



EP Determinations



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Navigating the Staggered Remedial Amendment Period: A General Guide for Section 414(d) Governmental Plans



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Overview of Presentation

- ✔ What is a determination letter?
- ✔ Why should I apply for a determination letter?
- ✔ When should I apply for a determination letter?
- ✔ How do I apply for a determination letter?



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What is a Determination Letter?

- ✓ A determination letter is issued by the IRS to assure the plan sponsor that the *form* of the plan document conforms to the requirements of the law.
- ✓ Generally, if the plan sponsor operates the plan in accordance with the terms of the IRS approved plan document, the plan will satisfy the law in *operation*.



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IRS Authority for Retirement Plans

- ✔ The IRS has authority over the federal income tax treatment of retirement plan benefits
- ✔ The IRS can disqualify any plan which does not meet the requirements of the Internal Revenue Code
- ✔ For a governmental plan, disqualification could result in the immediate taxation to all or part of the plan participants' benefits under the plan
- ✔ Only the IRS has jurisdiction to determine a plan's tax qualified status



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Why Should A Governmental Plan Apply for a Determination Letter?

- ✔ Determination letter tells the plan sponsor that its plan provisions meet the requirements of the law
- ✔ Once the IRS approves a plan, even if it contains an improper provision, the plan sponsor is provided reliance on the determination letter
- ✔ Filing a timely request for a determination letter provides the plan sponsor additional time to correct improper plan provisions
- ✔ Certain aspects of the Voluntary Compliance program require you to have a current determination letter



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What are the Disadvantages of a Determination Letter?

- ✔ There are costs involved in assembling all the material required for a determination letter including the IRS fee for the determination letter application.
- ✔ A determination letter is only good until the end of the plan's next cycle filing period.
- ✔ The plan is still required to amend for most changes in the law between the issuance of the determination letter and the end of the plan's next cycle period.



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When Do I apply for a Determination Letter?

- ✓ Under the new staggered remedial amendment process, each plan is generally assigned one of five cycles based on the Employer's EIN
 - Under the old system, all plans would come in at once
 - New approach intended to alleviate huge backlogs
- ✓ However, all governmental plans are deemed to be Cycle C filers pursuant to Rev. Proc. 2007-44
- ✓ Submission period for Cycle C started on February 1, 2008, and ends on January 31, 2009



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How Do I Apply for a Determination Letter?

- ✔ The plan sponsor must complete a Form 5300
- ✔ A user fee must be submitted with the Form 5300
- ✔ Submit a copy of the plan document (including all amendments and other material that contain the terms and provisions of the plan) along with the current trust documents
- ✔ The plan provisions must be updated to include all applicable items on the latest Cumulative List for Cycle C filers.



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Latest IRS Guidance for Determination Letter Applications

- ✓ Rev. Proc. 2008-6 contains application procedures, including submitting restated plan and amendments
- ✓ Rev. Proc. 2008-8 lists user fees
- ✓ Notice 2007-94 contains Cumulative List listing the plan qualification requirements IRS considers in its review
- ✓ Rev. Proc. 2007-44 describes the staggered remedial amendment program and when to submit plans



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Common Problems with Determination Letter Applications

- ❖ Failure to update the plan for all items on the Cumulative List
- ❖ Incorrect or missing user fee
- ❖ Failure to timely adopt required changes to the plan by the time prescribed by law
- ❖ Terminating plans – failure to amend for required law changes up to the date of termination



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Can I File for a Determination Letter Other than in Cycle C? (Off-Cycle Filing)

- ✓ Off-cycle filings are permitted
- ✓ Disadvantages
 - Not reviewed until all on-cycle applications are reviewed by the IRS. This could include multiple on-cycle filers
 - Plan is required to amend for all items on the latest Cumulative List for on-cycle filers
 - Determination letter expires at the end of the next Cycle C period.



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Exceptions for Review of Off-Cycle Filers

- Some applications will have the same priority as on-cycle filings including:
 - Terminating plans
 - New plans whose next regular on-cycle submission period ends at least 2 years after the end of the off-cycle submission period
 - Service requires submission
 - Urgent business need



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How Do I Stay Qualified?

- ✔ Timely amend your plan for all required law changes between each Cycle C
- ✔ Adopt interim amendment by later of the due date of the tax return or the last day of the plan year in which the amendment is effective
- ✔ Certain governmental plans must amend by the last day of the next regular legislative session after the amendment is effective for any required law changes
- ✔ Exception for PPA '06 – extended deadline to amend by the last day of the first plan year beginning on or after January 1, 2011
- ✔ Operate in accordance with IRS approved plan terms



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What is the Remedial Amendment Period?

- ✔ Gives you extra time to retroactively correct form defects
- ✔ Remedial amendment period for governmental plans that timely adopt amendments is extended to January 31, 2009
- ✔ A determination letter request can extend the time for making retroactive amendments while request is pending



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Update on Application Process

- ✓ Cycle C plan submissions to date (including governmental plans)
- ✓ Problem with mini-spikes – last minute filers each year



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Summary

- ✔ Staggered remedial amendment cycles are a new approach to submitting and issuing determination letters in an effort to avoid huge inventory backlogs
- ✔ Governmental plans are being submitted on-cycle now for the first time under this program
- ✔ The Service welcomes suggestions/input from governmental plans community
- ✔ Questions?