



April 30, 2010 Deadline for Restatement of 401(k) and Other DC Plans

This is a reminder to employers maintaining Master and Prototype (“M&P”) or Volume Submitter (“VS”) plans ... April 30, 2010 is the drop dead date to adopt an M&P or VS plan that has been restated to comply with EGTRRA¹ and certain other laws and regulations.

It is important for an employer to meet this deadline in order to **rely** on the IRS opinion letter the sponsor of the M&P or VS plan received in 2008 with respect to the restated M&P or VS plan’s qualification under I.R.C. §401(a) as to form. If an employer does not adopt the restated M&P or VS plan by April 30, 2010, the employer will need to file an IRS voluntary compliance submission and pay a monetary sanction to reinstate the plan’s 401(a) qualified status as to form.

This is also a reminder that M&P and VS participating employers who are either required or want to submit an I.R.C. §401(a) determination application in connection with the plan restatement, need to file such an application by not later than April 30, 2010.

An M&P or VS participating employer is **required** to submit a Form 5307 determination application if it is requesting a determination regarding a partial termination, affiliated service group status, leased employees or if the pre-approved plan is a multiple employer VS plan. An employer **may** want to submit a Form 5307 application for an I.R.C. §401(a) determination for other reasons, such as a determination with respect to whether the plan satisfies I.R.C. §410(b) minimum coverage requirements.

M&P adopters cannot rely on the sponsor’s IRS opinion letter if they amend the M&P basic plan document or adoption agreement, other than to change options in the adoption agreement. VS adopters cannot rely on the sponsor’s IRS opinion letter if they make extensive or complex amendments to the pre-approved VS plan. If the M&P adopter or VS adopter makes changes that are not permitted, the plan becomes an individually designed plan and should apply for an I.R.C. §401(a) determination under the IRS procedural rules that apply to individually designed plans.

Please let us know if we can be of assistance.

¹EGTRRA is an acronym for the Economic Growth Tax Relief and Reconciliation Act of 2001.

March 22, 2010