

Part III -- Administrative, Procedural and Miscellaneous

Elimination of User Fees for Certain Determination Letter Requests Pursuant to Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001

Notice 2003-49

I. Purpose

This notice provides guidance on the application of section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA), regarding elimination of user fees for certain determination letter requests. The guidance in this notice amplifies the guidance in Notice 2002-1, 2002-1 C.B. 283, by describing when the EGTRRA remedial amendment period begins for purposes of determining if a determination letter application is eligible for elimination of the user fee. The guidance in Notice 2002-1 and this notice will help a plan sponsor determine if it is required to pay a user fee for a determination letter application.

II. Background

Beginning January 1, 2002, section 620 of EGTRRA eliminated the requirement for payment of user fees for certain requests to the Internal Revenue Service for determination letters with respect to the qualified status of a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan maintained solely by one or more eligible employers¹ or the exempt status of any trust which is part of the plan. However, section 620 of EGTRRA did not eliminate user fees for any determination letter request made after the later of (a) the fifth plan year the plan is in existence or (b) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years.

Notice 2002-1 provides guidance on section 620 of EGTRRA, including guidance on who is an eligible employer, when a plan is in existence, and the types of determination letter requests that are eligible for elimination of the user fee. Notice 2002-1, Q&A-12, provides guidance on when the GUST² remedial amendment period begins for purposes of determining if a user fee is eliminated.

Notice 2001-42, 2001-2 C.B. 70, provides a remedial amendment period for EGTRRA ending no earlier than the end of the 2005 plan year. The EGTRRA remedial

¹ In general, an employer is an eligible employer if the employer had (i) at least one employee who was not a highly compensated employee (within the meaning of § 414(q) of the Internal Revenue Code) and who participated in the plan for the plan year preceding the determination letter request, and (ii) no more than 100 employees who received at least \$5,000 of compensation from the employer for the calendar year preceding the request. See Q&A-5 through Q&A-10 of Notice 2002-1.

² The term "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

amendment period is available to plans that timely adopt good faith plan amendments for EGTRRA.

Rev. Proc. 2003-8, 2003-1 I.R.B. 236, provides guidance for complying with the Service's user fee program as it pertains to requests for determination letters on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities (TE/GE). Form 8717, *User Fee for Employee Plan Determination Letter Request*, is used as an attachment to a determination letter application to transmit the payment of the required user fee or to certify exemption from the fee pursuant to section 620 of EGTRRA.

III. Beginning of EGTRRA Remedial Amendment Period for User Fee Purposes

For a defined contribution plan, the earliest date on which the plan's EGTRRA remedial amendment period could have begun is January 1, 2002. The first day of the 5-year period ending on January 1, 2002 is January 2, 1997. Thus, if a determination letter application for a defined contribution plan is filed within the plan's EGTRRA remedial amendment period, the application may be eligible for elimination of the user fee provided the plan was first in existence *after* January 1, 1997.

For a defined benefit plan, the earliest date on which the plan's EGTRRA remedial amendment period could have begun is January 2, 2001. (Although EGTRRA is generally effective for years beginning after December 31, 2001, section 611(a) of EGTRRA, which increased the defined benefit dollar limit under § 415 of the Code, is effective for limitation years ending after December 31, 2001. January 2, 2001 is the earliest date section 611(a) of EGTRRA could be effective for a plan and, thus, the earliest date on which a defined benefit plan's EGTRRA remedial amendment period could have begun.) The first day of the 5-year period ending on January 2, 2001 is January 3, 1996. Thus, if a determination letter application for a defined benefit plan is filed within the plan's EGTRRA remedial amendment period, the application may be eligible for elimination of the user fee provided the plan was first in existence *after* January 2, 1996.

The guidance in this notice amplifies but does not supersede the guidance in Notice 2002-1. Thus, pursuant to Q&A-12 of Notice 2002-1, if a determination letter application for a plan is filed within the plan's GUST remedial amendment period, the application may be eligible for elimination of the user fee provided the plan was first in existence *on or after* December 9, 1989.

IV. Effect on Other Documents

Notice 2002-1 is amplified.

DRAFTING INFORMATION

The principal drafter of this notice is James Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll-free number). Mr. Flannery may be reached at 1-202-283-9888 (not a toll-free number).