THE ROSENBAUM LAW FIRM P.C.

Perspectives

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For Retirement Plan Sponsors
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IRS Unveils 2011 COLA Limits for Retirement Plans.

The Internal Revenue Service announced the 2011 cost of living (COLA) adjustment table for retirement plan benefits on October 28th. Most of the limits were left unchanged from 2010.

The elective deferral limit for 401(k), 403(b), or 457(b) plans, and the federal government's Thrift Savings Plan remains unchanged at $16,500. The catch-up contribution limit under those plans for those aged 50 and over remains unchanged at $5,500.

The deduction for taxpayers making contributions to a traditional IRA is phased out for singles and heads of household who are active participants in an employer-sponsored retirement plan and have modified adjusted gross incomes (AGI) between $56,000 and $66,000, unchanged from 2010. For married couples filing jointly, in which the spouse who makes the IRA contribution is an active participant in an employer-sponsored retirement plan, the income phase-out range is $90,000 to $110,000, up from $89,000 to $109,000. For an IRA contributor who is not an active participant in an employer-sponsored retirement plan and is married to someone who is an active participant, the deduction is phased out if the couple's income is between $169,000 and $179,000, up from $167,000 and $177,000.

The AGI phase-out range for taxpayers making contributions to a Roth IRA is $169,000 to 179,000 for married couples filing jointly, up from $167,000 to $177,000 in 2010. For singles and heads of household, the income phase-out range is $107,000 to $122,000, up from $105,000 to $120,000. For a married individual filing a separate return who is an active participant in an employer-sponsored retirement plan, the phase-out range remains $0 to $10,000.

The AGI limit for the saver's credit for low- and moderate-income workers is $56,500 for married couples filing jointly, up from $55,500 in 2010; $42,375 for heads of household, up from $41,625; and $28,250 for married individuals filing separately and for singles, up from $27,750.

The limitation on the annual benefit under a defined benefit plan under section 415(b)(1)(A) remains unchanged at $195,000.

The limitation for defined contribution plans under Section 415(c)(1)(A) remains unchanged for 2011 at $49,000.

The annual compensation limit that a retirement plan can recognize for contribution purposes remains unchanged at $245,000.

The dollar limitation concerning the definition of key employee in a top-heavy plan remains unchanged at $160,000.

The limitation used in the definition of highly compensated employee remains unchanged at $110,000.

The compensation amount under Section 408(k)(2)(C) regarding simplified employee pensions (SEPs) remains unchanged at $550.

The limitation for salary deferrals regarding SIMPLE retirement accounts remains unchanged at $11,500.

Don't forget about the 2010 and 2011 Deadlines.

With 2010 winding down, it is extremely important to understand your retirement plan needs and some deadlines that are coming up.

If you have top heavy or ADP failure issues, nothing is better than adopting a safe harbor plan design. While the effective date of a change to a safe harbor plan will take place in 2011, there is a notice requirement to inform employees of the intention to implement a safe harbor plan design. The deadline for the notice is December 1, 2010 for the 2011 Plan Year.

For small businesses who want to implement a retirement plan for 2010, the deadline is to sign the plan document by December 31, 2010. December is a crazy season for third party administration firms and ERISA attorneys because so many small businesses wish to implement a defined benefit plan or a profit sharing plan to take advantage of tax deferred savings. Up until the last minute on December 31, 2010 retirement plans are being implemented and don't have to be funded until your tax due date (including extensions) in 2011.If you are interested in safe harbor plan designs or implementing new plans, please contact me or your friendly neighborhood third party administration firm.

Why You Shouldn't Hire Your Payroll Provider To Run Your 401(k) Plan

In the 401(k) world, the two largest payroll providers in the country feel that retirement plan administration is a natural segue from doing payroll. I respectfully disagree. Providing payroll service is an automated, computerized system that is dependent on getting the correct tax rates from the Federal, State, and Local Government. As long as the employer provides the weekly payroll, the numbers should be consistent.

If mistakes are made on payroll, most can easily be rectified without having to consult with attorneys, the Internal Revenue Service, and the Department of Labor. Retirement plans are highly structured tax exempt entities. They must continuously abide by the Internal Revenue Code, ERISA, Department of Treasury regulations, Department of Labor regulations, and the terms of its plan document. Errors in retirement plans can happen during contribution deposits, trade processing, determination of eligibility and vesting, discrimination testing, and the preparation of Form 5500. Retirement plans, especially 401(k) plans have so many moving parts, that an error that requires correction and reporting to the proper governmental authority can occur on a daily basis. Some errors may result in plan disqualification where prior employer deductions for plan contributions are disallowed and plan participants must immediately report their retirement plan contributions as income. This is why plan sponsors should carefully select who their third party administrator (TPA) will be.

Except for the withholding of salary deferrals, 401(k) plan administration has nothing to do with payroll. 401(k) plan administration is a highly specialized field, dependent on getting correct data from the Plan sponsor and making the correct calculations on the administrator side. Bad data will always get a bad testing result. So a large portion of what a 401(k) administrator might have to do is to check whether the data being provided by the client is error free.

Too often, I find that payroll providers who act as TPAs run retirement plans the way they run payroll. I have seen too many instances where the client provides completely wrong key and highly compensated employee information and the payroll provider TPA will run the tests with the wrong data. One major component of setting up a retirement plan is to maximize retirement plan savings for the plan participants. This can be done through a proper choice of among many different plan types and plan designs. The highly regarded TPAs (along with an ERISA attorney) are the firms that can take plan participant data and determine whether a 401(k) plan with a pro rata employer contribution is the right fit or whether the employer can augment retirement savings with a safe harbor or new comparability plan design, or whether the use a of a defined benefit plan like a cash balance plan should be added as well. Payroll providers tend to only administer 401(k) plans, so they will not likely discuss the merits of new comparability, floor-offset arrangements, or cash balance plans. They also tend to only offer cookie cutter 401(k) plan design through the use of prototype plan documents that may not fit all the needs of the 401(k) sponsor if they have a provision that may be outside the box that the prototype has set. A good TPA will be able to service the plan sponsor in all their retirement plan needs. A payroll provider TPA will only be able to service the plan sponsor in all their retirement plan needs, as long as all those needs can be met in a cookie cutter 401(k).

Another problem I have with the payroll provider TPA is the fact that they play a little too close to the role of a financial advisor/co-fiduciary. Many plans of these payroll provider TPAs do not have an advisor or broker to give them a level of protection for a participated directed ERISA 404(c) 401(k) plan. So while these payroll provider TPAs offer financial experts who select their menu of mutual funds and meet their clients, they do not offer any financial advice nor do they offer any co-fiduciary role.

I had a client with one of these payroll providers with $10 million in assets. While this Plan was large enough to have its own dedicated plan administrator/contact person, they had no financial advisor. I was at a meeting with the client, their payroll provider TPA administrator, and one of the TPA's financial "advisor." This advisor suggested that the Plan needed to add a small cap fund to the lineup, but he then insisted that he was not offering any advice; it was just a suggestion because he could not legally give advice. I jokingly called it a wink and a promise because while the advisor was offering a suggestion, the client could not legally rely on this suggestion.

No participant directed 401(k) plan should ever operate without the use of a broker or financial advisor and no TPA should ever take the any role where any client may think their winks on selection of mutual funds is financial advice.

Having your 401(k) plan administered by a payroll provider is like having a proctological exam performed by a pediatrician. Like a pediatrician in the area of proctology, payroll providers have a limited background and capability in administering retirement plans. Like hiring a proctologist to examine that area of trouble, it's important to hire retirement plan experts as your TPA and ERISA attorney.

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