CHAPTER 3--RECURRING ISSUES REPORT

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INTERNAL REVENUE SERVICE
TAX EXEMPT AND GOVERNMENT ENTITIES

TABLE OF CONTENTS

EMPLOYEE PLANS

Quarter Ended December 31, 2001

ISSUE I. --415

For years after 1994, GATT removed the linkage of the defined contribution dollar limit for purposes of IRC 415(c) to the defined benefit limit and provides for a separate adjustment to the defined contribution dollar limit. Defined contribution plans are not making the required amendments or do not provide for the correct effective date.

For plan years beginning before January 1, 1995 the defined contribution annual addition dollar limitation (per IRC section 415(c)(1) was the greater of $30,000 or ¼ of the dollar limitation applicable to defined benefit plans. The (statutory) defined benefit limit of $90,000 was adjusted for inflation each year; for limitation years ending in 1994, the $90,000 limit was at $118,800.

GATT (P.L. 103-465, section 732(b)(1)) deleted the "or, if greater, ¼ of the dollar limitation" (in effect under IRC section 415(b)(1)(A)). So, for plan years beginning after December 31, 1994, the annual addition dollar limit for defined contribution plans (pursuant to current IRC section 415(c)(1)) was changed to the lesser of $30,000 or 25 percent of the participant's compensation.

ISSUE II.—TOP PAID GROUP ELECTION

Plans, which include the Top Paid Group Election or the Calendar Year Election, are failing to specify if they intend to use it. IRC 414(q) and Notice 97-45.

This is in regard to the definition of Highly Compensated Employee (HCE), under IRC section 414(q). IRC section 414(q)(1) provides (in part):

Comments

"In general. The term HCE means any employee who (A) was a 5-percent owner at any time during the year or the preceding year, or (B) for the preceding year had compensation in excess of $80,000 and, if the employer elects the application of this clause by plan amendment for such preceding year, was in the top-paid group of employees for such preceding year."

Notice 97-45 provides guidance on making the top-paid group election, under which an employee (other than a 5-percent owner) with

compensation in excess of the dollar threshold is an HCE only if the employee is among the highest 20 percent of an employer's workforce.

Notice 97-45 also provides for a new calendar year data election, under which an employer that maintains one or more plans on a fiscal year basis has the option to use calendar year data to simplify the determination of whether an employee is an HCE.

Section V., part (3) of Notice 97-45 provides that notification or filing with the Internal Revenue Service of a top-paid group election or calendar year data election is not required for the election to be valid. However, section VII., part (1) of Notice 97-45 states: "If an employer makes either a top-paid group or calendar year data election for a determination year, <u>a plan that contains the definition of HCE must reflect the election.</u> If the employer changes either a top-paid group or calendar year data election, the plan must be amended to reflect the change. However, a plan is not required to add a definition of HCE merely to reflect a top-paid group or calendar year data election."

ISSUE III.—REPEAL OF 415(E)

Plans are failing to eliminate the requirements of IRC 415(e) and 416(h) effective for limitation years beginning after December 31, 1999.

<u>Comments</u>

The Small Business Job Protection Act of 1996 (SBJPA) repealed IRC section 415(e) (limitation in case of defined benefit plan and defined contribution plan for same employee) for limitation years beginning after December 31, 1999. SBJPA also repealed IRC section 416(h) (adjustments in section 415 limits for top-heavy plans) for plan years beginning after December 31, 1999.

ISSUE IV.—401(A)(31)

Section 401(a)(31) of the Code requires plans to permit distributees to elect to have an eligible rollover distribution paid to an eligible retirement plan. Section 401(c)(4) defines eligible rollover distribution. The IRS Restructuring and Reform Act of 1998 (RRA) amended section 402(c)(4), effective for distributions after December 31, 1998, to specify an additional exception to the definition of eligible rollover distribution for any hardship distribution described in section 401(k)(2)(B)(i)(IV). Notices 99-5 and 2000-32 provide guidance and relief with respect to this change. The August 3, 2000 Memo from the Manager, EP Technical Guidance and Quality Assurance regarding the GUST II Determination Letter Program Opening states: "Plans that may have to be amended include section 401(k) plans and profit sharing and stock bonus plans (even if they do not include a qualified cash or deferred arrangement).” Plans which are requesting a Full GUST ruling are failing to include this change. See Rev. Proc. 99-23 and Notices 99-5 and 2000-32 and Announcement 2000-77.

