

IRS Emphasizes Requirement to Retain Executed Copies of Plan Documents

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The IRS recently released Chief Counsel Memorandum 2019-002 (the “**CCM**”), in which it emphasized an employer’s obligation to timely sign and retain a copy of its qualified plan document pursuant to Section 6001 of the Internal Revenue Code or risk plan disqualification.

The IRS issued the CCM in response to the Tax Court’s holding in *Van Lanes Recreation Center v. Commissioner*, TC Memo 2018-92. In *Van Lanes*, the Tax Court held that the IRS had abused its discretion by disqualifying a plan when the employer failed to produce a signed copy of the restated plan document. The Tax Court determined that there was both credible evidence that the restated plan had been adopted and credible explanations for the absence of the signed documents including flooding of the employer’s premises and seizure of its accountant’s computers.

Plan documents must be signed by the plan sponsor or someone authorized to act on behalf of the plan sponsor. A good practice for plan sponsors would be to create a backup hard copy and electronic copy of the signed document that is stored in a secondary location so that the plan sponsor can produce a copy to the IRS upon audit even in the event of fire, flood, or other disaster at the primary location.

A copy of the CCM can be found [here](#).