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IRS Extends Determination Letter Program to 403(b) Plans

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The IRS has issued guidance that for the first time permits companies to apply for determination letters for individually-designed 403(b) Plans. Under the new guidance, determination letters will be available for 403(b) plans that have not previously received a letter, on termination, and at other times to be specified in subsequent IRS guidance.

The earliest date that an initial determination letter application may be submitted for a 403(b) plan depends on the plan sponsor's employer identification number (EIN s follows):

If the EIN of the Plan Sponsor ends in:	A determination letter application may be submitted beginning on:
1, 2, or 3	June 1, 2023
4, 5, or 6	June 1, 2024
7, 8, or 9	June 1, 2025

Determination letters for terminating 403(b) plans will be available June 1, 2023, for all plan sponsors regardless of EIN, but the application must be filed within one year after termination (later of effective and adoption date). Unlike qualified retirement plans, determination letters are not available to 403(b) plans in connection with plan mergers.

The IRS will consider changes that that appear on a Required Amendments List issued (or, if they will not appear on such a list, that are in effect) on or before the last day of the second calendar year preceding the year in which the determination letter application is submitted.

The new determination letter program is not available for 403(b) plans that are: (1) TEFRA church defined benefit plans, (2) plans that are grandfathered under Rev. Rul. 82-102, and (3) 403(b) plans that are not individually-designed. The program will not consider issues relating to sponsorship of a 403(b) plan by multiple employers.

The guidance also includes certain changes to determination letter procedures and amendment deadlines that affect other types of retirement plans. Notably, the IRS will now permit a plan sponsor to apply for an initial determination letter on a plan even if a previous determination letter had been issued for the plan, so long as the plan was not treated as an individually-designed plan at the time that the prior determination letter was issued. For example, plan sponsors are permitted to apply for determination letters with respect to pre-approved plans that have only minor modifications which are not significant enough to convert the plan into an individually-designed plan using Form 5307 and in some cases using Form 5300. The new IRS guidance confirms that regardless of whether Form 5307 or Form 5300 was used, the plan will not be treated as having previously received an initial determination letter unless the IRS considered the plan individually-designed at the time the prior determination letter was issued.