



## **ERIC** The ERISA Industry Committee

*The Only National Association Advocating Solely for the Employee Benefit and Compensation Interests of America's Largest Employers*

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*Annette Guarisco Fildes, President & CEO*

January 11, 2016

Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20224

Attn: Robert Choi, Director, Employee Plans

**RE: Filing Deadline for Cycle E On-Cycle Determination Letter Submissions**

Ladies and Gentlemen:

We are writing to request that the Internal Revenue Service ("IRS") formally announce, as soon as possible, that the deadline for on-cycle determination letter submissions for Cycle E filers is extended from Sunday, January 31, 2016 to Monday, February 1, 2016.

ERIC is the only national trade association advocating solely for the employee benefit and compensation interests of the country's largest employers. ERIC supports the ability of its large employer members to tailor health, retirement, and compensation benefits for millions of employees, retirees, and their families. ERIC's members provide comprehensive retirement benefits to tens of millions of active and retired workers and their families. ERIC has a strong interest in proposals that would affect its members' ability to provide secure pension benefits in a cost-effective manner.

While one day may not seem significant, if plan sponsors assume that the deadline automatically moves to the next business day they will file late and be subject to penalties but more importantly perhaps forfeit their ability to receive a determination letter due to the proposed discontinuance of the program.

By way of background, Revenue Procedure 2007-44 provides that the second 5-year remedial amendment cycle for Cycle E filer ends on January 31, 2016. However, because that date falls on a Sunday, plan sponsors may reasonably be assuming that the deadline has been automatically extended to the next business day. This assumption is supported by both past IRS practice, as well as by statutory guidance.

With respect to past practice, however, the IRS extended the filing deadline for Cycle C (as announced in its Winter 2009 "Employee Plans News") because January 31, 2009 fell on a

Saturday. It did so again in 2014 for Cycle D (in IRS Announcement 2014-41), because January 31, 2015 fell on a Saturday. Anecdotally, this pattern appears to have created an assumption among a significant number of plan sponsors (and their advisors) that the deadline for Cycle E filers has likewise been extended as a matter of course and consistency.

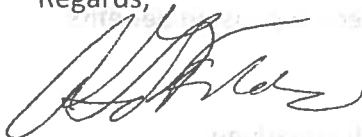
With respect to statutory guidance, section 7503 of the Internal Revenue Code of 1986 provides that if an "act" prescribed by the "internal revenue laws" falls on a weekend, performance of the "act" will be deemed timely if it is performed on the next succeeding business day. Many practitioners reasonably interpret the reach of this provision to include determination letter filings, and the IRS has never formally addressed this issue in any of its published guidance or pronouncements (including guidance of limited reliance, such as private letter rulings, guidance of general applicability, such as notices, or in published judicial decisions or the Internal Revenue Manual).

This issue is of particular importance in light of the discontinuance of the determination letter program, as described in IRS Announcement 2015-19. If sponsors file their plan on February 1, 2016 and the filing is rejected, they will have unwittingly forfeited their last chance to secure a favorable determination letter. This result would be unduly harsh and punitive in light of the reasonable bases (described above) for assuming that the deadline had been extended.

Accordingly, we respectfully ask that the IRS announce as soon as possible that the deadline has in fact been extended. Time is of the essence, since many sponsors are preparing to distribute the related "notice to interested parties," which includes various dates that key off of the filing date.

If you have any questions about this please contact me at 202-627-2910. Thank you.

Regards,



Annette Guarisco Fildes