Employee Benefit News

Fall/Winter 2013

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Dear valued clients and friends –

We are pleased to provide you with the latest developments and alerts related to retirement plans and our practice. In an effort to best serve you and keep you up to date on important developments, we will provide you with communications throughout the year. We hope you find them beneficial.

Windes Debuts a "Brand" New Identity

Windes and McClaughry Accountancy Corporation will now be known simply as Windes (rhymes with "minds"). We also have a new look and logo to more closely align our identity with our mission to serve as a trusted and forward-thinking business advisor to all of our clients. You will notice the new look on this edition of the newsletter, as well as our website and other communications. The following is the press release announcing the change.

Click here to read the press release

IRS Announces Cost of Living Adjustments for 2014

The Internal Revenue Service (IRS) has announced 2014 COLA increases for many of the retirement plan limits.

Some limits, such as the $17,500 maximum contribution to salary deferral arrangements, have remained at their 2013 levels. The defined contribution plan limit increased from $51,000 to $52,000, and the defined benefit limit (the maximum benefit at retirement) increased from $205,000 to $210,000.

We have prepared a historical chart showing the adjustments to all the relevant limits for 2014, as well as the progression of the increases back to 2007. This chart is available on our website.

Click here to view the cost of living adjustment chart for 2014

Bond, ERISA Bond

A recurring issue for plan administrators is making sure that plans are properly bonded to meet the requirements of multiple plan regulations. This includes the basic requirement under the Employee Retirement Income Security Act (ERISA) and the expanded requirements for plans holding certain types of assets. The bonding requirements can be satisfied by separate "surety" or "fidelity" bonds on the plan fiduciaries or may be included as a rider on the sponsor's overall business liability insurance. The following article details the bonding requirements. Each bond needs to be carefully analyzed to ensure it meets the regulations and exempts the plan from the audit requirements, if applicable. We can assist you with that analysis and direct you to resources to secure the correct bond for your plan.

Click here to read the article

Compliance Spotlight: RMDs and Distribution Verifications

As we approach the end of the calendar year, our attention turns to distribution issues, including required minimum distributions (RMDs) and the reporting of retirement plan disbursements and tax withholding that has occurred during the previous twelve months.

For employees other than business owners, RMDs must begin by the later of the year a participant retires or reaches age 70.5. For the first RMD, there is a special rule that allows a deferral of the initial distribution to April 1 of the next year. We generally have birthdate information available to communicate distribution options, but we sometimes do not know of an employee's retirement until we receive census data following the year end. This can lead to overlooking an RMD, which carries a 50% excise tax penalty. While there is a voluntary correction procedure to receive retroactive relief from this penalty, it is better to avoid the issue in the first place. As usual, communication is the key. Please let us know immediately if any employee at or near age 70.5 separates from service so we can properly communicate their distribution options. With employees working later in life and delaying their retirement, this is a more common issue than in the past, and we want to make sure that our clients' plans stay in compliance with the RMD rules.

The reporting of plan distributions that occur during the calendar year is due soon after December. Forms 1099-R (distribution reporting to participants) and 945 (tax withholding) are due by January 31 of the year following, and Form 1096 is due to the IRS by the end of February. In order to complete the necessary reporting, we must receive confirmation of distributions soon after they are made. There is not sufficient time to complete the plan accounting to determine whether distributions have occurred, so we rely on plan sponsors to confirm all distributions from their plans. Failure to report distributions will necessitate the filing of amended or late returns, which may result in late filing penalties. We encourage all of our plan sponsor clients to verify all distributions immediately after they are made so that the distribution reporting can be completed in a timely manner.

IRS Allows Safe Harbor Plans to Stop Contributions Mid-year

In November, the Internal Revenue Service (IRS) issued final regulations allowing plan sponsors to reduce or discontinue safe harbor contributions during the plan year. Prior to these final rules, sponsors were only allowed to discontinue safe harbor commitments by demonstrating a financial hardship. The IRS will now allow the cessation of safe harbor amounts mid-year for plans that provide specific language in their annual notices to plan participants.

Safe harbor provisions allow 401(k) plan sponsors to commit to a specific contribution (either a match or a nonelective contribution) for the coming year in exchange for automatic passage of nondiscrimination testing. This provides the highly paid employees with assurance that their contribution amounts made during the year will not be subject to correction after the year end. To use the safe harbor, plan documents must provide for these contributions and a notice must be provided to all plan participants between 30 to 90 days prior to the beginning of the plan year.

Under the final regulations, to be able to suspend or reduce safe harbor contributions during the coming year, the safe harbor notice must be modified with language such as the following:

> ***The plan may be amended during the plan year to reduce or suspend safe harbor nonelective contributions. The reduction or suspension will not apply until at least 30 days after you are provided notice of the reduction or suspension.***

To suspend or reduce the safe harbor contributions, employers must amend the plan and provide the supplemental notice. The safe harbor contributions will still be required up until 30 days following the provision of the notice. In addition, the plan will be subject to the nondiscrimination testing on its 401(k) contributions and any match for the entire plan year. Plan sponsors that do not include the above language in their notices can still suspend or reduce safe harbor contributions by demonstrating financial hardship.

