan or money purchase pension plan, enter "Yes" if you anticipate an accumulated funding deficiency.

If you answer "Yes" to this question, complete (i) through (iv).

**15g(i).** Answer "Yes" if you have unallocated funds that have been reallocated to participants.

**15g(ii).** If you answer "Yes" to (g)(i), complete g(ii).

**15g(iii).** If you answer "No" to (g)(i), complete g(iii).

**15h(i).** The attachment must include the names of the sponsor(s) involved; the identification number(s) of the sponsor(s); the plan administrator's name(s) and identification number(s), and the name(s) of the plan(s). Also provide a description of the transaction(s).

**15h(iv)(A).** All plan benefits must be satisfied before assets can revert to the employer upon termination of the plan. All liabilities will not be satisfied if the value of retirement-type subsidies are not provided with respect to participants who, after the date of the proposed termination, satisfy certain pretermination conditions necessary to receive such benefits. Section 401(a)(2), Regulations section 1.401-2(a)(1) and Rev. Rul. 85-6, 1985-1 C.B. 133.

**15h(iv)(B).** The annuity contracts purchased must be guaranteed for each participant. However, in order to maintain qualification of a continuing pension plan, the contracts covering

participants' accrued benefits in the plan must not be distributed except in accordance with Regulations section 1.401-1(b)(1)(i).

**15h(vii).** Answer "Yes" if your plan is a defined benefit plan and you intend that any or all of your participants will be covered by a new or existing defined benefit plan of the employer.

**15h(x).** If the answer to this item is "Yes," attach a list that includes the name(s) of the plan sponsor(s), employer or sponsor's identification number(s); administrator's identification number(s), plan number(s) and an explanation of the termination(s) including the amount(s) of the reversion(s), the date(s) of termination and the reason(s) for termination.

**15i.** If the plan or trust is under examination or if there is an issue related to the plan or trust pending before the Internal Revenue Service, the Department of Labor or the Pension Benefit Guaranty Corporation, check "Yes" and attach an explanation detailing the specific nature of the matter. Also specify which agency or court is considering the matter. Otherwise, check "No."

**15j.** For this question only, "lump-sum distribution" will mean a single payment of the value of a participant's benefits or a series of payments that do not provide substantially equal payments (either alone or in conjunction with other benefit payments) over the life of the participant.

**15l.** Code section 416 provides that plan participants in a top-heavy plan who are non-key employees must accrue a minimum benefit or receive a minimum contribution.

**16.** Complete this only for defined contribution plans. Enter the dates of the current plan year and the prior 5 plan years in the columns indicated.

**16a.** Enter the amount of employer contributions made for each of the plan years.

**16b.** Enter the amount of the forfeitures allocated for each of the plan years.

**17.** Check the box that indicates the form of distribution of benefits for your plan upon termination.

**18.** Complete the statement showing the estimated fair market value of the

plan assets and liabilities as of the proposed date of termination.

Include and clearly identify all liabilities (other than liabilities for benefit payments due after the date of plan termination) that are unpaid as of the proposed termination date or that are paid or payable from plan assets under the provisions of the plan after the proposed date of plan termination. Liabilities include expenses, fees, other administrative costs, and benefit payments due and not paid before the proposed termination date.

**18c(4).** Include investment securities issues by a corporate entity at a stated interest rate repayable on a particular future date such as most bonds, debentures, convertible debentures, commercial paper and zero coupon bonds. Do not include debt securities of Governmental units or municipalities.

"Preferred" means any of the above securities that are publicly traded on a recognized securities exchange and the securities have a rating of "A" or above. If the securities are not "Preferred" they are listed as "Other."

**18c(7)(A).** Include the current value of real property owned by the plan which produces income from rentals, etc. This property is not to be included in item 18e, buildings and other property used in plan operations.

**18c(7)(B).** Include the current value of real property owned by the plan which is not producing income or used in plan operations.

**18i.** Acquisition Indebtedness.— "Acquisition indebtedness," for debt-financed property other than real property, means the outstanding amount of the principal debt incurred:

(1) by the organization in acquiring or improving the property;

(2) before the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property; or

(3) after the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property and was reasonably foreseeable at the time of such acquisition or improvement.

For more details, see Code section 514(c).