Retirement Plan Update

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DOL Finalizes Timely Deferral Deposit Rules

The Department of Labor (DOL) has finalized regulations establishing a safe harbor for small employers to timely deposit employee deferrals and loan repayments. A small employer is defined as a plan with fewer than 100 participants as the beginning of the plan year.

If a small employer deposits withholdings into the plan no later than the 7th business day following the date the employees would have received the contributions (payday), the regulations deem that the employer has satisfied the requirement to deposit contributions "as soon as administratively feasible".

All small employers should strive to meet this safe harbor in order to avoid a dispute with the DOL over what the DOL deems is "administratively feasible".

The DOL has been very successful in its pursuit of employers who are not depositing contributions in a timely manner, and the DOL has an unofficial opinion that contributions should be able to be deposited into the plan within days of each payroll cycle. ❖

IRS Sends Questionnaire

On May 17th the IRS mailed out 1,200 letters to a selected group of 401(k) plans. The letter requires that the plan sponsor go to the IRS website and answer about 60 questions regarding their plan, including detailed data going back to 2006. Although the questionnaire is not an audit or investigation into the plan, it is mandatory that it be completed. The questionnaire is meant to assist the IRS in identifying areas where additional education, guidance, and outreach is needed; and how they can focus their enforcement efforts.

The IRS has said that the answers plan sponsors provide will not in and of themselves be the cause for an audit, however, failure to complete the questionnaire will result in further enforcement action. If you should receive one of these letters we strongly encourage you to contact our office so we can assist you in completing the questionnaire. ❖

DOL Announces New Form 5500 Filing Option

The Department of Labor (DOL) has announced a new option when it comes to electronic filing of the Form 5500 which may make the signing process a little easier for many clients.

In our November 2009 newsletter we informed you that beginning with the 2009 plan year the DOL requires that retirement and welfare plans file their Form 5500 electronically. Each individual who signs the Form 5500 and related schedules was required to have their own electronic credentials assigned by the DOL. On February 1, 2010 we sent a letter to clients asking them to obtain signing credentials for the person(s) responsible for signing the Form 5500. The purpose of signing credentials is so when RPA uploads the review version of the Form 5500 to the DOL website RPA can invite the signers to the DOL website to log in, review, and sign the 5500. In addition to the DOL signing process, the IRS still requires that a paper copy of the 5500 be signed and kept on file by the plan administrator.

The new option eliminates the need for clients to obtain signing credentials and the need to log into the DOL website and sign the Form. Instead, RPA can scan a signed paper copy of the 5500 and upload it to the DOL website. To qualify for the upload of a scanned 5500 the plan sponsor must sign an authorization giving the preparer permission to upload the scanned 5500, and also acknowledging that the signatures on the scanned 5500 are open to viewing by anyone visiting the DOL website. ❖

Small Business Tax Credit for New Retirement Plans

If you started a new retirement plan make sure you take advantage of the available tax credit. Beginning in 2002 small businesses with fewer than 100 employees are able to take a tax credit equal to 50% of the costs to set up and administer a new plan, up to $500 per year for each of the first three years of the plan. Additional qualifications to receive the tax credit include: 1) At least one participant must be a non-highly compensated employee; 2) you had no other plan in the previous three years. ❖

Do you have an enrollment period coming up? Give us a call and we will arrange for a representative from your investment company and/or an RPA representative to attend your enrollment meeting.

Conversion to a Roth IRA

Beginning January 1, 2010 participants in qualified retirement plans can convert their pre-tax accounts upon a distributable event into a Roth IRA without any income restrictions. The term "convert" may confuse some readers, so in general terms it means when a participant has terminated employment, or takes an in-service withdrawal, they can transfer all or a portion of the distribution to a Roth IRA. Here are some of the common questions we have received regarding Roth conversions from a qualified retirement plan:

Q: Can I make Roth contributions to my retirement plan?

A: Only if your employer allows Roth deferrals.

Q: In my current 401(k) plan, can I convert my pre-tax deferral balance to Roth?

A: No. The IRS does not allow conversions within a retirement plan. You can only convert when it is moved to a Roth IRA.

Q: Does the 10% early withdrawal penalty apply?

A: No. The 10% penalty for withdrawals prior to age 59½ does not apply to the conversion amount.

Q: Do I have to pay taxes on the amount converted?

A: Yes. The conversion amount is subject to normal federal and state taxes. There is a special rule that conversions made in 2010 will be includible in gross income 2011 and 2012, 50% in each year, unless the taxpayer elects otherwise to pay the taxes in 2010. A taxpayer may choose to pay taxes in 2010 if their gross income in 2011 or 2012 will put them in a different tax bracket, or if they fear federal or state tax rates may increase.

Q: Can I roll my Roth IRA into my 401(k) account?

A: No. The IRS only allows a rollover from a Roth IRA account into another Roth IRA account.

RPA has processed thousands of distributions so far this year and less than 10 participants have converted their distribution to a Roth IRA. Although our experience is that 42% of participants rollover their balances to an IRA or other retirement plan, a reason why more Roth conversions are not taking place is because the conversion amount is taxable to the participant. Should the participant not tax part of the distribution as cash to cover the possible taxes owed on the Roth transfer amount, the participant will need to come up with money out of pocket when they file their tax return. ❖

2010 Plan Limits (no changes from 2009)

401(k), 403(b), 457 Deferral	$16,500
401(k), 403(b), 457 Catch-up	$5,500
Maximum Compensation	$245,000
DC Plan 415 Contribution Limit	$49,000
Social Security Wage Base	$106,800
SIMPLE Deferral Limit	$11,500
SIMPLE Catch-up	$2,500
HCE Compensation Determination	$110,000
Top-Heavy Key Employee	$160,000
Defined Benefit 415 Limit	$195,000
Traditional/Roth IRA	$5,000
Traditional/Roth IRA Catch-up	$1,000
SEP Minimum Compensation	$550

Reminders & Tid-bits:

Amend Your Plan Document

If a trustee needs to be added or removed from the plan document an amendment must be done. Other common amendment triggers include changing the company name, acquiring another company, and internal spin-offs.

Summary Plan Description (SPD)

You must give a copy of the SPD to every newly eligible participant within 90 days of their entry into the plan. Let us know if you need a pdf copy sent to you.

Fidelity Bond

A Fidelity Bond protects the plan assets against fraud. Not having a Fidelity Bond can subject even the smallest of plans to a costly annual audit. The bond must be no less than 10% of assets or a minimum of $1,000. The maximum required bond amount is $500,000, although there are some exceptions where the maximum may be higher when employer stock or non-qualifying assets are held.