BENEFIT BYLINES

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Restatement Time Again

My, how time has flown. It seems like just yesterday that we were restating retirement plan documents to incorporate provisions of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA). In fact, those restatements were prepared over 4 years ago, with the end of the restatement window occurring in early 2010. In accordance with the IRS' 6 year cycle for restating pre-approved plan documents, if your business sponsors a tax-qualified profit sharing, money purchase or 401(k) plan, it is now time to restate your plan documents again.

Restatements for preapproved plans (prototype or volume submitter) are required to comply with the Pension Protection Act of 2006 (PPA) and must generally be prepared and signed by not later than April 30, 2016. Although PPA didn't contain legislation as groundbreaking as EGTRRA for defined contribution plans, it did include a number of very important provisions that ABP utilizes for the administration of clients' plans today. The most important of these was the decision to make permanent the provisions of EGTRRA, which were originally scheduled to expire in 2010 if further legislation was not enacted. PPA also relaxed notification timing standards for benefit distributions, liberalized rollover opportunities for non-spouse beneficiary distributions, and enhanced the requirements for information to be contained within participant benefit statements.

Defined benefit plans are maintained on a restatement cycle separate from defined contribution plans. Preapproved defined benefit plans are on a similar 6 year cycle, but sponsors will have at least

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Supreme Court Decision Recognizing Same-Sex Marriage Has Far-Reaching Implications

Most of us are aware of the fact that an increasing number of states and jurisdictions have legalized same-sex marriage. What some may not know is that the Federal Government also now recognizes same-sex marriage for a number of purposes.

Background

Historically, federal law has recognized marriage solely as a union between a man and a woman. However, last year, the US Supreme Court ruled in United States v. Windsor that sections of the federal Defense of Marriage Act (DOMA), which defined marriage to be solely a union between couples of the opposite sex, were unconstitutional for purposes of federal law. The rationale for this decision was that the restrictive provisions of DOMA denied same-sex couples who are legally married under state law equal protection and benefits when compared to married opposite sex couples. In response to the Supreme Court's decision, the IRS issued Revenue Ruling 2013-17. That ruling specified that same-sex couples would be treated as married for all Internal Revenue Code purposes if the couple is legally married under the laws of one of the 50 states, the District of Columbia, a U.S. Territory, or a foreign jurisdiction. *(Continued on Page 2)*

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An important consideration is that marriage itself is determined separately under the laws of each state or other jurisdiction. Accordingly, the Supreme Court decision does not automatically guarantee same-sex couples the right to marry. Rather, it specifies that if a same-sex couple is legally married under the laws of a state or jurisdiction, that couple will be considered legally married for purposes of the Internal Revenue Code and other federal statutes.

Jurisdictions Where Same-Sex Marriage is Legal

At the time of this writing, same-sex marriages are recognized in the District of Columbia and the following states:

California
Connecticut
Delaware
Hawaii
Illinois
Iowa
Maine
Maryland
Massachusetts
Minnesota
New Hampshire
New Jersey
New Mexico
New York
Rhode Island
Vermont
Washington

Place of Marriage is Generally the Determining Factor

For most purposes under federal law, the determination of marital status is based on the laws of the state where the marriage was celebrated, not the state of residence. For example, Pennsylvania now recognizes same- sex marriages but Ohio does not. Nonetheless, an individual who works or lives in Ohio but who was legally married in Pennsylvania must be treated as being married for all federal tax purposes even though the marriage is not recognized for purposes of Ohio state law.

Two notable exceptions to the above relate to Federal Social Security and the Family Medical Leave Act (FMLA). Although likely to change at some point in time, the state of domicile (not marriage celebration) is the determining factor when determining marital status in administering these two programs.

Domestic Partners/Civil Unions

Last year's Supreme Court ruling has no impact on either domestic partnerships or civil unions. These arrangements are still not classified as legal marriages under federal law.

How Does This Impact Employers (and others)?

Employers are materially impacted by the Supreme Court's decision in areas related to employment practices and the administration of employee benefit programs. Below are a few examples of employee benefits issues that will require special attention:

- *Beneficiary Designations & Spousal Consent Rules*
- *Qualified Retirement Plan Joint & Survivor Annuity Rules*
- *401(k) Discrimination Testing and Top-Heavy Plan determination (family ownership attribution rules)Qualified Domestic Relations Orders (QDROs)*
- *Retirement plan loans and plan distributions (if spousal consent is required)*
- *Controlled Group determinations (family ownership attribution rules)*
- *Cafeteria Plan election changes (change in status rules)*
- *COBRA*
- *The Family and Medical Leave Act*

Beneficiary designations and spousal consent rules are at the top of the list here because they were among the first areas to receive attention by the employee benefits community. There are a number of potential problems that could occur if current elections remain "as is." For example, consider a qualified retirement plan that is subject to spousal consent provisions. A former spouse, child or other person may be the current named beneficiary, but written consent for that designation may not have been obtained from the newly recognized same-sex spouse. This, in turn, may lead to competing claims for any death benefit or the benefit not being paid to the intended beneficiary. Another example could be

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the administration of participant loans where spousal consent is required. The plan administrator may not even be aware of the fact that there is a spouse when approving the loan. However, that spouse may have a valid claim against the plan by reason of not having provided consent. Note that each of the preceding problems can and do currently occur with heterosexual marriages. Now that same-sex marriages are legal, these and similar issues may arise with increased frequency unless additional procedures and controls are put in place.

