

Extension of Relief Relating to Application of Nondiscrimination Rules for Certain Governmental Plans

Notice 99-40

I. PURPOSE

This notice provides that certain governmental plans shall be deemed to satisfy § 401(a)(4), 401(a)(26), 401(k)(3), and 401(m) of the Internal Revenue Code until the first day of the first plan year beginning on or after January 1, 2001. In accordance with this relief, the regulations relating to these provisions do not apply until plan years beginning after that date. This relief is available with respect to governmental plans within the meaning of § 414(d) other than plans of State and local governments or political subdivisions thereof, agencies or instrumentalities thereof. This relief is provided in light of difficulties, which are unique to the governmental employers that maintain these plans, in determining compliance with the nondiscrimination requirements. See § 3.07 of Rev. Proc. 99-23, 1999-16 I.R.B. 5, for the remedial amendment period for disqualifying provisions of these plans relating to these nondiscrimination and other requirements.

II. BACKGROUND

A. Governmental Plans

Section 414(d) of the Code provides that the term “governmental plan” means a plan established and maintained for its employees by the government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term “governmental plan” also includes any plan to which the Railroad Retirement Act of 1935 or 1937 (the “Act”) applies and which is financed by contributions under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669).

Section 1505 of the Taxpayer Relief Act of 1997 (“TRA ’97”) generally pro-

vides that the nondiscrimination rules do not apply to State and local governmental plans. In particular, § 1505 amended the Code to provide that § 401(a)(3), 401(a)(4), and 401(a)(26) shall not apply to such plans. Section 1505 of TRA ’97 amended § 401(k) of the Code to provide that State and local governmental plans shall be treated as meeting the requirements of § 401(k)(3). In addition, § 1505(a)(3) of TRA ’97 amended § 410(c) of the Code to provide that governmental plans shall be treated as meeting the requirements of § 410 for purposes of § 401(a). This amendment to § 410(c), by its terms, is not limited to State and local governmental plans but applies to all governmental plans within the meaning of § 414(d).

B. Administrative Guidance

The nondiscrimination requirements under the Code were substantially changed by the Tax Reform Act of 1986 (TRA ’86). Announcement 95-48, 1995-23 I.R.B. 13, and Notice 96-64, 1996-2 C.B. 229, provided that the regulations under §§ 401(a)(4), 401(a)(26), 410(b) and 414(s) apply, in the case of governmental plans described in § 414(d), to plan years beginning on or after the later of January 1, 1999, or 90 days after the opening of the first legislative session beginning on or after January 1, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously (“1999 legislative date”). Notice 96-64 also provided that the regulations under § 401(k) and (m) apply to governmental plans only for plan years beginning on or after the later of October 1, 1997, or 90 days after the opening of the first legislative session beginning on or after October 1, 1997, of the governing body with authority to amend the plan, if that body does not meet continuously. For plan years beginning before the applicable effective date, governmental plans are deemed to satisfy §§ 401(a)(4), 401(a)(26), 401(k), 401(m), 410(b), and 414(s).

Section 3.07 of Rev. Proc. 99-23 extended, in the case of governmental plans described in § 414(d), the remedial amendment period under § 401(b) for certain amendments (“TRA ’86 remedial amendment period”) until the date described in Rev. Proc. 98-14, 1998-4

I.R.B. 22: the later of (i) the last day of the last plan year beginning before January 1, 2001, or (ii) the last day of the first plan year beginning on or after the 1999 legislative date. The amendments to which the TRA ’86 remedial amendment period applies are those required to comply with TRA ’86 and subsequent legislation through the Omnibus Budget Reconciliation Act of 1993.

III. EXTENSION OF RELIEF RELATING TO APPLICATION OF NONDISCRIMINATION RULES FOR CERTAIN GOVERNMENTAL PLANS

Under the relief provided by this notice, governmental plans within the meaning of § 414(d), other than those maintained by State or local governments or political subdivisions, agencies or instrumentalities thereof, shall be treated as satisfying the requirements of § 401(a)(4), 401(a)(26), 401(k)(3), and 401(m) until the first plan year beginning on or after January 1, 2001. In accordance with this relief, the regulations under §§ 401(a)(4), 401(a)(26), 401(m), 410(b) and 414(s), and the regulations implementing § 401(k)(3), apply to governmental plans described in this part only for plan years beginning on or after January 1, 2001.

IV. COMMENTS

Comments or suggestions regarding this notice should be addressed to CC:DOM:CORP:R (Notice 99-40), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may hand-deliver comments between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Notice 99-40), Courier’s desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC, or may submit comments electronically by using the following site: cynthia.grigsby@ml.irs.counsel.treas.gov

V. EFFECT ON OTHER DOCUMENTS

Notice 96-64 is modified.

DRAFTING INFORMATION

The principal author of this notice is Diane S. Bloom of the Employee Plans Division. For further information regard-

ing this notice, please contact the Employee Plans Division's taxpayer assistance telephone service at (202) 622-6074 or (202) 622-6075, between the hours of 1:30 p.m. and 3:30 p.m. Eastern Time, Monday through Thursday. Ms. Bloom may be reached at (202) 622-6214. These telephone numbers are not toll-free.