

MEMO# 2994

August 7, 1991

IRS ANNOUNCES OPINION LETTER PROGRAM FOR SARSEPS

August 7, 1991 TO: PENSION MEMBERS NO. 29-91 RE: IRS ANNOUNCES OPINION LETTER PROGRAM FOR SARSEPS _____ In response to the Institute's request, the Internal Revenue Service announced that, effective August 5, 1991, it will accept applications for opinion letters from sponsors of prototype salary reduction SEPs ("SARSEPs"). At the urging of the Institute, sponsors will be able to offer prototype SARSEPs which are not automatically "top-heavy" and thus, will not require minimum contributions on behalf of all eligible employees. Pursuant to Rev. Proc. 91-44, to request a favorable opinion letter on a prototype SARSEP, a sponsor must submit a document that incorporates one of the following procedures: the Model Amendment, the Short Amendment or the Long Amendment. 1. Model Amendment Mass submitters or sponsoring organizations that amend a prototype SEP that has received a favorable opinion letter dated July 18, 1984 or later may adopt the Model Amendment. The Model Amendment, like IRS Form 5305A-SEP, the IRS model SARSEP plan form, requires the plan to be considered "top-heavy." A copy of the Model Amendment is included in Rev. Proc. 91-44. Use of the Model Amendment requires use of a model "Notice to Adopting Employer" and "Notice to Employees" which is also included in Rev. Proc. 91-44. 2. Short Amendment The Short Amendment may be used by sponsors of existing prototype SEPs which have received favorable opinion letters on their SEPs dated July 18, 1984 or later, and employers who have adopted such SEPs. The Short Amendment also may be used by new prototype SEP/SARSEP sponsors. A Short Amendment is written by the sponsor and contains the information contained in each provision of the Model Amendment. It may contain additional information in the discretion of the sponsor. Short Amendment users must use the model Notices to Adopting Employer and Employees on a word for word basis. 3. Long Amendment An existing or new prototype SEP may be amended through use of a Long Amendment. The Long Amendment may be deemed top-heavy or not deemed top-heavy. Long Amendments which are deemed top-heavy, like the Short Amendment, must contain the information contained in the Model Amendment and must also contain the information contained in the model Notice to Adopting Employer (concerning effective date, deductibility of contributions, discrimination testing, top-heavy minimum contributions, etc.). Long Amendments which are not deemed top-heavy do not need to contain the top-heavy provisions contained in the Model Amendment. Instead, they must contain all the necessary language within the plan document to enable the SARSEP to meet the applicable requirements if the SARSEP becomes top-heavy. Long Amendments must also contain the name, address and telephone number of the person or institution to which adopting employers may direct inquiries concerning the SARSEP. Instructions to sponsoring organizations desiring a written opinion as to the acceptability of the form of their

prototype SARSEP are listed in Section 5 of Rev. Proc. 91-44. The revenue procedure also contains a model salary deferral form. A copy of Rev. Proc. 91-44 is attached. We will keep you informed of developments. W. Richard Mason Assistant Counsel - Pension Attachment

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