

Employee Benefits E-news

December 12, 2008

IRS Extends Deadline for Plan Sponsors to Update 403(b) Plan Documents

On December 11, 2008, the Internal Revenue Service ("IRS") released Notice 2009-3, granting a one-year extension to December 31, 2009 of the deadline for sponsors of Internal Revenue Code ("Code") Section 403(b) plans to have a written plan document in place.

The IRS originally published final regulations under Code Section 403(b) on July 26, 2007, mandating that 403(b) plan sponsors maintain a written plan satisfying the requirements of the final regulations by January 1, 2009. The IRS granted the extension due to numerous requests from plan sponsors, who indicated that they would be unable to have a written plan document in place by the beginning of 2009.

The extension of the deadline provides that a Code Section 403(b) plan will not fail to satisfy the requirements of Code Section 403(b) and the final regulations during 2009, so long as plan sponsors satisfy three conditions:

1. On or before December 31, 2009, the plan sponsor must adopt a written 403(b) plan that is intended to satisfy the requirements of Code Section 403(b) and the final regulations, effective as of January 1, 2009;
2. During 2009, the plan sponsor must operate the plan in accordance with a reasonable interpretation of Code Section 403(b) and the final regulations; and
3. Prior to the end of 2009, the plan sponsor must make its best efforts to retroactively correct any operational failure during 2009 to conform to the terms of the written Code Section 403(b) plan document.

In addition to the extension of the compliance deadline, the IRS also announced its intention of establishing determination letter programs for both pre-approved and individually designed Code Section 403(b) plans. The IRS does not currently have a program in place for Code Section 403(b) plan sponsors to receive assurance that the written form of the plan satisfies the Code, other than through the private letter ruling process. If the IRS implements the programs, a plan sponsor would have the ability to retroactively amend its Code Section 403(b) plans to include any provisions the IRS deems necessary for compliance, so long as the plan sponsor timely submits its plans for review.

If you have questions regarding 403(b) plans or other employee benefits matters, please contact your regular Butzel Long attorney, a member of the Butzel Long Employee Benefits Practice Group, or the author of this e-mail news alert.

Mark W. Jane

734 213 3434
jane@butzel.com

Butzel Long Employee Benefits Practice Group

Alexander B. Bragdon

Phone: 248 258 7856
Email: bragdon@butzel.com

Robert G. Buydens

Phone: 313 225 7013
Email: buydens@butzel.com

Roberta Granadier

Phone: 248 593 3020
Email: granadier@butzel.com

Mark W. Jane

Phone: 734 213 3434
Email: jane@butzel.com

Lynn McGuire

Phone: 734 213 3261
Email: mcguire@butzel.com

Antoinette M. Pilzner

Phone: 734 213 3630
Email: pilzner@butzel.com

Jordan Schreier

Phone: 734 213 3616
Email: schreier@butzel.com

Thomas L. Shaevsky

Phone: 248 258 7858
Email: shaevsky@butzel.com

Tara L. Slone

Phone: 734 213 3421
Email: slone@butzel.com

This news is only intended to highlight some of the important issues. This e-mail has been prepared by Butzel Long for information only and is not legal advice. This information is not intended to create, and receipt of it does not constitute, a client-lawyer relationship. Readers should not act upon this information without seeking professional counsel. This electronic newsletter and the information it contains may be considered attorney advertising in some states.

For previous e-news or to learn more about our law firm and its services, please visit our website at: www.butzel.com

Butzel Long Offices:

Ann Arbor
Bloomfield Hills
Boca Raton
Detroit
Holland
Lansing
New York
Palm Beach
Washington D.C.

Alliance Offices:

Beijing
Shanghai
Mexico City
Monterrey

Member:

Lex Mundi