These new rules will allow employers added flexibility if it is deemed necessary to modify plan contributions in difficult economic times. We have included this language in the majority of our 2014 safe harbor notices for our clients. Please let us know if you have any questions.

403(b) Plans: Too Many Cooks? Coordination Required Between Multiple Investment Providers

Employers sponsoring 403(b) plans are generally encouraged to distance themselves from transactions between plan participants and the institution responsible for plan investments. In these plans, the investments are considered a contract between the individual and the company, with the employer merely facilitating the arrangement. This is especially true of plan sponsors who consider their plans as exempt from the provisions of the Employee Retirement Income Security Act (ERISA).

There are circumstances, however, when the plan sponsor needs to review both the provisions of the plan document and the overall account balance of the participant to ensure that plan rules are not being violated. For plans with multiple investment providers, sponsors must aggregate all of the plan accounts of a participant to determine the applicability of plan provisions.

For example, an employee may have plan balances with three different providers, one with $750, a second with $2,500 and a third with $2,000. Plans typically have “cash-out” provisions that allow for the automatic disbursement of small balances (usually less than $1,000). If a participant separates from service and requests a distribution from the first provider, the provider will automatically issue a check based on the low balance. This violates plan provisions because the total account of the participant is over $5,000, which requires additional consents and notices. It is the responsibility of the plan administrator to coordinate all distributions to adhere to the provisions of its plan.

Another potential problem occurs in plans offering participant loans. Loans are limited to 50% of the vested account balance up to a statutory limit. This amount is reduced by the outstanding loan balance over the prior twelve months. Plan sponsors must track all loan balances in order to prevent excess loans being issued and to determine defaults. Plans with multiple vendors can run afoul of the plan rules without monitoring the loans being offered by each entity.

Other areas that are impacted by multiple providers are 403(b) deferral limits, matching contributions and required minimum distributions. A third-party administrator can provide valuable assistance in overseeing all aspects of plan operations and provide support in coordinating the activities of multiple investment providers.

Cafeteria Plan Rules Modified

In October, the Internal Revenue Service (IRS) modified the "use it or lose it" rule applicable to flexible spending arrangements (FSA) inside cafeteria plans. Under prior rules, employees were required to elect an amount to be withheld from pay as an estimate of their non-covered medical expenses for the coming year. Amounts withheld from pay but not used for medical expenses during the year were forfeited to the employer.

Effective immediately, the new rules allow employees to carry up to $500 of unused FSA deferrals to the following plan year. This carry-over is added to the statutory $2,500 cap on FSA reimbursements mandated by the Affordable Care Act. That means that employees with a maximum $500 carryforward would have a $3,000 FSA limit in the next plan year.

A previous modification of the FSA rules allowed a 2.5 month extension of the claims period beyond the plan year end to allow participants to avoid forfeiture of their FSA deferrals. Plans that want to utilize the new rules will need to choose between the extension period and the $500 carryforward. Plans have until the end of 2014 to amend their documents for the new provision.

IRS Notices to Form 5500-EZ Filers

We have received inquiries from several of our clients of an informational notice that has been issued by the Internal Revenue Service (IRS) concerning their filing status. The IRS has mailed a communication to every one-participant plan sponsor.

Plans that cover only the business owner and their partners (and spouses) are eligible to file the abbreviated Form 5500-EZ. This form is exempt from the electronic filing requirements and can still be mailed to the IRS to satisfy the filing requirements. One purpose of the mailing is to inform plan sponsors that they have the option of electronically filing Form 5500-SF as an alternative to the paper filing. While this does require enrollment in the government electronic filing system (EFAST), this method does provide confirmation of the plan filing. Paper filers must provide proof of mailing if questioned about whether a Form 5500-EZ was filed.

The other purpose of the mailing is to remind one-participant plans that they do not need to file a return if the value of their plan assets fall below $250,000. Conversely, plans whose assets have increased beyond this level are now required to comply with the filing requirements.

Strategic Partners

We have partnered with several quality organizations to provide a full range of services to our retirement plan sponsor clients. These services include payroll, investment advice, fiduciary benchmarking, financial planning, insurance and estate planning. We have carefully chosen our referral partners and our clients have had excellent experiences from their interactions with these professionals. Please contact us with any needs you may have at rgreen@windes.com or 562.435-1191.

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With over a century of combined experience in the employee benefits field, our professionals have the expertise and access to leading edge resources that uniquely qualify us to provide our clients with complete administrative services that ensure the successful operation of their employee benefit programs. In addition, we work closely with existing advisors to provide the teamwork needed for successful administration of their clients' retirement programs.

Our professionals are members of the American Society of Pension Actuaries and the National Institute of Pension Administrators and have earned nationally recognized professional designations.

The Windes Employee Benefit Services group is composed of the following individuals who are dedicated to providing your organizations with complete administrative and consulting services:

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