

PROTOTYPE AND VOLUME SUBMITTER 403(B) PLANS MAY SOON BE ON THEIR WAY

Apr 01, 2013

Last week, the Internal Revenue Service ("IRS") issued Rev. Proc. 2013-22 describing the procedures for submitting an application for an opinion or advisory letter on a prototype or volume submitter 403(b) plan. This news is relevant for employers sponsoring 403(b) plans. Why? Read on.

The IRS issued regulations in 2007 requiring sponsors of 403(b) plans to have a written plan document in place by January 1, 2009, that complied both in form and operation with the requirements of the regulations. In Rev. Proc. 2007-71, the IRS provided model language that school districts (and other employers, with some modifications) could utilize to draft the required written document. In 2009, the IRS requested comments on a draft revenue procedure that was intended to provide an opinion letter program for 403(b) prototype plans. Despite suggestions by the IRS that it was just a matter of months, no program for either the issuance of opinion and advisory letters for prototype 403(b) plans or a favorable determination letter for individually designed 403(b) plans was forthcoming.

Now, under Rev. Proc. 2013-22, sponsors of both pre-approved and individually designed 403(b) plans can amend their plans (including any investment arrangements and any other documents incorporated by reference into the plan) retroactively to the first day of the plan's remedial amendment period (i.e., the later of January 1, 2010 or the plan's effective date) to satisfy the requirements under Code Section 403(b) and the 2007 regulations and to correct any defects in the form of its written plan. This requirement is automatically satisfied (except to the extent any documents incorporated by reference into the plan must be amended) if sponsors retroactively adopt a pre-approved plan by the last day of the plan's remedial amendment period.

Now comes the tricky part. The IRS has yet to announce the date that will be the last day of this first remedial amendment period for 403(b) plans. According to the revenue procedure, the date will be published in conjunction with the IRS's issuance of opinion and advisory letters and is expected to provide in excess of one year during which sponsors can adopt a pre-approved 403(b) plan. Sponsors who wish to maintain individually designed plans have more waiting to do. IRS plans to establish an individual determination letter program for 403(b) plans appear to be on hold.

For parties interested in marketing a prototype or volume submitter 403 plan, the IRS will start accepting those applications beginning June 28, 2013.

MEET THE TEAM



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