

Amending Qualified Plans for GUST

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As we approach mid-year 2001 clients are asking us when they must amend their qualified plans for GUST, the General Agreement of Tariffs and Trade (GATT), the Uniform Services Employment Reemployment Rights Act (USERRA); the Small Business Job Protection Act (SBJPA), the Taxpayer Relief Act of 1997 (TRA '97) and the Internal Revenue Restructuring and Reform Act of 1998 (RRA). We must answer them, it all depends. Our answer is, It depends upon the type of plan they have adopted, such as individually designed, a master and prototype (M&P), or volume submitter, and upon the individual sponsor of the M&P or volume submitter plan adopted.

The period during which an employer sponsoring a qualified plan has to bring the plan into compliance with the Internal Revenue Code is called the Remedial Amendment Period (RAP), and is defined in the Internal Revenue Code ("The Code") at §401(b), and further explained in the attendant regulation.

401(b) "Certain Retroactive Changes In Plan

A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period."

Generally the Remedial Amendment Period ends on the last day by which the employer may file his return for his taxable year in which the plan or amendment is adopted, including extensions.

Traditionally the Remedial Amendment Period has been extended after the passage of major tax legislation, in order to provide the Internal Revenue Service time to publish guidance, and for employers to develop strategies that consider the changes in the law. Additionally, third party administrators, consultants and attorneys must be able to plan for their staffing needs. Their question is, whether and when to add staff to permit them to amend all the qualified plans for which they are responsible before the end of the RAP.

The Secretary of the Treasury has been given the authority to extend the RAP from time to time and has done so in the case of the GUST Remedial Amendment Period. Revenue Procedure 2000-27 has set the end of the GUST Remedial Amendment Period as the last day of the first plan year beginning on or after January 1, 2001.

For government plans, the TRA 86 remedial amendment period for sections 401(a)(4), 401(a)(26), 401(k), 401(m), 410(b) and 414(s) which had previously been extended until the last day of the first plan year beginning on or after January 1, 1999 (Notice 96-64) has been further extended under Revenue Procedure 2000-27 until the last day of the first plan year beginning on or after January 1, 2001.

For non-electing church plans (section 410(d) of the Code) the TRA 86 remedial amendment period was extended until the last day of the first plan year beginning on or after January 1, 2001 (Notice 98-39), except for provisions of OBRA 93, UCA 92 and other nondiscrimination provisions that had to be adopted for the first plan year beginning on or after January 1, 1999.(Notice 96-64)

Individually Designed Plans

Individually designed plans, except for governmental and nonelecting church plans must be amended, and submitted for determination no later than the last day of the last plan year beginning on or before December 31, 2001. It is important to note that the plan must be amended and if required for reliance, filed for determination. This period can be further extended if the employer intends to adopt a M&P plan or volume submitter plan to replace its individually designed plan.

Master or Prototype Plans and Volume Submitter Plans

Employers using M&P plans or volume submitter plans must amend no later than the last day of the last plan year beginning on or before December 31, 2001, unless the employer meets the requirements for an extension of the Remedial Amendment Period provided in §19 of Revenue Procedure 2000-20.

Section 19, Revenue Procedure 2000-20

SECTION 19. REMEDIAL AMENDMENT PERIOD

.01 Purpose - The purpose of this section is to ensure that employers will have 12 months after an M & P plan or volume submitter specimen plan is approved for GUST in which to adopt the approved plan as a timely GUST restatement. Employers will be eligible for this 12-month period if they are prior adopters of an M & P, regional prototype, or volume submitter specimen plan, or if they certify that they intend to restate their plan for GUST using an M & P or volume submitter specimen plan, and the M & P plan sponsor or volume submitter practitioner submits its plan for GUST-approval by December 31, 2000.

.02 Extension of Remedial Amendment Period - If the requirements in subsection .03 are satisfied, the remedial amendment period for an employer's plan will not expire before the time described in subsection .04. For purposes of this section, the remedial amendment period means the remedial amendment period determined under section 1.401(b)-1 and Rev. Proc.97-41 and Rev. Proc. 98-14, both as modified by Rev. Proc. 99-23. As provided in section 3.05, where it is appropriate in this section (for example, in subsection .031), the term "M & P plan" includes regional prototype plans under Rev. Proc. 89-13, and the term "opinion letter" includes notification letters issued under Rev. Proc. 89-13.

.03 Requirements for Extension - The requirements of this subsection .03 are satisfied if:

1. before the end of the remedial amendment period (determined without regard to the extension provided by this section), the employer adopts an M & P plan or volume submitter specimen plan (regardless of whether such plan has a TRA '86 opinion or advisory letter); or

2. before the end of the remedial amendment period (determined without regard to the extension provided by this section), the employer and an M & P plan sponsor or volume submitter practitioner execute a written certification of the employer's intent to amend or restate its plan by adopting the sponsor's or practitioner's GUST-approved M & P or volume submitter specimen plan; and
3. by December 31, 2000, the sponsor or practitioner submits an application for a complete GUST opinion or advisory letter for the M & P plan or volume submitter specimen plan referred to in 1 or 2 (even if the M & P plan is an identical adoption of a mass submitter plan).

.04 Period of Extension - If the preceding requirements are satisfied, the remedial amendment period for the employer's plan will not expire before the end of the twelfth month beginning after the date on which a GUST opinion or advisory letter is issued for the M & P or volume submitter specimen plan referred to in subsection .03 or the opinion or advisory letter application for the plan is withdrawn. Within this period, the employer must amend or restate its plan by adopting the GUST-approved M & P or volume submitter specimen plan (or another GUST-approved M & P or volume submitter specimen plan, or individually designed GUST amendments) and, if required for reliance, request a determination letter.

