

IRS determination letter program for tax-qualified retirement plans

By Marcia S. Wagner, Esq.

The IRS processes applications for determination letters using a staggered five-year system. A determination letter is the method by which a plan sponsor seeks the Internal Revenue Service's approval that the form of a plan complies with all legal requirements. Under this system, each individually designed retirement plan is assigned to one of five "cycles" (12-month periods starting on February 1 and ending the following January 31) based upon the last digit of the sponsor's federal employer identification number ("EIN"). These cycles are as follows:

EIN ends in:	Cycle:	First day of cycle:	Last day of cycle:
1 or 6	A	February 1, 2006	January 31, 2007
2 or 7	B	February 1, 2007	January 31, 2008
3 or 8	C	February 1, 2008	January 31, 2009
4 or 9	D	February 1, 2009	January 31, 2010
5 or 0	E	February 1, 2010	January 31, 2011

The initial Cycle A, Cycle B, Cycle C, and Cycle D have closed. If your EIN ends in a 1, 2, 3, 4, 6, 7, 8, or 9 and you sponsor an individually-designed qualified retirement plan that was *not* submitted for a determination letter during the applicable period, please contact our office as soon as possible to discuss your options.

Because the IRS believes that having a current determination letter represents a best practice for all plan sponsors, it is recommended that plan sponsors apply for updated determination letters during the appropriate cycle.

The first round of cycles will end on January 31, 2011, when the current cycle, Cycle E, ends. If your EIN ends in a 5 or 0, your individually-designed qualified retirement plan will have to be submitted for a determination letter by January 31, 2011.

There are two additional groups of plans that might have to be submitted for a determination letter by January 31, 2011:

- An election could have been made by members of a controlled group that maintain more than one plan for the

group to defer the determination letter filings for all of the plans sponsored by the members of the controlled group until Cycle E.

- A plan sponsor of a Cycle D plan whose first plan year beginning on or after January 1, 2009, ended or ends on or after February 1, 2010, could have deferred submitting its plan until Cycle E and still be treated as having been filed within the plan's EGTRRA remedial amendment period. Such a plan will be treated as a Cycle E plan solely for the initial cycle, and all subsequent submissions will be made in Cycle D.

The next round of cycles will begin February 1, 2011, when the second Cycle A opens. These cycles will begin and end as follows:

EIN ends in:	Cycle:	First day of cycle:	Last day of cycle:
1 or 6	A	February 1, 2011	January 31, 2012
2 or 7	B	February 1, 2012	January 31, 2013
3 or 8	C	February 1, 2013	January 31, 2014
4 or 9	D	February 1, 2014	January 31, 2015
5 or 0	E	February 1, 2015	January 31, 2016

Because the IRS believes that having a current determination letter represents a best practice for all plan sponsors, it is recommended that plan sponsors apply for updated determination letters during the appropriate cycle. The determination letter system anticipates that plans will file for a new determination letter only once every five years, but plans must still be amended from time to time as the law and regulations governing tax-qualified plans change.

Note: Marcia Wagner was the Chairperson of the Employee Plans section of the IRS Advisory Committee on Tax Exempt and Government Entities, and in such position, was lead author of a report to the IRS which recommends significant changes be made to this Cycle system. The report is entitled "Analysis and Recommendations Regarding the IRS' Determination Letter Program," and is available on The Wagner Law Group's Web site, www.erisa-lawyers.com, under Events, Government Testimony, or you may access the report on www.irs.gov. ♦

Marcia S. Wagner is the Managing Director of The Wagner Law Group, a law firm specializing in ERISA, employee benefits, and executive compensation law. For information, kindly visit www.erisa-lawyers.com. Ms. Wagner can be reached at 617-357-5200 or at Marcia@WagnerLawGroup.com.