



4245 North Fairfax Drive, Suite 750
Arlington, VA 22203
P 703.516.9300 F 703.516.9308
www.asppa.org

May 6, 2010

Ms. Monika Templeman
Acting Director, Employee Plans
Internal Revenue Service
1750 Pennsylvania Ave., NW
Washington, DC 20006

Andrew Zuckerman
Director, EP Rulings & Agreements
Internal Revenue Service
1750 Pennsylvania Avenue NW
Washington, DC 20006

**Re: Extension of the IRS Determination Letter Program
for Pre-approved Defined Contribution Plans**

The American Society of Pension Professionals and Actuaries (ASPPA) appreciates the willingness of the Service to consider continuation of the IRS Determination Letter Program for pre-approved defined contribution plans beyond April 30, 2010, as announced during the March 31 phone forum, and we are writing to express support for continuation of the program in the circumstances described below.

ASPPA is a national organization of more than 7,500 members who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants, and attorneys. Our large and broad based membership gives ASPPA a unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small to medium sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

Summary of Recommendations

ASPPA recommends that the IRS continue to allow plans to apply for determination letters using Form 5307 beyond April 30, 2010, in the circumstances described herein. This is not a request to extend the time to restate pre-approved defined contribution plans to comply with EGTRRA. As discussed below, keeping the program open will provide necessary reliance for plan sponsors and will not overburden the IRS.

Discussion of Recommendation

April 30, 2010 was the deadline for sponsors of pre-approved defined contributions to restate their plans, and if desired, apply for individual determination letters. However, there are a number of other circumstances where an adopting employer of a pre-approved plan might want or need to apply for an individual determination letter after April 30, 2010. Limiting the ability of employers using pre-approved plan documents to request an individual determination letter after April 30, 2010 will result in undue hardship for plan sponsors.

Circumstances where employers may want or need to apply for individual determination letters for plans maintained on pre-approved documents after April 30th include the following:

- **Plan Amendments**

Plan sponsors periodically amend their plans in response to changes in business or employee demographics. A plan sponsor may want reliance on the language in the amendment. The most efficient way to obtain reliance is to file a Form 5307. This is efficient for the IRS as well, and allowing employers to file in this situation will help to promote compliance.

Employers may also want assurance that amendments to pre-approved volume submitter plans after April 30, 2010 do not go beyond “minor modifications.” Furthermore, pursuant to Revenue Procedure 2005-16, Section 15.05, the ability of a volume submitter practitioner to amend a plan on behalf of an adopting employer is conditioned on the employer obtaining a determination letter if there is no automatic reliance on the volume submitter plan.

- **Testing Methodology/Plan Design**

The determination letter process offers the opportunity to have non-discrimination testing methodology under Code sections 401(a)(4) and 410(b) and certain plan designs reviewed and approved. The resulting reliance, though not required, provides assurance and predictability to practitioners and plan sponsors. For example, plans may be modified to use cross-testing or other testing methodologies to demonstrate that allocations are not discriminatory after April 30, 2010. In this case, plan sponsors should be allowed to seek a determination letter for reliance. Another example is a plan sponsor that amends a pre-approved plan after April 30th to create separate “benefits, rights and features,” such as multiple matching contribution structures. The plan sponsor should be able to apply for a determination letter for continued reliance.

- **Bankruptcy**

An individual determination letter may provide a higher level of bankruptcy protection, even for pre-approved plans. A plan that has not received an individual determination letter must demonstrate that it is in compliance for participant

accounts to be protected from creditors under the 2005 Bankruptcy Protection Act. It is not clear whether bankruptcy courts will treat a plan that has automatic reliance as having received a determination letter. For that reason, some practitioners recommend that employers obtain a determination letter even though a pre-approved plan is being utilized.

- **Institutional Accounts**

Some financial institutions require that a plan have an individual determination letter to open an account.

- **Business Transactions**

As with individually designed plans, a purchaser of a business that elects to continue a plan of the seller may insist on obtaining a determination letter, even if the plan is on a pre-approved document.

We do not believe that permitting plan sponsors to submit Form 5307 determination letter applications after April 30, 2010 will cause an undue burden on the IRS. Processing a Form 5307 submission is more efficient than processing a Form 5300 submission and requires a less experienced level of technical review. Additionally, we understand that at this point, the number of Form 5307 filings during the EGTRRA restatement period has been substantially less than anticipated by the IRS. Since the IRS will need to continue processing determination letter applications required under EPCRS after April 30, 2010, keeping the Form 5307 program open beyond April 30, 2010 (for defined contribution plans), for the situations described above will not significantly increase the number of filings or overburden the resources of the Service.

Conclusion

There are a variety of circumstances in which plan sponsors may want or need to apply for determination letters for plans maintained on pre-approved documents after April 30, 2010. For these reasons we urge the IRS to maintain its existing program for pre-approved defined contribution plans beyond April 30, 2010. This recommendation is not intended to provide extra time to employers that did not timely restate plans for compliance with EGTRRA. We believe that continuing the Form 5307 determination letter program will be efficient and will promote continued compliance for plan sponsors using pre-approved plan documents.

These comments were prepared by the Plan Document Subcommittee of the ASPPA Government Affairs Committee, and were primarily authored by Richard Perlin, APM. Please contact Craig Hoffman, General Counsel and Director of Regulatory Affairs at ASPPA, at (703) 516-9300 ext. 128, if you have any comments or questions regarding the matters discussed above. Thank you for your consideration of these comments.

Respectfully submitted,

/s/

Brian H. Graff, Esq., APM
Executive Director/CEO

/s/

Judy A. Miller, MSPA
Chief of Actuarial Issues

/s/

Craig P. Hoffman, Esq., APM
General Counsel

/s/

David M. Lipkin, MSPA, Co-chair
Gov't Affairs Committee

/s/

Robert M. Richter, Esq., APM, Co-chair
Gov't Affairs Committee

/s/

Elizabeth T. Hallam, CPC, Chair
Plan Documents Sub-committee

/s/

James Paul,, Esq., APM, Co-chair
Gov't Affairs Committee

Courtesy Copy:

Michael Julianelle
Director, Employee Plans
Internal Revenue Service
1750 Pennsylvania Avenue, NW
Washington, DC 20006