403(b) Pre-Approved Plan Program Established

The IRS announced Friday that it will start accepting applications for opinion and advisory letters for prototype and volume submitter 403(b) Plans on June 28, 2013.

For plan sponsors with such prototype and volume submitter 403(b) Plans, we recommend that you stay in contact with your service providers to ensure your plan will be able to rely on their opinion and advisory letters. For individually designed plans, the revenue procedure states that the IRS is currently

not contemplating establishing a determination letter program for such plans.

What This Means For You

The IRS will start accepting applications for opinion and advisory letters for prototype and volume submitter 403(b) plans on June 28, 2013.

Under the program, pre-approved plan sponsors may apply to the IRS for an:

- *opinion letter (for prototype plans), or*
- *advisory letter (for volume submitter plans).*

Revenue Procedure 2013-22 (to be published in Internal Revenue Bulletin 2013-18 on April 29, 2013) establishes the new program and explains certain:

- *requirements that pre-approved 403(b) plans must satisfy,*
- *responsibilities of pre-approved plan sponsors,*
- *procedures for applying for opinion and advisory letters, and*
- *conditions under which an eligible employer that adopts a pre-approved 403(b) plan has reliance that the form of the plan meets IRC section 403(b) and the final 403(b) regulations.*

Revenue Procedure 2013-22 also describes procedures for the retroactive remedial amendment of plans to satisfy the requirements of IRC Section 403(b) and the regulations. These procedures will permit the retroactive remedial amendment of 403(b) plans regardless of whether a plan is a pre-approved plan under the new program.

The IRS has published sample plan language that pre-approved 403(b) plan sponsors may use in preparing to submit their plans to the IRS for approval.

The IRS asked for public comments on a draft revenue procedure to establish a program for the pre-approval of section 403(b) prototype plans in Announcement 2009-34, 2009-18 I.R.B. 916. Based on the public comments Revenue Procedure 2013-22 significantly modifies and expands the scope of the program that was described in the draft revenue procedure. As a result, more employers will be able to use the new program and rely on opinion and advisory letters.

As it relates to individually designed 403(b) Plans, the IRS stated that:

> *A determination letter program for individually designed § 403(b) plans, on the other hand, is costly and less efficient. Given the Service's limited resources, it is not feasible for the Service to establish such a program at this time. Furthermore, issuing individual determination letters to adopters of pre-approved § 403(b) plans would greatly increase the Service's cost of administering the pre-approved plan program with minimal additional benefit to plan sponsors and plan participants. Therefore, this revenue procedure does not contemplate the issuance of individual determination letters to sponsors of § 403(b) plans. Thus, a sponsor of a § 403(b) plan will be able to obtain reliance as to the acceptability of the form of its plan only if the plan is a pre-approved plan as described in this revenue procedure or if the employer is a public school that has adopted the model plan language included in Rev. Proc. 2007- 71 and is entitled to reliance under that revenue procedure."*

[h6a]If you have any questions on this post or other matters of which we can be of service, please Contact Us[/h6a]

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