Part III - Administrative, Procedural and Miscellaneous

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

Notice 2001-46

I.   PURPOSE

This notice provides relief from the application of the nondiscrimination

requirements of the Internal Revenue Code for certain church and governmental plans.

In particular, this notice extends the effective date of regulations under

§§ 401(a)(4), 401(a)(5), 401(l), and 414(s) of the Internal Revenue Code for nonelecting

church plans until further notice, but in no case earlier than the first plan year beginning

on or after January 1, 2003.

In addition, 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 Code until the first day of

the first plan year beginning on or after January 1, 2003. In accordance with this relief,

the regulations relating to these provisions do not apply until plan years beginning on or

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, agencies or instrumentalities thereof.

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 that

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 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.

Notice 2001-9, 2001-4 I.R.B. 375, provided that the regulations under §§ 401(a)(4), 401(a)(5), 401(l) and 414(s) would apply for nonelecting church plans in plan years beginning on or after January 1, 2002. 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.

B. 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 provides 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).

Notice 2001-9 provided that governmental plans, other than plans maintained by

State or local governments or political subdivisions or instrumentalities thereof, would

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,

2002. The notice also provided that the regulations relating to these provisions would

not apply until plan years beginning on or after that date.

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

The regulations under §§ 401(a)(4), 401(a)(5), 401(l), and 414(s) shall not apply

to nonelecting church plans until further notice, but in no case earlier than the first plan

year beginning on or after January 1, 2003. Nonelecting church plans must be

operated in accordance with a reasonable, good faith interpretation of these statutory

provisions until the time such notice is provided.

IV.   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, 2003. 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), shall apply to governmental plans described in this section IV only for plan years beginning on or after January 1, 2003.

V. EFFECT ON OTHER DOCUMENTS

Notice 2001-9 is modified.

DRAFTING INFORMATION

The principal author of this notice is Diane S. Bloom of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at (202) 283-9516 or (202) 283-9517, 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) 283-9888. These telephone numbers are not toll-free.