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NEWSLETTER

## NEW "EFAST2" REQUIREMENTS REQUIRE COMPUTER ACCESS

As we have reported in previous newsletters, annual retirement plans' Form 5500 Series must be electronically filed starting with the 2009 reporting year. These reports will be prepared and filed in the coming months and are due July 31 for calendar year plans. One complication for small plans may be the requirement that the person, who "signs" the electronic form and verifies its accuracy, must have an e-mail address. This requires a personal computer, or at least access to one, so that the signing process can occur. Those who have very small plans and who do not regularly use a computer will need to plan for this new electronic filing requirement. However, most "one participant" retirement plans would be allowed to continue to file a Form 5500EZ on paper with the IRS as they have done in the past.

## NEW REQUIREMENTS FOR CODE SECTION 403(b) RETIREMENT PLANS

Retirement plans that permit employees to sock away money for retirement on a tax deferred basis have been available to employees in public education, hospitals, churches, and certain non-profit organizations long before 401(k) plans. These plans are authorized by Internal Revenue Code section 403(b) and resemble the more prevalent 401(k) plan. Once referred to as "TSA's" because employee deferred salary contributions were usually paid into tax sheltered annuities, these plans assets are now often invested in mutual funds where a custodian trustee maintains ownership. These are the only two investment vehicles open to 403(b) plans. These 403(b) plans have grown from "pure" employee deferral plans to more complex arrangements involving employer matching contributions in some cases and even employer non-elective contributions in others.

### Federal Regulations Move 403(b) Closer to 401(k)

TSA's or 403(b) plans originally were not viewed as plans at all. Often, certain days of the month were designated open for insurance sales personnel to visit with employees in lunchrooms and recreation areas to sell the employees insured annuities. Their employer would deduct the premiums from their otherwise taxable income and remit it to the applicable insurance carrier. Commonly, several insurers were permitted to solicit employees. Individual employees had enforcement rights and made necessary administrative decisions. These arrangements were largely ignored by the federal government until extensive regulations were published in 2007 following a series of IRS audits of 403(b) plans.

The 2007 regulations announced two changes that have had a profound impact on employers who allow 403(b) plans for employees. First, starting in 2009, every plan must be in writing. Originally, the plans were to have been "adopted" no later than January 1, 2009, but the Government subsequently postponed the "adoption" date until December 31, 2009. Nevertheless, the "effective date" of these 403(b) documents was January 1, 2009 and plans must have been operated per the terms of the document throughout 2009. The second big surprise for 403(b) plan sponsors was a requirement that full annual reports under the form 5500 series are required starting in 2009. This includes an independent auditor's examination for plans covering 100 or more participants.

### IRS Plans Changes in Document Oversight Program

While Government pre-approved plan documents under Code Section 401(a) have existed for decades, along with a program of Government

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review of non pre-approved plans, this is not the case for a 403(b) plan. An April 2009 announcement indicates that pre-approved 403(b) prototype documents are in the planning stages and may be available in the next year or so. Also in the planning stages is a program where the IRS will review 403(b) plans and issue letters of determination as to their tax status.

**NRS can help with these new rules**

The new requirements have many 403(b) sponsors seeking help from those who have been assisting 401(k) plan sponsors for years. These include financial advisors and third party administrators. While there are a few aspects of 403(b) plans that are different, there are also many similarities. Third party administrators (including NRS) are in a position to assist in the preparation of documents, annual reports, and tax compliance activities. As the 403(b) plan continues to evolve to more closely resemble the 401(k) retirement plan, more and more employers with these plans will utilize traditional third party administrators.

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