

IRS ISSUES REVENUE PROCEDURES GOVERNING AMENDMENTS OF 403(B) AND 401 (A) PLANS

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The Internal Revenue Service recently issued a pair of Revenue Procedures dealing with amendments for 403(b) tax sheltered annuity and 401(a) qualified retirement plans.

Rev. Proc. 2021-37 ushers in a few developments for 403(b) plans. First, the Cycle 2 submission period for providers to submit applications for opinion letters will begin on May 2, 2022 and run through May 1, 2023. At some point prior to May 2, 2022, the IRS will issue a cumulative list which will identify the changes 403(b) plans will have to address. This Revenue Procedure also clarifies that the remedial amendment period for form defects first occurring after the expiration of the initial remedial amendment period ends the later of (i) the end of the cycle that includes the date on which the remedial amendment period would have ended if the plan were an individually designed plan, or (ii) the end of the first cycle in which an application for an opinion letter that considers the form defected may be submitted.

In addition, Rev. Proc. 2021-37 states that the interim amendment deadline for non-governmental 403(b) plans is the end of the second calendar year after the calendar year in which the change in the 403(b) plan requirement is effective. For governmental 403(b) plans, the deadline is the later of (i) the end of the second calendar year following the calendar year in which the change in the 403(b) plan requirement is effective, or (ii) 90 days after the close of the third legislative session of the legislative body with the authority to amend the plan that begins on or after the amendment is effective.

Similarly, Rev. Proc. 2021-38 modifies the interim amendment for pre-approved 401(a) qualified retirement plans to match the deadline for non-governmental 403(b) plans. Now, an interim amendment is considered timely for a 401(a) pre-approved plan if it is adopted by the end of the second calendar year following the calendar year in which the change in qualification requirements is effective. This replaces the old deadline which was contingent on the employer's tax-filing deadline.

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

Employee Benefits