Comments

IRC section 402(c)(4)(C) provides (effective for distributions after December 31, 1998) that an eligible rollover distribution means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust, except that term shall not include any hardship distribution described in IRC section 401(k)(2)(B)(i)(IV).

LRM 51 of the defined contribution LRMs accordingly requires provision for IRC section 402(c)(4) for 401(k) plans, profit sharing plans and stock bonus plans, regardless of whether they have 401(k) provisions.

Notice 99-5 provided transition relief that allowed hardship distributions made in calendar year 1999 to be considered eligible rollover distributions. Notice 99-5 also provided that, for section 402(c)(4)(C) purposes, a hardship distribution includes only amounts described in Treas. Reg. section 1.401(k)-1(d)(2)(ii), which limited hardship distributions to the distributable amount (the employee’s total elective contributions as of the date of distribution, reduced by the amount of previous distributions on account of hardship), for plan years beginning after December 31, 1988.

Plan sponsors and record keepers, in many cases, had significant difficulties in determining pre-1989 401(k) amounts. Notice 2000-32 provided that a hardship distribution may be treated as ineligible for rollover, even though another event has occurred that could entitle the recipient to a distribution without regard to hardship. Alternatively, the rule in Notice 99-5 may be followed. In any case, a plan generally must be consistent in the treatment of all distributions.

Announcement 2000-77 (Determination Letter Applications for Volume Submitter Plans) provided, in part, that in order to obtain a GUST II determination letter, the plan should include amendment related to the addition of IRC section 402(c)(4)(C).

ISSUE V.—DISTRIBUTIONS OF EXCESS CONTRIBUTIONS

Prior to SBJPA, excess deferrals allocated to HCEs were returned based on the order of Actual Deferrals Ratios (ADRs) beginning with the highest. Section 1433(e) of SBJPA amended section 401(k)(8) and 401(m)(6) to change the allocation of distributions to HCEs, effective for years beginning after December 31, 1996.

The dollar amount of the total reduction is still calculated under the ratio leveling method. However, SBJPA changes how the dollar amounts are reallocated to HCEs. If excess deferrals or excess contributions are returned to HCEs in order to satisfy the ADP or ACP test, the excess must be returned on the basis of each HCE’s contribution, rather than on the order of the highest ADRs. Excess deferrals are attributable first to the HCE with the largest dollar amount deferred.

Plans are failing to properly include both steps of this process to distribute excess deferrals. This same error is occurring regarding the distributions of excess contributions.

Notice 97-2, IRC 401(k)(8) and 401(m)(6).

DISTRIBUTIONS OF EXCESS CONTRIBUTIONS AND EXCESS AGGREGATE CONTRIBUTIONS

The SBJPA changed the way in which excess amounts are reallocated to HCEs, although the dollar amount of the total reduction is calculated under the same leveling method described under pre-SBJPA law.

General Description

Under pre-SBJPA law, if the plan does not meet ϶ 401(k) and 401(m) nondiscrimination tests, an acceptable way to correct for the ADP test is to distribute excess contributions to the HCEs (excess elective contributions, including QNECs and QMACs that are treated as elective contributions), and for the ACP test to distribute excess aggregate contributions to the HCEs (excess of matching and employee contributions and any QNECs and elective contributions taken into account in computing the contribution percentage).

The dollar amount of excess contributions and excess aggregate contributions is determined under a "leveling" method described in Code ϶϶ 401(k)(8) and 401(m)(6), and Treas. Reg. ϶ 1.401(k)-1(f)(2) and ϶ 1.401(m)-1(e)(2)(i). The amount of excess contributions for a HCE for a plan year is the amount by which the HCE's elective contributions must be reduced for the employee's ADR to equal the highest permitted ADR under the plan. To calculate the highest permitted ADR under a plan, the ADR of the HCE with the highest ADR is reduced by the amount required to cause the employee's ADR to equal the ratio of the HCE with the next highest ADR. If a lesser reduction would enable the arrangement to satisfy the ADP test, only this lesser reduction may be made. This process must be repeated until the CODA satisfies the ADP test.

