

Client Alert

IRS Opens New Program for Determination Letter Applications

The Internal Revenue Service has announced that it will begin accepting determination letter applications in February from sponsors of individually-designed tax-qualified plans that take into account amendments to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and certain other legally required changes. Earlier this summer, the IRS had announced that it would begin accepting EGTRRA determination letter applications from sponsors of pre-approved tax-qualified plans, such as master and prototype plans and volume submitter plans.

Highlights of the New Program

- Applications from sponsors of individually-designed plans will be staggered over a five-year period based on the last digit of the sponsor's employer identification number (known as its EIN).
- Applications from sponsors of pre-approved plans will be staggered over a six-year period.
- The remedial amendment periods for qualified plans will also be staggered over the corresponding five- or six-year periods. (The remedial amendment period is the period of time during which a plan sponsor may retroactively amend the plan document to comply with changes in the law without using the IRS' formal correction program.)
- The remedial amendment deadline for EGTRRA and certain other amendments is extended to the last day of the new five- or six-year cycle.

Individually-Designed Plans Have Five-Year Cycles

Under the new program, sponsors of individually-designed qualified plans will generally need to apply for new determination letters every five years. Each plan sponsor will be assigned one of five five-year cycles (Cycles A through E) based on the last digit of the plan sponsor's EIN (see the chart on the next page). Plan sponsors would typically file their determination letter applications with the IRS during the *last* year of their assigned five-year cycle. For example, plan sponsors with an EIN ending in 1 or 6 would be in Cycle A and would apply for an EGTRRA determination letter between February 1, 2006 and January 31, 2007. Plan sponsors with an EIN ending in 2 or 7 would be in Cycle B and would apply for an EGTRRA determination letter between February 1, 2007 and January 31, 2008. The chart on the next page has more details on each of the cycles.

Under each of the first five-year cycles, the deadline for making any EGTRRA-related remedial amendments and amendments for required minimum distributions under Internal Revenue Code Section 401(a)(9) has been extended to the last day of the assigned cycle (for example, January 31, 2007 for Cycle A and January 31, 2008 for Cycle B). The procedures for filing a determination letter application (such as use of the Form 5300) have not been changed by the creation of the new program.

<u>INDIVIDUALLY-DESIGNED QUALIFIED PLANS DETERMINATION LETTER CYCLES</u>			
<u>Cycle</u>	<u>Last Digit of EIN</u>	<u>Last Year of First Cycle (and Deadline for Submitting EGTRRA Determination Letter Application)</u>	<u>Last Day of Subsequent Cycles</u>
A	1 or 6	February 1, 2006 - January 31, 2007	January 31, 2012 January 31, 2017
B	2 or 7	February 1, 2007 - January 31, 2008	January 31, 2013 January 31, 2018
C	3 or 8	February 1, 2008 - January 31, 2009	January 31, 2014 January 31, 2019
D	4 or 9	February 1, 2009 - January 31, 2010	January 31, 2015 January 31, 2020
E	5 or 0	February 1, 2010 - January 31, 2011	January 31, 2016 January 31, 2021

- ***Alternative Cycles for Certain Types of Plans.*** The program applies special rules for certain types of plans, including:
 - Multiple employer plans will be on Cycle B, multiemployer plans will be on Cycle D, and government plans will be on Cycle C.
 - Unless otherwise elected (see the next two bullet points), a plan maintained by multiple members of a controlled group or an affiliated service group will be on the cycle determined by using the last digit of the EIN reported on the plan's annual Form 5500 filing.
 - Members of controlled groups and affiliated service groups that maintain more than one plan (other than multiple employer and multiemployer plans) may elect that all plans will be on Cycle A (each member of the group must make this election).
 - In lieu of electing Cycle A (as noted in the prior bullet point), parent-subsidary controlled groups (as opposed to other controlled group relationships) that maintain more than one plan (other than multiple employer and multiemployer plans) may elect to have the plans' cycles be determined by reference to the last digit of the parents' EIN (this election is made by the parent company).
 - Specific rules for plans involved in mergers, acquisitions, spin-offs, and changes in sponsorship, and for a terminated plan's remedial amendment period.
- ***Reliance on Determination Letters.*** One of the IRS' goals in setting up this program is to reduce the number of determination letter applications for which plan sponsors will apply.

