

EP DETERMINATIONS QUALITY ASSURANCE BULLETIN

FY-2001 No. 3

Date: January 25, 2001

RETURN OF APPLICATIONS FOR LACK OF RESPONSE

This Bulletin clarifies EP's position on the circumstances under which applications may be returned for failure of the applicant to respond to requests for information and/or amendments, and explains the methodology to be employed when returning them.

There has been a lack of uniformity regarding the handling of such "no response" situations. Some offices have routinely returned such plans and the accompanying application packages to the submitter by means of Letter 2234. Others have returned them with different letters, some of which were locally developed. Still others have prepared proposed adverse determination letters based on the plans' apparent failure to comply with the qualification requirements being questioned. Review of pertinent IRM provisions, written communications from Chief Counsel, and discussions with personnel in EP Technical Guidance and Quality Assurance led to the development of the policy set forth in this Bulletin.

Once a case has passed the screening phase and been assigned to a group it is up to the agent working the case to identify all necessary amendments to plan language and to request them from the plan sponsor/POA. With respect to individually designed plans (other than terminations), if the agent does not receive a response to the request for plan amendments in a reasonable amount of time, he/she is expressly authorized to return the case to the applicant by means of Letter 2234 (Attachment A) *if the language deficiencies are numerous and egregious*. Letter 2234 is specifically designed to return those plans that do not comply with existing qualification requirements, and are so technically deficient that they cannot be reviewed in a reasonable amount of time. This is a judgement call and should be carefully considered by the agent and concurred with by the manager, keeping in mind that, if the applicant files for a declaratory judgement under IRC 7476, the Service may have to defend the position that the plan, as submitted, is so technically deficient that it constitutes a failure on the applicant's part to exhaust its administrative remedies. It is important to note that Letter 2234 must be accompanied by an itemized explanation of those areas in which the plan is deficient. This is essential to the creation of an administrative record that can be referred to should the determination case become the subject of litigation. Note that use of Letter 2234 cannot be used in the

case of plan terminations. Language deficiencies in terminating plans must be addressed by proposed plan disqualification.

Generally speaking, except for the grossly deficient situation described above, plans should NOT be returned for language deficiencies alone. However, plans may be returned as incomplete when the application package lacks items or information that is required for proper processing, and the applicant/representative fails to provide it. This could include missing or incorrect user fees (generally a screening matter), missing or incorrect/incomplete attachments, such as Schedule Q demonstrations, or items of a similar nature that are required by a Revenue Procedure or by the application instructions. So, even though technical deficiencies requiring amendment may not rise to the level of egregiousness needed for the Letter 2234, missing administrative items can serve as a basis for returning the case. A special 15-day letter (Attachment B) has been developed for use by screeners when returning applications that cannot be perfected. This letter can also be used by agents working the cases to provide the applicant fair warning prior to returning the plan via Letter 1012 (Attachment C).

If the agent requests plan amendments but the plan sponsor/POA declines to make them because of a genuine belief that the plan as written is acceptable, the case should NOT be returned. In this instance, the agent should prepare a proposed adverse letter, as there is a genuine disagreement between the Service and the plan sponsor/POA regarding the acceptability of plan provisions. Of course, the plan could also be submitted for technical advice if appropriate as an alternative to proposed disqualification.

There will be a remaining category of plans consisting of those that are not so deficient as to warrant return with Letter 2234, and in which the plan sponsor/POA has not expressed disagreement with the Service's request for amendments, but there are no administrative shortcomings. Such cases should be processed as proposed adverse determinations.

If the application is returned via Letter 1012 (application deficiencies) or Letter 2234 (technical deficiencies), EDS should be utilized to prepare the letter. This will establish a historical record of the case. The special 15-day letter (attachment B) is currently not available on the EDS system. This attachment may be copied and modified as necessary.

