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NRS
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NEWSLETTER

OBAMA ADMINISTRATION ENTERS RETIREMENT PLAN ARENA

"As a nation, we ought to do all we can to ensure that folks have sensible, affordable options to save for retirement." - President Barack Obama

Over the Labor Day weekend, the IRS and Treasury issued four notices and three revenue rulings aimed at America's retirement savings programs. The releases contained no new proposed legislation, but did serve notice that the Administration was definitely interested in the nation's retirement practices and programs. A common theme ran through most, if not all, of the releases: "if some extra cash comes your way, give serious consideration to setting some or all of it aside." The money (over and above a regular pay check) may take the form of vacation pay, a pay raise, even an income tax refund. Also, when an employee changes employment, extra money may be available in the form of unused sick pay, vacation pay, or payments from the former employer's retirement plan. The government releases addressed each of these situations and a few more.

Automatic Enrollment in 401(k) Retirement Plans

While automatic enrollment provisions have been included in 401(k) plans for some time, they are primarily selected by larger employers. The Administration has provided pre-approved plan document language that medium to small sized employers can adopt to facilitate automatic savings in their plans. In addition, Revenue Ruling 2009-30 points out that any 401(k) plan can not only provide an automatic deferral of compensation provision, it can also build in automatic increases to the default percentages, including allocating a portion of pay raises as a 401(k) salary deferral. The timing of the changes can be made to coincide with pay increases and need not necessarily be the first day of a Plan Year. Like all contribution default provisions, the participant has the option to take the initiative at any time and elect how much, if any, of his or her pay will be deferred.

For example, an employee who makes no elections concerning contributions to his/her 401(k) plan might be automatically enrolled at 3% of compensation. The next time he/she gets a raise in pay, 30% of that raise is deferred into the company retirement plan. Furthermore, after each year that he/she is in the plan, the overall percentage is bumped up one percentage point until a 6% salary deferral rate is achieved. Each of the pay percentages in the example are a matter of plan design.

Contributing Unused Leave Time to a 401(k) Plan

When an employee changes jobs, there is frequently a sizable accumulation of vacation and/or time off pay that has not been used. Likewise, continuing employees of some employers may have accumulated time off pay that must be used or forfeited. Two of the new revenue rulings concentrate on how a 401(k) plan can be designed to receive these monies as either an employee deferral (if the employee has the option to receive cash) or as an employer non-elective contribution if the employee is not entitled to the cash. These provisions can be designed to apply periodically to active employees, to terminating employees, or both. As with any of the plan changes promoted by the Administration, a plan amendment would be required in order to implement the program. State laws concerning employee vesting of unpaid leave varies, thus complicating the issue. Finally, if the employer decides to make a non-elective plan contribution of money that is not vested, benefit costs and plan complexity increase significantly.

Rollovers - Don't Spend Retirement Money Prematurely

Federal law has long required administrators to provide tax information materials to participants who receive retirement plan distributions. The materials describe the do's and don'ts for rolling money over to an IRA or another employer retirement plan. The government provided sample language in 2002, assuring plan administrators that if their sample language was used, the Administrator would be deemed to be in compliance. This was particularly reassuring because tax laws change frequently and nothing was said about the need to keep the tax information current.

As part of their retirement plan "Labor Day package," the Administration has released new sample language

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concerning rollover taxation. This time, instead of a single document running about 14 pages, two notices are provided. Each notice is about 8 pages long. The first notice is designed for all plan distributions except distributions from a Roth account, while the second deals exclusively with Roth account distributions. The second notice is not necessary unless the participant is getting money from a plan's Roth account. If a participant is receiving money from various accounts, including a Roth account, the government requires that *both* notices be provided. The new notices are in a question and answer format and are much easier to read than their predecessor.

Plan administrators who choose to use the two sample notices (which may be modified to remove extraneous topics) are deemed to be in compliance with the disclosure law *but only with respect to laws that were in place in September 2009*. In other words, plan administrators are obligated to monitor changing tax laws and modify their notices to reflect any pertinent law changes. NRS is taking steps to be sure that the government's new provided language is in place for use by our clients starting no later than 2010 and will make changes for new laws as needed. NRS is currently monitoring tax information that follows the 2002 government provided materials, but updated to reflect current developments, such as Roth accounts.

We see the new government releases as an indication that the new Administration wants to promote retirement savings and has found ways to do so without making tax law changes, at least for the present. All of the changes are voluntary and most of the changes involve added administrative effort and expense. They do represent ways that employers can promote retirement savings for their employees, if employers find that those results justify the expense.

AMNESTY DEADLINE FOR REPORTING FOREIGN INVESTMENTS EXTENDED

The IRS just announced an extension until **October 15, 2009** for reporting foreign investments, including foreign investments held by retirement plans. The Report of Foreign Bank and Financial Accounts, if required, is filed on a form TD F 90-22.1 and carries hefty penalties for failure to file. Most qualified plans covered by Title I of ERISA do not have foreign investments, but some plans are not covered under ERISA and there are exceptions to the foreign asset prohibition. If your retirement plan or a client's plan hold foreign investments, it would be well to check with an accountant or tax attorney to avoid possible penalties.

HOW ARE WE DOING?

To ensure that we are meeting your expectations, all NRS clients will soon be receiving instructions on how to review and complete your NRS Client Satisfaction Survey.

This survey will go directly to Executive Management for immediate attention.

We look forward to hearing from you!

For more information or to request a proposal, please visit our website at www.NRServices.com, or for sales support, please contact:

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