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403(b) Plans Update and Latest Developments

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- Types of Retirement Plans
- Required Minimum Distributions
- Retirement Plan FAQs
- Published Guidance
- Forms & Publications
- Correcting Plan Errors
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Tax Information for Retirement Plans Community



Help with Choosing a Retirement Plan

Web guide to help you compare plans

File a Retirement Plan Return

Forms 5500, 5500-SF, 5330, 5558 and 8955-SSA

Form 2848 - More Changes

Use the March 2012 version to designate a representative for retirement plan issues.

Retirement Plans Phone Forums

Check out upcoming phone forums

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Find, Fix and avoid common mistakes in plans

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Scope of Presentation

- Background and Overview of Pre-Approved Plan Program
- Changes to the Pre-Approved Plan Program
– Rev. Proc. 2014-28
- Effect of Windsor decision
- Additional Resources
- Questions and Answers



Background

- Internal Revenue Code Section 403(b) plan retirement plan is intended for:
 - individuals employed by public schools,
 - individuals employed by 501(c)(3) organizations, and
 - church ministers
- Updated 403(b) regulations issued in 2007, generally effective January 1, 2009



Written Plan Document Requirement

- Historically, no Internal Revenue Code based written plan requirement
- 2007 403(b) Regs required a written plan to be in place by 1/1/09
- Notice 2009-3 provided transition relief



Written Plan, Transition Relief for 2009

- Notice 2009-3 transition relief for 2009 if:
 - Written plan intended to satisfy 403(b) and Regs, adopted by 12/31/09;
 - During 2009, plan operated in accordance with a reasonable interpretation of 403(b) and Regs; and
 - By 12/31/09, “best efforts” made to retroactively correct operational failures during 2009 to conform to written plan



The 403(b) Pre-Approved Program

- Rev. Proc. 2013-22 (April 29, 2013):
 - Establishes the 403(b) Pre-Approved Program (Program)
 - Provides sponsors the ability to get assurance about written plan document
 - Lowers costs
 - Makes it easier to administer plans



The 403(b) Pre-Approved Program

- Includes a remedial amendment period (sec. 21)
- By adopting a 403(b) pre-approved plan by the deadline (to be announced), eligible employer can retroactively correct defects in its written plan back to the first day of the plan's remedial amendment period (the later of 1/1/2010 or plan's effective date)



The 403(b) Pre-Approved Program

- No individually designed plan letter program at this time
- Eligible individually designed plans still have RAP (deadline to be announced)
- No reliance for an individually designed plan eligible for RAP unless restated as a pre-approved plan under the Program by required deadline



Types of Pre-Approved Plans

- 403(b) Prototype Plans, or
- 403(b) Volume Submitter Plans

A regular sponsor - not a mass submitter- of either type must expect at least a certain number of eligible employers to adopt its plan(s)



Mass Submitters

- May sponsor either a prototype or volume submitter plan if it:
 - Has an established place of business in the US where it can be reached every business day; and
 - Submits applications for at least a certain number of sponsors who will sponsor the mass submitter's plan on a word-for-word identical basis



Mass Submitters

- A person may sponsor a plan of a mass submitter regardless of the number of adopting employers it expects
- May do so on either a:
 - word-for-word identical basis, or
 - with only minor modifications to the mass submitter's plan that we will review under the Program



Changes to the Pre-Approved Program – Rev. Proc. 2014-28

- In response to comments from pre-approved plan sponsors:
 - Rev. Proc. 2014-28 modifies Rev. Proc. 2013-22
 - Allows more pre-approved plan sponsors and eligible employers to participate in the Program



Changes to the Pre-Approved Program

- Application deadline extended from April 30, 2014 to April 30, 2015
- A regular prototype or volume submitter sponsor (i.e., not a mass submitter) must now only expect at least 15 eligible employers (instead of 30) to adopt its pre-approved plan(s)



Changes to the Pre-Approved Program

- A mass submitter must now only have at least 15 sponsors (instead of 30) using plan on a word-for-word identical basis.
- A sponsor using a mass submitter's volume submitter plan may now make minor modifications to it and still come in under the Program. (Originally, only permitted for a mass submitter's prototype plan.)



