



IRS Announces Future Guidance on Procedures for 403(b) Plan Qualification

The IRS has announced that it will issue revenue procedures in the next few months for obtaining opinion letters for prototype 403(b) plans and for obtaining determination letters for individual 403(b) plans. An employer that adopts a pre-approved plan with a favorable opinion letter or that applies for an individual determination letter under these revenue procedures will be able to retroactively correct any defects in its 403(b) plan.

Background

In late 2008, the IRS released [Notice 2009-3](#), providing that 403(b) plans would generally be treated as complying with the law and regulations in 2009 if the employer adopted a written plan by the end of 2009 and operated it accordance with a reasonable interpretation of the requirements. (See our December 18, 2008 [For Your Information](#).) This year, the IRS announced its intention to establish a 403(b) prototype plan program and a procedure for issuing determination letters to individual 403(b) plans. (See our August 12, 2009 [For Your Information](#).)

Announcement 2009-89

In [Announcement 2009-89](#), the IRS says that it plans to issue two revenue procedures in the near future – one for obtaining opinion letters on 403(b) prototype plans and the other for obtaining individual determination letters. The announcement states that an employer that adopts a written 403(b) plan by December 31, 2009 (as required by Notice 2009-3) and subsequently either adopts a pre-approved plan that has received a favorable opinion letter or applies for an individual determination letter under these future revenue procedures will be able to correct any defects in its plan documents retroactive to January 1, 2010. Further, the employer will have reliance that the form of its written plan satisfies Section 403(b) and the regulations retroactive to January 1, 2010 if it retroactively corrects any defects in the plan.

An employer that first establishes a 403(b) plan on or after January 1, 2010 will also have reliance retroactive to the plan's effective date that its plan complies with Section 403(b) and the regulations if the employer adopts a pre-approved plan with a favorable opinion letter or submits its individual plan to the IRS for a determination letter and retroactively corrects any defects.

Conclusion

The latest IRS announcement should provide some comfort to those employers adopting 403(b) plans. Plan sponsors using plan documents provided by their vendors should make sure that the vendors will submit these plans as prototype plans for opinion letters in accordance with the future revenue procedure and should obtain copies of the favorable opinion letters. Sponsors of 403(b) plans that are not being submitted by vendors for opinion letters should consider applying for individual determination letters when the IRS issues that revenue procedure. Buck's consultants would be happy to help review vendors' prototype plan submissions as well as help plan sponsors apply for individual determination letters.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.