Retirement Plan Document Amendments

The documents under which 401(k) and other tax-qualified retirement plans are maintained may need to be amended as a result of changes in the way marriage and spouse are now defined. However, plan documents drafted by ABP utilize non-specific language that will avoid the need for plan amendments and the associated additional expense.

Close

While appearing on the surface to be a straight-forward issue involving choice and equal protection under the law, the ripple effects associated with the Supreme Court's actions (effectively changing the definition of marriage) are huge. You can expect to hear much more about this issue from many sources in coming weeks, months, and years. ▪

IRS Reverses Position on IRA Rollovers

Tax Court Ruling Spurs IRS Reversal

In January 2014, the Tax Court issued a ruling that caused the IRS to reverse its position on tax-free rollovers from traditional Individual Retirement Accounts (IRAs). Prior to the ruling, the IRS had determined that an individual could process one tax-free rollover per year from each IRA he or she owned. The IRS's position was challenged by the Tax Court when it ruled in Bobrow vs. Commissioner that the law permits an individual to process only one tax-free rollover per year from an IRA no matter how many IRAs that individual owns. So, where the IRS would have permitted an individual with three IRAs to process three rollovers - one from each IRA - in a one year period, the Tax Court has held that this same individual is permitted only one rollover in the same one year period. In light of the Tax Court's ruling, the IRS has changed its official position and beginning in 2015 will only permit an individual to process one tax-free rollover per year despite the number of IRAs owned.

Rollover vs Direct Transfer

At first glance, the current reversal by the IRS of their one-per-year rollover rule may appear to be a cause for concern. However, in reality, it should have little impact on most taxpayers. In order to understand why this is the case, you need to be familiar with the difference between a rollover and a direct transfer. A tax-free rollover from an IRA occurs when an individual takes a distribution from one IRA and repays it to the same or a different IRA within 60 days. As long as the funds are re-deposited into an IRA within 60 days, the distribution is not taxable. In a direct transfer, sometimes referred to as a "direct" rollover, funds are transferred directly from one IRA to a second IRA. In a direct transfer the individual never has access to the funds distributed from the IRA.

If an individual wants to move money from one IRA to another, the preferred method of processing this transaction would be as a direct transfer. The only reason to move funds from one IRA to another as a rollover would be if an individual needs access to the funds being distributed for a short period of time (no longer than 60 days). Unlike the one-per-year rollover rule, there is no limit to the number of direct transfers and individual can process in one year.

Points of Interest

- *The one-per-year rollover rule applies to Individual Retirement Accounts and Individual Retirement Annuities.*
- *The one year period is not measured on a calendar basis but begins on the date the distribution is processed and ends twelve months later.* *(Continued on Page 4)*

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- *There is no limit to the number of direct transfers that can be processed in a one year period.*
- *The new ruling regarding one-per-year rollovers will be effective for distributions processed after December 31, 2014.*

Summary

At first glance, the change in IRS position allowing only one tax-free IRA rollover per year appears problematic. However, this limitation does not apply to "direct" rollover transactions which are typically used when there is either a plan distribution or transfer from one IRA custodian to another. In addition, the "direct" rollover is easier and more efficient to transact. The traditional rollover that involves receiving funds personally then rolling them back into an IRA account is really only beneficial if the recipient has a short term need for the funds and can replace the amount received within 60 days to avoid a taxable distribution event.▪

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two additional years before it will be necessary to totally restate those plans. Cash balance defined benefit plans are maintained on various 5 year restatement cycles (based on the employer's tax identification number). ABP will notify clients as appropriate for any required actions.

It is not currently possible to maintain a 403(b) arrangement using an IRS pre-approved plan document. However, the IRS is in the final stages of an initiative to make that a reality. ABP will individually contact our 403(b) plan sponsors to keep them informed of further developments in this area.

Although plan restatements are mandatory, this required process provides a good opportunity to re-visit optional plan design and administrative provisions. This includes adding Roth 401(k) provisions, automatic enrollment features, or more flexible "class allocation" profit sharing provisions, to name a few. In addition, if you currently sponsor a profit sharing only plan, it may be time to consider adding a 401(k) provision to your plan. If this is an option that you think may benefit you and your employees, ABP can prepare a design study to provide you with a better picture of the available opportunity.

IRS Submissions

With our last round of restatements for EGTRRA, ABP recommended that plans other than standardized prototype plans be submitted to the IRS to obtain a Favorable Determination Letter specific to each plan. With this round of restatements, however, the IRS has made a major change in their determination letter program. The IRS will no longer accept requests for individual determination letters for plans that utilize pre-approved (prototype or volume submitter) plan documents. All plan documents that ABP will prepare for this PPA restatement process will fall into that category. *(Continued on Page 4)*

The IRS' new position involves both good and bad news for our clients. The elimination of an IRS submission package and review equates to a lower expense for our clients during this restatement process.

