Employee Benefit News

Winter 2019

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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.

New Law Allows More Time to Avoid Tax on Defaulted Plan Loans

A loan default occurs when a retirement plan participant with a defaulted plan loan, following severance from employment or the termination of the plan, was subject to an offset against his or her account balance. Prior to 2018, a participant had only 60 days to come up with funds equal to the defaulted loan balance, plus any tax withholding, and roll over those funds to an individual retirement account (IRA) or other qualified plan to avoid paying taxes and penalties on the distribution of the defaulted loan balance.

Beginning in 2018, The Tax Cuts and Jobs Act permits taxpayers to complete the rollover by their tax return due date in the year following the year of the plan loan offset. That means the participant must complete the rollover by April 15 (or October 15, if an extension was filed) of the year after the year the defaulted loan was offset against the participant's plan account.

If you have any questions or would like more information, please contact Therese Cheevers at tcheevers@windes.com or **844.4WINDES** (844.494.6337).

Congressional Initiatives and Regulatory Priorities

The changes ushered into our nation's capital by the midterm elections last year will undoubtedly have an impact on retirement policy and legislative priorities in the coming year. The change in leadership of the House committees that oversee retirement plans drive the legislative agenda for the new congress. The new House Ways and Means Committee chairman, Richie Neal (D-MA) has long been an advocate for the private retirement system. The following legislation has been introduced in either the House or Senate:

- The Retirement Enhancement and Savings Act
- The Rehabilitation for Multiemployer Pensions Act
- The Retirement Security Act
- The SIMPLE Plan Modernization Act

These are the holdovers from the prior congress and the new House majority will have their own priorities for legislation. The prospects for any legislation proceeding through the Senate and being signed into law will likely depend on strong bi-partisan support.

In addition to any legislative initiatives, the Treasury Department has issued its Priority Guidance Plan for 2018-2019 as follows:

- Hardship regulations (proposed regulations were released)
- Extended rollover period for loan offsets (see above)
- Timing of 403(b) plan amendments
- Updating ESOP rules
- Required Minimum Distribution updates to life expectancy and distribution tables
- Universal Availability under 403(b) plans (see below)
- Missing participants

We will keep you updated on any further developments.

Social Security Planning

The focus of our practice is to help business owners accumulate assets through the private retirement system. However, many baby boomers are now confronting the dizzying array of options for claiming their social security benefits. Determining when to claim benefits can have a dramatic effect on your monthly income, and making the wrong choice could limit your overall distributions from the public retirement system. Factors that can influence the correct strategy include your need for income, your health, your current employment, and marital status. We have heard from many clients that the Social Security Administration is inconsistent in their advice and assistance.

A customized analysis of your situation will determine the optimal claiming strategy and provide peace of mind over this confusing issue. As noted below, we partner with qualified financial planners who can provide help with social security planning. Please contact us for a referral.

Compliance Spotlight: Related Employers

Any type of business entity can sponsor a qualified retirement plan, from a sole proprietorship to a partnership of corporations. When entities are related, either through ownership or business affiliation, there are special rules that determine whether the entities can be treated as a standalone employer, or as one combined employer for retirement plan purposes.

The consequence of employers being related is that they are considered one plan for benefit limits and for non-discrimination testing purposes. Even if the businesses are unrelated in purpose or industry, they cannot be considered separately for a qualified plan. While they can still sponsor their own plans, the plans must be combined for testing.

A controlled group of employers are related through common ownership. Direct ownership of one entity by another is known as a parent-subsidiary relationship. When one business owns at least 80% of another, then they are considered under common control. For example, if corporation X owned 100% of corporation Y, which in turn owned 80% of corporation Z, all three would be a controlled group. If Y only owned 75% of Z, then only X and Y would be considered under common control.

Another type of controlled group is a "brother-sister" relationship. This is where five or fewer individuals (includes trusts and estates) satisfy an 80% or more common ownership test and a more than 50% identical ownership test. These tests are illustrated by the following example:

Ownership %			
Owner	Corp D	Corp E	Identical Ownership
Kathy	40	30	30
Bob	20	40	20
Carol	35	15	15
Jim	5	0	0
Emily	0	15	0
Common Ownership	95	85	65

Jim and Emily are not counted since they do not have ownership in each entity. Collectively, Kathy, Bob and Carol own over 80% of each entity. Their identical ownership exceeds 50%, which makes Corporation D and E a controlled group. The type of entity (corporation, partnership, LLC) does not matter.

There are many different permutations of ownership that make the determination of controlled group status difficult. To complicate matters, ownership includes both direct ownership, and attributed ownership to certain family members. Thus a spouse or child can be considered an owner of a business even if they have no direct involvement or ownership.

