

September 17, 1998

ADVANCE COPY OF INTERNAL REVENUE BULLETIN ITEM

Attached is an advance copy of Revenue Procedure 98-53, describing the review of determination letter applications filed on or after April 27, 1998.

It will appear in Internal Revenue Bulletin 1998-53, dated October 5, 1998.

You may release this rev. proc. immediately.

Communications Division

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters

Rev. Proc. 98-53

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 98-14, 1998-4 I.R.B. 22, to give sponsors of individually-designed pension, profit-sharing and stock bonus plans, including volume submitter plans, the option of requesting that applications for determination letters involving § 401(a) or § 403(a) of the Code be reviewed without taking into account changes in the plan qualification requirements made by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT), the Small Business Job Protection Act of 1996, Pub. L. 104-188 (SBJPA) (including § 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 (USERRA)), and the Taxpayer Relief Act of 1997, Pub. L. 105-34 (TRA '97). This option is being provided in response to employer and practitioner comments and will continue until further notice. This option will allow employers to take advantage of the full remedial amendment period for changes in the plan qualification requirements under these acts.

SECTION 2. BACKGROUND

.01 Rev. Proc. 98-14 provides that determination letter applications that are filed on or after April 27, 1998, will be reviewed taking into account GATT, TRA '97, and those provisions of SBJPA that are effective before 1999 ("new law"). The only exception is for determination letter applications for adopters of master or prototype (M&P) and regional prototype plans (other than terminating plans) that have not yet been amended for the new law; these will continue to be reviewed and approved on the basis of "pre-GATT" law. In addition, under Rev. Proc. 98-14, applications for opinion letters for M&P plans, notification letters for regional prototype plans, and advisory letters for volume submitter specimen plans that are filed on or after April 27, 1998, will be reviewed on the basis of the new law.

.02 Rev. Proc. 97-41, 1997-33 I.R.B. 51, as modified by Rev. Proc. 98-14, provides that the remedial amendment period under § 401(b) for amending plans for the new law generally does not expire until the end of the first plan year beginning on or after January 1, 1999. Rev. Proc. 97-41 also provides that this remedial amendment period applies with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and all disqualifying provisions of existing plans arising from a plan amendment adopted after December 7, 1994. Nevertheless, employers and practitioners have asked that plan sponsors be allowed to request determination letters without being required to amend their plans for the new law at this time.

SECTION 3. MODIFICATION OF REV. PROC. 98-14

.01 Rev. Proc. 98-14 is modified to provide that sponsors of individually-designed plans, including volume submitter plans, may request that an application for a determination letter on a plan's qualified status (other than a determination on plan termination) be reviewed without taking into account the requirements of the new law, except for § 1432 and § 1454 of SBJPA, which amended § 401(a)(26) and § 414(n), respectively. The fact that a plan sponsor requests that its application be reviewed without taking into account the requirements of the new law does not preclude the sponsor from incorporating in the plan any provisions that reflect the new law, such as the GATT changes to § 417(e). However, the determination letter that is issued for the plan may not be relied upon with respect to whether such provisions satisfy the qualification requirements as amended by the new law, except for § 1432 and, if the applicant has requested a determination of leased employee status, § 1454 of SBJPA. This option of requesting a pre-GATT letter will apply with respect to applications filed on or after April 27, 1998, and will continue until further notice.

.02 A determination letter applicant who wishes to request a pre-GATT letter should so indicate in a cover letter submitted with the application or on the face of the application form. If the application has already been filed, the applicant should notify the Service by calling the phone number shown on the Service's acknowledgment-of-receipt letter or by contacting the specialist who has been assigned to review the application. A favorable determination letter that is issued in response to an application for a pre-GATT letter will contain a statement to the effect that the letter does not reflect consideration of new law changes in the qualification requirements, except for § 1432 and, if the applicant has requested a determination of leased employee status, § 1454 of SBJPA.

.03 The procedures described in section 6.03 of Rev. Proc. 98-14, regarding applications filed for plans that contain the family aggregation rules of § 414(q)(6) and § 401(a)(17)(A), will not apply if the applicant requests a pre-GATT letter.

.04 This modification does not affect the provisions of Rev. Proc. 98-14 that apply to determination letter applications filed by adopters of M&P and regional prototype plans or to applications for opinion, notification, or advisory letters. Thus, for example, applications for opinion, notification, and advisory letters that are filed on or after April 27, 1998, will in all cases be reviewed taking into account the requirements of the new law.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 98-14 is modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective with respect to determination letter applications that are filed on or after April 27, 1998.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Employee Plans Division. For further information regarding this revenue procedure, contact the Employee Plans Division's telephone assistance service between the hours of 1:30 and 3:30 p.m. Eastern time, Monday through Thursday, on (202) 622-6074/75. (These telephone numbers are not toll-free.)