

IRS Grants One-Year Reprieve for 403(b) Plans

The IRS published comprehensive final regulations in July, 2007 for 403(b) tax sheltered annuities maintained by governmental and tax exempt employers for their employees. The regulations generally were scheduled to be effective beginning January 1, 2009 for most 403(b) plans. They require, among other things, that all such plans be covered by a written plan document that satisfies specific rules for content and operation. Many employers - particularly those with programs comprising individual annuity contracts or custodial accounts offered by providers selected by the employees themselves - complained about the difficulty of providing the required written documentation by the regulatory deadline.

In response, the IRS has extended the deadline for written 403(b) plan documents until December 31, 2009, so long as (1) 403(b) plans are operated during 2009 in accordance with a "reasonable interpretation" of the final regulations, and (2) employers use their best efforts before the end of 2009 to correct retroactively any 2009 operational failures to conform to the written plan requirements of the final regulations. In the same announcement the IRS indicated its intention to implement both a determination letter program for individually designed 403(b) plans and a procedure for approval of prototype 403(b) plans. These programs will provide for retroactive remedial amendment of 403(b) plans for years after 2009.

If you have questions or would like additional information about the section 403(b) final regulations or the extension of the regulatory compliance deadline, please feel free to contact Brian Dougherty at (215) 587-5919 or bdougherty@postschell.com.

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