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## IRS Eliminates Determination Letter Expiration Dates for Employee Benefit Plan Sponsors



By SUSAN E. BERNSTEIN

The Internal Revenue Service (“IRS”) has issued the first of what will likely be many changes to its long-standing system of periodically reviewing individually designed plans for compliance. As previously reported in “IRS Expected to Slash Part of Retirement Plan Determination Letter Process Due to Budget Constraints and Limited Resources,” (92 PBD, 5/13/15) last year in IRS Announcement 2015-19, the IRS announced drastic changes to the determination letter program when it eliminated the five-year remedial amendment cycles for individually designed plans. In IRS Notice 2016-03, the Department of Treasury and the IRS notified plan sponsors that the expiration dates on determination letters issued prior to Jan. 4, 2016 will no longer be operative.

Since 2007, when the IRS instituted the staggered determination letter system under Revenue Procedure 2007-44, plan sponsors have been able to submit plans to the IRS for periodic review in accordance with the following cycles:

- Single employer sponsors’ individually designed plans have been able to submit their plan to the IRS

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during one of the five-year cycles that correspond with the last digit of their employer identification number;

- Multiple employer plan sponsors have been able to submit multiemployer plans during Cycle B; and
- Multiemployer plans have been able to submit during Cycle D.

With this staggered system in place, the IRS issued determination letters to plan sponsors that expired on the last day of the plan’s five-year remedial amendment cycle. After such date, the plan sponsor could no longer rely on the determination letter for support that the plan satisfied the IRS tax qualification requirements. Plan sponsors had to refile for a new determination letter to preserve their reliance.

### EXAMPLE:

XYZ company sponsors a single employer plan, and XYZ’s 10-digit employer identification number ends with the number 7. As a result, XYZ’s plan fell into Cycle B. Cycle B’s first five-year determination letter cycle period ran from Jan. 31, 2008 until Jan. 31, 2013, and the second Cycle B period runs from Jan. 31, 2013 through Jan. 31, 2018. The last determination letter that XYZ received would have stated that the letter expires on Jan. 31, 2018.

NOTE: As a result of IRS Notice 2016-03 and Revenue Procedure 2016-6, the Jan. 31, 2018 expiration date is no longer effective.

Under prior law, an employer’s reliance on a determination letter was always limited to the plan provisions and information submitted with the application. Revenue Procedure 2016-6 provides (as it has provided for the last 20 years) the following with respect to the scope of reliance on a determination letter:

“Such a determination letter is based on the facts and demonstrations presented to the Service in connection with the application for the determination letter and **may not be relied upon after a change in material fact or the effective date of a change in law**, except as provided.” (Emphasis added).

Plan sponsors could never rely on determination letters for amendments made to the plan after the date the determination letter was issued. Plan sponsors could,

however, request a new determination letter that would address all of the amendments that were adopted since the last determination letter filing cycle. Filing another determination letter application extended the applicable remedial amendment period for the plan for 90 days following the date the next determination letter was issued. By eliminating the five-year cycles, the IRS has acknowledged that it needs to examine the duration of the remedial amendment period. The IRS asked for comments on this issue and plan sponsors would benefit if the IRS extends the remedial amendment period.

What will happen to a plan sponsor's ability to rely on a determination letter after it adopts a plan amendment? Will plan sponsors be permitted to rely on existing determination letters for all unchanged provisions in their plans? Or will they be at risk of losing their reliance on the whole plan if changes are made that are determined to not be qualified? Future IRS guidance is expected to address whether and to what extent plan sponsors can continue to rely on determination letters with respect to provisions that have not changed since the date the determination letter was issued.