

News

IRS Requests Input on Possible Expansion of Determination Letter Program in 2019

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In Notice 2018-24, the Treasury Department and IRS request comments on the potential expansion of the determination letter program for individually designed plans during 2019. As part of their commitment to annually review the scope of the program, they are looking for comments on the types of plans that should be allowed to seek a determination letter as well as specific issues for those plans that would justify the need for review. They will accept comments through June 4, 2018.

The determination letter program for individually designed plans was revised effective January 1, 2017 to dramatically limit when a plan could seek a determination on its tax-qualified status. Specifically, a plan could seek a determination letter for its initial qualification, for qualification on the plan's termination, and other circumstances identified in guidance. To date, the Treasury and IRS have not identified any other circumstances which allow a plan to seek a new determination letter.

After the change from the 5-year cycle for determination letters in place before 2017 to the new program, plan sponsors face a dilemma of how to be assured that their retirement plan, in form, continues to satisfy the qualification requirements. Many situations can cause this angst for sponsors, such as:

- Plans using a cash balance or similar benefit formula whose last determination letter was prior to the effective date of the final hybrid plan regulations;
- Plans that have merged with one or more other plans; and
- Plans adopting significant changes or new designs that could impact benefit formulas or participant coverage – including lifetime income products, in-plan Roth conversions, early retirement incentives, automatic enrollment, safe harbor design, change in the definition of compensation, etc.

The Treasury and IRS have indicated that they will issue guidance if they identify any additional types of plans that may request a determination letter during 2019. However, they reserve the right not to expand the program at all, given the still limited IRS resources and the focus on tax reform, but “don’t ask, don’t get”! And in the meantime, we continue to offer Groom’s Document Compliance Service (DCS) that

provides an employer with a tax opinion on the tax-qualified status of its plan or a plan amendment.

Groom is putting together comments to Treasury and IRS with our ideas on how to expand the determination letter program so plan sponsors have more opportunities to get comfortable that their plans remain tax-qualified. If you would like to join the group – or simply want to share your thoughts on the subject or learn more about Groom’s DCS solution – please reach out to your regular Groom attorney.

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