

***Qualified Retirement Plans***  
***Practice Alert***  
*November 2008*

**Choosing Between 401(k) and 403(b)**

<b>Eligibility:</b>	<u>Entity</u> Taxable	<u>401(k)</u> Yes	<u>403(b)</u> No
	State or local government	No	Yes if educational
	Tax exempt	Yes after 1996	Yes if 501(c)(3)
	Federal government	Yes	No
<b>IRS Approval:</b>		Yes-letter of determination	Private letter ruling
<b>Funding Vehicle:</b>		Trust required	Annuity, custodial acct
<b>Catchup Contribution:</b>		\$5,000 for 2008	Special 403(b) catchup or traditional 401(k)
<b>Excludable Employees:</b>		Minimum age, service Union Non resident aliens	Min deferral \$200 Non resident aliens Work/study students Work < 20 hours/week
<b>Non Discrimination Test:</b>		ADP, ACP, IRC §410(b) IRC §401(a)(4)	Universal availability
<b>Top Heavy Rules:</b>		Yes	No
<b>Distributions:</b>		<u>Deferrals:</u> Age 59½ Termination of employment Death Disability Hardship <u>Employer:</u> In service if in document	Same
<b>Life Insurance:</b>		Yes if incidental	Prohibited after 9/24/07

**Stephen Abramson, CPC, CLU, ChFC**  
**APS Pension & Financial Services Inc.**  
**(516) 228-8444 E-mail [steve@apspension.com](mailto:steve@apspension.com)**