



Third Determination Letter Filing Period Opens for Individually Designed Plans

Under the IRS' staggered system for obtaining determination letters on qualified plans, individually designed plans have been assigned to one of five filing cycles. The first cycle, Cycle A, ended on January 31, 2007. Cycle B ended January 31, 2008. The determination letter filing period for the third cycle, Cycle C, commenced on February 1, 2008 and ends on January 31, 2009. Cycle C generally applies to plans of employers with employer identification numbers ending in 3 or 8 and to all governmental plans.

Background

Sponsors of individually designed retirement plans can apply to the IRS for determination letters confirming that their plans meet the qualification requirements under Section 401(a) of the Internal Revenue Code. [Revenue Procedure 2005-66](#) established a staggered determination letter submission system for individually designed plans under which determination letter applications are submitted once every five years. (See our September 28, 2005 [For Your Information](#).) The IRS updated the system in [Revenue Procedure 2007-44](#).

Under the staggered filing system, individually designed plans are assigned to certain five-year cycles (Cycle A, B, C, D, or E) based on the last digit of the plan sponsor's employer identification number (EIN). Special filing cycle rules apply to multiple employer plans, multiemployer plans, and governmental plans. In addition, if two or more plans are maintained by members of certain groups of companies, the plan sponsor or the parent company in a controlled group situation may be able to elect the same filing cycle for all of the plans in the group.

Plan sponsors who want to be able to amend their plans retroactively to comply with applicable qualification requirements must file for a new determination letter by the end of the filing period for the plan's assigned filing cycle. The qualification requirements that must be reflected in all plans filed in a particular cycle are contained in the applicable Cumulative List of Changes in Plan Qualification Requirements (Cumulative List), which is generally issued approximately two months before a cycle opens.

In November, 2007, the IRS issued [Notice 2007-94](#) containing the Cumulative List. The initial determination letter filing period for Cycle C opened February 1, 2008 and ends January 31, 2009.

Individually Designed Cycle C Plans

Individually designed plans maintained by sponsors whose EINs end in 3 or 8 have been assigned to Cycle C. To retain their qualified status and their right to make retroactive corrections to the plans, Cycle C plan sponsors must update their plans to reflect the requirements of EGTRRA and the other qualification provisions identified on the 2007 Cumulative List and file their determination letter applications by January 31, 2009.

One exception to this filing rule may apply in a parent-subsiary controlled group. If two or more plans are maintained by members of a parent-subsiary controlled group, the parent company may elect to file all of the plans in the controlled group under the filing cycle that applies based on the last digit of the parent company's EIN. This special cycle election must be made by the last date for filing determination letter applications under the earliest filing cycle that would otherwise apply to any plan in the group. The election, which must list all the members of the group, each member's EIN and all plans (other than multiple employer plans and multiemployer plans) maintained by each member of the group, must be filed with the determination letter applications.

BUCK COMMENT. *If none of the plans in a parent-subsiary controlled group filed a determination letter application in Cycle A or Cycle B and the earliest filing cycle for any plan in the controlled group is Cycle C, the election to base the filing cycle on the parent company's EIN for all plans in the controlled group must be made by January 31, 2009.*

Governmental Plans

All employer plans that qualify as governmental plans under Section 414(d) have been assigned to Cycle C.

2007 Cumulative List

As noted above, the 2007 Cumulative List contains the qualification requirements that must be reflected in plans filed during the Cycle C determination letter filing period. It also clarifies that provisions relating to the following items will *not* be considered in plans submitted during this period –

- guidance published after October 1, 2007
- statutes enacted after October 1, 2007
- qualification requirements first effective in 2009 or later
- statutory provisions that are first effective in 2008 for which there is no guidance identified in the 2007 Cumulative List.

Importantly, Notice 2007-94 clarifies that individually designed plans filed under Cycle C will not be reviewed for provisions related to changes required by the Pension Protection Act of 2006 (PPA). Generally, the deadline for

amending individually designed plans to comply with PPA is the last day of the 2009 plan year. However, a number of PPA provisions are already in effect and plan sponsors may want to incorporate some of the new rules in their plan documents. If a Cycle C plan has been amended to reflect PPA provisions that are effective in 2008 or earlier, the PPA requirements and the affected plan provisions must be identified in the determination letter application. Notice 2007-94 lists the PPA provisions that are effective in 2008 or earlier.

BUCK COMMENT. *It is important for Cycle C filers to understand that their determination letters will not cover any of their plans' PPA-related provisions.*

Cycle-Affecting Events

As discussed in our earlier publications, certain events or actions may affect a plan's filing cycle. A terminated plan must be amended to reflect all qualification requirements in effect as of the date of termination and generally must file for a determination letter within one year after the plan is terminated. If a plan sponsor converts an individually designed plan into a pre-approved plan or changes from a pre-approved plan to an individually designed plan, special filing cycle rules apply. Corporate acquisitions and dispositions and plan mergers and spin-offs may also change filing cycles.

Conclusion

The new system of staggered filing cycles has changed the deadlines for filing determination letter applications with the IRS. It is important for employers to understand the new filing deadlines and reevaluate, possibly annually, whether any corporate or plan changes may have affected these deadlines.

Buck's consultants are prepared to assist you with amending your plans, determining if a special filing cycle election is available, and identifying when plan filing cycles have changed due to corporate or plan changes. We can also help you decide when to amend your plans to reflect certain PPA provisions.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.