

**PILLSBURY WINTHROP_{LLP}****Guidance for Qualified Plans Regarding the 2001 Tax Act and Determination Letter Filings****Susan P. Serota • Peter J. Hunt • Patricia A. Killian**

The Internal Revenue Service (the “IRS”) recently issued **Notice 2001-42**, in which it provided preliminary guidance on amending qualified plans to reflect the changes enacted under the Economic Growth and Tax Relief Reconciliation Act of 2001 (the “2001 Tax Act”). The IRS also issued **Announcement 2001-77**, in which it modified certain procedures regarding the determination letter application process. The highlights of this recent IRS guidance are described below.

Generally, the 2001 Tax Act enhances benefits available under qualified retirement plans. Many of the 2001 Tax Act’s provisions are either mandatorily or permissively effective beginning in 2002, but a few provisions could be effective in 2001. For a summary of the most significant changes in the 2001 Tax Act, please see our **July 2001 Tax Bulletin**. Further, in **Notice 2001-56** the IRS has provided guidance on the effective dates of certain plan-related provisions of the 2001 Tax Act.

The 2001 Tax Act Does Not Extend the Remedial Amendment Period for GUST

For individually designed plans, the remedial amendment period for amendments required under the Uruguay Round Agreements Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998 and the Community Renewal Tax Relief Act of 2000 (“GUST”) ends on the last day of the 2001 plan year and is not being extended by the 2001 Tax Act. Individually designed plans submitted for GUST determination letters may reflect changes made by the 2001 Tax Act; however, any

determination letter issued will not consider such 2001 Tax Act changes. For prior adopters of pre-approved plans and employers that timely certify their intent to adopt a pre-approved plan that has been restated for GUST, the remedial amendment period for GUST ends on December 31, 2002.

IRS Modifies Application Process for Determination Letters

The IRS is revising its determination letter request forms as follows:

- Plan sponsors will have the option to request determination letters without furnishing information on how plans satisfy the nondiscrimination requirements of section 401(a)(4), the additional participation requirements of section 401(a)(26) or the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986, as amended (the “Code”). Thus, the filing of Schedule Q, which addresses these requirements, is now optional.
- Beginning August 22, 2001, plan sponsors may amend volume submitter specimen (“Specimen”) plans to reflect the final regulations on cross-testing under section 401(a)(4) of the Code (**T.D. 8954, June 29, 2001**), and may request determination letters taking into account such regulations.
- The IRS will now permit adopting employers of nonstandardized master and prototype (“M&P”) plans or Specimen plans to rely on a favorable opinion or an advisory letter for such a plan if the employer adopts a plan that is identical to an approved M&P or Specimen plan and chooses only options permitted under the terms of the approved plan. Except in limited situations, however, an adopting employer of a nonstandardized M&P or a Specimen plan may not rely on a favorable opinion or an advisory letter to demonstrate compliance with the nondiscrimination requirements of the Code.

Susan P. Serota and Peter J. Hunt are partners and Patricia A. Killian is a senior attorney in the New York office of Pillsbury Winthrop LLP. This article also appears on the world wide web as part of the firm’s Tax Page. See “Materials Available On-Line” for links to the administrative and other material referred to herein.

- The IRS is modifying the application procedures for determination letters for multiple employer plans.
- The IRS is reconsidering the overall structure of the determination letter process and has published *The Future of the Employee Plans Determination Letter Program*, a white paper that explores alternatives to the current process.

IRS Provides Further Guidance on the 2001 Tax Act Amendments

Generally, the remedial amendment period for the 2001 Tax Act amendments ends on the last day of the 2005 plan year. A plan, however, is required to have a “good faith” 2001 Tax Act amendment in effect for an earlier year if (i) the plan is required to implement a provision of the 2001 Tax Act for that year or the plan sponsor chooses to implement an optional provision of the 2001 Tax Act for that year and (ii) the plan language, prior to the amendment, is inconsistent with the 2001 Tax Act or the plan’s operation.

“Good faith” 2001 Tax Act plan amendments must be adopted by (i) the end of the plan year in which the amendments are required to be put into effect or (ii) the end of the GUST remedial amendment period, whichever is later. A plan amendment is a “good faith” 2001 Tax Act amendment if it represents a “reasonable effort to take into account all of the requirements of the applicable 2001 Tax Act provision and does not reflect an unreasonable or inconsistent interpretation of the provision.”

The IRS has published in *Notice 2001-57* certain sample 2001 Tax Act plan amendments that plan sponsors and sponsors of pre-approved plans can adopt or use in drafting individualized plan amendments. These model amendments do not address all of the 2001 Tax Act changes, however, and should not be adopted without advice from counsel.

Plan Sponsors Should Submit GUST Amendments and Begin Considering New 2001 Tax Act Options

Plan sponsors that have not yet amended their individually designed plans for GUST should do so immediately. The amended plan documents should be submitted to the IRS before the end of the 2001 plan year. Because most of the 2001 Tax Act’s changes are effective January 1, 2002 — and some are effective in 2001 — plan sponsors should begin considering which of the optional 2001 Tax Act changes they may want to implement and

when they would like such changes to become effective. Amendments reflecting those changes should be made to the plan document no later than the end of the plan year in which the changes become effective. Further, plan sponsors should begin taking steps to comply with the new required changes under the 2001 Tax Act.

Materials Available On-Line

Readers who are using Acrobat Reader 3.0 or later (or an Acrobat 3.0 or later-enabled web browser) to review this bulletin can obtain the referenced administrative and other material through the links in the ensuing list. Alternatively, the html version of this bulletin at www.pmstax.com/gen/qualPlan0109.shtml contains links to the material.

- *Notice 2001-42*, amending qualified plans to conform to the 2001 Tax Act [25K]
- *Announcement 2001-77*, revision of determination letter process [33K]
- *Pillsbury Winthrop’s July 2001 Tax Bulletin*, summary of plan-related 2001 Tax Act changes [490K]
- *Notice 2001-56*, effective dates of certain plan-related 2001 Tax Act provisions [30K]
- *T.D. 8954*, final regulations under I.R.C. § 401(a)(4) (June 29, 2001) [84K]
- *The Future of the Employee Plans Determination Letter Program*, an IRS white paper explaining alternatives to the current process [439K]
- *Notice 2001-57*, sample 2001 Tax Act plan amendments [106K]

