

IRS Guidance Priorities for 2022-23 Reflect Few New Projects

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For many years now, IRS and Treasury have jointly developed a list of areas in which they intend to release guidance – such as regulations, revenue rulings, notices and other published official authority – during the coming year. In earlier years, IRS and Treasury succeeded in issuing guidance on many items on these “guidance priority” lists, but their more recent track record has declined considerably. In this regard, intervening legislation often throws a monkey wrench into the published plan.

The July 2022 – June 2023 Priority Guidance Plan (“Plan”) was announced on November 4, 2022. Most of the project descriptions are quite general so it is hard to tell exactly what guidance will be forthcoming. The majority of the 21 pension-related projects on this plan are carryovers from prior guidance plan lists. Such carryover items include guidance on various changes made by the 2019 SECURE Act, student loan payments under qualified/403(b) plans, guidance on missing participants, and regulations updating electronic delivery rules for participant notices and elections.

Notable changes to the list include –

- updated guidance on IRA issues now also includes guidance under Section 408(m), relating to “collectibles” that result in deemed distributions to the IRA owner,
- a project relating to the “timing of the use or allocation of forfeitures in qualified plans” has returned to the list, and
- a project on the definition of “church plan” under section 414(e) has reappeared.

In the health care and employment tax areas, there is a new guidance project relating to “contributions to and benefits paid from paid family and medical leave programs.” And, in a related vein, a project covering guidance on W-2 reporting for qualified sick and family leave wages. Otherwise, most are repeat entries.

The Plan continues to carry over two important projects related to the deferred compensation provisions of Code section 409A –

If you have any questions, please do not hesitate to contact your regular Groom attorney or the author listed below:

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

- final rules for the calculation of income inclusion for 409A violations, and
- the final version of proposed rules on “ineligible plans” under Code section 457(f).

One wonders if these rules – which are long overdue – will ever see the light of day.

Observations

Treasury and IRS continue to solicit recommendations from the public for guidance projects but – at least in the benefits area – they rarely make the list. And the list itself increasingly consists of carryover projects, most of which are many years old.

In light of this experience, IRS and Treasury may want to revisit whether they should continue to publish the “priority guidance plan” at all.

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