PRE-1997 EXAMPLES

EXAMPLE (9):

Employer X maintains a CODA under ϶ 401(k). For the 1990 plan year the following employee data is available:

HCEs	ADR
A	4
B	6
C	8

HCE ADP = 6.0%
NHCE ADP = 3%
Maximum HCE ADP = 5% (Target ADP)

(i) Reduce C (8%) to B's level, 6%, find HCE ADP for all HCEs (5.33%).
(ii) Reduce C and B to the level necessary to produce an average of 5% overall (reduce B, and C's ADR to 5.50%). Note that the employer must not reduce B's and C's ADR to 4%, since a lesser reduction enables the CODA to satisfy the ADP test.

EXAMPLE (10):

Short Cut Leveling Method (same facts as above)

Solve for x, where x = ADR to which B and C must be reduced.

$$\frac{4 + 2x}{3} = 5$$

x = 5.50

4 = A's ADR (not reduced in this example)
2 = # of HCEs whose ADRs must be reduced
3 = total # of HCEs
5 = target ADP (maximum HCE ADP)

Treas. Reg. ∍ 1.401(m)-1(e)(2)(i) sets forth the leveling method for 401(m). To calculate the highest permitted ACR, the highest ACR is reduced to the next highest ACR. If less of a reduction would make the plan satisfy the ACP test, only the lesser reduction may be made. This leveling process must be repeated until the plan satisfies the ACP test.

SBJPA Change in Reallocating Amounts (post 1996

Prior to the SBJPA the amounts allocated to HCEs are returned based on the order of ADR's beginning with the highest. Section 1433(e) of the SBJPA amended ∍ 401(k)(8) and 401(m)(6) to change the allocation of distributions to HCEs, effective for years beginning after December 31, 1996.

The dollar amount of the total reduction is still calculated under the leveling method. However, the SBJPA changes how the dollar amounts are reallocated to HCEs. If excess contributions or excess aggregate contributions are returned to HCEs in order to satisfy the ADP or ACP test, the excess must be returned on the basis of each HCE's contribution, rather than on the order of the highest ADRs. Thus, a greater portion of the excess is returned to the highest paid HCEs rather than the lower level HCEs. Excess contributions are attributable first to the HCE with the largest dollar amount deferred (the ∍ 402(g) limit in most cases). Under prior law, the highest paid HCEs could defer a larger amount than lower paid HCEs, but a greater portion of the excess contributions would be returned to the lower paid HCEs, whose deferrals were a higher percentage of compensation. Because the new method determines distributions based on amounts, rather than percentages of compensation, more highly paid HCEs may receive distributions.

Notice 97-2 provides steps and a detailed example on how to distribute excess contributions under IRC ∍ 401(k)(8).

1) Calculate the dollar amount of excess contributions for each affected HCE in a manner described in ∍ 401(k)(8)(B) and Treas. Reg. ∍1.401(k)-1(f)(2). However, in applying these rules, rather than distributing the amount necessary to reduce the ADR of each affected HCE in order of these employees' ADRs, beginning with the highest ADR, the plan uses these amounts in step 2.
2) Determine the total of the dollar amounts calculated in step 1. This total amount in step 2 (total excess contributions) should be distributed in accordance with steps 3 and 4 below.
3) The ECs of the HCE with the highest dollar amount of ECs are reduced by the amount required to cause that HCE's ECs to equal the dollar amount of the ECs of the HCE with the next highest dollar amount of ECs. This amount is then distributed to the HCE with the

highest dollar amount. However, if a lesser reduction, when added to the total dollar amount already distributed under this step, would equal the total excess contributions, the lesser reduction amount is distributed.

4) If the total amount distributed is less than the total excess contributions, step 3 is repeated.

Notice 97-2 provides that if these distributions are made, the CODA is treated as meeting the nondiscrimination test of ∍ 401(k)(3) regardless of whether the ADP, if recalculated after distributions, would satisfy ∍ 401(k)(3).

A parallel method is used for the purpose of recharacterizing excess contributions under ∍ 401(k)(8)(A)(ii) and for distributing excess aggregate contributions under ∍ 401(m)(6)(C) as amended.

