



April 30, 2010 Deadline for Restatement of 401(k) and Other DC Plans

In a recent employee plans newsletter the IRS sent a loud and clear message to employers adopting Master and Prototype (“M&P”) or Volume Submitter (“VS”) plans ... April 30, 2010 is the drop dead date to adopt an M&P or VS plan that has been restated to comply with EGTRRA¹ and certain other laws and regulations.

This is important if the employer wants to **rely** on the IRS opinion letter the sponsor of the M&P or VS plan received in 2008 with respect to the restated M&P or VS plan’s qualification under I.R.C. §401(a) as to form. If an employer does not adopt the restated M&P or VS plan by April 30, 2010, it will need to file an IRS voluntary compliance submission and pay a monetary sanction to reinstate the plan’s 401(a) qualified status as to form.

The IRS newsletter also reminded M&P and VS participating employers that if they are either required or want to submit an I.R.C. §401(a) determination application in connection with the plan restatement, the deadline for such an application is also April 30, 2010.

An M&P or VS participating employer is **required** to submit a Form 5307 determination application if it is requesting a determination regarding a partial termination, affiliated service group status, leased employees or if the pre-approved plan is a multiple employer VS plan. An employer **may** want to submit a Form 5307 application for an I.R.C. §401(a) determination for other reasons, such as a determination with respect to whether the plan satisfies I.R.C. §410(b) minimum coverage requirements.

The newsletter indicates that the IRS does **not** anticipate extending these April 30, 2010 deadlines.

A similar 2008 IRS announcement reminded M&P adopters that they cannot rely on the sponsor’s IRS opinion letter if they amend the M&P basic plan document or adoption agreement, other than to change options in the adoption agreement. The same announcement reminded VS adopters that they cannot rely on the sponsor’s IRS opinion letter if they make extensive or complex amendments to the pre-approved VS plan. If the M&P adopter or VS adopter makes changes that are not permitted, the plan becomes an individually designed plan and should apply for an I.R.C. §401(a) determination under the IRS procedural rules that apply to individually designed plans.

Please let us know if we can be of assistance.

¹EGTRRA is an acronym for the Economic Growth Tax Relief and Reconciliation Act of 2001.

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