ATTACHMENT A

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

Employer Identification Number:

XX-XXXXXXX

DLN:

XXXXXXXXXXXXXXXXXX

NAME

Person to Contact:

STREET ADDRESS

XXXXXXXXXXXXXXXXXXXX ID XXXXX

CITY ST ZIP

Contact Telephone Number:

(XXX) XXX-XXXX

Plan Name:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Plan Number: XXX

Original Submission Date:

XX/XX/XXXX

Remedial Amendment Period

Response Date:

Dear Applicant:

We are unable to process your application for a determination letter regarding the plan identified above because it does not include provisions to satisfy the latest requirements of the law. For this reason, we are rejecting the application at this time. Therefore, we are returning your application and our records will reflect that there is no pending request for a determination letter regarding this plan.

We are enclosing Form 886A, Explanation of Items, which outlines some of the major areas in which your plan is deficient. We are also enclosing the Alert Guideline Worksheet(s) applicable to your plan, if Form 886A does not contain a complete list of all the deficiencies. You will be able to identify any deficiencies not listed on Form 886A by completing the Worksheet(s).

The 270-day period specified in section 7476(b) of the Internal Revenue Code (relating to declaratory judgments) will not begin until we receive your complete and correct application. However, if you return a complete and correct application within 30 days from the date of this letter, we will use the original submission date for purposes of determining the remedial amendment period under Code section 401(b).

User fees are not refundable for requests that are returned to the submitter as incomplete. If you resubmit the request within 90 days from the date it is returned, no additional payment will be due. However, if you resubmit the request more than 90 days after the date of return, another user fee payment is required.

If you resubmit your application, PLEASE ATTACH A COPY OF THIS LETTER.

Letter 2234 (DO/CG)

-2-

NAME

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Director,
Employee Plans Rulings & Agreements

Enclosures:
Application
Form 886A
Copy of this Letter
Envelope

ATTACHMENT A

Letter 2234(DO/CG)



**Department of the Treasury
Internal Revenue Service
Tax Exempt/Government Entities**

DATE:

ADDRESS

Name of Plan:

Plan Number:

Employer Identification Number:

Person to Contact:

Telephone Number:

Previous Contact Date(s):

Dear Sir or Madam:

We asked you on the above dates to furnish information about your request for a determination letter for the plan identified above.

We need the information specified on the enclosed list to process your application.

Please send the requested material within 15 days from the date of this letter so we may complete consideration of your application. If we do not hear from you within that time, we will return the application. You may resubmit it when you have secured the requested information.

Please mail the information requested in this letter to the following address:

Attn:
Internal Revenue Service
Room
P.O. Box 2508
Cincinnati, OH 45201

If you have any questions concerning this matter, please contact the person whose name and number are shown above. When you send the information requested or if you write with questions about this letter, please provide your telephone number and the most convenient time for us to call if we need to contact you.

Sincerely,

ATTACHMENT B

Employee Plans Specialist

Enclosure:
Checksheet

CC:

ATTACHMENT C

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: OMB Clearance Number:
XXXX-XXXX
Employer Identification Number:
XX-XXXXXXX
NAME DLN:
NAME (CONT) XXXXXXXXXXXXXXXX
STREET ADDRESS Person to Contact:
CITY, STATE ZIP XXXXXXXXXXXXXXXXXXXX ID#
XXXXX
Contact Telephone Number:
(XXX)XXX-XXXX
Plan Name:
XXXXXXXXXXXXXXXXXXXXX
Plan Number: XXX
User Fee Response Date:

Dear Applicant:

We previously wrote to you requesting certain items, described on the enclosed list, needed to complete your application for a determination letter for the plan identified above. To date we have not received the requested items. Therefore, your application is rejected, and we are closing your case.

We are returning all material to you or your representative and our records will reflect that there is no pending request for a determination letter regarding the plan identified above. If you still wish to receive a determination letter, you or your representative should resubmit the entire package with the requested information. PLEASE ALSO RETURN A COPY OF THIS LETTER WHEN YOU RESUBMIT YOUR PLAN.

The 270-day period specified in section 7476 of the Internal Revenue Code (relating to declaratory judgments) will not begin until we receive your complete and correct application.

User fees are not refundable for requests that are returned to the submitter as incomplete. If you resubmit the request by the date indicated above, no additional payment will be due. However, if you resubmit your request after that date, another user fee payment is required.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

NAME

Thank you for your cooperation.

Sincerely yours,

Director,
Employee Plans Rulings &

Agreements

Enclosures:
List of Missing Items
Application

ATTACHMENT C