

Part IV--Items of General Interest

Determination Letter Applications for Volume Submitter Plans

Announcement 2000-77

Purpose

The purpose of this announcement is to assist practitioners and plan sponsors in filing determination letter applications for volume submitter plans where the volume submitter specimen plan has not received an advisory letter that considers all the changes in the qualification requirements made by GUST. The announcement provides guidance on the types of plan amendments that may be needed to obtain a favorable determination letter. It also discusses certain procedural requirements related to the application process.

Background

Rev. Proc. 2000-27, 2000-26 I.R.B. 1272, provides that determination letter applications for individually-designed plans, including volume submitter plans, that are filed with the Service on or after June 26, 2000, will generally be reviewed taking into account all the changes in the qualification requirements made by GUST. (GUST is an acronym for the Uruguay Round Agreements Act (GATT), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the Small Business Job Protection Act of 1996 (SBJPA), the Taxpayer Relief Act of 1997 (TRA '97) and the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA '98).) A letter that takes into account all of the requirements of GUST is referred to as a GUST II letter.

Prior to June 26, 2000, plan sponsors could not request complete GUST letters except for terminating plans. Rather, they had the option of requesting one of two limited scope determination letters: a letter that excludes consideration of any of the qualification changes made by GUST, or a letter that generally considers GUST but excludes consideration of certain qualification changes effective after 1998. These letters are referred to as pre-GATT and GUST I letters, respectively. Until further notice, plan sponsors will continue to have the option of requesting either of these limited scope letters, except, of course, in the case of terminating plans. However, unless the plan sponsor requests a limited scope review in the cover letter for its application, a determination letter application for an individually-designed plan, including a volume submitter plan, that is filed on or after June 26, 2000, will be reviewed taking into account all of the requirements of GUST. *See* section 3.01 of Rev. Proc. 2000-27.

Volume submitter practitioners have been able to obtain GUST II advisory letters for their volume submitter specimen plans since March 8, 2000. However, as of now, the latest advisory letter issued for most specimen plans is either a pre-GATT letter or a GUST I letter.

General Guidelines for Determination Letter Applications for Volume Submitter Plans That Have Not Received GUST II Advisory Letters

The guidelines that follow are intended to ensure that volume submitter determination letter applications are processed efficiently and correctly. Practitioners and plan sponsors should note that failure to follow these guidelines may result in processing delays, unnecessary taxpayer contacts, requests for plan restatement, new applications or additional user fees, and possible issuance of incorrect letters.

The effect of Rev. Proc. 2000-27 on the review of applications for determination letters for volume submitter plans that are filed on or after June 26, 2000, is as follows: These applications will be reviewed as GUST II applications in all cases, even if the latest advisory letter for the specimen plan is a GUST I or

pre-GATT letter, unless the application or cover letter specifically requests a GUST I or pre-GATT determination letter.

Consequently, practitioners and plan sponsors who will be filing determination letter applications for volume submitter plans where a GUST II advisory letter has not been issued for the specimen plan should carefully consider the requirements that may have to be satisfied in order to receive a GUST II determination letter. In addition to necessary plan amendments, these requirements may entail plan restatement, the filing of Form 5300 instead of Form 5307 and the payment of a higher user fee. These requirements, including certain plan amendments that may be needed, are discussed below under **Specific Guidelines for Determination Letter Applications for Volume Submitter Plans That Have Not Received GUST II Advisory Letters.**

In addition, practitioners and plan sponsors are reminded that until proposed regulations under § 411(d)(6) of the Code are finalized, the Service will not issue a favorable determination letter for a plan that is amended to eliminate or reduce benefits in a manner that is not permitted under regulations now in effect. Therefore, plan sponsors who are considering submitting determination letter applications before the proposed regulations under § 411(d)(6) are finalized should also be aware that they may have to submit another application and pay another user fee if they wish to adopt plan amendments as a result of the final regulations. In view of the foregoing, plan sponsors may wish to consider deferring their requests for determination letters until the final § 411(d)(6) regulations have been issued and a GUST II letter has been issued for the volume submitter specimen plan. Also *see* section 19 of Rev. Proc. 2000-20, 2000-6 I.R.B. 553, and section 4 of Rev. Proc. 2000-27 regarding the remedial amendment period for volume submitter plan sponsors.

If the plan sponsor desires a GUST II letter, the determination letter application should include all necessary GUST amendments as well as any other permissible amendments the plan sponsor wishes to make. The practitioner and plan sponsor are also urged to include a cover letter stating that the application is for a GUST II determination letter. In accordance with section 9.08(2)(e) of Rev. Proc. 2000-6, 2000-1 I.R.B. 187, the application must also include a statement by the practitioner identifying and describing each deviation from the language of the approved specimen plan.

If the plan sponsor does not desire a GUST II letter, it must indicate on the application or in a cover letter whether it is requesting a pre-GATT or GUST I determination letter.

Specific Guidelines for Determination Letter Applications for Volume Submitter Plans That Have Not Received GUST II Advisory Letters

The following guidelines address the plan amendments that may be needed to obtain a GUST II determination letter where the specimen plan's latest advisory letter is a GUST I letter. The guidelines also address the situations in which a request for a GUST II determination letter may require plan restatement, use of Form 5300 instead of Form 5307 and payment of a higher user fee.

1. Where the latest advisory letter for the specimen plan is a GUST I letter:
 - A. If the plan is not intended to satisfy the safe harbors under § 401(k)(12) and § 401(m)(11), the plan amendments that may be needed for a GUST II determination letter should in most cases be limited. These include amendments related to the repeal of the combined plan limitation of § 415(e) and, for § 401(k), profit-sharing and stock bonus plans, amendments related to the addition of § 402(c)(4)(C) which changed the definition of eligible rollover distribution. *See* Notice 99-44, 1999-35 I.R.B. 326, Notice 99-5, 1999-3 I.R.B. 10, and Notice 2000-32, 2000-26 I.R.B. 1274, regarding these changes. These amendments should usually be minor and should not, of themselves, either require plan restatement or affect the plan sponsor's ability to use Form 5307.

B. If the plan is adding the safe harbors under § 401(k)(12) and § 401(m)(11), the plan must be restated and the plan sponsor cannot use Form 5307 but must instead use Form 5300 and pay the user fee for an individually-designed plan that is not a volume submitter plan.

2. Where the latest advisory letter for the specimen plan is a pre-GATT letter:

A. Except as provided in B., below, the plan must be restated and the plan sponsor cannot use Form 5307 but must instead use Form 5300 and pay the user fee for an individually-designed plan that is not a volume submitter plan.

B. If the plan is a defined contribution plan under which the only contributions are nonelective employer contributions, then the plan does not have to be restated and the plan sponsor can use Form 5307.