

EGTRRA RESTATEMENTS

The general rule is that a qualified plan must be qualified both in form and operation. When a law change occurs, Congress generally provides an extended period of time for an employer to amend its qualified plan for the law change. Congress passed the Economic Growth and Tax Relief and Reconciliation Act (“EGTRRA”) in 2001. EGTRRA contained many provisions related to qualified plans. The Internal Revenue Service (“IRS”) requires that plan documents now must be amended to reflect the changes in the law and regulations pertaining to retirement plans.

The IRS issued opinion letters covering EGTRRA for volume submitter defined contribution plans and prototype plans on March 31, 2008. Issuance of these opinion letters will begin the final two years of a 6-year amendment cycle. The final two years of the 6-year cycle is the time during which employers must update their documents for EGTRRA. Employers using the volume submitter documents will be required to adopt the EGTRRA-approved plan document no later than **April 30, 2010**.

Employers adopting a Volume Submitter document are not required to submit the document to the IRS for an individual determination letter in order to adopt the EGTRRA amendments. However, a determination letter specifically addressed to an employer’s plan can be an important verification of the plan’s qualified status. The IRS will stop accepting applications for determination for EGTRRA on **May 1, 2010**. If the employer is not exempt, the IRS User Fee for a Volume Submitter Application for Determination (Form 5307) is \$300.

Some important points to consider:

- April 30, 2010, will soon be upon us. If you sponsor a qualified retirement plan and it has not been updated for EGTRRA, please do so as quickly as possible.
- The restatement process is a good opportunity to review the entire plan document. Do you have the signed plan documents reflecting the initial effective date for the plan? Do you have the signed documents for prior law changes, such as GUST? Do you wish to change any features of your plan? Now is a good time to consider all updates for your plan.
- The general effective date for EGTRRA provisions is January 1, 2002. A plan that terminates before the extended amendment date must be updated, at the time of termination, for all law changes that are effective as of the plan’s termination. Thus, if a plan has terminated after January 1, 2002, it must incorporate EGTRRA provisions even though it no longer is in existence.

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