Notice 97-2 further provides that after excess contributions and excess aggregate contributions, if any, have been distributed using the method described above, the multiple use test of ∍ 401(m)(9) is applied. For purposes of ∍ 401(m)(9), if a corrective distribution of excess contributions has been made, or a recharacterization has occurred, the ADP for HCEs is deemed to be the largest amount permitted under ∍ 401(k)(3). Similarly, if a corrective distribution of excess aggregate contributions has been made, the ACP for HCEs is deemed to be the largest amount permitted under ∍ 401(m)(2).

EXAMPLE (11):

(from Notice 97-2)

For the 1997 plan year, HCE 1 has ECs of $8,500 and $85,000 in compensation, for an ADR of 10%, and HCE 2 has ECs of $9,500 and compensation of $158,333, for an ADR of 6%. As a result, the ADP for the 2 HCEs under the plan is 8%. The ADP for the NHCEs is 3%. Under the ADP test of ∍ 401(k)(3)(A)(ii), the ADP of the two HCEs under the plan may not exceed 5% (i.e. 2 percentage points more than the ADP of the NHCEs under the plan).

Step 1: ECs of HCE 1 (HCE with highest ADR) are reduced by $3,400 to reduce the ADR of HCE 1 to 6% ($5,100/$85,000), which is the ADR of HCE 2. Because the ADP of the HCEs still exceeds 5%, the ADP test of ∍ 401(k)(3)(A)(ii) is not satisfied and further reductions in elective contributions are necessary. The ECs of HCE 1 and 2 are each reduced by 1% of compensation ($850 and $1,583 respectively). Because the ADP of the HCEs now equals 5%, the ADP test of ∍ 401(k)(3)(A)(ii) is satisfied, and no further reductions in elective contributions are necessary.

Step 2: The total excess contributions for the HCEs that must be distributed equal $5,833, the total reductions in ECs under step 1 ($3,400 + $850 + $1,583).

The $5,833 in total excess contributions for the 1997 plan year would then be distributed **as follows**:

Step 3: The plan distributes $1,000 in elective contributions to HCE 2 (the HCE with the highest dollar amount of ECs) in order to reduce the dollar amount of the ECs of HCE 2 to $8,500, which is the dollar amount of the ECs of HCE 1.

Step 4: Because the total amount distributed ($1,000) is less than the total excess contributions ($5,833), step 3 must be repeated. As the dollar amounts of remaining ECs for both HCE 1 and 2 are equal, the remaining $4,833 of ECs is then distributed equally to HCE 1 & HCE 2 in the amount of $2,416.50 each.

Under this example, HCE 1 must receive a total distribution of $2,416.50 of ECs and HCE 2 must receive a total distribution of $3,416.50 of ECS. This is true even though the ADR of HCE 1 exceeded the ADR of HCE 2. The plan is now treated as satisfying the nondiscrimination test of ∍ 401(k)(3) even though the ADP would fail to satisfy ∍ 401(k)(3) if recalculated after distributions.

ISSUE VI.—415 DEFINITION OF COMPENSATION—INCLUDE ELECTIVE DEFERRALS

SBJPA amended the definition of 415 compensation for limitation years beginning after December 31, 1997. For purposes of Internal Revenue Code section 415, compensation for years beginning in 1998 includes elective deferrals and any amount contributed by the employer at the election of the employee and not included in the employee's gross income by reason of section 125 and 457. Plans are not being amended accordingly.

Comments

IRC section 415(c)(3)(D) now provides that the term "participant's compensation" shall include any elective deferral (as defined in IRC section 402(g)(3)) and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of IRC section 125, 132(f)(4), or 457.

ISSUE VII.—CHANGES TO 415(B)(2)(E) LIMITATION

Effective for limitation years beginning after December 31, 1994, the General Agreement on Tariffs and Trade (GATT) and the Small Business Job Protection Act of 1996 (SBJPA) amended Internal Revenue Code (IRC) section 415(b)(2)(E). Revenue Ruling 98-1 and the June 9, 1998 Field Directive provide clarification and guidance regarding the changes to IRC section 415(b)(2)(E) and state that an employer has two options in amending its plan for such changes. Defects include: failure to provide the correct form adjustments when a benefit is subject to 417(e)(3), failure to provide the correct definitions of Applicable Interest Rate, Applicable Mortality Table, Stability Period and Lookback Month, failure to provide the correct mortality assumptions as provided in 417(e)(3), and the failure to include any of the required language. In addition, incorrect effective dates are being used.

