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Author: David W. Powell

If you have questions, please contact your regular Groom attorney or any of the attorneys listed below:

Elizabeth T. Dold
edold@groom.com
(202) 861-5406

David N. Levine
dlevine@groom.com
(202) 861-5436

Louis T. Mazawey
lmazawey@groom.com
(202) 861-6608

David W. Powell
dpowell@groom.com
(202) 861-6600

IRS Modifies 403(b) Pre-Approved Plan Program, Extends Deadline for Filing

As IRS representatives have indicated informally in speeches at recent tax conferences, the IRS has just announced several modifications to its 403(b) pre-approved plan document program. In Rev. Proc. 2013-22, issued in April of 2013 (see prior report here: <http://www.groom.com/resources-756.html>), the IRS had announced a procedure for issuing opinion and advisory letters for 403(b) prototype plans and 403(b) volume submitter plans. Generally, that procedure required, except in the case of defined contribution church retirement income account plans under Code section 403(b)(9), that the sponsor or mass submitter expect at least 30 eligible employers to adopt its pre-approved plan. In addition, in order to be eligible for the remedial amendment period for retroactive plan amendments, the plan had to be filed with the IRS on or before April 30, 2014.

Newly issued Rev. Proc. 2014-28 makes several changes to the program to make applications easier. First, the number of eligible employers the sponsor or mass submitter expects to adopt its 403(b) prototype plan or volume submitter plan has been reduced from 30 to 15. Also, the deadline for filing 403(b) pre-approved plans with the Service for opinion and advisory letters has been extended a year, to April 30, 2015.

In other administrative changes, the procedure has been modified to allow a person to sponsor a plan as a minor modifier of a 403(b) volume submitter *specimen* plan of a mass submitter under the same conditions previously listed in the procedure for a person sponsoring a plan as a minor modifier of a § 403(b) *prototype* plan of a mass submitter. In addition, a mass submitter who had submitted 15 word-for-word identical adopter plans may submit additional applications on behalf of other pre-approved plan sponsors as minor modifiers of a 403(b) volume submitter specimen plan of the mass submitter after the 15 word-for-word identical adopter requirement has been met.

Further, the original procedure permitted applications for an advisory letter for a 403(b) volume submitter specimen plan to be filed by (1) a volume submitter practitioner, (2) a mass submitter with respect to its mass submitter plan, or (3) a mass submitter on behalf of a word-for-word identical adopter of the mass submitter's plan. The new procedure extends this permission to (4), a mass submitter on behalf of a minor modifier of the mass submitter's plan. The new procedure also makes conforming changes to the Appendix to the procedure, the "Application for Approval of § 403(b) Pre-approved Plan".

These changes are welcome, though they do not address some other concerns expressed by practitioners, such as the absence of any ruling process for individually designed plans, or certain provisions of the 403(b) model language or "LRMs".