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IRS Makes Changes to Determination Letter Application Program and Electronic Filing in General

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The IRS annually publishes a revenue procedure that provides guidance on, among other things, filing a determination letter application regarding the tax-qualified status of an employer-sponsored retirement plan (a “plan”). This year, Rev. Proc. 2022-4 (the “Revenue Procedure”) made some notable changes to the determination letter application filing process. This article provides background on changes made under the Revenue Procedure to the determination letter filing process, including utilizing pay.gov, some “nuts and bolts” advice regarding navigating the website (discussed in more detail below), filing an IRS Form 2848 electronically, and related considerations.

BACKGROUND

The IRS determination letter application process provides a plan an opportunity for the IRS to “bless”

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the tax-qualified status of a plan under various provisions of the I.R.C. – either initially (i.e., upon the initial effective date of a plan) or under certain other circumstances. This determination letter application process is revised annually pursuant to an IRS revenue procedure, and is done for an individually designed plan using the Form 5300, *Application for Determination for Employee Benefit Plan*.

Historically, a determination letter application (i.e., the Form 5300 and related attachments) was submitted via a paper application to a specific IRS office address provided in the Form 5300 instructions. Additionally, the user fee associated with the determination letter application filing would be paid (or waived in certain circumstances) using the IRS Form 8717, *User Fee for Employee Plan Determination Letter Request*, with payment confirmation attached.

Beginning July 1, 2022, the Revenue Procedure revised the determination letter application submission process by requiring a plan to submit its determination letter application electronically, meaning the IRS will no longer accept a paper determination letter. Because the user fee for a determination letter application is now paid when completing the Form 5300 electronically via pay.gov (see below for more information), completing the Form 8717 is no longer necessary.

The Revenue Procedure also eliminated the requirement to provide a trust agreement as part of the determination letter application process. The elimination of this requirement is generally consistent with IRS positions that the agency will generally not provide opinions on trust documents (both in individually designed plans and pre-approved plans).

CONSIDERATIONS

- **Filing the Form 5300 via pay.gov.** When filing the determination letter application electronically, the individual completing the filing must have an account under pay.gov. There are two types of accounts – personal accounts and company accounts. This article focuses on establish-

ing a personal account where an individual will be filing the determination letter application on behalf of another entity presumably pursuant to a Form 2848, *Power of Attorney*.

- **Creating a pay.gov Account.** To create an account, you will need to provide the following:
 - Your first and last name;
 - Email address (you will receive a verification email after providing this information);
 - Mailing address; and
 - Other personal identification information.

Creating a pay.gov account will also require you to check boxes on different pages acknowledging you agree to certain terms and conditions.

- **Searching for Electronic Forms.** Once an account under pay.gov is created and logged into, the account holder may proceed to the applicable submission page by searching a related term on the home screen. For example, to commence a filing under the determination letter program, search “Form 5300” as the key words under “search” and fill out the form following the website prompts.
- **Completing the Form.** Once the applicable form (for the purposes of this article, the Form 5300) has been located, it can be filled out elec-

tronically in a manner similar to how it would have filled out traditionally. A few points to note:

- The form can be saved prior to filing and downloaded as a PDF so it can be provided to a client for review prior to filing (i.e., emailed to the client along with any relevant attachments).
- You can access saved forms that have not yet been filed by going to “my account,” “my forms,” and then clicking the “saved” tab where you can pick up where you left off.
- **Paying the Filing Fee.** In the past, paying the Form 5300 filing fee would be done using a check. Now, using pay.gov, the fee can be paid through automatic clearing house. Based on past practice, using automatic clearing house is easy (you just have to provide bank account information) and can request reimbursement from the client at a later date.
- **Attachments.** You will be given the opportunity to attach documents to the Form 5300 filing – typically you would attach a single PDF (e.g., cover letter, required Form 5300 statements, plan documents, the notice to interested parties, etc.) with tabs so it is easy for the reviewing agent to review the documents.

- **Form 2848.**

- There is some uncertainty as to whether the signed Form 2848 should be included in the pay.gov filing or can be submitted through the IRS electronic filing portal (you will also need an account to use this electronic filing portal, but doing so is similar to the steps above). The link for the electronic filing portal is here - just click the blue “Log In To Submit” box at the top of the page to begin the electronic filing process. In past experience, using both electronic filing methods – i.e., one for the Form 2848 and another for the Form 5300 (plus attachments) – has not been an issue.
- When completing the Form 2848, it can be helpful to check the second box under §5a (Other acts authorized) and entering language

along the lines of “To permit my authorized representative to complete the filing of the Form 5300.” This language can help prevent push back from the IRS on authority granted under the Form 2848.

CONCLUSION

In short, plans should be aware of the electronic filing requirements for documents such as the Form 5300 and become familiar with using the IRS website – pay.gov. Similarly, plans should be aware of the electronic filing portal for the Form 2848 and consider using it to streamline IRS form filing processes, keeping in mind the box 5a language issue noted above. These electronic systems should help streamline filings such as determination letter applications and make the process less burdensome.