

Compliance Deadlines Approaching for 401(k) Plans

December 5, 2006

Some time ago, the IRS converted its most recent set of proposed regulations governing 401(k) plans into final regulations. These final regulations contain certain changes that must be made to 401(k) plan documents as well as changes that can be made (based on the features of the plan and the discretion of the sponsoring employer). If amendments are not made to 401(k) plans in a timely fashion, the plan could be "disqualified" and adverse tax consequences for the employer and the employees can result.

The final regulations address various topics including nondiscrimination testing (and correction of a failed test), hardship distributions, calculation of earnings on assets, "safe harbor" 401(k) plans, and automatic enrollments. Compliance with these final regulations can be complex and different rules (as well as different compliance deadlines) apply to different types of provisions. The general rule, however, is that amendments must be made to a plan document by the end of the plan year beginning in 2006 (i.e., December 31, 2006 for a calendar year plan). Although there is some authority allowing an extension of time for certain "required" amendments, the applicability of that authority is unclear and depends on factors unrelated to the 401(k) plan. As a result, it is prudent to review and make any required amendments to calendar year 401(k) plans by December 31, 2006.

For more information on 401(k) plans or qualified retirement plans in general, contact Christopher A. McMican at mcmican@millercanfield.com or (313) 496-7922, or another member of the Federal Tax and Employee Benefits practice group.