



**National Tax Sheltered
Accounts Association**

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W. Thomas Reeder, Esq.
Benefits Tax Counsel
Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 5418
Washington, DC 20220

August 27, 2007

Re: Request for Additional Guidance on Final 403(b) Regulations

Dear Mr. Reeder:

On behalf of the National Tax Sheltered Accounts Association (NTSAA), we are requesting the Treasury Department and Internal Revenue Service to issue guidance that clarifies several questions resulting from the recently published 403(b) final regulations, and delays the transition dates for exchanges and tax-free transfers under the final regulations. Based on comments by our membership, which includes law firms, benefits consulting firms, governmental plan representatives, employee groups, employer groups, individual 403(b) plan participants, insurance companies, registered investment companies, broker dealers and marketing organizations working in the 403(b) marketplace, there is confusion, misunderstanding and conflicting conclusions regarding the correct methodology for compliance with the tax-free exchange and transfer provisions of the final regulations, as issued. Accordingly, the membership seeks additional guidance and time to properly comply with the requirements for such transactions.

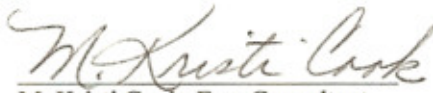
Delay The September 24, 2007 Expiration Date of Rev. Rul. 90-24. Because the final regulations impose significant recordkeeping and data storage requirements on employers and product providers offering investment vehicles under employer 403(b) plans, additional time is needed to meet the systems and operation needs for compliance and to satisfy legal requirements imposed by state and federal regulators on already issued contracts. The sixty (60) day transition period has the effect of changing contract rights of participants and leaves insufficient time to amend the contracts and custodial accounts to conform to the new rules, re-file and communicate the changes to shareholders and contract holders. It is also unclear if these contracts rights can be unilaterally changed without regulatory consent. Further, the existing systems and operational support currently utilized by providers in the non-ERISA 403(b) marketplace are unable to provide the necessary information to accommodate information sharing based on employer plans rather than individual contracts. The short transition period is inadequate for product providers and employers considering exchanges and transfers after September 24, 2007.

We respectfully request that Rev. Rul. 90-24 be extended until December 31, 2008 so that compliance efforts can be coordinated in a uniform and efficient manner. This short transition period is particularly difficult for public education organizations and other schools. These employers are focused on reopening the schools and preparing the staff for the new school year. Getting the schools opened, determining faculty sufficiency, accommodating students and evaluating security requirements will all take precedence over the impact of the final regulations on employers and participants. These employers will not have time to consider the impact of the new 403(b) regulations and how they may affect their employee/participants. Nor will they have time to evaluate their vendors to determine if information can be exchanged for purposes of permitting or prohibiting exchanges and transfers. Accordingly, we request an extension in the deadline for Rev. Rul. 90-24 transfers until December 31, 2008 so that compliance with the new regulations may be undertaken in its entirety.

Relief Needed for Orphan Plans. The final regulations do not seem to address the compliance responsibility attendant on 403(b) accounts that are no longer linked to an employer. These accounts may have become "orphans" because a participant performed a legal transfer from one vendor to another who may not have a relationship with the participant's employer. In the alternative, the account may have been disassociated by the employer who subsequently closed the payroll slot to that vendor. While these unattached accounts are troublesome from a compliance perspective, they did not develop outside of applicable law or regulation. Guidance should be issued that offers these accounts some security from disqualification. Based on remarks by several IRS spokespeople, there is some support for the conclusion that these orphan accounts would become disqualified on January 1, 2009 if each and every one of them were not included under some employer's 403(b) plan document. The IRS has often granted "grandfather" protection when the application of new rules would otherwise unfairly punish innocent taxpayers. We respectfully request that these orphan accounts be grandfathered from the application of those provisions of the final regulations that impose new qualification requirements on contracts or employers, such as the plan document requirement and the restrictions on exchanges and transfers. It may not be possible to identify these contracts and attempting to do so will frustrate the compliance efforts of the marketplace as unreasonable attention is focused on an irresolvable problem. These "orphan" contracts were created under the law in place at the time. A subsequent change in regulations should not automatically disqualify these contracts.

Thank you for your time and consideration of our requests. If you would like to discuss the issues raised or if you have any questions to which we can provide information, please contact us.

Respectfully submitted,


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Ellie Lowder, MCRS, Consultant

On behalf of the membership of the NTSAA

cc: Robert Architect (IRS)
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