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RETIREMENT PLANS AND 1999 EXTENDED RELIANCE PERIOD

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The Internal Revenue Service has announced a further extension of the goal of not requiring qualified retirement plans to be amended as frequently as they have in the past.

The present state of pension law is that employers have until the plan year ending in 1994 to amend their retirement plans to comply with all of the changes in this area of the law starting with the Tax Reform Act of 1986. However, if an employer-plan sponsor waits until 1994, it will not have the benefit of the new extended reliance period to the last day of the plan year ending in 1999.

Employers, who have not already submitted their retirement plans for a favorable determination letter under the post-1986 tax law changes, must make a decision whether or not to submit their plans for a determination as to their qualified status under pension law this year, in 1993. If an employer-plan sponsor decides to amend their retirement plan in 1993, then the plan may receive the benefit of the 1999 extended reliance period provided the plan falls into the safe harbor designs set out in the IRS regulations. Examples of plans which would not qualify for the extended reliance period are age or service weighted profit sharing plans, or those plans which do not yet satisfy the new non-discrimination regulations under Code §401(a)(4) or mandatory coverage rules under Code §410(b).

In 1989, the Internal Revenue Service granted an extended reliance period for up to five years for retirement plans that had submitted a request for a favorable determination letter by the end of the 1991 plan year. The old extended reliance period ended in December 31, 1993, and in some cases, December 31, 1994. This was the Internal Revenue Service's first attempt to ease the employer-plan sponsor's continuing burden of complying with the ever-changing employee benefits law arising from the Tax Reform Act of 1986 and the almost yearly changes in this area of the law since that time. Of course, retirement plans would have to be amended if the law was changed, as it has been, to require plan amendments. (The mandatory 20% withholding requirement was just such a change that requires all plans to be amended in 1993. See MFN, 2/93, 1993 Retirement Plan Action.)

Now, the IRS has issued a new Revenue Procedure, 93-9, that creates a new period of extended reliance for defined contribution plans only. The new extended reliance period expires on (a) the last day of the plan year commencing prior to January 1, 1999, or (b) the date established for plan amendment by any legislation that is effective after the date of the plan's determination letter. A defined contribution plan is a profit sharing plan, a money purchase pension plan, or a 401(k) plan. They are called defined contribution plans because the written

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plan defines the employer contribution levels each year, like 5% of an employee's wages, rather than the amount of the benefit that will be received on the date of an employee's retirement at age 65 (a defined benefit plan). This new extended reliance period does not apply to defined benefit plans.

The benefit for employer-plan sponsors in amending their plans earlier than the law presently allows is to not require them to amend their plans to comply with new IRS regulations or Internal Revenue Service Releases or Revenue Procedures that are issued after the date of the favorable opinion letter or plan notification letters until the 1999 plan year, except if Congress passes legislation that mandates further changes to the plan design. It is important to note that some of President Clinton's proposed changes to retirement plan law would require some small but significant changes to the design and operation of a qualified plan. For example, one proposed change is the lowering of the amount of eligible compensation for the computation of benefits, from $235,840 to $150,000.

Plans that have already received their favorable determination letters may continue to rely on those letters, so long as the plans comply with the new 20% mandatory withholding requirements and sponsors amend their plans on or before the end of the 1994 plan year to add language adopting the new withholding rules.

In summary, plan sponsors can elect to amend their qualified retirement plans that fall into the safe harbor designs set forth in the IRS regulations to take advantage of the new extended reliance period until the end of the 1999 plan year. The benefit to employers is to reduce the cost of continuously amending their retirement plans to comply with IRS regulatory changes. If an employer decides to amend its plan, it must be amended and submitted to the IRS for a favorable determination letter on or before December 31, 1993 and ultimately receive a favorable determination letter approving the plan provisions. Your professional representative can inform you whether or not your plan is a plan which is eligible for this new extended reliance period.