

Rev. Proc. 2004-25

SECTION 1. PURPOSE

This revenue procedure extends the remedial amendment period under § 401(b)

of the Internal Revenue Code with respect to certain disqualifying provisions until the end of the remedial amendment period for the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, (EGTRRA). This extension applies to all disqualifying provisions of new plans, that is, plans that have been put into effect after December 31, 2001, and to all disqualifying provisions arising from a plan amendment adopted after December 31, 2001.

SECTION 2. BACKGROUND

.01 Section 401(b) provides a remedial amendment period during which an amendment to a disqualifying provision may be made retroactively effective, under certain circumstances, to comply with the requirements of § 401(a). Section 1.401(b)-1(b)(1) of the Income Tax Regulations provides that a disqualifying provision includes a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan which causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective.

.02 As provided in § 1.401(b)-1(d), the remedial amendment period for a disqualifying provision described in § 1.401(b)-1(b)(1) begins, in the case of a provision of, or absence of a provision from, a new plan, on the date the plan is put into effect, and, in the case of an amendment to an existing plan, on the date the plan amendment is adopted or put into effect (whichever is earlier). Generally, the remedial amendment period for a disqualifying provision described in § 1.401(b)-1(b)(1) ends with the due date (including extensions) for filing the income tax return for the employer's tax year that includes, in the case of a provision of, or absence of a provision from, a new plan, the date the plan is put into effect, or, in the case of an amendment to an existing plan, the date the plan amendment is adopted or put into effect (whichever

is later). Section 1.401(b)-1(f) grants the Commissioner the discretion to extend the remedial amendment period.

.03 Section 1.401(b)-1(b)(3) provides that the Commissioner may also designate as a disqualifying provision under § 401(b) a plan provision that either (1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements, or (2) is integral to a qualification requirement that has been changed. Pursuant to this authority, Notice 2001-42, 2001-2 C.B. 70, provides a remedial amendment period under § 401(b), ending no earlier than the end of the 2005 plan year, in which any needed retroactive remedial plan amendments for EGTRRA must be adopted (the EGTRRA remedial amendment period). The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of required good faith EGTRRA plan amendments. In general, a good faith EGTRRA plan amendment is adopted timely if it is adopted by the later of the end of the plan year that includes the effective date of the EGTRRA change or the end of the plan's GUST remedial amendment period.¹

SECTION 3. EXTENSION OF REMEDIAL AMENDMENT PERIOD FOR DISQUALIFYING PROVISIONS AFTER DECEMBER 31, 2001

.01 The remedial amendment period with respect to disqualifying provisions described in § 1.401(b)-1(b)(1) that are put into effect (in the case of new plans) or adopted (in the case of existing plans) after December 31, 2001, is extended to the end of the EGTRRA remedial amendment period. Thus, the remedial amendment period with respect to all disqualifying provisions of new plans, that is, plans that have been put into effect after December 31, 2001, and all plan amendments adopted after December 31, 2001, that would cause an existing plan to become disqualified, will not end earlier than the EGTRRA remedial amendment period.

¹ 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.

The GUST remedial amendment period generally ended on the later of February 28, 2002, or the end of a plan's 2001 plan year. However, for certain plans eligible for an extended GUST remedial amendment period under Rev. Proc. 2000-20, 2000-1 C.B. 553, the period generally ended on September 30, 2003.

.02 The time by which good faith EGTRRA plan amendments must be adopted is not extended. Thus, for example, in the case of an individually designed plan that was put into effect during 2002, if the required EGTRRA good faith amendments were adopted by the due date (including extensions) for filing the employer's 2002 income tax return (assuming a calendar plan and tax year), the remedial amendment period for all disqualifying provisions of the plan, whether or not related to EGTRRA, will end no

earlier than the end of the plan's 2005 plan year.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective April 19, 2004.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Employee Plans, Tax Exempt and Govern-

ment Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Flannery may be reached at 1-202-283-9888 (not a toll-free number).