



IRS Extends 403(b) Plan Document Requirement Deadline to December 31, 2009

On December 11, 2008, the Internal Revenue Service (the “IRS”) and the Treasury Department issued Notice 2009-3, which extends the written plan document deadline for plans governed by Section 403(b) of the Internal Revenue Code until December 31, 2009. The notice also describes the programs the IRS intends to create to facilitate ongoing compliance with Section 403(b).

Background

The IRS published final regulations under Section 403(b) of the Internal Revenue Code on July 26, 2007. The final regulations require plan sponsors to adopt a written plan document that complies with the regulations on or before December 31, 2008. This deadline has now been extended until December 31, 2009. Organizations are required to comply in good faith with Section 403(b) of the Internal Revenue Code until that time.

Impact of Notice 2009-3

The notice provides that the IRS will not treat a Section 403(b) plan as failing to satisfy the requirements of Section 403(b) and the final regulations during the 2009 calendar year if: (1) on or before December 31, 2009, the sponsor of the plan has adopted a written Section 403(b) plan that is intended to satisfy the requirements of Section 403(b) (including the final regulations) effective as of January 1, 2009; (2) during 2009, the sponsor operates the plan in accordance with a reasonable interpretation of Section 403(b), taking into account the final regulations; and (3) before the end of 2009, the sponsor makes its best efforts to retroactively correct any operational failure during the 2009 calendar year to conform to the terms of the written Section 403(b) plan.

The notice indicates that there will be forthcoming guidance with respect to obtaining IRS approval of Section 403(b) prototype plans and individualized plans.

Looking Ahead

Although the IRS has extended the requirement that Section 403(b) plan sponsors have a written plan document in place, this is just one of the many aspects of Section 403(b) compliance. Sponsors that have yet to review their plans for operational compliance should do so immediately, as operational compliance with the Section 403(b) regulations is required by January 1, 2009.

This alert is meant to provide general information only, not legal advice. Please contact Judith Moldover at Lawyers Alliance for New York at (212) 219-1800 x 250 or visit our website www.lawyersalliance.org for further information.

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