



FOR YOUR INFORMATION

December 2008
News For School and Municipal Clients

IRS Extends Deadline for Adoption of Written 403(b) Plan

On December 11, 2008, the IRS issued Notice 2009-3 which provides for an **extended due date** for the adoption of a written 403(b) plan. Prior to the issuance of Notice 2009-3, school districts with a 403(b) plan were required to adopt a **written** 403(b) plan by January 1, 2009.

Under Notice 2009-3, if the following three conditions are met, the 403(b) plan will satisfy the requirements of the final 403(b) regulations:

1. On or before December 31, 2009, the sponsor of the 403(b) plan has adopted a written 403(b) plan that is intended to satisfy the requirements of Internal Revenue Code ("IRC") § 403(b) (including final regulations) effective as of January 1, 2009;
2. During 2009, the sponsor operates the plan in accordance with a

reasonable interpretation of IRC § 403(b) taking into account the final regulations; and

3. Before the end of 2009, the sponsor makes its best efforts to retroactively correct any operational failure during the 2009 calendar year to conform to the terms of the written 403(b) plan.

For school districts who have already adopted a written 403(b) plan, the new IRS Notice will have no effect. Those school districts should continue to administer their 403(b) plan in accordance with the written plan and IRS regulations. For those school districts that have not yet adopted a written plan, the due date for adoption of the written 403(b) plan has been extended by the IRS to December 31, 2009, provided the above requirements are met.

If you have any questions regarding this topic, please call David P. Weller of Lathrop & Clark LLP at 608-257-7766. Attorney Weller provides counsel in the areas of taxation and employee benefits to our school law clients.

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