

403(b) Plans Remedial Amendment Period

Many school districts have a 403(b) plan, which is a special retirement plan available to non-profit organizations, like schools. The IRS requires that a 403(b) plan be in writing. This is old news as the deadline for adopting a written plan was December 31, 2009. Many school districts adopted the IRS 403(b) Model Plan, and many made slight modifications to that Model Plan. An IRS determination letter approving such plans was previously not available to school districts adopting a 403(b) plan.

However, the IRS has recently changed its position and has outlined a method for school districts to now have the opportunity to adopt an IRS pre-approved 403(b) plan document. The benefit of adopting a pre-approved 403(b) document is that the school district can rely on the determination letter that the IRS provided for that pre-approved 403(b) plan document.

Insurance companies and third-party administrators are able to obtain IRS approval as a “volume submitter” on standard 403(b) plan documents. The school district should adopt the IRS approved 403(b) document by March 31, 2020. This period ending March 31, 2020, is known as the “remedial amendment” period. If the pre-approved 403(b) plan document is adopted on or before the end of the remedial amendment period, then the adoption of the approved plan document will relate back to December 31, 2009. December 31, 2009, was the deadline for a school district to adopt a 403(b) written plan. A pre-approved 403(b) plan document adopted on or before March 31, 2020, will allow the school district to rely on the determination letter, and that determination letter will relate back to the original written 403(b) plan adopted. In other words, the district would be protected against a later claim that the plan document is not in compliance with tax law. This provides the school district with certainty that it is protected against a later IRS challenge that the plan document does not comply with tax law, subject to a future law change.

Reliance on the determination letter will not protect the district for an operational failure, which is a failure to operate the plan in accordance with tax law and the 403(b) plan document.

We strongly recommend that all school districts contact a third-party administrator or

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company who has already received IRS approval on 403(b) plan documents and ask about adopting an IRS approved 403(b) plan document. While there will be some cost associated with adopting a pre-approved 403(b) Plan, we believe it is well worth the extra work and cost. It is important that the adoption of the IRS approved 403(b) plan document take place before March 31, 2020.

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