However, the IRS is not totally on the same page in all departments. The IRS is still accepting submissions for determination letters upon plan termination. During that process, a previously issued favorable determination letter (FDL) is relied on by the IRS as "proof" of timely adopted documents and amendments. Without these periodic FDLs, plan sponsors are now required to provide 10-15 years of plan documents when requesting a plan termination FDL.

ABP believes that the IRS' new position on FDL's will ultimately be a positive change for our clients, but it will take some time for the pieces to fall into place.

Next Steps

ABP will be contacting affected clients in the next few months to discuss the plan restatement process, potential plan design enhancements and the timetable as it relates to their plan. ▪

Our Employees Don't Appreciate It

On more than one occasion, members of the ABP staff have heard clients say "We spend a lot of time and money on benefit programs but our employees don't appreciate it". Some clients go on to mention that there is an increasing entitlement mentality among the general population which extends to employer-sponsored benefits.

While this may be the case for some, a perhaps less cynical explanation might be "out of sight, out of mind". During ABP's 30+ years of operation, we have routinely observed many clients making generous contributions to retirement and group insurance arrangements while doing little to promote the importance and cost of those benefits to their employees. Summary Plan Descriptions and other government-mandated employee disclosure materials can help educate employees about their benefits. However, these materials tend to be written using language designed to satisfy legal requirements and do little to promote the value of the benefits themselves. Further, traditional communication materials rarely identify the cost of employee benefits, leaving employees unaware of how much their employer is spending on their behalf.

Larger Employers Have an Advantage

Compared to small firms, larger employers tend to have more personnel and financial resources which can be used to promote employee benefit programs. Many larger employers have dedicated HR personnel who focus on publicizing and explaining company-provided benefits through frequent written communications, regularly scheduled employee meetings and benefits fairs. Some employers even provide employees with customized benefit statements illustrating line-by-line detail of what the employer spends for each benefit, including amounts to fund Social Security and other statutory benefits. These statements are a very effective tool, but are time consuming and expensive to produce. As a result, few smaller employers are willing or able to make the commitment to provide them.

Smaller Employers May Have a Better Story to Tell

In fact, many of ABP's smaller clients actually make more substantial employer contributions to fund retirement and health care benefits than do larger competitors. Small employers tend to place high value on a more limited number of hard-working, dedicated employees. Significant benefits may keep employees happy and prevent them from leaving to join larger firms. So, while smaller employers face challenges in communicating the full scope of their benefit arrangements, the actual value of those benefits is often superior to the competition.

Here are a few suggestions that may benefit both the employer and the employees:

1. **Service Provider Materials**: A wealth of information is often provided by the insurers and investment institutions retained to deliver pension and welfare benefit programs. Some of these materials are delivered in hard copy whereas others are posted on websites. Distributing and selectively discussing descriptions of benefit programs and important announcements at staff meetings and company events demonstrate the employer's commitment in a highly visible manner. Doing so also puts the employer's face on these benefit programs.

2. **Performance and Compensation Reviews**: Most of us hate giving or receiving performance reviews. However, they are generally viewed as a necessary employee communication and management tool. At the point when compensation is discussed, it makes sense to point out how much the employer spends on benefits. Some of these costs such as OASDI (6.20% of TWB), Medicare (1.45% TWB), and employer matching or nonelective retirement plan contributions are readily determinable at an individual employee level. Determining the individual employer cost of other benefits such as medical, life and disability insurance coverage, if applicable, may require more work. However, average costs per employee can be used if it is burdensome to provide more detail. *(Continued on Page 6)*

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Note that even if benefit costs are presented on a broad brush basis, employees are often surprised at the magnitude of the costs in dollars and as a percentage of pay.

3. **Service-provider Personnel**: A resource that is often under-utilized is requesting the insurance broker through whom benefits are purchased to conduct regularly scheduled meetings with employees to explain and help promote the benefits being provided. Similarly, the retirement plan's financial consultant can usually be called on to conduct investment education meetings and promote the benefits of participating in the retirement plan. ABP can support these events both by providing communication materials suitable for group meetings or by attending the meeting to respond to technical questions that employees may have. Often, there is little or no incremental cost to the employer for tapping the resources of these service providers to explain and promote the various benefit programs they provide.

Final Note: ABP does not have a magic solution for our smaller clients that will result in all of their employees appreciating the importance and value of the benefits they provide. However, there are cost-effective strategies and resources available to those employers who (1) are truly concerned about the welfare of their employees and (2) see the importance of taking credit for the commitment that is being made on their behalf. If your firm has utilized other strategies and resources to promote your benefit programs and other aspects of your work environment to your employees, we would love to hear your story. ▪

Associated Benefit Planners, Ltd.

Associated Benefit Planners, Ltd. (ABP) is an independent consultant and third party administrator (TPA) operating from offices located in Berwyn and King of Prussia, Pennsylvania. We specialize in the design and administration of employer-sponsored retirement/savings plans, including 401(k) arrangements. ABP also provides plan document and compliance support for Section 125 Plans and Employee Welfare Plans, operating on a fee-for-service basis.

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