Expansion of Determination Letter Program



Revenue. Procedure. 2019-20, consistent with the process described in Rev. Proc. 2016-37, 2016-29 I.R.B. 136, provides

for a limited expansion of the determination letter program with respect to individually designed plans. Under this limited expansion, the Internal Revenue Service (IRS) will accept determination letter applications for,:

- individually designed statutory hybrid plans during a 12-month period beginning September 1, 2019, and
- individually designed Merged Plans (as defined in section 5.01(2) of the revenue procedure) on an ongoing basis.

As provided by Rev. Proc. 2016-37, a plan sponsor continues to be permitted to submit a determination letter application for initial plan qualification and for qualification upon plan termination. Revenue. Procedure. 2019-20 also provides for a limited extension of the remedial amendment period under § 401(b) of the Internal Revenue Code (Code) and Rev. Proc. 2016-37 under specified circumstances, and for special sanction structures that apply to certain plan document failures discovered by the IRS during the review of a plan submitted for a determination letter pursuant to the revenue procedure.

EXPANSION OF DETERMINATION LETTER PROGRAM

The Treasury Department and the IRS received numerous comments in response to the request for comments. After consideration of the comments, the Treasury Department and the IRS have determined that the determination letter program will be

expanded to permit plan sponsors to submit (i) determination letter applications for individually designed statutory hybrid plans, during the 12-month period beginning September 1, 2019, and ending August 31, 2020, and (ii) determination letter applications for certain individually designed Merged Plans on an ongoing basis. The revenue procedure also provides for a limited extension of the remedial amendment period and special sanction structures applicable to plans submitted for a determination letter pursuant to the revenue procedure.

Expansion of Determination Letter Program for Statutory Hybrid Plans

In general, the IRS will accept a determination letter application for an individually designed statutory hybrid plan, as defined in § 1.411(a)(13)-1(d)(5), during the 12-month period beginning September 1, 2019, and ending August 31, 2020 (statutory hybrid plan submission period).

The procedures relating to the submission of determination letter applications for individually designed plans set forth in Rev. Proc. 2019-4, 2019-1 I.R.B. 146 (and its annual successors), and Rev. Proc. 2016-37 apply to determination letter applications submitted.

The IRS's review of individually designed statutory hybrid plans that are submitted for a determination letter pursuant to the revenue procedure will be based on the 2017 Required Amendments List (Notice 2017-72). The review will also take into account all Required Amendments Lists and Cumulative Lists issued prior to 2016.

Definitions for Guidance Related to Merged Plans

The term “Plan Merger” means a merger or consolidation, as described in § 1.414(l)-1(b)(2), that combines two or more plans maintained by previously Unrelated Entities into a single individually designed plan, and that occurs in connection with a corporate merger, acquisition, or other similar business transaction among Unrelated Entities that each maintained its own plan or plans prior to the Plan Merger.

The term “Merged Plan” means a plan that results from the merger or consolidation of two or more plans into a single individually designed plan pursuant to a Plan Merger.

The term “Unrelated Entities” means entities that are not members of the same controlled group under § 414(b), the same set of trades or businesses under common control under § 414(c), or members of the same affiliated service group under § 414(m).

The “Date of a Corporate Merger, Acquisition, or Other Similar Business Transaction” is the effective date of the transaction as evidenced by a corporate board resolution or written documentation signed and dated by persons duly authorized to represent the entities involved.

The “Date of the Plan Merger” is the effective date of the Plan Merger as evidenced by (a) a corporate board

resolution or written documentation signed and dated by persons duly authorized
to represent the entities involved, or (b) a plan amendment.

Expansion of Determination Letter Program for Merged Plans

In general, beginning September 1, 2019,
the IRS will accept a determination letter application that satisfies the
conditions set forth in section 5.02(2) with respect to a Merged Plan.
Determination letter applications submitted for a Merged Plan will be accepted
on an ongoing basis and are not limited to a specific submission period.

A determination letter application for a
Merged Plan satisfies the conditions of section 5.02(2) if the following
requirements are satisfied:

(a) The Date of
the Plan Merger occurs no later than the last day of the first plan year that
begins after the plan year that includes the Date of a Corporate Merger,
Acquisition, or Other Similar Business Transaction between Unrelated Entities,
and

(b) A determination
letter application for the Merged Plan is submitted within a period beginning
on the Date of the Plan Merger and ending on the last day of the first plan
year of the Merged Plan that begins after the Date of the Plan Merger (Merged

Plan submission period).

The procedures relating to the submission of determination letter applications for individually designed plans set forth in Rev. Proc. 2019-4 (and its annual successors) and Rev. Proc. 2016-37 apply to determination letter applications.

The IRS's review of individually designed Merged Plans that are submitted for a determination letter pursuant to the revenue procedure will be based on the Required Amendments List that was issued during the second full calendar year preceding the submission of the determination letter application. The review will also take into account all previously issued Required Amendments Lists and Cumulative Lists.

CONTINUED CONSIDERATION OF COMMENTS

The Treasury Department and the IRS will continue to consider comments received in response to Notice 2018-24 and any other comments received regarding additional situations in which the submission of a determination letter application may be appropriate. Also, the Treasury Department and the IRS will continue to request, on a periodic basis, comments on additional situations in which the submission of a determination letter application may be appropriate.

EFFECT ON OTHER DOCUMENTS

Revenue.
Procedure. 2019-20 amplifies and modifies Rev. Proc.
2016-37.

EFFECTIVE DATE

Revenue.
Procedure. 2019-20 is effective September 1, 2019.

Plan
sponsors should read the revenue procedure in its entirety and consult ERISA
counsel related as necessary.

Phone:

Email:

Address:

Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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