

# The Nuts and Bolts of the IRS Determination Letter Filing Process for Multiemployer Plans

Joyce A. Mader

O'Donoghue & O'Donoghue, LLP

Washington, DC

# Why File a Determination Letter Request (Form 5300)?

- A qualified pension plan is entitled to favorable tax treatment.
- Trustees and participating unions/employers want advance assurance that the terms of their plan satisfies IRS qualification requirements.
- IRS provides this assurance by means of its determination letter (DL) program.
- A DL applies to qualification requirements regarding the form of the plan and not the operation of the plan (unless plan elects to file Schedule Q).

# Why File Now?

- IRS confirms plan's compliance with recent changes in the law.
- Multiemployer Plans are Cycle D filers.
- Added benefit --provides an opportunity to consolidate amendments into restated plan and, where necessary, identify and resolve ambiguities.

# Cycle D Filers

- Rev. Proc. 2007-44 provides that all multiemployer plans are Cycle D filers.
- February 1, 2009-January 31, 2010.
- Alternative submission in Cycle E for plans with plans years ending on or after February 1, 2010.  
*See IRS Notice 2008-108, IV, P. 3.*

# Process

- Step 1. Gather all plan documents.
- Step 2. Insert plan amendments.
- Step 3. Check compliance/identify problems.
- Step 4. Prepare any required amendments. VCP filing, if required
- Step 5. Prepare Notice to Interested Parties.
- Step 6. Preparing to File Form 5300.

# Step 1. Gather Plan Documents: Plan Documents Needed for Filing

- Latest restated Plan document signed by Trustees or with adoption documented.
- All amendments to latest restated plan signed by Trustees (or adoption documented) and dated.
- Any pending amendments to the latest restated plan.
- The plan's latest favorable determination letter.
- A copy of the plan's latest Form 5300 filing with all attachments.

# Step 1. Gather Plan Documents (Continued)

- A copy of the plan's latest restated Trust document with any amendments.
- In the case of a multiemployer defined benefit plan in critical status a copy of the rehabilitation plan adopted by the Trustees. (If the rehabilitation plan has been prepared but not yet adopted, a copy of the latest draft.)
- A copy of the Notice to Interested Parties for the last DL filing if not included as an attachment to the Form 5300 filing.



# Plan Amendment Issues

- Adoption date missing.
- Not signed or no evidence of adoption.
- Review minutes.
- Lack of evidence of adoption or adoption dates of amendments may require VCP filing.



# Auxiliary Documents

## Quality Assurance Bulletin 2008-1

- Some multiemployer plan incorporate some plan provisions by reference to other documents.
  - CBAs
  - Reciprocity Agreements
  - Participation Agreements
- If the trustees want reliance on a DL for the portions of a plan that incorporate by reference other documents, then the relevant portions of the documents being incorporated must be submitted as an appendix to the plan.

# Step 2. Insert Amendments in Document

- Rev. Proc. 2009-6:
  - Requires that plans be submitted in restated format either as adopted restated plan or as a working copy with amendments incorporated.
  - Changed the previous requirement that all changes made to the prior plan document be identified.
  - Requires that the application include a statement explaining how any amendment made since the last determination letter affects the plan.

## Step 3. Check Compliance/Identify Problems

- Review restated document for all required amendments.
- Check adoption dates
- Resource: 2008 Cumulative List of Changes in Plan Qualification Requirements, Notice 2008-108.


[www.irs.gov/irb/2008-50\\_IRB/ar09.html](http://www.irs.gov/irb/2008-50_IRB/ar09.html)

# Step 4. Prepare amendments/VCP filing, if required

- New Remedial Amendments
  - WRERA RMD Waiver (Optional with this filing)
  - HEART –plans may be amended but will not be considered when issuing DL.
  - PPA

# Non-amenders and VCP

- Streamlined VCP available for failure to timely adopt amendments under Rev. Proc. 2008-50.
- \$375 filing fee.
- Result is that amendment is treated as timely so filing can only be done while plan's filing cycle is open.
- Must be filed prior to Form 5300 filing; amendments submitted with VCP submitted with 5300 and VCP noted in 5300 filing.
- See IRS website for fill in forms and other resources on streamlined VCP.  
[www.irs.gov/retirement/article/0,,id=205524,00.html](http://www.irs.gov/retirement/article/0,,id=205524,00.html)



# Step 5. Notice to Interested Parties (NIP)

- Determine proposed date for filing Form 5300. Contact client about mailing.
- NIP must state date of 5300 filing so requires some coordination.
- See Sections 17 and 18 of Rev. Proc. 2009-6.

# Step 6. Preparing to File Form 5300

- Filing package—
  - Cover letter
  - Completed Form 5300
  - Form 5300 Attachments:
    - Description of all amendments adopted since last DL filing (line 3b)
    - Description of plan's initial participation rule (line9b)
    - Description of benefit formula at normal and early retirement age and plan's normal form of benefit (line11a)
    - Description of how contributions are determined under the plan (line 11b)
  - Form 8717 User Fee and check
  - Form 2848 Power of Attorney

# Step 6. Preparing to File Form 5300 (Continued)

## ■ Filing package—

- A copy of the plan's last determination letter.
- A copy of the restated plan (or working copy).
- A copy of all plan amendments.
- A copy of the underlined/strikeout version of the plan. (Not required.)
- A copy of the latest restated trust with any amendments.
- A copy of the Notice to Interested parties. (Not required.)

# Resources

- IRS Determination Letter Resource Guide  
[www.irs.gov/retirement/article/0,,id=128189,00.html](http://www.irs.gov/retirement/article/0,,id=128189,00.html)
- Rev. Proc. 2009-6 (Determination Letter Procedures)  
[www.irs.gov/irb/2009-01\\_IRB/ar11.html](http://www.irs.gov/irb/2009-01_IRB/ar11.html)
- 2008 Cumulative List of Changes in Plan Qualification Requirements, Notice 2008-108.  
[www.irs.gov/irb/2008-50\\_IRB/ar09.html](http://www.irs.gov/irb/2008-50_IRB/ar09.html)

# Resources

- Employee Plans News

Current

[www.irs.gov/retirement/article/0,,id=96731,00.html](http://www.irs.gov/retirement/article/0,,id=96731,00.html)

Archive

[www.irs.gov/retirement/article/0,,id=96719,00.html](http://www.irs.gov/retirement/article/0,,id=96719,00.html)

# Resources

- Quality Assurance Bulletin 2008-1 (April 3, 2008)  
Multiemployer Plans: Determination Procedures  
[www.irs.gov/pub/irs-tege/qab\\_040308.pdf](http://www.irs.gov/pub/irs-tege/qab_040308.pdf)