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Plan Administration

IRS Issues Revenue Procedure Requiring Notices of Requests for Church Plan Status

The Internal Revenue Service issued a revenue procedure and model notice Sept. 21 requiring church plans to notify participants and other interested parties if a plan applies to IRS for a letter ruling on church plan status.

Effective Sept. 26, IRS will not issue rulings that a qualified tax code Section 401(a), 403(a), or 403(b) plan is a church plan unless the new notice requirement has been satisfied, according to IRS Revenue Procedure 2011-44.

The revenue procedure, which modifies previous guidance under tax code Section 414, requires that a copy of the notice be submitted to IRS as part of a letter ruling application.

Exempt From ERISA. Church plans generally are exempt from minimum participation, coverage, and vesting requirements and other participant protections under the tax code and the Employee Retirement Income Security Act, IRS said in the revenue procedure.

Under the new procedure, plans will be required to provide advance notice of requests for church plan status and an opportunity for participants and other interested parties to comment on those requests, IRS said.

Church plans are not covered by Title IV of ERISA, under which the Pension Benefit Guaranty Corporation provides a level of guaranteed benefits, IRS said in the revenue procedure.

The tax code, under Section 414(e), generally defines a church plan as a Section 501 tax-exempt plan established and maintained by a church or a convention or association of churches for its employees and beneficiaries.

Rev. Proc. 2011-44, which modifies Rev. Proc. 2011-4, contains procedures for submitting letter ruling requests and a model notice. Although a church plan is

not required to have a favorable letter ruling from IRS, a letter ruling ordinarily confirms a plan's status for tax purposes, IRS said.

Effective Date. The new revenue procedure is effective for all requests for church plan letter rulings received after Sept. 26, and ruling requests pending with IRS as of Sept. 26, the agency said.

Reaction to the Guidance. According to the Pension Rights Center, a substantial number of plan terminations and lawsuits in the past 10 years show a history of rulings by IRS in which the agency may have interpreted too broadly an exemption for church plans that has existed under ERISA and the tax code since ERISA's enactment in 1974 (133 PBD, 7/12/11; 38 BPR 1321, 7/19/11).

"We'll need to study it further, but at first glance, it looks as if the revenue procedure is good news for thousands of participants in plans that are seeking church plan rulings from the IRS," Karen Ferguson, director of the Pension Rights Center, told BNA in a Sept. 21 e-mail message.

Many, if not most, of the ruling requests pending at IRS are for plans that were not established by churches and were not at all times maintained by churches, Ferguson said. Many of those plans that are sponsored by church-affiliated hospitals "were plainly ERISA plans under the 1974 definition of church plans and have continued to operate as ERISA plans to this day," she said.

'Assured' Protections. Under the revenue procedure, participants will be told that issuance of a church plan ruling would deny them all ERISA protections, including pension insurance protection, and that they have an opportunity to tell IRS that their plans "were not established by and, at all times, maintained by churches," Ferguson said.

"It is our hope that the plans will simply withdraw their ruling requests," Ferguson told BNA. "Many of the participants in these plans have worked for 30 to 40 years under their plans, having been repeatedly assured

that their plans were fully protected by ERISA and that their benefits were insured by the PBGC," she said.

The revenue procedure is prospective, she added, "so it will apply only to future church plan rulings, and it won't help those whose ERISA plans have already received church plan rulings."

Rev. Proc. 2011-44 was published Sept. 26 in Internal Revenue Bulletin 2011-39.

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Text of IRS Rev. Proc. 2011-44 is available at <http://op.bna.com/pen.nsf/r?Open=pkun-8lylfs>.