Governmental Retirement Plans – Under IRS Radar

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What We'll Cover

- IRS Determination Letters
- IRS Survey Questionnaire
- Pension Protection Act Update (enacted 8/17/06)
- RMD Suspension
- HEART Act Update (enacted 6/17/08)
- Withholding Update

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IRS Determination Letters

- What Are – And Why Get – Determination Letters?
- History of Governmental Determination Letters
- 2002 – The Plan Amendment Rules Begin to Change
- 2005 – The Determination Letter Process Changes

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IRS Determination Letters

- Development of the IRS Cycle Program for Individually Designed Plans
  - Cumulative Lists
- Filing Window for Mass Submitter Plans
- Cycle C – Now Cycle E (2/1/10 – 1/31/11)

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IRS Determination Letters

- Interim Amendments
  - Later of (1) the due date for the sponsoring employer's tax return for the sponsoring employer's tax year in which a legally required change went into effect and (2) the last day of the plan year that includes the date the change first became effective

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IRS Determination Letters

- Discretionary Amendments – End-of-Year Deadline
  - Non-Required, Optional Amendments
  - Good Faith Compliance Issues

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IRS Determination Letters

- Special Issues for Governmental Plans
  - Amendment Process
  - Collective Bargaining
  - State Constitutional Protections
  - Defining “Plan Document”
  - Documentary Compliance – Back to “GUST”
  - Impact on “Failures” Discovered During the Determination Letter Process

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IRS Determination Letters

- To File or Not to File
  - Pre-Filing Compliance Status
  - Benefits of a Determination Letter
  - Audit Questions
  - Alternative Programs for Failures – Employee Plans Compliance Resolution System
  - The IRS Process – What Happens After The Application is Filed
  - Groom Comments: http://www.groom.com/resources-324.html

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IRS Survey Questionnaire

- Increasing Attention
  - Governmental Plans Roundtable – April 2008
  - Website Page: http://www.irs.gov/retirement/article/0,,id=181779,00.html
  - IRS Concludes That Governmental Plans Are "Underserved"

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IRS Survey Questionnaire

- Survey Draft Circulated in 2008-2009
  - Limited Distribution
  - Broad Scope – Not Limited to IRS Issues
  - Some Organizations Provide Input
- Survey Group of 25 Public Plans
  - Identities of "Test" Group Participants Not Revealed
  - Caution for "Test" Group
- Website Page: http://www.irs.gov/retirement/article/0,,id=204168,00.html

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IRS Survey Questionnaire

- Topics of Survey
  - Plan Demographics / Data – Plan Type, Amendment Authority, Financial Statement Information
  - What Items Comprise the Plan Document?
  - Determination Letter Status
  - Plan Terms

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IRS Survey Questionnaire

- Topics of Survey
  - 401(a)(9) (RMDs), 401(a)(17) (Compensation Limits), 401(a)(31) (Rollovers), 415(b)/(c) (Maximum Benefits/Contributions), and 415(n) Compliance (Purchase of Service Credit)
  - Plan Communications
  - Plan Administration

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IRS Survey Questionnaire

- Significant Concerns
  - Use of Survey – Informational? Audits? Other?
  - Timeline for Responding – 90 days?
  - Financial Statements
  - Eligibility Rules
  - Pick Up Provisions

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IRS Survey Questionnaire

- Significant Concerns (cont'd)
  - Benefit Formulas
  - Funding Rules
  - Plan Communications
  - Plan Administration and Fiduciary Duties
- Groom Comments:

http://www.groom.com/resources-366.html

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IRS Survey Questionnaire

- Next Steps
  - Broad Survey Distribution?
  - Corrections?
  - Enforcement?

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PPA Update

- General Amendment Deadline for Governmental Plans: 2011
- Important Areas
  - Normal Retirement Age
  - Market Rate of Return on Member Accounts
  - $3,000 Health Care Pension Benefit for Eligible Public Safety Officers
  - Non-Spouse Rollovers
  - After-Tax Rollovers

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PPA Update

- Normal Retirement Age
  - Compliance for Governmental Plans Extended to 2011
  - Guidance Issues
    - Age Based NRA
    - Service Based NRA
    - Early NRAs
  - Amendment Issues
    - Bargaining
    - Constitutional Issues

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PPA Update

- Market Rate of Return on Member Accounts
  - Cash Balance and Governmental Plans
  - "Interest" on Member Accounts
  - Market Rate of Return
    - IRS Authority Under ADEA
    - IRS Guidance
  - December 2008 – Resolved Legislatively

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PPA Update

- $3,000 Health Care Pension Benefit for Eligible Public Safety Officers
  - Limited to $3,000
  - Must be (1) After Separation from Service and (2) For a Specific Tax Year
  - Pre-Tax Funds Only – 401(a), 403(b) or 457(b)
  - For Insured or Self-Funded Health Programs
  - Minimal Reporting Responsibilities

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PPA Update

- Non-Spouse Rollovers
  - Inherited IRAs and Roth IRAs
  - Required in 2010
- After-Tax Rollovers
  - 2007 Changes
  - Required
- Section 415 Regulations
  - 2008 and Later Limitation Years
  - Amend by 10/15/09

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RMD Suspension

- Suspension of RMDs in 2009
- Scope of RMD Suspension
  - Defined Contribution Plans
  - Not For Defined Benefit Plans
- General Deadline for Governmental Plans: 2011
- Many Open Issues
- Groom Comments:

http://www.groom.com/resources-334.html

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HEART Act Update

- Death Benefits
  - Mandatory Change
  - Death During USERRA "Qualified Military Service"
  - Treated as if Reemployed and Then Terminated on Death for Death Benefit Eligibility Purposes
  - Effective January 1, 2007; 2012 Amendment Deadline

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HEART Act Update

- Additional Benefits on Death or Disability
  - Optional Provision
  - Death or Disability During "Qualified Military Service"
  - Treated as if Reemployed and Then Terminated Benefits on Death for Accrual Purposes
  - Effective January 1, 2007; 2012 Amendment Deadline
  - Nondiscrimination Rules Apply

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HEART Act Update

- Exemption from 10% Early Distribution Tax for Military Service Distributions
  - PPA Provision Made Permanent
- Military Differential Pay
  - Treated as Employee of Employer
  - Treated as W-2 Compensation (No FICA)
  - Special Distribution Rule With Six Month Suspension
  - Nondiscrimination Rules

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Withholding Update

- 2009 Economic Stimulus Bill – Withholding Tables Modified
- Recent Guidance (IR 2009-50): Optional Alternative Tables
- Impact on Pensioners
  - Communications
  - Under/Overwithholding Issues

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Questions

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