Changes to the Pre-Approved Program – In Summary

- A regular sponsor may submit an application for a pre-approved plan if it expects at least **15** eligible employers to adopt:
 - The sponsor's prototype plan(s)
 - The sponsor's volume submitter plan(s)



Changes to the Pre-Approved Program – In Summary

- A mass submitter may submit its own application for a pre-approved plan (if it is also submitting applications on behalf of at least **15** identical adopter sponsors for at least one of its plans)
- A mass submitter may also submit an application for a pre-approved plan on behalf of either:
 - a word-for-word identical adopter sponsor of the mass submitter's plan (regardless of the expected number of eligible employers), or
 - a minor modifier sponsor of the mass submitter's plan (regardless of the expected number of eligible employers)



Sample Plan Language

- Sample plan provisions -
http://www.irs.gov/pub/irs-tege/403b_lrm0313.pdf
- Use not required but encouraged, please identify in cover letter if used
- Reviewing comments about possible changes to LRMs



403(b) Plans and Windsor

- On June 26, 2013, the Supreme Court decided United States v. Windsor, 570 U.S. ____, 133 S. Ct. 2675 (2013), (Windsor), declaring Section 3 of the Defense of Marriage Act (DOMA) unconstitutional. Section 3 of DOMA excluded same-sex spouses from the definition of “spouse” in applying federal statutes, including the Internal Revenue Code.
- Following the Windsor decision, the IRS issued Rev. Rul. 2013-17 which holds that married same sex couples are now treated as married for all federal tax purposes, including those governing retirement plans.



403(b) Plans and Windsor

What does this mean in general for qualified plans?

- To the extent the qualification rules contain provisions addressing the rights and obligations of married participants, such provisions will be applied to all married participants including, on and after June 26, 2013, those participants in a same-sex marriage.
- However, for the period between June 26, 2013 and September 16, 2013, in determining whether to recognize a same-sex marriage the laws of the state of the participant's domicile could be considered. If a participant resided in a state that did not recognize the participant's same-sex marriage as valid prior to September 16, 2013, then the plan did not have to regard the participant as married.



403(b) Plans and Windsor

- On and after September 16, 2013, a uniform “state of celebration” standard must be applied- if the marriage was entered into in a state that recognizes same-sex marriage then the Plan must regard the participant and the participant’s spouse as married, regardless of whether their marriage would be permitted or recognized under the laws of the state of the participant’s domicile.

Source: Rev. Rul. 2013-17 and Notice 2014-19



403(b) Plans and Windsor

- The rules of Rev. Rul. 2013-17 apply for all Federal tax purposes, including for purposes of the Federal tax rules that apply to 403(b) plans. The interpretation of the Windsor decision and Rev. Rul. 2013-17 in Q&A-1 through Q&A-3 of Notice 2014-19 applies with respect to 403(b) plans. Q&A-1 through Q&A-3 of Notice 2014-19 address the following:
 - 1) How does the Windsor decision affect the application of the Federal tax rules to qualified retirement plans?
 - 2) As of what date are qualified retirement plans required to be operated in a manner that reflects the outcome of Windsor and the guidance in Rev. Rul. 2013-17?
 - 3) May a qualified retirement plan be amended to reflect the outcome of Windsor as of a date earlier than June 26, 2013, and, if so, may the amendment reflect the outcome of Windsor for only certain purposes?



403(b) Plans and Windsor

- In the case of a 403(b) plan to which Title I of ERISA does not apply, none of the special rules applicable to spouses in Code Section 401(a)(11)(A) or (B) (and the parallel section of ERISA § 205(a) and (b)) apply.
- However, these plans must provide a direct rollover to another eligible employer retirement plan or IRA if requested by a distributee of an eligible rollover distribution (taking into account the different rules for surviving spouses and other beneficiaries under Code Section 402(c)(9) and 402(c)(11), respectively).



403(b) Plans and Windsor

- 403(b) plans do not have the same remedial amendment period as 401(a) plans. Thus, the general Windsor amendment deadline for non-governmental 401(a) plans-- the later of (i) the applicable deadline under sec. 5.05 of Rev. Proc. 2007-44; or (ii) December 31, 2014-- does not apply to 403(b) plans.
- Instead, 403(b) plans are instructed to use the deadline in sec. 21 of Rev. Proc. 2013-22. Thus, the general deadline for adopting a Windsor amendment is the expiration of the pre-approved plan remedial amendment period.

Note: an amendment may not be required if a plan's terms are not inconsistent with Windsor or with Rev. Rul. 2013-17. See Notice 2014-19.



403(b) Plans and Windsor

- Further information about the application of Windsor to both 401(a) and 403(b) plans may be found on the IRS website at: <http://www.irs.gov/Retirement-Plans/Answers-to-Frequently-Asked-Questions-Regarding-the-Application-of-the-Windsor-Decision-and-Post-Windsor-Published-Guidance-to-Qualified-Retirement-Plans>



Additional Resources

- On www.irs.gov:
 - “IRC 403(b) Tax-Sheltered Annuity Plans” webpages
 - Revenue Procedure 2013-22
 - 403(b) Plan Fix-it Guide
 - IRS 403(b) video segments
- IRS June 25, 2013, phone forum –
<http://www.tax.gov/SmallBusinessTaxpayer/RetirementPlans/WhatYouNeedToKnowAboutThe403bPreApprovedPlanProgram>



WRAP-UP / Q&As
