

EMPLOYEE BENEFITS

ALERT

DECEMBER
2008

IRS DELAYS SECTION 403(b) WRITTEN PLAN DOCUMENT REQUIREMENT

On December 11, 2008, the Internal Revenue Service issued Notice 2009-3 in which it announced a delay in the requirement that a Section 403(b) plan sponsor adopt a written plan document. Section 403(b) plans are a type of retirement plan that can be maintained by public schools, colleges and universities, and other tax-exempt organizations.

Under the final Section 403(b) regulations issued on July 26, 2007, plan sponsors were required to adopt a written plan document no later than December 31, 2008. Recognizing that many plan sponsors had not yet adopted a written plan and also recognizing that the Service has no current program under which a plan sponsor can obtain assurance that the written form of its plan satisfies Section 403(b) other than through a private letter ruling, the Service has issued this Notice.

The Notice provides that Section 403(b) plan sponsors will be in compliance with the Section 403(b) regulations if they take the following steps:

- Adopt a written plan document by December 31, 2009;
- Operate their plans according to a reasonable interpretation of the Section 403(b) rules during 2009; and
- Make a best effort to retroactively correct any errors made in operating the plan during the year by the end of 2009.

The relief provided in Notice 2009-3 applies only to the 2009 calendar year and may not be relied upon with respect to the operation or correction of operational defects in years prior to or subsequent to 2009.

The Service plans to issue procedures for obtaining approval of prototype Section 403(b) plans. It will then establish a determination letter program for individually designed Section 403(b) plans. The Service also plans to establish a retroactive remedial amendment procedure for Section 403(b) plans for years after 2009 and include Section 403(b) issues under its EPCRS correction program. ♦

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