

Need a Determination Letter? A Declaratory Judgment Might Work

TAX NOTES

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In this article, Fred Oliphant, Gary Quintiere, and Nick Wamsley* examine the implications of a recent Internal Revenue Service (IRS) announcement stating the Service's intention to close its determination letter program to ongoing individually-designed retirement plans. The authors discuss whether an employer seeking to implement a plan amendment should consider requesting a declaratory judgment in the Tax Court if the IRS refuses to issue a determination letter. Further, they analyze whether the IRS would have a legal basis for blocking an employer from seeking declaratory relief in the Tax Court. "The IRS's recent move [in Announcement 2015-19] to close the determination letter program to ongoing, individually designed retirement plans should motivate employers to reconsider the declaratory judgment benefits afforded by section 7476," the authors said. "Assuming the IRS remains unbending in its decision not to issue a determination, those steps [outlined in the article] should give the employer access to the Tax Court's declaratory judgment powers, thus affording the employer an opportunity to protect its plan with a favorable determination."

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