

September 2003

GUST Deadline for Master and Prototype and Volume Submitter Plans Extended -- Again!

On August 28, 2003, the IRS released Revenue Procedure 2003-72 (RP 72) which extends (again) the GUST* amendment deadline for certain master and prototype (M&P) and volume submitter (VS) plans from September 30, 2003 to January 30, 2004. RP 72 also extends the deadline for adoption of certain amendments to comply with final and temporary regulations under § 401(a)(9) of the Internal Revenue Code (the "Code"), relating to required minimum distributions.

RP 72 applies solely to M&P and VS plans and not to individually-designed plans. The filing deadline for individually designed plans has already passed. However, if an employer is the sponsor of an individually designed plan and the employer adopted or certified prior to February 28, 2002, or June 30, 2002 (if applicable) its intent to adopt a timely submitted M&P or VS plan, the employer has until the later of September 30, 2003 or 12 months after the date of the last opinion or advisory letter issued to the M&P plan sponsor or VS practitioner (the "GUST remedial amendment period") to adopt the GUST amended plan. That is, of course, unless the employer is eligible for an extension under RP 72.

As to whether an employer must file an application for a determination letter, employers should look at their plans to see if they say "standardized" or "non-standardized". Standardized plans have not been modified other than pre-approved changes. Non-standardized plans have been modified outside of the terms of the pre-approved plan. Standardized plans do not need to be filed because employers who adopt a standardized plan can rely on a favorable opinion letter issued to the M&P

sponsor or VS practitioner. In contrast, employers who adopt non-standardized plans must file an application for a determination letter to have reliance. If a determination letter is deemed appropriate, the deadline for filing an application is September 30, 2003, unless an extension is available under this Revenue Procedure. If you have a question as to whether an employer needs to file a determination letter, please contact either the sponsor of the plan or the Seyfarth Shaw Employee Benefits Group.

Eligibility For Extension

A plan is eligible under Revenue Procedure 2003-72 only if the plan's GUST remedial amendment period ends on or after September 30, 2003 and before January 1, 2004 and either:

- ◆ the plan is amended to comply with GUST within the plan's GUST remedial amendment period; or
- ◆ the employer files a determination letter application by January 31, 2004, pays a compliance fee of \$250 (such fee is in addition to any application fee), and includes in the application its plan (regardless of whether such plan is in adopted or proposed form).

GUST Amendment Deadline Extension

Qualified plans must be amended for GUST by the end of the GUST remedial amendment period. In general, if an employer timely adopted, or certified its intent to adopt, a timely-submitted M&P plan or VS plan then the employer has until the end of its GUST remedial amendment period to adopt the GUST amended plan. Under RP 72, however, even if the employer fails to timely adopt GUST amendment(s), provided the employer files a determination letter application by January 31, 2004 and includes payment of the \$250 compliance fee, the

application will be deemed to have been filed by September 30, 2003, regardless of whether the plan submitted with the application is in adopted or proposed form. Consequently, the GUST remedial amendment period for the employer's plan (and thus the time period in which the GUST amendment(s) must be adopted) will remain open through the 91st day following the issuance of a determination letter.

Section 401(a)(9) Amendment Deadline Extension

The time period by which a defined contribution plan must be amended to comply with the final and temporary regulations under Code § 401(a)(9) is the latter of the last day of the first plan year beginning on or after January 1, 2003, or the end of the GUST remedial amendment period. Assuming (1) the GUST remedial amendment period has been extended under RP 72; and (2) the issuance of a favorable determination letter, the employer will not be required to adopt Code § 401(a)(9) amendments prior to the 91st day following issuance of the letter.

Next Steps

- ◆ Verify that the name of the M&P plan sponsor or VS practitioner appears on the IRS M&P and VS list prepared and updated by the IRS. The list can be found at www.irs.gov/pub/irs-utl/mplist.pdf.
- ◆ Determine if the M&P or VS plan has received a GUST opinion or advisory letter. If so, the employer should adopt the GUST-approved plan within the GUST remedial amendment period. If an opinion or advisory letter has not yet been issued, check the IRS list periodically to determine when the last letter was issued.
- ◆ Unless a plan is a standardized plan, it needs to be filed with the IRS for a favorable determination letter.
- ◆ Amend the plan to comply with the final and temporary regulations under Code § 401(a)(9).

Please contact the Seyfarth Shaw employee benefits attorney with whom you regularly work if you would like more information about the GUST amendment process or any of the steps listed above for master and prototype plans and volume submitter plans.

* "GUST" refers to the following: the Uruguay Round Agreements Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998 and the Community Renewal Tax Relief Act of 2000.

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