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IRS Advises Its Auditors on 403(b) Plan Missing Participant Search Procedures

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In a recent memorandum to employee plan auditors, the IRS prescribes missing participant search procedures for 403(b) plans (the "Memo"). Locating missing participants (and beneficiaries) often arises as an issue for 403(b) plans in the context of paying required minimum distributions ("RMDs"). Under the RMD rules, once participants reach a certain age, generally 70 ½, the plan must commence paying their benefits. If a 403(b) plan fails to pay RMDs, its tax-advantaged status could be placed at risk.

The challenge for 403(b) plans is balancing maintaining their tax-advantaged statuses with expending plan resources searching for missing participants. According to the Memo, IRS auditors will not challenge a 403(b) plan as failing to satisfy the RMD rules for missing participants if each of the following steps is taken:

- The plan searched its records, those of related plans, and publicly-available records or directories for alternative contact information.
- The plan used any of the following search methods:
  - A commercial locator service,
  - A credit reporting agency, or
  - A proprietary internet search tool for locating individuals.
- The plan attempted to contact the missing participant via United States Postal Service certified mail to the missing participant's last known mailing address, email address and phone number.

The Memo procedures aren't new as the IRS prescribed the same procedures for qualified plans (such as 401(k) plans and defined benefit plans) last year (and blogged about the procedures here).

The Memo is a welcome piece of guidance but its helpfulness is somewhat negated by the DOL's nonconforming guidance. For non-governmental 403(b) plans, the DOL has concurrent jurisdiction with the IRS for administering the RMD rules and its guidance on the search procedures 403(b) plans should undertake to avoid an audit challenge, issued in Field Assistance Bulletin 2014-01, places a more onerous burden on 403(b) plans than the procedures outlined in the Memo. We hope the DOL issues conforming guidance but in the meantime, 403(b) plans should consider all applicable guidance in formulating their missing participant search procedures.