Comments

IRC 415(b)(2)(E)-limitation for defined benefit plans of annual benefit; limitation on certain assumptions

IRC 417(e)(3)-restrictions on cash-outs; determination of present value

DEFINITIONS:

Applicable Interest Rate

The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance.

Applicable Mortality Table

The applicable mortality table is the mortality table based on the prevailing commissioners' standard table used to determine reserves for group annuity contracts issued on the date as of which present value is being determined and that is prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.

In Revenue Ruling 95-6, the IRS announced the applicable mortality table for this purpose, which is a unisex table based on 50% of the male mortality rates and 50% of the female mortality rate from the 1983 Group Annuity Mortality Table (modified GAM 83).

Stability Period

The stability period is the period for which the applicable interest rate remains constant. The stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year or one calendar year.

Lookback Month

The lookback month may be the first, second, third, fourth or fifth full calendar month preceding the first day of the stability period. A plan must specify the lookback month that is used to determine the applicable interest rate.

Comments

A plan subject to IRC sections 415(b)(2)(E) and 417(e)(3) must provide that if a retirement benefit in any form other than a straight life annuity is offered, or if the employees contribute or make rollover contributions, then this benefit must be adjusted to a straight life annuity, beginning at the same age, which is the actuarial equivalent of such benefit.

For limitation years beginning on or after January 1, 1995, the actuarially equivalent straight life annuity for purposes of applying the limitations under IRC section 415(b) to benefits that are not subject to IRC section 417(e)(3) is equal to the greater of the equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable, and the equivalent annual benefit computed using a 5 percent interest rate assumption and the applicable mortality table.

For limitation years beginning on or after January 1, 1995, for plan benefits subject to IRC section 417(e)(3), the equivalent annual straight life annuity is equal to the greater of the equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable, and the equivalent annual benefit computed using the applicable interest rate and the applicable mortality table. The applicable interest rate used for determining actuarial equivalencies is the annual interest rate on 30-year Treasury securities as specified by the Commissioner. The applicable mortality table is the mortality table described in Rev. Rul. 95-6.

Employers may elect one of two overall options for implementing the requirements under IRC section 415(b)(2)(E). The first option is to apply the new requirements to all benefits under the plan as of the Retirement Protection Act of 1994 section 415 effective date (the first day of the first limitation year beginning in 1995), including benefits that accrued before such date. The second option is to protect some portion of a participant's benefit that accrued on or before a date that is earlier than the first day of the limitation year beginning after December 31, 1999 (this option will require more detailed and complicated plan amendments).

The complete Field Directive cited may be found in the 1999 EP CPE coursebook, beginning on page 241.

ISSUE VIII. TERMINATION PLANS WITHOUT VERIFYING 411

Terminating plans are being closed without verification of the plan's compliance with IRC 411. Information must be secured verifying that all participants who were dropped without full vesting were properly cashed out in accordance with the plan or, alternatively, will be fully vested upon the plan's termination.

Comments

IRC section 411(d)(3) provides (in part) that a trust shall not constitute a qualified trust under IRC section 401(a) unless the plan of which such trust is a part provides that upon its termination, partial termination, or (where IRC section 412-minimum funding-does not apply) upon complete discontinuance of contributions under the plan, the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable.

The instructions to the Form 5310 , Application for Determination for Terminating Plan, Section 12 of Revenue Procedure 2002-6 and Section 7.7.2.2.1 of the IRM require that, where participants were dropped without full vesting, that either verification be obtained that the vesting used was proper and those participants were properly cashed out, or that the participants will become fully vested upon termination.

ISSUE IX.—REVERSION OF EXCESS PLAN ASSETS

IRM 7.7.2.2.8 states in general, no part of the corpus of the trust of a qualified plan may revert to the employer. However, in the event of a termination of a defined benefit plan, amounts in excess of that required to satisfy all liabilities with respect to employees and their beneficiaries may revert to the employer if such amounts are the result of an erroneous actuarial computation. See IRC 401(a)(2) and Regulation section 1.401-2. Form 5310 applications indicating that a reversion will occur are being closed without securing proof that the reversion is due to erroneous actuarial computation.

