Kilpatrick

MAY 2, 2019

IRS Reopens Determination Letter Program for Cash Balance Plans and Plan Mergers

by R. Sterling Perkinson

The IRS has announced that it is reopening its determination letter program for cash balance plans on a temporary basis and for merged plans on an ongoing basis. The IRS determination letter program allows plan sponsors of qualified retirement plans to obtain a ruling that their plan documents are in compliance with the Internal Revenue Code. The IRS previously discontinued its regular determination letter program for individually designed plans effective January 1, 2017, except for the initial qualifications of plans and plan terminations. In expanding its determination letter program, the IRS has recognized that cash balance plans and merged plans involve special circumstances that make a determination letter particularly important.

Cash Balance Plans

The IRS will accept determination letter applications for statutory hybrid plans (including cash balance plans) during a 12-month window from September 1, 2019 until August 31, 2020. The IRS is offering this special window in recognition that cash balance plans were unable to obtain a determination letter that takes into account final hybrid plan regulations that the IRS issued in 2014 and 2015. The IRS is not offering any relief with respect to plan amendments that would potentially reduce the interest crediting rate to comply with the market rate of return rules under these regulations with respect to benefits that have already been accrued.

The IRS will not impose sanctions if it discovers a failure to satisfy these regulations in the course of reviewing a determination letter application. The IRS will impose limited sanctions equal to the VCP user fee (up to $3,500) for failures where it determines that an amendment was adopted timely and in good faith for the purposes of maintaining plan qualification or if the plan sponsor reasonably and in good faith believed that no amendment was required because of a qualification change.

Merged Plans

Beginning September 1, 2019, the IRS will accept determination letter applications for merged plans following a corporate transaction. To be eligible, the plans must have been merged by the last day of the first plan year after the corporate transaction and the determination letter application must be submitted by the last day of the first plan year following the plan merger. Determination letters will not be available for plan mergers that do not follow a corporate transaction between previously unrelated entities.

The IRS will not impose sanctions if it discovers a qualification failure with respect to the plan amendment that effectuates the plan merger. For other qualification failures, the IRS will impose limited sanctions equal to the VCP user fee (up to $3,500) for failures where it determines that an amendment was adopted timely and in good faith for the purposes of

maintaining plan qualification or if the plan sponsor reasonably and in good faith believed that no amendment was required because of a qualification change.

Other Circumstances

The IRS is continuing to consider comments regarding other situations where reopening the determination letter process may be appropriate.

Revenue Procedure 2019-20 is available at: https://www.irs.gov/pub/irs-drop/rp-19-20.pdf