

## **IRS Grants Extension to Complete Written Section 403(b) Plans**

The IRS issued Notice 2009-3 on December 11, 2008. This notice extends the deadline for public schools, colleges and universities, and other tax exempt organizations to adopt new written plans or amend existing plans to satisfy the requirement of the final 403(b) regulations. Currently, employers with Section 403(b) plans were required to have a written plan that satisfied the final regulations in place by no later than January 1, 2009.

The IRS has extended the deadline because of difficulties expressed by plan administrators in meeting the January 1, 2009 deadline.

Under the notice, the IRS will treat Section 403(b) plans as meeting the requirements of the Internal Revenue Code and the final regulations during the 2009 calendar year if:

- By December 31, 2009, the plan sponsor (i.e., the employing school district, college/university or tax-exempt organization) has adopted a written plan that is intended to satisfy the requirements of Section 403(b) and the final regulations.
- During 2009, the plan sponsor operates the plan in accordance with a reasonable interpretation of Section 403(b) and the final regulations.
- By the end of 2009, the plan sponsor makes its best effort to retroactively correct any operational failure during the 2009 calendar year to conform to the written plan.

The IRS plans to issue further guidance on 403(b) plans, including a revenue procedure establishing programs for 403(b) plans to obtain IRS approval of the plan document and allowing these plans to make remedial amendments to retroactively fix plan provisions under rules that similar to those that apply for 401(a) qualified plans.

It is important to note that the notice does not exempt school districts or joint agreements that offer covered plan from complying with Section 403(b) and the final regulations. All it does is allow some welcome additional time to finalize and approve a written plan document. In the meantime, school districts and joint agreements who offer Section 403(b) annuities or custodial accounts to their employees must still comply with all of the requirements of the Internal Revenue Code and the final regulations. If you have not already done so, you should take immediate action to ensure that your school district or joint agreement has the operational procedures in place that will allow it to operate in compliance with applicable law, and to take any remedial measures that may be necessary to correct any plan violations or deficiencies.

We have assisted several of our clients with their Section 403(b) compliance efforts, and are ready to assist you with any questions or concerns that your school district or joint agreement may have on this issue.

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