§19 of Revenue Procedure 2000-20 extended the RAP to the last day of the twelfth month beginning after the date on which a GUST opinion or advisory letter is issued for the M&P or volume submitter specimen plan. However, this extension is only available where the sponsor of the M&P or volume submitter submitted an application for a complete GUST opinion or advisory letter no later than December 31, 2000.

The factors necessary to determine the RAP for any plan are:

- ✓ what is the plan type?
 - individually designed
 - master or prototype
 - volume submitter
 - governmental entity
 - non-electing church
- ✓ who is the sponsor of the M&P plan or volume submitter plan.

Generally an individually designed plan must be amended for GUST by the last day of the plan year beginning on or after January 1, 2000. Pursuant to Revenue Procedure 2000-20, the employer sponsoring an individually designed plan can extend this period if the employer executes a written certification of its intent to amend or restate its plan by adopting a master and Prototype or volume submitter specimen plan that has been approved for GUST.

An employer who is using a master and prototype or volume submitter plan must amend its plan for GUST by the last day of the twelfth month beginning after the date on which a GUST opinion or advisory letter is issued for the master or prototype or volume submitter specimen plan.

§19.05 of Rev Proc 2000-20 provides a bonus or sorts. It says that an adopter of a plan of a M&P or volume submitter sponsor is deemed to have adopted all the other plans sponsored by such sponsor. This means that the RAP is tied to the last plan of the sponsor to receive an opinion or advisory letter.

The application of the rules governing the RAP is best illustrated by example

Example 1

Facts:

Friendly TPA sponsors Plan A, a M & P CODA
 Plan B, a M & P defined benefit plan
 Plan C, a Volume Submitter profit sharing plan

Plan A receives a GUST opinion letter dated June 30, 2001
Plan B receives a GUST opinion letter dated July 15, 2001
Plan C receives a GUST opinion letter dated December 30, 2001

Employer X adopted Plan A, a M & P plan sponsored by Friendly TPA in 1997.

Employer X has until December 31, 2002 (Friendly TPA's compliance date), to adopt any GUST-approved M & P or volume submitter specimen plan (or another GUST-approved M & P or volume submitter specimen plan and not necessarily Friendly TPA's Plans, or individually designed GUST amendments) and, if required for reliance, request a determination letter. Even though the opinion letter for Plan A was received on June 30, 2001, because Employer X is deemed to have adopted all the plans of Friendly TPA, Friendly TPA's compliance date is measured using the opinion letter date of Plan C, December 30, 2001.

Example 2

Facts:

Friendly TPA sponsors Plan A, a M & P CODA
 Plan B, a M & P defined benefit plan
 Plan C, a Volume Submitter profit sharing plan

Plan A receives a GUST opinion letter dated June 30, 2001
Plan B receives a GUST opinion letter dated July 15, 2001
Plan C receives a GUST opinion letter dated December 30, 2001

Employer Y, now a client of Friendly TPA adopted a M&P plan of Prior TPA in 1997.

Prior TPA's plans have opinion letters dated May 15, 2001.

Employer Y has until May 31, 2002 to adopt a GUST-approved M & P or volume submitter specimen plan, or individually designed GUST amendments) and, if required for reliance, request a determination letter no later than May 31, 2002 (Prior TPA's compliance date).

Example 3

Facts:

Friendly TPA sponsors Plan A, a M & P CODA
 Plan B, a M & P defined benefit plan
 Plan C, a Volume Submitter profit sharing plan

Plan A receives a GUST opinion letter dated June 30, 2001
Plan B receives a GUST opinion letter dated July 15, 2001
Plan C receives a GUST opinion letter dated December 30, 2001

Employer Z, now a client of Friendly TPA adopted a Volume Submitter plan of Prior TPA in 1997.

Employer Z, prior to December 31, 2001 signs and Friendly TPA countersigns a certification that Employer Z intends to adopt any M & P or volume submitter specimen plan sponsored by Friendly TPA.

Prior TPA's plans have opinion letters dated May 15, 2001.

Employer Z has until December 31, 2002, (Friendly TPA's compliance date) to adopt a GUST-approved M & P or volume submitter specimen plan (or another GUST-approved M & P or volume submitter specimen plan, or individually designed GUST amendments) and, if required for reliance, request a determination letter.(section 19.02, Rev. Proc. 2000-20)

Example 4

Facts:

Friendly TPA sponsors	Plan A, a M & P CODA Plan B, a M & P defined benefit plan Plan C, a Volume Submitter profit sharing plan
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Plan A receives a GUST opinion letter dated June 30, 2001
Plan B receives a GUST opinion letter dated July 15, 2001
Plan C receives a GUST opinion letter dated December 30, 2001

Employer W, now a client of Friendly TPA adopted a M & P plan of Prior TPA in 1997.

Employer W, prior to December 31, 2001 adopts an interim M & P plan of Friendly TPA which has not received a GUST opinion letter.

Prior TPA's plans have opinion letters dated May 15, 2001.

Employer W has until December 31, 2002, (Friendly TPA's compliance date) to adopt a GUST-approved M & P or volume submitter specimen plan (or another GUST-approved M & P or volume submitter specimen plan, or individually designed GUST amendments) and, if required for reliance, request a determination letter.