

IRS Outreach and Compliance for Governmental Plans

Southern Conference on Teacher
Retirement

April 22, 2009

Presenter

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IRS Governmental Plan Initiative

- Outreach – Governmental Plan Roundtable
- Education – New IRS webpage on Governmental Plans
- Compliance Programs
 - Determination Letter Program
 - EPCRS
- Guidance
- Questionnaire

IRS Governmental Plan Initiative

- First Roundtable held in Washington, DC on April 22, 2008
- Presentations made by IRS representatives
- Copies of these presentations are available at
 - <http://www.irs.gov/ep>, then click on the link to the Governmental Plans webpage

Why is IRS involved in Governmental Plans?

- IRS has authority over federal income tax treatment of retirement plan benefits
- IRS can disqualify a plan that does not meet requirements of Internal Revenue Code
- For a governmental plan, disqualification could result in the immediate taxation of benefits to participants

Definition of Governmental Plan

- Code section 414(d) defines a governmental plan as a plan established and maintained for its employees by
 - Government of United States
 - Government of any State or political subdivision thereof
 - Any agency or instrumentality of any of the foregoing
 - Special rules for Indian tribal governments

Tax Qualification Requirements for Governmental Plans

- Governmental plans are not subject to as many requirements under the Internal Revenue Code as private plans
- Exempt from funding, participation, nondiscrimination standards, and post ERISA minimum vesting

Tax Qualification Requirements for Governmental Plans

- Section 401(a)(1)
 - Plan must be in writing
 - Plan must operate in accordance with terms
- Section 401(a)(2)
 - Plan must be for exclusive benefit of participants
- Section 401(a)(7)
 - Pre-ERISA minimum vesting standards – 100% vesting on retirement, plan termination or discontinuance of employer contributions

Tax Qualification Requirements for Governmental Plans

- Section 401(a)(9)
 - Required minimum distributions to participants
 - Reasonable good faith standard for governments
 - Proposed regulations issued in 2008
 - Waived for 2009
- Section 401(a)(17)
 - Annual limit on amount of compensation that can be taken into account to determine participants' benefits

Tax Qualification Requirements for Governmental Plans

- Section 401(a)(31)
 - Participant has right to make a direct trustee-to-trustee transfer of an eligible rollover distribution
 - Each participant must receive notice under section 402(f)
- Section 415
 - Limits maximum amount of a participant's accrued benefit or the annual contribution that can be allowed into participant's account
- For more tax qualification requirements see IRS governmental plans webpage

How to Stay Qualified?

- Timely amend the plan
- Operate in accordance with terms
- Once you make a timely amendment you get a period of time to fix it (remedial amendment period)

Timely amendments

- All plans are required to timely amend for interim and discretionary amendments, even if they are submitted to the IRS only once every 5 years
- Special deadline for governmental plans to amend is later of the end of the plan year, the end of the due date for filing a tax return for the year, or the last day of the next regular legislative session beginning after the amendment's effective date
- Problem – what if the government doesn't have a tax filing requirement?
- IRS working on guidance to address this issue

Remedial Amendment Period

- If you make timely amendments you get a certain period of time to fix them
- Also, during the determination letter process, IRS may require amendments
- Amendments must be adopted by 91st day after issuance of determination letter
- Problem for governments – what if legislative body is not in session to adopt amendments?
- IRS working on guidance to address this issue

Why Get a Determination Letter from IRS?

- Favorable letter tells plan sponsor that plan language meets requirements of law
- Plan sponsor can rely on letter even if mistake is later discovered in the plan
- Certain aspects of the Voluntary Compliance program under EPCRS require you to have a current determination letter
- Determination letter does not give reliance that the plan is being operated correctly

When to Apply for a Determination Letter

- Individually designed plans have one of five cycles (A-E), generally based on employers EIN
- Governmental Plans are Cycle C filers (submission period was February 1, 2008 – January 31, 2009)
- Special one-time exception – governmental plans can file in Cycle E instead (2/1/10 - 1/31/11)
- File on Form 5300 with a user fee

Status of Cycle C Governmental Plan Filings

- Number received
- Status of review

Guidance on Governmental Plans

- Recently Issued Guidance Impacting Qualified Governmental Plans
 - Proposed regulations under section 401(a)(9)
 - Notice 2007-69 and Notice 2008-98 on normal retirement age
 - 401(a)(9) waiver – Notice 2009-9
 - Notice 2007-7 and Notice 2007-99 regarding certain governmental employees

Guidance on Governmental Plans

- Guidance relevant to compliance programs
 - Rev. Proc. 2007-44 (staggered remedial amendment program)
 - Rev. Proc. 2009-6 (determination letter program)
 - Rev. Proc. 2008-50 (Employee Plans Compliance Resolution Program)

Possible Future Guidance on Governmental Plans

- Future Guidance
 - Definition of Governmental Plan under section 414(d)
 - Final regulations under section 401(a)(9)
 - Revisions to Rev. Proc. 2007-44
 - Guidance on HEART Act and other recent legislation
 - Section 402(f) notice

Special issues for governmental plans

- No cohesive plan document available
 - IRS will allow an assortment of documents to be submitted in a determination letter application for governmental plans
- State laws conflict with federal laws
 - IRS recognizes this as an issue and will take it into account as a factor in a submission
- No record of all amendments
 - IRS allows governmental plans to submit a summary of amendments

Special issues for governmental plans

- State legislatures don't meet in time to approve amendments by IRS deadline
 - IRS working on guidance to resolve this issue
- Plans not timely amended
 - Consider EPCRS

EPCRS

- Revenue Procedure 2008-50
- Allows plan sponsors to correct disqualifying plan provisions through self-correction or by paying a fee to the IRS
- Information about EPCRS can be found at www.irs.gov/ep - double click on the link “Correcting Plan Errors”

Questionnaire

- IRS governmental plan experience has been through the determination letter program and EPCRS, and indirectly, through various published studies and press coverage
- Questionnaire was sent to 25 governmental plans to gather information on unique issues faced by governmental plans

Questionnaire

- Questionnaire is posted on the governmental plans website
- There is a 90 day comment period – anyone can comment
- May be revised after comments and will then be sent to a larger group
- Report will be issued on responses

Topics on Questionnaire

- Demographics
- Plan Documents
- Plan Provisions and Plan Operation
- Communication to Participants
- Plan Administration
- Miscellaneous