

the dana report

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ABOUT THE FIRMS

Dana Consulting Group, Ltd. and Jennings Law Firm, Ltd. were established to provide employers with a single source of comprehensive legal and consulting services relating to retirement plan and employee benefit matters.

QUOTES

Imagination is more important than knowledge.

- Albert Einstein

Acting on a good idea is better than just having a good idea.

- Robert Half

Every vital organization owes its birth and life to an exciting and daring idea.

- James B. Conant

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SHOULD YOU CONVERT YOUR IRA TO A ROTH IRA?

Our website at www.danaconsulting.com contains a tab on Roth IRA Conversions. We created this tab to assist our clients and partners with analyzing the relative benefits of converting a traditional IRA to a Roth IRA. We have added an article by Mr. Brian Kennedy and reprinted from the Journal of Pension Benefits (Summer 2010) showing how to quantify the relative benefits of converting a traditional IRA to a Roth IRA. Mr. Kennedy is a former Senior VP and Treasurer of Blue Cross and holds an MBA from the University of Chicago Booth School of Business and clearly understands how to "run the numbers" on this kind of analysis. ■

LOOKING FOR CPA FIRMS THAT PROVIDE RETIREMENT PLAN AUDITS

Employers that maintain qualified retirement plans that cover 100 or more participants generally need to engage an independent CPA firm each year to conduct an audit of those plans. We have discovered that many CPA firms do not offer this annual audit service. To assist clients and our partners with identifying CPA firms who offer retirement plan audit services, we have added a section to the Education Center of our website at www.danaconsulting.com to identify CPA firms we have worked with who offer qualified plan audit services. We invite you to contact them if you need to have your plan audited and we invite our CPA firm partners who offer these services to contact us if they would like to be added to our list.

Recommendation: One way to avoid having to obtain an audit is to split the plan into two plans. Please contact Lee T. Jennings in our office if you would like more information about this. ■

OBAMA ADMINISTRATION CONTINUES TO SUPPORT EMPLOYER-PROVIDED PLANS

The president's 2012 proposed budget makes no changes in current fiscal policy relating to employer-provided benefits such as retirement plans and health benefits. The budget shows a steady increase in the estimated tax benefits provided to employers and employees for these benefits.

The 2012 tax benefits, referred to as "tax expenditures", for retirement plans are estimated to be:

- \$45.2 billion for defined benefit plans (\$42.2 billion in fiscal 2011).
- \$67.5 billion for 401(k) plans (\$62.8 billion in fiscal 2011).
- \$15.6 billion for IRAs (\$13.9 billion in fiscal 2011).

Total estimated five-year tax expenditures for all of the above is a staggering \$682.5 billion.

Total estimated five-year tax expenditures for employer-provided health care is \$1.07 trillion. ■

PLAN SPONSOR SURVEY ON TARGET DATE FUNDS

A survey published in November 2010 by Janus Capital Group found an increasing number of plan sponsors indicating they perceive balanced funds and target risk funds are the best QDIAs for their 401(k) plans. Only 34% of respondents thought target date funds were the best QDIAs, down from 57% in 2009.

Also when asked to compare QDIA options based on fees, transparency, overall performance, risk management and correct usage by participants, balanced funds experienced gains in each category compared to the prior year, while target date funds experienced declines.

Finally, the survey also revealed a large gap between plans' utilization

and understanding of target date funds. Despite the increasing number of 401(k) plans offering target date funds, a significant percentage of plan sponsors are still unclear about many aspects of the target date funds in their plans. ■

ILLINOIS REFORMS WILL NOT FIX FUNDING OF CHICAGO PENSION SYSTEMS

The funding status of public employee pensions in Chicago and Cook County continue to deteriorate and recently enacted "reforms" will have little impact on the near-term financial crisis, according to a recent report.

The Civic Federation, a Chicago-based fiscal watchdog organization, issued a report analyzing the funding status of the ten major retirement systems covering Chicago and Cook County public employees. According to the report:

- The systems' funding status deteriorated in 2009 and has significantly deteriorated over the prior decade.
- The aggregate funding ratio for all ten systems in 2009 was 61.3%, compared with 89.5% in 2000.
- The weakest system covers Chicago's firemen with a funding ratio of 36.5%. ■

DEPT OF JUSTICE WILL NOT DEFEND THE DEFENSE OF MARRIAGE ACT

Attorney General Eric Holder announced on February 3rd that the Justice Dept will no longer defend Section 3 of the Defense of Marriage Act. Section 3 of DOMA defines marriage as the exclusive union between a man and a woman. The announcement implements the decision by the Obama Administration that failure of DOMA to recognize same sex marriages is unconstitutional.

In response, House Speaker John Boehner intends to convene a Bipartisan Legal Advisory Group to initiate action by the House of

Representatives. Rep. Boehner indicated that the constitutionality of DOMA should be determined by the courts and by unilateral action by the president.

This matter affects beneficiary rights under qualified retirement plans where, for instance, a plan administrator could face a claim by a same-sex partner of a deceased participant that conflicts with a duly filed beneficiary designation form.

The Justice Dept announcement arose out of two court cases pending in the US Second Court of Appeals. The Justice Dept, legally bound to defend US laws, is now declining to defend those laws. The Bipartisan Legal Advisory Group is a five-member panel of senior members of the House of Representatives and has the authority to instruct the Office of the House General Counsel to take legal action on behalf of the House. ■

ANNUAL PLAN REVIEW

In our experience, many employers review the design and provisions of their qualified retirement plan shortly before the end of the plan year (which typically coincides with the employer's taxable year). This makes sense since certain changes, such as adding or changing a safe harbor contribution feature must be done at the beginning of the next following plan year. However, as is often the case, the employer (specifically its owners and key employees) are distracted by other matters, such as year-end tax matters. Thus this year-end "review" may only be cursory and not get the deep attention it really deserves. As shown in an earlier article in this newsletter, the federal government provides substantial tax benefits for employer-provided retirement plans. Congress is constantly changing and revising the rules governing retirement plans to encourage employers to maintain the plans. Thus, the "right" plan design is constantly changing depending not only on the company's particular situation but also what Congress may do (such as increasing taxes).

March 15th marks the date many businesses have finalized their prior year tax liabilities, and the owners now should have more time to devote to other matters. This is a perfect time to take stock in the company's retirement plan and conduct a thorough review of the plan and whether the plan is carrying out its objectives. This review should include, at the very least, the participation of the plan's third party administrator (TPA) and financial advisor.

Another good reason to initiate a plan review now is that the owners have a clearer picture of the company's profitability. They have completed their prior year financial statements and see in hard dollars how profitable is the company. Whether or not profitability is trending up or down impacts how much the company may wish or is able to commit to retirement benefits. [One client's attitude is that he would rather give \$2 to his employees than \$1 to the IRS.] The plan's TPA can prepare projections to see whether the company should consider increasing (or decreasing) its annual contributions. This is also a good time for the owners to discuss among themselves if they are individually receiving all of the contributions to the plan they seek. Certain changes can be implemented immediately while some may need to be deferred until the following year but this is the time to figure that out.

The newspapers regularly feature articles describing the dire financial straights facing the Social Security trust fund and Congress's failure to adequately address it. [How does one justify a reduction in the employee portion of SS taxes in 2011 while the trust fund's ability to pay benefits continues to deteriorate?] Qualified retirement plans are, for many Americans, going to be their primary source of retirement income. Employers need to help their workers save for retirement and make informed decisions on the investment of their 401(k) accounts. This matter should be a part of any meaningful year-end plan review. ■



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