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Retirement News for Employers

Helping Business Owners with Retirement Plans

Internal Revenue Service Tax Exempt and Government Entities

The 403(b) Regulations Finally Go Final

On July 23, 2007, a momentous event occurred in the world of 403(b) tax-sheltered annuities, with the issuance (published July 26, 2007) of the first comprehensive **regulations** in 43 years. The regulations package reaches out beyond 403(b) to also provide guidance on 414(c) common control for certain tax-exempt organizations.

The general effective date is for taxable years beginning after December 31, 2008, with some notable exceptions. The portion of the regulations dealing with the grandfathering of incidental life insurance contracts applies to contracts issued up to 60 days after the publication date. Similarly, the new in-service contract exchange rules do not apply to a contract received in an exchange that occurred on or before 60 days after the publication date. Churches sponsoring 403(b)s and collectively bargained situations may experience a later effective date.

So let's explore the highlights of the regulations:

Existing IRS positions that have been acknowledged:

- 403(b)s that provide for vesting.
- Age 50 catch-up applies only after the 402(g)(1) (employee elective deferral limits) and 402(g)(7) (15 years-of-service catch-up) dollar limitations.
- The nonelective nature of post-severance contributions (up to 5 years).
- Meaningful notice is needed to satisfy universal availability for salary reduction contributions.
- Hardship distributions follow the 401(k) rules.

Brand new highlights:

- Requirement that a 403(b) program be maintained pursuant to a written defined contribution plan which satisfies 403(b) in both form and operation and contains all the terms and conditions for eligibility, limitations and benefits under the plan.
- Elective deferrals for 403(b) and 402(g) purposes are limited to contributions under a cash or deferred election as defined under 401(k).
- The good faith reasonable standard of Notice 89-23 for nonelective nondiscrimination is no longer maintained.
- Non-grandfathered contracts not subject to distribution restrictions may offer distributions only after severance of employment or upon the occurrence of an event such as after a fixed number of years, the attainment of a stated age under the plan or disability.

Additionally, the regulations provide that:

- Contribution amounts (in non-ERISA plans) must be transferred to providers within a period no longer than is reasonable for proper plan administration, such as transferring elective deferrals within 15 business days following the month in which these amounts would have been paid to the participant.
- Incidental life insurance, unless grandfathered, may not be part of a 403(b) plan.
- These plans may terminate and distribute assets with full rollover ability, as well as recognize the occurrence of an employment severance where an employee no longer works for an employer eligible to maintain a 403(b).
- In-service, plan-to-plan 403(b) asset transfers are limited to situations where the participant is an employee or former employee of the employer sponsoring the receiving plan.
- Church 403(b)(9) retirement income accounts will be expected to be maintained pursuant to a written plan which affirmatively states the intent to be a retirement income account.

Finally, the 414(c) regulation addresses aggregation to determine the employer for control group benefit purposes for all exempt organizations (not governments), except churches, based upon an 80% director or trustee common control test.

So, welcome to a new world for 403(b). Check out our updated **403(b) web pages** for guidance, publications, FAQs and other useful resources. ■

Announcement 2007-63 Clarifies the IRS' Position on the Elimination of the Schedule P (Form 5500)

In conjunction with the Department of Labor's July 21, 2006, *Federal Register* announcement mandating the electronic filing of the Form 5500, the IRS initiated certain other measures intended to reduce burdens and expenses on both the filing community and the involved regulatory agencies. Among those measures was the elimination of the Schedule P, *Annual Return of Fiduciary of Employee Benefit Trust*.

With the release of **Announcement 2007-63** on June 29, 2007, the IRS has announced that it will treat the plan's filing of the appropriate Form 5500-series return as "if the filing constitutes a return of the plan's employee benefit trust for purposes of §6501(g)(2)." Simply put, as of 2006 (or 2005 for Form 5500-EZ), the filing of a Form 5500-series return will replace the Schedule P as the triggering devise for purposes of §6501(g)(2). ■

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