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IRS Offers Relief for Government-Sponsored Pension Plans in Determination Letter Process

August 17, 2009

On August 12, 2009, the U.S. Internal Revenue Service (IRS) released [Revenue Procedure 2009-36](#), which provides individually designed government-sponsored pension plans some leeway in the IRS determination letter process. Specifically, the revenue procedure:

- Extends the deadline by which a governmental entity must adopt amendments required by a conditional favorable determination letter; and
- Formally revises the determination letter process in Revenue Procedure 2007-44 to permit governmental plans to file for determination letters in Cycle E by January 31, 2011.

Furthermore, Revenue Procedure 2009-36 provides that a governmental plan sponsor that submitted a determination letter request in Cycle C—by January 31, 2009—may withdraw this request and resubmit in Cycle E.

Extension of Deadline

Revenue Procedure 2009-36 extends the period (called the "remedial amendment period") in which a governmental plan may adopt amendments required in conjunction with an IRS determination letter. This remedial amendment period was previously 91 days after the date of the favorable determination letter (under Revenue Procedure 2007-44 and Treasury Regulations issued under Internal Revenue Code section 401(b)). Revenue Procedure 2009-36 extends the remedial amendment period to 91 days after the last day of the first regular legislative session beginning more than 120 days after the date of the favorable determination letter in which the governing body with the authority to amend the plan can consider a plan amendment. This extension is likely to be relevant for governmental plans that must be amended by a legislative governing body that does not meet on a regular basis.

Formalizes Cycle-E Filing Option

Revenue Procedure 2009-36 also formalizes the IRS's November 5, 2008, website guidance allowing governmental plans to file for a favorable determination letter in Cycle C (by January 31, 2009) or in Cycle E (by January 31, 2011). Moreover, governmental plan sponsors that filed for a determination letter in Cycle C have the option of withdrawing and resubmitting this request in Cycle E. However, if the sponsor opts to do so, the user fee paid with the application will not be returned to the applicant unless the application was filed on or before November 7, 2008, and a written request to withdraw the application was submitted to the IRS and postmarked on or before January 31, 2009. Thus, governmental sponsors who now withdraw these applications will not receive a refund of the user fee.

It is important to note that a governmental plan that opts to submit in Cycle E will have to amend the plan to comply with the IRS's cumulative list of required plan amendments, to be issued in 2010. In addition, the extension to Cycle E applies only to the current cycle for governmental plans. Governmental plans will be required to file in Cycle C going forward. Therefore, a governmental plan that files in Cycle E will have to resubmit for a new determination letter by January 31, 2014.

Conclusions

The extension of the adoption period is likely to be welcome relief. However, in the governmental setting, interested parties may want to seek input from appropriate executive and legislative leaders *before* agreeing to language with the IRS during the determination letter process. With a Cycle E deadline of January 31, 2011, it is not too early to begin the process of educating those leaders on the determination letter process and potential legislative corrections.

For Further Information

If you have any questions about this Alert, please contact any of the [attorneys](#) in our [Employee Benefits and Executive Compensation Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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