

One Minute Memo®

IRS Announces Issuance of Opinion and Advisory Letters for Pre-Approved Defined Contribution Plans

The IRS recently established new procedures that include six-year staggered cycles for sponsors of pre-approved retirement plans (*i.e.*, master, prototype and volume submitter plans) to file opinion or advisory letter applications beginning in 2006. Under these procedures, plan sponsors were required to restate their pre-approved defined contribution plans for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and other required changes. The IRS has now announced that it expects to issue opinion and advisory letters for pre-approved defined contribution plans that were filed timely to comply with the EGTRRA (and other changes in qualification requirements) on March 31, 2008, or, in some cases, as soon as possible thereafter.

Employers who used pre-approved plan documents to amend their defined contribution plans for EGTRRA are required to adopt the EGTRRA approved plan documents by April 30, 2010. The IRS will accept applications for individual determination letters

submitted by adopters of these pre-approved defined contribution plans beginning on May 1, 2008. The IRS announcement contains specific guidance on the determination letter application requirements.

Some employers can rely on the IRS letter to the provider of the pre-approved plan. Others need an individual determination letter. Generally, individual determination letters for pre-approved plans are requested by filing a Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans, which is designed for these plans and requires limited additional information and documents. After September 30, 2008, Form 5307 is being revised for optical scanning and the current form will no longer be processed. The IRS may request evidence of adoption of good faith and interim amendments during the course of its review of a particular plan. The longer Form 5300, Application for Determination for Employee Benefit Plans must be used rather than Form 5307



where changes have been extensive or outside the prototype or where certain issues such as partial plan termination are addressed.

For additional information regarding the issuance of opinion, advisory and determination letters for pre-approved plans, please call the Seyfarth Shaw attorney with whom you work, or any Employee Benefits attorney on our website, www.seyfarth.com.

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