



To Our Clients and Friends

March 20, 2006

IRS Adopts New Determination Letter System for Qualified Retirement Plans

The Internal Revenue Service has adopted a new system that changes the process for applying for and receiving determination letters for qualified retirement plans. As explained in Revenue Procedure 2005-66, the objective of the new system is to smooth out the workload concerning these submissions, by providing staggered five-year submission cycles for individually designed qualified pension and profit sharing plans, and six-year submission cycles for pre-approved plans.

Under the old determination letter system, a plan sponsor could rely on a determination letter until such time as significant changes in the law or in the plan design made it necessary to secure a new determination letter to establish that such changes did not adversely affect the plan's compliance with the IRS qualification requirements.

New Five-Year Cycles

Under the new system, individually designed qualified plans are assigned to a five-year cycle, called a "remedial amendment cycle." Every five years, a plan sponsor is required to submit an "on-cycle" application for a determination letter during the last twelve months of the plan's remedial amendment cycle. If an on-cycle application is not submitted, prior determination letters will expire, and the sponsor may no longer rely upon them for support that the plan satisfies the IRS qualification requirements. Therefore, in order for plan sponsors to continue to rely upon a favorable determination letter, they must comply with the "on-cycle" filing requirements.

There are five separate remedial amendment cycles that apply to all plans. Plans are generally assigned a cycle based upon the plan sponsor's employer identification number, or EIN. These five cycles are staggered, so that plans assigned to different cycles will file applications for determination letters at different times. The following chart illustrates the five staggered remedial amendment cycles:

Last Digit of Plan Sponsor's EIN Number	Designated Remedial Amendment Cycle	Last Day of Initial Remedial Amendment Cycle	Next Remedial Amendment Cycle Ends
1 or 6	A	January 31, 2007	January 31, 2012
2 or 7	B	January 31, 2008	January 31, 2013
3 or 8	C	January 31, 2009	January 31, 2014
4 or 9	D	January 31, 2010	January 31, 2015
5 or 0	E	January 31, 2011	January 31, 2016

As indicated in the chart, the remedial amendment cycles repeat, so that when a plan's current remedial amendment cycle ends the following remedial amendment cycle begins (e.g., for Cycle A plans, the first remedial amendment cycle ends on January 31, 2007, and the following remedial amendment cycle ends on January 31, 2012).

Continued Need to Adopt Plan Changes on a Timely Basis

Although amendments that are made in connection with plan qualification requirements can be filed with the IRS within the appropriate cycles, timely compliance requires that these amendments generally be adopted by the last day (including extensions) for filing the employer's tax return for the year in which the qualification requirement first becomes applicable to the plan. In addition, changes in the design of a plan (e.g., an amendment to increase the number of outstanding participant loans permitted under the plan) must also be adopted by the last day of the plan year in which the plan design change first becomes effective.

Off-Cycle Applications

Occasionally, a plan sponsor may wish to submit an "off-cycle" application for a determination letter; for example, upon the adoption of a new plan or a significant plan amendment, particularly if these events occur significantly earlier than the time for submitting an on-cycle application. However, a determination letter that results from an off-cycle submission will expire at the end of the plan sponsor's regular cycle, and does not extend the period that the plan sponsor may rely upon previous determination letters. As a result, an on-cycle application is necessary to continue relying on both an off-cycle determination letter and all other prior determination letters. Furthermore, the IRS has stated that the issuance of a determination letter from an off-cycle application will be delayed, because it will not review off-cycle applications until all of the on-cycle filings (from plans on a different remedial amendment cycle) submitted during the same time have been reviewed.

Multiple-Employer and Multiemployer Plans

Certain types of plans are not assigned to a remedial amendment cycle based upon the plan sponsor's EIN, but instead are assigned to a cycle based upon the type of plan. Multiple-employer plans (i.e., plan maintained by two or more unrelated employers) are assigned to Cycle B, and multiemployer plans (i.e., collectively bargained plans that cover employees of more than one employer) are assigned to Cycle D.

Plans Involved in Certain Corporate Transactions

In the case of a transaction involving a merger or acquisition, a change in plan sponsor, or a plan spin-off, a plan will be assigned to a remedial amendment cycle based upon the employer that maintains the plan after the completion of the transaction.

Controlled Groups

A plan that is maintained by more than one member of a controlled group (or an affiliated service group) is assigned to a remedial amendment cycle based upon the EIN of the entity that files the annual Form 5500 for the plan. Employers in a controlled group with more than one plan may make an irrevocable election for all of their plans to be assigned to Cycle A. Further, in the case of a parent-subsidary controlled group that maintains more than one plan, the parent company has the option to irrevocably elect to have the subsidiaries assigned to a remedial amendment cycle based upon the parent company's EIN number.

Terminated Plans

In the event that a plan sponsor terminates a plan, the plan sponsor must submit an application for a determination letter prior to the later of one year from the effective date of the plan termination, or one year from the date of the adoption of the action that terminates the plan. The plan sponsor must amend the plan to reflect compliance with all qualification requirements as of the date of the plan's termination.

Pre-Approved Plans

Under the new system, pre-approved plans, such as master and prototype, as well as volume submitter plans, will have to be submitted for review every six years. Pre-approved plans are assigned to different cycles based upon whether the plan is a defined benefit or a defined contribution plan. After the IRS has completed its review of all pre-approved plans submitted during a particular cycle, the IRS will announce the period (approximately 2 years) during which employers must adopt the plan.

Action

Plan sponsors should determine which remedial amendment cycle applies to their plans and take steps to ensure the timely submission of an application for a determination letter. If a plan sponsor is a member of a controlled group that maintains more than one plan, the sponsor should consider the possibility of electing a uniform remedial amendment cycle for the controlled group. Finally, plan sponsors should ensure that their plans are properly amended each year as necessary in order to remain in compliance with all applicable IRS requirements and to reflect any design changes that were implemented during the plan year.

If you have any questions or would like further information about this matter, please call Norman J. Misher at (212) 903-8733; Allen J. Erreich at (212) 903-8769; Howard Hans at (212) 903-8767; or Gary J. Chase at (212) 903-8737.

Roberts & Holland LLP