

Effective Date of Nondiscrimination Regulations for Church Plans

Notice 98-39

I. PURPOSE

This notice extends, until the first day of the first plan year beginning on or after January 1, 2001, the effective date of certain nondiscrimination regulations for nonelecting church plans. Specifically, this notice extends the effective date of the regulations under §§ 401(a)(4), 401(a)(5), 401(l), and 414(s) of the Internal Revenue Code. This notice also extends the TRA '86 remedial amendment period for such provisions, and other related administrative relief for nonelecting church plans, until the last day of the first plan year beginning on or after January 1, 2001.

II. BACKGROUND

A. Church Plans

Section 414(e)(1) of the Code provides in general that the term "church plan" means a plan established and maintained for its employees (and their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under § 501. Pursuant to § 410(d), a church or convention or association of churches which maintains any church plan may make an election under § 410(d) to have certain Code provisions relating to participation, vesting, and funding, etc., apply to such church plan (an "electing church plan") as if such provisions did not contain an exclusion for church plans. A church plan for which such an election has not been made (a "nonelecting church plan") is not subject to these provisions.

Section 1462(b) of the Small Business Job Protection Act of 1996 ("SBJPA") provides that the Secretary of the Treasury may design nondiscrimination and coverage safe harbors for church plans.

B. Announcement 95-48 and Notice 96-64

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)(5), 401(l) and 414(s) apply for nonelecting church plans in plan years beginning on or after January 1, 1999. For plan years beginning before that effective date, nonelecting church plans must be operated in accordance with a reasonable, good faith interpretation of these statutory provisions.

The remedial amendment period described in § 401(b) is generally the period during which a plan may be amended retroactively to comply with certain plan qualification requirements. Announcement 95-48 and Notice 96-64 extended the remedial amendment period under § 401(b) for nonelecting church plans for certain amendments ("TRA '86 remedial amendment period") to the last day of the first plan year beginning on or after January 1, 1999. 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. Announcement 95-48 and Notice 96-64 also provided that, for a nonelecting church plan during the TRA '86 remedial amendment period, the additional administrative relief provided under Notice 92-36, 1992-2 C.B. 364, would continue to be available.

C. Revenue Procedure 97-41 and Revenue Procedure 98-14

The Uruguay Round Agreements Act of 1994 ("GATT"), SBJPA (including § 414(u) of the Code and the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA")), and the Taxpayer Relief Act of 1997 ("TRA '97") changed certain provisions of the Code affecting qualified plans. Rev. Proc. 97-41, 1997-33 I.R.B. 51, and Rev. Proc. 98-14, 1998-4 I.R.B. 22, set forth the remedial amendment period for plans for amendments relating to these statutes. The remedial amendment period for these statutes generally permits plan amendments to be made retroactively effective if they are adopted on or before the last day of the first plan year beginning on or after January 1, 1999, and they relate to GATT, SBJPA (including § 414(u) and USERRA), and TRA '97 changes that are

effective before the first day of that plan year. (A later remedial amendment period applies for governmental plans.)

III. EXTENSION OF EFFECTIVE DATE OF NONDISCRIMINATION REGULATIONS FOR NONELECTING CHURCH PLANS

Under the extension provided by this notice, the regulations under §§ 401(a)(4), 401(a)(5), 401(l), and 414(s) apply to nonelecting church plans only for plan years beginning on or after January 1, 2001. For plan years beginning before this extended effective date, nonelecting church plans must be operated in accordance with a reasonable, good faith interpretation of these sections.

IV. EXTENSION OF REMEDIAL AMENDMENT PERIOD AND ADMINISTRATIVE RELIEF FOR NONELECTING CHURCH PLANS FOR AMENDMENTS RELATING TO NONDISCRIMINATION REQUIREMENTS

Under this notice, the TRA '86 remedial amendment period for nonelecting church plans is extended to the last day of the first plan year beginning on or after January 1, 2001, but only for amendments required to comply with the nondiscrimination requirements of §§ 401(a)(4), 401(a)(5), 401(l), and 414(s). The additional administrative relief provided under Notice 92-36 also applies to these plans through this extended remedial amendment period with respect to these nondiscrimination requirements. This notice does not extend the remedial amendment periods for any provisions applicable to nonelecting church plans other than these nondiscrimination requirements.

V. SCOPE AND COMMENTS

The extensions described in this notice are provided in anticipation of the development of nondiscrimination and coverage safe harbors for nonelecting church plans to comply with §§ 401(a)(4), 401(a)(5), 401(l), and 414(s), as described in § 1462(b) of SBJPA. The Treasury and the Service recognize that certain issues may arise for nonelecting church plans that are attributable to unique features of churches as sponsoring employers. Such

issues may arise, for instance, in the interaction of §§ 401(a)(4) and 410(c). The Treasury and the Service invite specific comments and suggestions regarding the design of safe harbors for nonelecting church plans.

The extensions provided by this notice do not apply to electing church plans. The Treasury and the Service do not presently anticipate the development of safe harbors for electing church plans under § 1462(b) of SBJPA, but comments are welcome regarding whether these plans need safe harbors. Furthermore, this notice does not apply to annuity contracts or other arrangements maintained by churches pursuant to § 403(b), which continue to be eligible for the relief described in § VI of Notice 96-64.

Comments or suggestions in response to this notice should be addressed to CC:DOM:CORP:R (Notice 98-39), 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 98-39), Courier's desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC, or may submit comments electronically via the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html

VI. EFFECT ON OTHER DOCUMENTS

Notices 96-64 and 92-36 are modified.

DRAFTING INFORMATION

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