

## SECTION 1. PURPOSE

This revenue procedure modifies the interim amendment deadline set forth in section 15.04(1) of Rev. Proc. 2016-37, 2016-29 I.R.B. 136, as modified by Rev. Proc. 2017-41, 2017-29 I.R.B. 92, and Rev. Proc. 2020-40, 2020-38 I.R.B. 575, to provide that an interim amendment made to a pre-approved plan qualified under § 401(a) of the Internal Revenue Code (Code) is adopted timely if the amendment is adopted by the end of the second calendar year after the calendar year in which the change in qualification requirements is effective with respect to the plan. Under this modification, the interim amendment deadline is no longer determined with reference to § 401(b), and, accordingly, an employer's tax-filing deadline is no longer relevant in determining the date by which an interim amendment must be adopted. As a result of this modification, the interim amendment deadline set forth in section 15.06(1)(a) of Rev. Proc. 2016-37, which is applicable to a governmental plan within the meaning of § 414(d), and which is determined by reference to the interim amendment deadline for a plan that is not a governmental plan, is modified. Also, consistent with this modification, section 15.06(2) of Rev. Proc. 2016-37, which provides a special rule for determining the tax-filing deadline applicable to a tax-exempt employer that is no longer relevant in light of the modified interim amendment deadline, is deleted. These changes to the interim amendment deadline are consistent with the deadline for adopting interim amendments with respect to § 403(b) pre-approved plans, as set forth in Rev. Proc. 2021-37, this Bulletin.

## SECTION 2. BACKGROUND

.01 Rev. Proc. 2016-37 sets forth a system of recurring remedial amendment cycles for qualified pre-approved plans, and sets forth plan amendment deadlines for interim and discretionary amendments made to these plans.

.02 Section 15.02 of Rev. Proc. 2016-37 defines an interim amendment as an amendment with respect to a disqualifying provision described in section 5.03 of Rev. Proc. 2016-37 (that is, a disqualifying provision that results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001, or that is integral to such disqualifying provision).

.03 Section 15.04(1) of Rev. Proc. 2016-37 sets forth the deadline for the timely adoption of an interim amendment to a qualified pre-approved plan. In general, an interim amendment is considered to have been adopted timely if it is adopted by the end of the remedial amendment period described in section 2.07 of Rev. Proc. 2016-37. In the case of a plan maintained by one employer, the remedial amendment period ends on the later of: (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins; or (2) the last day of the plan year that includes the date on which the remedial amendment period begins. In the case of a plan maintained by more than one employer, the remedial amendment period ends on the last day of the tenth month following the last day of the plan year in which the remedial amendment period begins. The remedial amendment period begins on the date on which a change in qualification requirements becomes effective with respect to a plan or, in the

case of a provision that is integral to a qualification requirement that has been changed, the first day on which the plan is operated in accordance with the provision as amended.

.04 Section 15.06(1)(a) of Rev. Proc. 2016-37 provides that, for a governmental plan within the meaning of § 414(d), the adoption deadline for an interim amendment is: the later of (1) the deadline that would apply under the rules of section 15.04(1), or (2) 90 days after the close of the third regular legislative session of the legislative body with authority to amend the plan that begins on or after the date the amendment becomes effective.

.05 Section 15.06(2) of Rev. Proc. 2016-37 provides that, for a tax-exempt employer, the adoption deadline for an interim amendment set forth in section 15.04(1) and 15.05 applies, as modified by section 15.06(2). For purposes of determining the applicable tax-filing deadline referenced in section 15.04(1), section 15.06(2) provides the rule used to determine the due date (including extensions) for filing the income tax return for the employer's taxable year.

.06 Rev. Proc. 2017-41 sets forth procedures of the Internal Revenue Service (IRS) for issuing opinion letters regarding the qualification in form of pre-approved plans. Rev. Proc. 2017-41 provides for a single Opinion Letter program that combines and replaces the Master & Prototype (M&P) and Volume Submitter (VS) programs, under which M&P sponsors and VS practitioners, respectively, submitted their plans to the IRS for review.

### SECTION 3. MODIFICATION OF REV. PROC. 2016-37

.01 Section 15.04(1) of Rev. Proc. 2016-37 is revised to read as follows:

In the case of an interim amendment, an employer (or an M&P sponsor or VS practitioner, if applicable) is considered to have timely adopted the amendment if the plan amendment is adopted by the end of the second calendar year following the calendar year in which the change in qualification requirements is effective with respect to the plan.

.02 The heading of section 15.06 of Rev. 2016-37 is revised to read as follows:

Special deadlines for governmental employers

.03 The heading of section 15.06(1) of Rev. Proc. 2016-37 is deleted.

.04 Section 15.06(1)(a) of Rev. Proc. 2016-37 is redesignated as section 15.06(1).

.05 Section 15.06(1)(b) of Rev. Proc. 2016-37 is redesignated as section 15.06(2).

.06 Section 15.06(2) of Rev. Proc. 2016-37 is deleted.

#### SECTION 4. FUTURE MODIFICATION OF REV. PROC. 2016-37

The Department of the Treasury and the IRS intend to revise Rev. Proc. 2016-37 in future guidance to reflect guidance issued after the publication of Rev. Proc. 2016-37, including the merger of the M&P and VS programs as provided in Rev. Proc. 2017-41, and to make additional administrative changes.

#### SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016-37 is modified.

#### SECTION 6. EFFECTIVE DATE

This revenue procedure applies to disqualifying provisions that are effective with respect to a plan after December 31, 2020.

## SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Angelique Carrington of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure, contact Employee Plans at (513) 975-6319 (not a toll-free number).