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TCRS 2008-03: Internal Revenue Service Announcement 2008-23

The Internal Revenue Service (IRS) has issued Announcement 2008-23 relating to the issuance of Opinion and Advisory Letters and the opening of the EGTRRA determination letter program for IRS pre-approved defined contribution plans. This Announcement affects document providers of pre-approved defined contribution plans and plan sponsors using one of these plans.

IRS pre-approved defined contribution plans include Master and Prototype (M&P) and Volume Submitter (VS) plans. An Opinion Letter is issued to a document provider of a M&P plan after review and approval by the IRS and an Advisory Letter is issued after review and approval of a VS plan. A determination letter is issued to a plan sponsor that files for IRS approval of its own individual plan.

On March 31, 2008, or as soon as possible thereafter, the IRS expects to issue Opinion and Advisory Letters to document providers that timely filed their plans (by January 31, 2006 for defined contribution plans) for EGTRRA approval. Plan sponsors using a pre-approved defined contribution plan document to restate their plans for EGTRRA have a 2-year window (May 1, 2008 – April 30, 2010) to restate and file their individual plans with the IRS. The IRS will begin accepting individual plan sponsor requests for determination letters starting May 1, 2008.

According to Announcement 2008-23, generally, a plan sponsor that uses an IRS pre-approved plan and files for an individual determination letter must do so using Form 5307. In certain cases, however, a Form 5300 must be used, such as when filing a plan sponsor's multiple employer plan.

Announcement 2008-23 describes certain changes to the IRS determination letter program that will simplify the application process for many plan sponsors and document providers who assist them in preparing the IRS application for a determination letter. These changes generally relate to situations where the IRS will not be requiring the inclusion of interim amendments (regardless of when adopted) in the application for an EGTRRA determination letter if the document provider has authority to amend the plan on behalf of a plan sponsor and Form 5307 is used. An example of an interim amendment is the EGTRRA good faith amendment which plan sponsors were required to adopt in 2002. In addition, an application need not include the plan's interim plan amendments, regardless of adoption date, under the following circumstances: a plan sponsor is using an IRS pre-approved plan in which the document provider has the authority to amend the plan and is required to file Form 5300 because (i) the plan is a multiple employer plan or (ii) the plan sponsor is requesting a determination regarding a plan termination, affiliated service group status or leased employee status. However, Announcement 2008-23 notes that in either case, the IRS reserves the right to request evidence of the timely adoption of interim amendments in the course of its review of a particular plan.

Form 5307 is undergoing revisions, but it is expected to be available soon. Plan sponsors may continue to use the current Form 5307 until September 30, 2008.

The issuance of Opinion and Advisory Letters for IRS pre-approved defined contribution plans marks the end of the 2-year review period allotted to the IRS under the EGTRRA determination letter program.

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