



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR EMPLOYEE PLANS (EP) EXAMINATIONS EMPLOYEES

FROM: Sean E. O'Reilly, Acting Director, EP Examinations

SUBJECT: Missing Participants and Beneficiaries and Required Minimum Distributions – 403(b) Plans

This memorandum directs EP examiners not to challenge a 403(b) plan as failing to satisfy the required minimum distribution (RMD) standards under Internal Revenue Code (IRC) § 403(b)(10) in the circumstances set forth below. This memo addresses only the application of IRC § 403(b)(10) to certain circumstances involving a 403(b) plan's actions related to a benefit of a participant or beneficiary whom the plan is unable to locate and does not address the application of any other requirements or other applicable law, including Title I of ERISA. This is not a pronouncement of law and is not subject to use, citation, or reliance as such. Nothing herein shall affect the operation of any other provision of the IRC, Treasury Regulations, or guidance thereunder.

Background

In general, IRC § 403(b)(10) provides that a 403(b) contract must satisfy requirements similar to the requirements of IRC § 401(a)(9) in order to be receive favorable tax benefits. Reg. § 1.403(b)-6(e) provides that a 403(b) plan must meet the minimum distribution requirements of IRC § 401(a)(9) (in both form and operation). According to the RMD standards, distribution of a participant's accrued benefit under a 403(b) plan must commence after the attainment of age 70½ of the participant or, in the case of a participant who is not a 5% owner of the plan sponsor, the participant's retirement. In certain cases, plans have been unable to commence or make a distribution to a terminated participant due to the plan's inability to locate the participant.

Administrative Guidelines

For purposes of IRC § 403(b)(10), EP examiners shall not challenge a 403(b) contract for violation of the RMD standards for the failure to commence or make a distribution to

a participant or beneficiary to whom a payment is due, if the plan has taken the following steps:

- searched plan and related plan, sponsor, and publicly-available records or directories for alternative contact information;
- used any of the search methods below:
 - a commercial locator service;
 - a credit reporting agency; or
 - a proprietary internet search tool for locating individuals; and
- attempted contact via United States Postal Service (USPS) certified mail to the last known mailing address and through appropriate means for any address or contact information (including email addresses and telephone numbers).

If a 403(b) plan has not completed the steps above, EP examiners may challenge a 403(b) plan for violation of the RMD standards for the failure to commence or make a distribution to a participant or beneficiary to whom a payment is due.

Effect on Other Documents

This guidance will be incorporated into IRM 4.72.13 by February 23, 2020.

Effective Date

This memo applies to exams open on and after the date of issuance.

Point of Contact

For questions regarding this memo, contact Lou Leslie at (202) 317-8619.

Distribution

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