Another type of related employer is an Affiliated Service Group ("ASG"). This involves two or more organizations with a service relationship, but not necessarily common ownership. Types of ASGs include "A-org groups," "B-org groups," and "Management groups." The analysis of ASG status is complicated and beyond the scope of this article, but the following would be an example of a group of employers related by service:

> *Ten physicians each own their own medical corporations, and are the only employee of their corporation. Each of the corporations own 10% of ABC Medical Center. ABC Medical Center is an LLC, and employs all of the employees necessary to operate the center. The physician corporations each pay a share of the operating expenses to ABC Medical Center and receive their proportionate share of profits. The medical center is where the physicians see all their patients, do the billing, and remit payments back to the individual corporations. This is not a controlled group, but would be considered an affiliated service group. Any retirement plans sponsored by the individual corporations would need to include the surgery center employees for nondiscrimination benefit testing purposes.*

This has been a brief description of the rules surrounding this complicated subject.

Please contact us with any questions or concerns regarding your organization. For detailed information on the rules governing controlled groups and affiliated service groups, the IRS has published the following guidance:

https://www.irs.gov/pub/irs-tege/2013cpe_related_employers.pdf

403(b) Plans: The IRS Clarifies Plan Eligibility for Part-Time Employees

As we have written about in prior editions of EBS News (Summer 2016), 403(b) plans are challenged to track and account for part-time employees. 403(b) plans are generally required to cover all employees under their salary deferral plans (with specific exceptions), otherwise known as "universal availability." One of the exceptions allows plans to exclude employees "who normally work less than 20 hours a week."

The 2009 403(b) regulations changed the exclusion standard from 20 hours a week to 1000 hours a year, measured during the employee's first 12 months of employment and in subsequent rolling 12-month periods following the initial period. To apply the exclusion, plan sponsors must account for the hours during each period to determine if an employee exceeded the 1000-hour threshold.

Some plan sponsors applied this rule on a year-by-year basis. Employees who exceeded the threshold in a year, but fell below it the next year were only allowed to participate in the plan for the year following the year of 1000 hours of service. In a year following less than the required number of hours, the employee was excluded from participation. Other sponsors chose to apply the rule to such employees by continuing their participation for all years once the 1000-hour mark was reached, regardless of subsequent service.

The IRS, in Notice 2018-95, has confirmed the latter approach, called the "once-in always-in rule." Beginning in 2019, all 403(b) plan sponsors must operate under this rule, and change their administrative practices to consider anyone who works more than 1000 hours in any 12-month eligibility period as permanently eligible for deferrals under their plan.

For plans that operated in good faith under the "in and out" rule, there is relief available. Plans will be granted a fresh start beginning with the 2019 year. Years from 2009 through 2018 fall into the "remedial amendment period" that runs through the required plan restatement date of March 31, 2020. Plans use of the in-and-out rule will not be considered an operational failure. To maintain compliance, these plans need to document their actual operation for their affected years in their adoption of a pre-approved document as part of the plan restatement process, and do not need to adopt an interim amendment.

For any questions regarding the plan restatement process or the application of the eligibility rules, please contact Richard Green or Therese Cheevers.

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.

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With more than 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 Professionals and 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:

Richard L. Green, CPC, ERPA, QPA, QKA, APA	Partner
Therese S. Cheevers, ERPA, APA	Senior Manager
Connie Lee, CPC, QPA, QKA	Senior Manager
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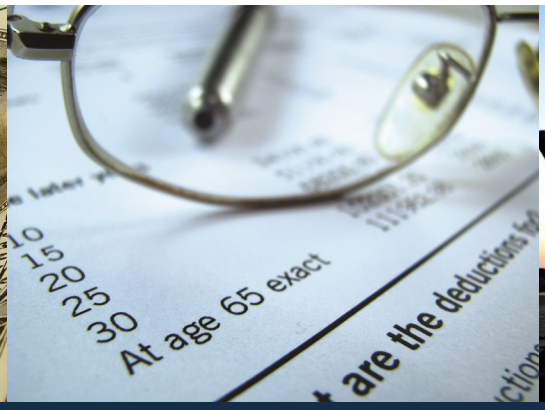

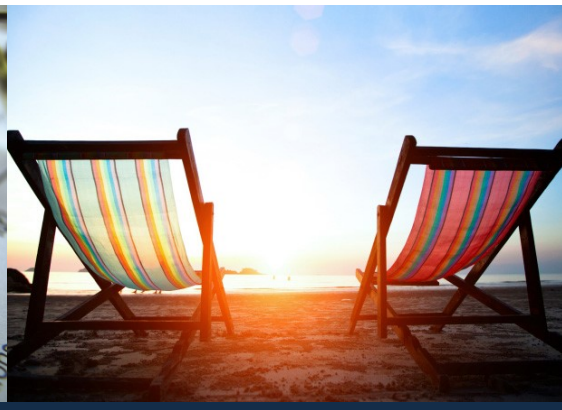

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