
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

You can't build a reputation on what you're going to do.

- Henry Ford

Professionalism is knowing how to do it, when to do it and doing it.

- Frank Tyger

I never knew a person who suffered from overwork. There are many, however, who suffered from too much ambition, and not enough action.

- Dr. James Mantague

Route To:

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New Summary of Tax Rules Form

We have updated our Summary of Federal Income Tax Rules notice that must be given to each participant who is entitled to receive a distribution from a qualified plan. The new notice is available on our website (www.danaconsulting.com) under the Client Services tab. The notice is in PDF format and can be downloaded to your computer. Prior notices should be discarded.

If you have questions about using the notice, please contact the DCG administrator assigned to your plan.

US Labor Dept Finalizes 7-Day "Safe Harbor" Deposit Deadline

The US Labor Dept has finalized regulations that establish a 7-business "safe harbor period" in which employers must deposit employee 401(k) contributions and loan deposits to the plan. This rule is limited to "small plans," which are those plans covering less than 100 participants.

Under this rule, deposits of 401(k) contributions and loan payments within seven business days (i.e., not seven calendar days) shall be treated as timely contributing these amounts to the plan for purposes of ERISA and the Internal Revenue Code of 1986. ■

Annuitization of DC Plan Account Balances

The retirement plan universe has moved from a defined benefit plan focus to a defined contribution plan focus since the 1970s. The 2008 investment market decline significantly reduced many 401(k) account balances and much thought is now being given to the question of how Americans are

going to retire on their now-diminished account balances. One idea being given an increasing level of attention is annuitizing a portion of a 401(k) account balance. Under this approach, a portion of a 401(k) account balance would be used to purchase an annuity policy to guarantee a stream of income for the participant's life (or joint lives of the participant and spouse).

We are creating a new tab on our website (www.danaconsulting.com) called DC Annuities to organize documents and articles relating to this subject. We hope it becomes a resource for plan sponsors and their advisors to become more familiar with this matter and enable them to make informed decisions.

We invite interested parties to submit materials and articles to us for inclusion in our DC Annuities tab. We will give appropriate credit to submitters. ■

IRS to Send Out Questionnaire to Measure 401(k) Plan Compliance

The power to regulate is tempered by the ability to regulate, and the IRS Employee Plans Division has only so many agents who can audit retirement plans. In an attempt to get 401(k) plan sponsors to assist the IRS identify problem areas, the Service will be sending out questionnaires hoping to gather information on the level of compliance (or lack thereof) that exists.

While we certainly applaud the desire of Americans to assist the government in carrying out its duties, we suggest to our clients that if they receive a questionnaire and feel it is their patriotic duty to fill it out, that they give their DCG administrator a call to discuss their responses. ■

Speaking of IRS Searching Out Non-compliance...

The IRS also announced that it will be selecting 2,000 employers each year for the next three years to undergo comprehensive employment tax audits. The initiative is apparently just part of what the Service is calling a "research study." That said, the research study is intended to assist the Service in identifying the greatest compliance risks and enhance its ability to target companies to audit. ■

Still More on IRS Searching Out Non-compliance

In another research study called LESE (for Learn, Educate, Self-Correct and Enforce), the IRS recently reported that the most common error on Form 5500 is the plan sponsor's failure to purchase a fidelity bond or to carry a sufficient level of coverage. ■

IRS Guide to Tax Treatment of Employment-Related Settlements

The IRS recently issued guidance to its agents describing various employment and income tax rules relating to employment-related settlements. The guidance encompasses matters such as attorney fees and tax withholding.

The IRS citation is PMTA-2009-035. If you would like a copy, please feel free to call Becky Gonzales in our office at (312) 332-7733. ■

IRS Audits of Retirement Plans

We have notified readers in earlier issues of *The Dana Report* that the IRS has increased the number of audits of qualified retirement plans over the past several years. We have also strongly recommended that plan sponsors not represent themselves in these audits. A case in point is an audit the IRS conducted of one of our clients.

When we took over the administration of this client's plan several years ago, the client had incomplete plan documents. The client declined our recommendation to file the plan to correct this defect with the IRS, assuming the plan would not get audited. Well, the plan did get audited.

We have developed an in-house audit program for how we manage these audits and a major part of our program is how we organize and present the requested records to the IRS agent. In this case the agent was so impressed with our audit program that she was willing (with her supervisor's consent) to overlook the incomplete plan documents. If the IRS was not so accommodating, the potential penalties to the client would have been significant.

All audits are not conducted the same way, and IRS agents do possess certain discretion in how these audits are conducted and settled. We have developed a considerable amount of expertise in these matters, including resolving document and operational defects affecting retirement plans with the IRS. Please feel free to contact Lee T. Jennings in our office to discuss any issues you may perceive exist with your own plan or a client's plan. ■

Life Insurance in Retirement Plans

Life insurance is sometimes acquired by a retirement plan for a variety of reasons. In some situations, the plan later sells the insurance policy to the insured participant. A recent Tax Court case illustrates how the IRS and the court will review sales of life

insurance policies from retirement plans. We should note neither the IRS nor the court objected to the sale itself. How the policy was valued was at the heart of the case. See Matthies (2010), 134 TC No. 6

NOTE: Treas. Reg. 1.402(a)-1(a)(2) was amended since the transaction in the case was entered into. Thus readers of the case should understand that the current version of the regulation is different (and in fact more restrictive) than the version analyzed in the court decision. ■

Bankruptcy No Defense to 5500 Penalty

The economy has been very unkind to many businesses over the past couple of years, even driving some into bankruptcy and liquidation. Don't expect any sympathy from the government if you fail to file Form 5500 however. An administrative law judge recently upheld \$86,500 in civil penalties on a plan administrator who failed to file a complete Form 5500 (no auditor's report was attached). The plan administrator pleaded extreme hardship, even though the company went into bankruptcy. No matter, said the judge.

This is not the entire story. Apparently, the plan administrator figured he did not have to obtain an auditor's report since the company was going into bankruptcy anyway and that the government could not do anything about it. The judge agreed the plan administrator's conduct was not willful but figured the administrator could have done more to cooperate with the government. ■



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