Comments

Treas. Reg. section 1.401-2(b) (in part): "A balance due to an "erroneous actuarial computation" is the surplus arising because actual requirements differ from the expected requirements even though the latter were based upon previous actuarial valuations of liabilities or determinations of costs of providing pension benefits under the plan and were made by a person competent to make such determinations in accordance with reasonable assumptions as to mortality, interest, etc., and correct procedures relating to the method of funding.

For example, a trust has accumulated assets of $1,000,000 at the time of liquidation, determined by acceptable actuarial procedures using reasonable assumptions as to interest, mortality, etc., as being necessary to provide the benefits in accordance with the provisions of the plan. Upon such liquidation it is found that $950,000 will satisfy all of the liabilities under the plan. The surplus of $50,000 arises, therefore, because of the difference between the amounts actuarially determined and the amounts actually required to satisfy the liabilities. This $50,000, therefore, is the amount which may be returned to the employer as the result of an erroneous actuarial computation. If, however, the surplus of $50,000 had been accumulated as a result of a change in the benefit provisions or in the eligibility requirements of the plan, the $50,000 could not revert to the employer because such surplus would not be the result of an erroneous actuarial computation."

In cases where there is a reversion, proof must be secured that the reversion was due to erroneous actuarial computation to insure that an exclusive benefit violation has not occurred.

ISSUE X. AMENDING FOR 417(E)(3)

Amending a plan for GATT's 417(e)(3) provisions could result in an increase in a reversion or could create a reversion where none existed before. Section 3 (page 5) of the Headquarter's Field Directive of June 23, 1995 states that: "Any increase in the reversion of plan assets to the employer that is attributable to a plan amendment applying the new GATT interest and mortality assumptions is not considered to be the result of erroneous actuarial computation within the meaning of 1.401-2 of the Regulations. Therefore, a plan amendment causing such an increase could violate 401(a)(2)." Form 5310 applications are being closed before this issue is fully addressed. Specifically, assurance must be obtained that the 417(e)(3) amendment did not result in an increase in reversion or create a reversion.

Comments

Where there is a reversion, a statement is to be obtained that no IRC section 417(e)(3) amendment caused the reversion or served to increase the amount of the reversion. If the amendment caused or caused an increase in the reversion this would be considered an exclusive benefit violation.

ISSUE XI. VERIFY PLAN TIMELY AMENDED FOR UCA 92 AND OBRA 93

Cases are being closed without verification that the plan was timely amended for UCA 92 and OBRA 93.

Comments

P.L. 102-318 (Unemployment Compensation Amendments of 1992) added IRC 401(a)(31), effective for distributions after December 31, 1992. This provides for the optional direct transfer of eligible rollover distributions. Eligible rollover distributions are as defined in IRC section 402(c)(4).

P.L. 103-66 (Omnibus Budget Reconciliation Act of 1993) amended IRC section 401(a)(17), effective for benefits accruing after December 31, 1993. This reduced the annual limit for eligible compensation from $200,000, adjusted for inflation ($235,840 in 1993) to $150,000, as adjusted for inflation after 1994.

Plans were to be amended for these law changes by the end of the OBRA 93 remedial amendment period.

Rev. Proc. 95-12, section 7: For a plan maintained by one employer, the last day of the OBRA 93 remedial amendment period is the later of the last day of the 1994 plan year, or the time prescribed by law (including extensions) for filing the income tax return for the employer's taxable year that includes the first day of the 1994 plan year. For a plan maintained by more than one employer, the last day of the OBRA 93 remedial amendment period is the last day of the tenth month following the last day of the 1994 plan year. For an employer that had adopted a regional prototype, M&P, or volume submitter plan that was entitled to the extension of the TRA 86 remedial amendment period, the OBRA 93 remedial amendment period could not have ended before the end of the TRA 86 remedial amendment period. For an employer adopting an M&P plan that was entitled to continued or interim reliance under Rev. Proc. 89-9, the OBRA 93 remedial amendment period did not expire until the end of the twelve-month period referred to in Rev. Proc. 89-9, section 13. If a determination letter request was filed on or before the last day of the third month beginning after the end of the TRA 86 remedial amendment period, such determination letter request is considered to have been filed on or before the last day of the OBRA 93 remedial amendment period.

ISSUE XII. INCORRECT DETERMINATION LETTER

There were 13 instances were the determination letter was incorrect. These errors included incorrect amendment dates, incorrect law ruling caveats, omissions of caveats, and omission of amendment dates.