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## ***IRS releases procedures for obtaining opinion and advisory letters for 403(b) plans***

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### ***In brief***

The Internal Revenue Service has issued Rev. Proc. 2013-22, setting forth the procedures for issuing opinion and advisory letters for pre-approved 403(b) plans (i.e., prototype plans for employees of tax exempt and public school employers). Under the program established by this revenue procedure, the IRS will accept applications for opinion and advisory letters regarding the acceptability of prototype plan formats under Section 403(b) of the Internal Revenue Code, beginning on June 28, 2013.

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### ***In detail***

#### **Background**

Final regulations under Code section 403(b) were issued in 2007. Under these regulations, 403(b) plan sponsors for the first time were required to have a written plan document that satisfies the rules of 403(b), effective as of January 1, 2009.

The IRS has not previously maintained a program for the issuance of opinion or advisory letters regarding the acceptability of the form of a plan under section 403(b). However, the IRS has on occasion issued private letter rulings regarding the excludability of contributions for a contract or account under section 403(b). In 2007, the IRS provided model plan language that could be used by public schools and other eligible

employers (including tax-exempt employers) as sample language to comply with the written plan requirement. This model language has not been modified by the new revenue procedure, and may still be utilized.

#### **Rev. Proc. 2013-22**

Revenue Procedure 2013-22 establishes a program for the pre-approval of 403(b) plans. This program offers employers that maintain a 403(b) plan an alternative to adopting an individually designed plan in order to satisfy the written plan requirement of the 2007 regulations. Under this program, the Service will issue an opinion or advisory letter as to whether the form of a 403(b) prototype plan meets the requirements of 403(b). An employer may satisfy the

written plan requirement and obtain assurance that its plan meets the requirements of 403(b) by adopting a plan that has received an opinion or advisory letter under this program.

The IRS is not establishing a determination letter program for 403(b) plans at this time and an employer who adopts an individually designed 403(b) plan or a pre-approved 403(b) plan will not be able to apply for an individual determination letter for the plan. Accordingly, an employer that wishes to have assurance from the IRS that the form of its plan satisfies the rules of section 403(b) has no choice but to adopt a plan that has been pre-approved under this Revenue Procedure, and to

rely on that plan's opinion or advisory letter.

Rev. Proc. 2013-22 establishes procedures for the approval of two types of prototype 403(b) plans, standardized and non-standardized, both of which require an adoption

agreement. The revenue procedure explains the types of organizations that may establish prototype plans, and specifies provisions that must be included in all pre-approved plans and additional provisions that must be included in prototype plans. The procedures for requesting an opinion

or advisory letter are set forth, and the scope of, and employer reliance upon, opinion and advisory letters are discussed.

Click [here](#) for Rev. Proc. 2013-22.

## ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

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