

Date: July 29, 2008

TCRS 2008-06: Reasonable Good Faith Interpretation of Required Minimum Distribution Rules by Governmental Plans

The Internal Revenue Service (IRS) recently issued proposed amendments to the regulations under sections 401(a)(9) and 403(b) of the Internal Revenue Code (Code) to permit a governmental plan within the meaning of Code section 414(d)¹ to comply with the required minimum distribution rules using a reasonable good faith interpretation of Code section 401(a)(9) and related regulations.

These regulations are in response to Section 823 of the Pension Protection Act of 2006 which instructed the Secretary of the Treasury to issue regulations under which a governmental plan within the meaning of Code section 414(d) is treated as having complied with the required minimum distribution rules if the plan complies with a reasonable good faith interpretation of Code section 401(a)(9).

These proposed regulations would apply to all years to which Code section 401(a)(9) applies and would affect a governmental Code section 401(a) or 403(a) plan, a Code section 457(b) eligible governmental plan and a Code section 403(b) contract that is part of a governmental plan.

The IRS is requesting comments before these regulations are finalized. All comments and requests for a public hearing must be received by the IRS by October 8, 2008.

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¹. 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 applies and which is financed by contributions required 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). The term "governmental plan" includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).