

New Notice Requirements for Retirement Plans Seeking IRS Approval of Church Plan Status

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Revenue Procedure 2011-44 modifies the procedures for submitting a private letter ruling request that a retirement plan constitutes a church plan to include a requirement that the applicant provide a notice to certain interested persons. The guidance provides rules regarding the timing and method for providing the notice as well as a Model Notice that applicants can modify as required.

The Internal Revenue Service (IRS) recently released Rev. Proc. 2011-44, which modifies the procedures for submitting a private letter ruling request that a retirement plan constitutes a church plan. The procedures apply to any tax-qualified retirement plan (under Internal Revenue Code Section 401(a)) or employee annuity plan (under Code Section 403(a) or 403(b)) that meets the church plan definition and to which the sponsor has not made the Code Section 410(d) irrevocable election to apply all the federal tax and ERISA rules as though the plan were not a church plan. In connection with church plan ruling requests, Rev. Proc. 2011-44 adds a notice requirement and requires the plan sponsor to represent that the Section 410(d) election has not been made. The revenue procedure applies to ruling requests pending with the IRS on, or received after, September 26, 2011.

New Church Plan Notice Requirement

Letter ruling applicants are now required to provide a notice to “interested persons” that a letter ruling under Code Section 414(e) on behalf of a church plan will be or has been submitted to the IRS. In addition, a copy of the notice must be provided to the IRS as part of the ruling request. An “interested person” includes each plan participant, beneficiary and QDRO alternate payee, and any employee organization representing employees who are plan participants.

Contents of Church Plan Notice

At a minimum, the notice must contain the information included in the Model Notice (which is provided as an appendix to the revenue procedure). Because ERISA does not apply to a church plan, the notice contains specific information that will inform plan participants that the plan is not protected by ERISA’s statutory protections, including eligibility rules, vesting rules and minimum funding requirements. Any information contained in the Model Notice that is not applicable to the particular plan should be deleted. For example, if the plan is not a defined benefit pension plan, the Model Notice would be revised to delete references to insurance protection provided by the Pension Benefit Guaranty Corporation. If the plan sponsor chooses to post the notice on a bulletin board (an option that is described

below), the Model Notice must be revised to state that any interested person may request and receive, free of charge, a paper copy of the notice. Applicants may include additional information not provided in the Model Notice, as long as the information is necessary and helpful to interested persons and is not misleading, misinforming or distracting.

Timing and Method for Providing the Notice

A request for a letter ruling filed with the IRS on or after September 26, 2011, must include a copy of the notice along with a statement that the notice was provided to interested persons. The statement must specify the date that the notice was provided, which must be within 30 days before the date on which the letter ruling request was submitted to the IRS.

An applicant whose letter ruling request is pending with the IRS on September 26, 2011, must submit a copy of the notice to the IRS and a cover letter containing a statement that references the pending request and specifies the date that the notice was provided to interested persons. The notice must be provided to the IRS no later than November 25, 2011. If the notice is not provided by that date, the IRS may consider the ruling request withdrawn without refund of the applicant's user fee. If an applicant chooses not to provide the required notice, the IRS will not rule on the applicant's pending request. In such case, the applicant must notify the IRS by November 25, 2011, to receive a refund of its ruling request user fee.

The revenue procedure provides that, as long as the applicant makes a reasonable effort to satisfy the notice rules, failure to provide the notice to one or more interested persons will not cause the applicant to fail the new notice requirement. Further, posting the notice on a bulletin board is not sufficient to meet the notice requirements, unless the notice is prominently displayed on a bulletin board at a principal place of employment, the bulletin board is regularly and actively used for a wide variety of purposes by employees who are plan participants, and the notice is provided to all other interested persons by other methods that constitute a reasonable effort to satisfy the notice requirement.

Next Steps

Plan sponsors with church plan ruling requests pending before the IRS should provide the notice to interested parties as soon as possible, and should then provide the notice to the IRS no later than November 25, 2011. The IRS has informally indicated that sponsors who provide the notice quickly and notify the IRS accordingly may reduce the time it takes for the IRS to rule on the sponsor's request. Any material changes to the IRS model notice should be closely examined to ensure that they are consistent with the new requirements and would not be considered to mislead or distract plan participants.

Concluding Observations

It is worth noting again that the new notice requirement applies only to retirement plans that are treated as church plans and that are the subject of a ruling request on church plan status. While it may be useful for several reasons to apply for and receive an IRS ruling on the plan's church plan status, such a ruling is not required as a matter of federal tax law or ERISA. In addition, although welfare benefit plans also may be treated as church plans and may be the subject of an IRS ruling request as to church plan status, the new notice requirement does not apply to any ruling requests involving the church plan status of welfare benefit plans.

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