

IRS Announces Remedial Amendment Period for 403(b) Plans

In Announcement 2009-89 the IRS reiterated its intent to establish a procedure for issuing to plan sponsors (i) an opinion letter for prototype or other pre-approved 403(b) plans or (ii) a determination letter for individually designed 403(b) plans. In either case the opinion or determination letter will assure plan sponsors that the form of the plan complies with 403(b) statutory and regulatory requirements.

Perhaps more importantly, plan sponsors that (i) adopt a pre-approved plan with a favorable opinion letter or (ii) apply for a determination letter when available will be permitted to amend their plans retroactively to January 1, 2010, if and as necessary, to correct any documentary deficiencies identified through the IRS approval process. Employers that take advantage of these procedures will also be assured that plan documents adopted by the end of 2009 comply with § 403(b) requirements from January 1, 2010 forward, so long as any amendments required by the IRS are adopted in a timely manner.

This guidance offers important comfort and reassurance to 403(b) plan sponsors. So long as a written plan document is adopted by the end of 2009 that is intended to comply in good faith with § 403(b) requirements, any inadvertent deficiencies may be corrected retroactively, if the plan sponsor pursues IRS approval procedures in a timely manner. Given the paucity of guidance from the IRS to date on the required content for 403(b) plan documents, plan sponsors may justifiably have believed that they were at risk for good faith decisions about the content of their plan documents. This Announcement assures those sponsors that all will be forgiven if established procedures are followed.

If you have questions or would like additional information about new requirements for 403(b) plans, please feel free to contact Brian Dougherty at 215-587-5919 or bdougherty@postschell.com

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments or enclosures) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. In addition, we do not impose on any person or entity to whom this is addressed any limitation on disclosure of the tax treatment or tax structure of any transaction discussed herein (including in any attachments or enclosures).

Disclaimer: this E-Flash does not offer specific legal advice, nor does it create an attorney-client relationship. You should not reach any legal conclusions based on the information contained in this E-Flash without first seeking the advice of counsel.

© Copyright 2009 Post & Schell, P.C. All rights reserved
"POST & SCHELL" and the Post & Schell Logo are registered trademarks of Post & Schell, P.C.
[About Us](#) | [Our Attorneys](#) | [Practice Areas](#) | [Publications](#) | [Offices](#)