

250% Increase in IRS User Fees for Determination Letters

Pre-Approved Plans of Mass Submitters Become Even More Attractive!

By John P. Griffin, JD, LLM

Effective February 1, 2011, the Internal Revenue Service (IRS) in Revenue Procedure 2011-8 increased the fees applicable to determination letters for individually designed qualified retirement plans. In some cases the fee increases 250 percent from \$1,800 to \$4,500! Fortunately, the IRS did not raise its fee for a “regular” determination letter (\$300) if the employer adopts a pre-approved (i.e., prototype or volume submitter) plan.

In addition to increasing the user fee for determination letter submissions, the IRS also increased the cost to pre-approved plan sponsors in obtaining approval letters for prototype and volume submitter plans. The increase is especially significant for sponsors that do not adopt a Mass Submitter’s documents.

Determination Letter User Fees

If an employer wants “reliance” that its qualified retirement plan satisfies the tax rules, it must receive IRS approval of the plan document. An employer adopting an “individually-designed plan” files IRS Form 5300. An employer using a pre-approved plan, in most situations, can rely on the approval letter the IRS has already issued for the pre-approved plan. However, if situations warrant, employers using pre-approved plans file IRS Form 5307. Here is a comparison of the old and new user fees for determination letters:

	FORM 5300:		FORM 5307:	
	Individually-designed plans		Pre-Approved Plans	
	Old Fee (expired 1/2011)	New Fee (as of Feb/11)	New Fee (as of Feb/11)	Old Fee (expired 1/2011)
without discrimination test review	\$ 1,000	\$ 2,500	\$ 300	\$ 300
with discrimination test review	\$ 1,800	\$ 4,500	\$ 1,800	\$ 1,000

The IRS, via its pricing, is expressing its goal that more employers adopt pre-approved plans rather than individually-designed plans. Individually designed plans are much more time-consuming for the IRS to review. Additionally, pre-approved plans have become more flexible to the point that very few employers truly need an individually designed plan. In fact, the IRS is likely to open its pre-approved program to plan previously limited to the individually designed format, such as ESOPs and cash balance plans.

Submission Fees for Nonmass Submitter Pre-Approved Plan Sponsors Also Increase

In addition to increasing the user fee for determination letter submissions, the IRS also increased the cost to pre-approved plan sponsors in obtaining approval letters for prototype and volume submitter plans. The increase is especially onerous for Nonmass Submitter sponsors.

A Nonmass Submitter sponsor is an entity that submits its own prototype or volume submitter plan for IRS approval. Most prototype and volume submitter sponsor utilize the documents provided by Mass Submitters rather than drafting their own documents. A Mass Submitter is a document provider (such as the ASC Institute) that receives advanced IRS approval for prototype and volume submitter plans, which can then be utilized by any organizations wishing to provide these types of documents to their clients.

Under the new fee schedule, a Nonmass Submitter must pay \$12,000 for each basic plan document with one adoption agreement plus \$9,500 for each additional adoption agreement. So, if a Nonmass Submitter seeks approval of a defined contribution prototype basic plan document with profit sharing, 401(k) and money purchase adoption agreements, the user fee cost will be \$31,000! If the Nonmass Submitter also wants the same for a defined contribution volume submitter plan, the user fee cost increases to \$62,000!

Scenarios:	IRS FEES	IRS FEES
	Submission of Non-Mass Submitter Documents	Adoption of Mass Submitter Documents
Basic Plan document with 1 adoption agreement	\$12,000	\$300
Each additional adoption agreement	\$9,500	\$300
DC Prototype basic plan document with profit sharing, 401(k) and money purchase adoption agreements	\$31,000	\$900
DC Volume Submitter basic plan document with profit sharing, 401(k) and money purchase adoption agreements	\$31,000	\$900

On the other hand, an organization wishing to sponsor prototype and volume submitter plans may utilize the documents available from a Mass Submitter at substantially lower cost. The IRS user fee for the adoption of a word-for-word identical plan document of a Mass Submitter is only \$300 for each adoption agreement. So, if we look at the Nonmass Submitter that wishes to receive approval of a defined contribution prototype basic plan document with profit sharing, 401(k) and money purchase adoption agreements, the IRS user fee cost would be \$900 to sponsor Mass Submitter documents (as opposed to the \$31,000 for a separate Nonmass Submitter approval). Organizations that use Mass Submitter documents still receive IRS approval letters in the specific name of the organization.

More Practitioners Likely Will Use Mass Submitter Pre-Approved Plans

The increase in user fees should prompt many more practitioners to consider using pre-approved plans and, in particular, using Mass Submitter plans. Practitioners can lower the costs for themselves and their clients by adopting and, if necessary, submitting pre-approved plans rather than individually designed

plans. The Mass Submitter provider of the pre-approved document will ensure that pre-approved plans are up-to-date with the latest IRS requirements and often provides software to assist in the generation of IRS forms (such as the Form 5307) and plan-specific forms for participants and employers.

Unfortunately, the higher cost for submitting an individually designed plan for a determination letter may mean that employers will not submit for a determination letter. While saving costs, this alternative puts the client, the plan participants and the practitioner at risk, if the plan does not satisfy the very complex tax-qualification rules. With the option of using a pre-approved plan available, practitioners and employers will be better served using a prototype or volume submitter plan.

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