Under the program, plan sponsors should not need to apply for a determination letter more than once every five or six years. Instead, determination letters issued under the new program will come with an “expiration date” after which the letter can no longer be relied upon (generally, the end of the plan’s next five-year remedial amendment cycle that ends more than 12 months after the determination letter application was received by the IRS).

- **“Off-Cycle” Filing.** While the program is intended to encourage plan sponsors to apply for determination letters during the last year of their five-year cycles (referred to as “on-cycle” filing), plan sponsors are free to apply during the first four years of their five-year cycles (referred to as “off-cycle” filing). Plan sponsors who file off-cycle, however, will not be able to rely upon their determination letters beyond the end of that cycle. As a further deterrent, an off-cycle filing will not be reviewed until all on-cycle filings for that year have been reviewed and processed, and will only be reviewed using the same Cumulative List (see below for a further discussion of Cumulative Lists) used for applications filed on-cycle during the same year, making it possible that the plan’s determination letter will not cover all qualification changes that may be required during that plan’s current remedial amendment period. As a result, an off-cycle filer may find it necessary to further amend its plan and seek another determination letter during the same remedial amendment period. The second application would need to be filed during the last year of the cycle in order for the determination letter to remain effective for the next five-year cycle.

Pre-Approved Plans Have Six-Year Cycles

Pre-approved plans will need to apply for new opinion, advisory, or determination letters every six years. Defined contribution plans have a different six-year cycle than defined benefit plans. The end of the first cycle is January 31, 2011 for defined contribution plans and January 31, 2013 for defined benefit plans (although different types of pre-approved plans have different application deadlines within those cycles).

During the cycle for pre-approved plans, the IRS will announce the date by which adopting employers must adopt the newly approved plans. This will be a uniform date applicable to all adopting employers and is expected to give adopting employers about two years to adopt updated plans. Adopting employers would then generally be able to adopt the updated plan without the need to submit determination letter applications of their own.

The new program also sets forth complicated timing rules with respect to pre-approved plans that are individually amended by an adopting employer. Such a plan may be shifted from the six-year cycles to the five-year cycles for individually-designed plans. If you think your plan falls within that category of plans, we would be happy to review the rules with you and to assist you with determining the filing deadlines for your plan.

Plans Will Need to Satisfy All Prior Cumulative Lists of Plan Changes Issued by the IRS

Each year (around mid-November), the IRS plans to publish a “Cumulative List of Changes in Plan Qualification Requirements.” Every plan submitted for a determination letter will need to comply with all of the Cumulative Lists published by the IRS through the calendar year before the February 1st of the one-year submission period during which the plan was submitted. The IRS will not consider qualification changes issued or that become effective after that time. For example, Cycle B’s one-year submission period (*i.e.*, the last year of its five-year cycle) begins February 1,

2007. So, plans that submit determination letter applications during that submission period will need to comply with all Cumulative Lists issued by the IRS through 2006. If a plan qualification requirement goes into effect on January 1, 2007, the IRS will not review those plans for compliance with that 2007 rule; instead, those Cycle B plans would be reviewed for compliance with that 2007 rule five years later during Cycle B's next submission period.

Deadline for Mass Submitter Plans and National Sponsors Extended to January 2006

Finally, the deadline for sponsors maintaining mass submitter plans and national sponsors of defined contribution M&P and volume submitter plans to file EGTRRA-amended plans has been extended to January 31, 2006 (the deadline was previously set as October 31, 2005 in Announcement 2005-36).

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We would be happy to discuss the new program with you in more detail.

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For Additional Information

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