

Part III – Administrative, Procedural and Miscellaneous

Rev. Proc. 2007-49

26 CFR 601.202: Closing agreements.

SECTION 1. PURPOSE

01 This revenue procedure describes the consequence to a sponsor or practitioner maintaining a pre-approved plan that submits its plan for review after the established deadline in section 16 of Rev. Proc. 2007-44, 2007-28 I.R.B. 54.

02 This revenue procedure also modifies the streamlined VCP application procedure for failures set forth in section 11.01 and Appendix F of Rev. Proc. 2006-27, 2006-1 C.B. 945.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2006-27 sets forth the Employee Plans Compliance Resolution System ("EPCRS"), a comprehensive system of correction programs that permits plan sponsors to correct qualification failures and thereby preserve their plans' tax-favored status. The components of EPCRS are the Self-Correction Program ("SCP"), the Voluntary Correction Program ("VCP"), and the Audit Closing Agreement Program ("Audit CAP"). Under SCP, a plan sponsor may correct certain qualification failures, including operational failures described in Appendix B of that procedure as being correctable by plan amendment. Under VCP, a Plan Sponsor, before audit, may submit to the Service and receive approval for correction of qualification failures. Under Audit CAP, a plan sponsor may correct qualification failures that are identified on audit.

.02 Rev. Proc. 2005-16, 2005-1 C.B. 674, sets forth the Service's procedures for issuing opinion and advisory letters regarding the acceptability under §§ 401 and 403(a) of the Internal Revenue Code of the form of pre-approved plans (i.e., master and prototype (M&P) and volume submitter (VS) plans).

.03 An application for an opinion letter for an M&P plan may be submitted by a sponsor (as defined in Rev. Proc. 2005-16) who satisfies the requirements of section 4.07 of Rev. Proc. 2005-16. In the alternative, an application for an opinion letter may be submitted by an M&P Mass Submitter (as defined in section 4.08 of Rev. Proc. 2005-16) or a word-for-word identical adopter or

minor modifier adopter of a plan of an M & P Mass Submitter as provided in section 4.08 of Rev. Proc. 2005-16.

.04 An application for an advisory letter for a VS plan may be submitted by a VS practitioner (as defined in Rev. Proc. 2005-16) who satisfies the requirements of section 13.04 of Rev. Proc. 2005-16. In the alternative, an application for an advisory letter may be submitted by a VS Mass Submitter (as defined in section 13.05 of Rev. Proc. 2005-16) or a word-for-word adopter of a plan of a VS Mass Submitter as provided in section 13.05 of Rev. Proc. 2005-16.

.05 Rev. Proc. 2007-44 sets forth a system of cyclical remedial amendment periods under § 401(b) for pre-approved plans and individually designed plans. Under this system, every pre-approved plan generally has a regular six-year remedial amendment/approval cycle. As a result, sponsors and practitioners generally need to apply for new opinion or advisory letters only once every six years.

.06 Section 16.02 of Rev. Proc. 2007-44 provides that sponsors and practitioners maintaining pre-approved plans generally have until January 31st of the calendar year following the opening of the six-year remedial amendment cycle to submit applications for opinion or advisory letters. This deadline also applies to word-for-word identical adopters and minor modifier placeholder applications.

.07 Section 16.03 of Rev. Proc. 2007-44 provides that when the review of a cycle for pre-approved plans has neared completion (after approximately a two-year review process), the Service will publish an announcement providing the date by which adopting employers must adopt the newly approved plans. This will be a uniform date that will apply to all adopting employers. Depending upon the length of the review process, it is expected that this date will give virtually all employers approximately a two-year window to adopt their updated plans.

.08 Section 17.01 of Rev. Proc. 2007-44 provides that an employer's plan will be treated as a pre-approved plan and therefore eligible for a six-year amendment/approval cycle if the employer's plan meets the requirements of section 17.01(1) of Rev. Proc. 2007-44 and the sponsor or practitioner maintaining the pre-approved plan timely submits an opinion or advisory letter application in accordance with section 17.01(2) of Rev. Proc. 2007-44.

SECTION 3. VCP STREAMLINED SUBMISSION PROCEDURE FOR THE FAILURE TO ADOPT TIMELY CERTAIN AMENDMENTS

Section 11.01 of Rev. Proc. 2006-27 is supplemented to provide the following. The Appendix F format should not be modified. In addition, since it is a document that is executed by the Internal Revenue Service, it should not be submitted under the letterhead of the plan sponsor or the plan sponsor's

authorized representative. The failure to provide the information required by Appendix F in the format provided for by Appendix F may result in the application being returned as an incomplete submission.

SECTION 4. LATE SUBMISSIONS FOR OPINION OR ADVISORY LETTERS

.01 Applications for opinion or advisory letters submitted by sponsors and practitioners, including word-for-word identical adopters and minor modifier placeholder applications, are generally processed in the order received. If a sponsor or practitioner of an M&P or VS plan with a valid opinion or advisory letter from the immediately preceding six-year cycle (or, for the initial six-year cycle, a valid opinion or advisory letter for GUST¹) submits an application for an opinion or advisory letter after the scheduled due date provided for in section 16 of Rev. Proc. 2007-44 (or in the predecessor procedure, Rev. Proc. 2005-66, 2005-2 C.B. 509) or in any successor revenue procedure, then the review of the plan will be delayed and may not be completed by the time the review of timely submitted pre-approved plans is completed for other sponsors and practitioners (approximately two years). As a result, an employer adopting such plan may have less than two years to adopt the late submitted pre-approved plan (i.e., less time than an employer adopting a pre-approved plan that had been submitted by the deadline set forth in section 16 of Rev. Proc. 2007-44).

.02 Any application for an opinion or advisory letter submitted by sponsors and practitioners, including word-for-word identical adopters and minor modifier placeholder applications, should be mailed to the address listed in section 20 of Rev. Proc. 2005-16 and include the appropriate user fee referred to in section 6.05 or 6.06 of Rev. Proc. 2007-8, 2007-1 I.R.B. 245.

SECTION 5. EFFECTIVE DATE

Section 3 of this revenue procedure is effective August 28, 2007. Section 4 of this revenue procedure applies to all late submissions for opinion or advisory letters made after January 31, 2006.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2006-27 is modified.

DRAFTING INFORMATION

¹ The term "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

The principal author of this revenue procedure is Avaneesh Bhagat of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday or Mr. Bhagat at RetirementPlanQuestions@irs.gov.