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

The pursuit of happiness is mankind's favorite sport.

- Anonymous

No man will work for your interests unless they are his.

- David Seabury

You cannot push anyone up the ladder unless he is willing to climb himself.

- Andrew Carnegie

Route To:

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2012 401(k) Contribution Form

You can download a 401(k) contribution change form from our website at www.danaconsulting.com under the Client Services tab. There are two forms: one with Roth contributions and one without Roth contributions. The contribution limit for 2012 has been increased to $17,000 (see next article).

You can download the form to your computer, enter your plan name, and save the revised form. ◘

2012 Retirement Plan Dollar Limits

We have updated our popular worksheet showing all of the applicable dollar limits relating to qualified retirement plans to include the 2012 amounts. Most dollar limits have been increased. ◘

Year-End Tax Planning

The economy continues to be very challenging for a lot of companies, and end-of-the-year planning may seem out of place for many companies, but here are some things to be thinking about anyway (particularly if Congress decides to raise taxes):

1. There are ways to reduce employer contributions to your retirement plan without wiping out contributions for your owners and other key employees. Many of these changes, however, must be implemented by December 31st?

2. Should you add a safe harbor feature or change your existing safe harbor contribution election? This needs to be resolved by the end of November if you have a calendar year plan.

3. What changes for 2012 should be made? Whether 2012 will bring a stronger economic recovery or be a repeat of 2011, is your retirement plan ready to respond?

4. Some companies are continuing to experience strong profits. Are you using your retirement plan to maximize your available tax deductions? Techniques like New Comparability and cash balance plans can provide substantial tax savings for owners and key employees without "breaking the bank" on required contributions for staff employees.

Please contact Lee T. Jennings in our office at (312) 651-6073 if you wish to schedule a private consultation about your plan. ◘

Scared To Get Help

We have regularly reported in *The Dana Report* the dilemma facing a growing number of Americans who are facing retirement with insufficient financial resources. One reason often cited is that Americans are not making good decisions about managing and investing what assets they do have. Articles appear repeatedly in various publications offering anecdotal evidence of people who anticipate working "forever" or living in poverty. A recent white paper by Financial Engines, an advisory firm, indicates that various emotions frequently create barriers to individuals accessing professional help. One of the most often cited emotions is distrust in using an advisor. The white paper also reported that individuals who participate in an employer-provided retirement plan said having their employer select and monitor independent advisors made it more likely they would accept professional help. This is consistent with earlier studies reporting that individuals view saving for retirement through their employer's retirement plan as one of the most effective ways to prepare for retirement.

The whitepaper can be downloaded free of charge at www.financialengines.com. ◘

IRS Program to Resolve Worker Classification Errors

The IRS has launched a program for employers to re-classify workers from independent contractors to employees. The new program, called Voluntary Classification Settlement Program (VCSP), is set out in an IRS Announcement 2011-64 and attempts to encourage employers who have "improperly" classified workers as independent contractors to reclassify them as employees without facing interest and penalties. However the employer is required to pay 10% of the back taxes for the past year.

Our Comment: Worker classification has been a contentious issue with the IRS for decades and the current rules are for the most part completely out of date. However, Congress has precluded the IRS from imposing new rules until Congress can figure out what it wants to do on this issue. Unfortunately this is something Congress has simply never done - and may not for a very long time given other issues existing in Washington. Employers should consult with their accountants about taking advantage of this new program. ◘

New Court Decision on Plan Fees

The Seventh Circuit federal court (where Illinois is located) has recently ruled that a 401(k) plan is not required to provide only low-cost mutual funds to participants. Thus a trustee did not abuse its fiduciary duty by offering retail rather than institutional, funds. The court also held that the lower court did not abuse its discretion by assessing $42,000 in court costs against the participants.

Comment: The court decision is unremarkable in that ERISA has never required that fiduciaries select the lowest cost investment lineup. The fact that the litigation was initiated, however, shows a continuing focus on plan fees.

We are concerned that Labor Dept regulations becoming effective in 2012 that require greater disclosure of plan fees will actually accelerate what we view as a "race to the bottom." Nobody wants to pay for anything anymore and we think it is vital for employers to communicate to their employees that good service providers need to be paid to do a good job.

We have developed a short webinar on these new disclosure rules that we would be pleased to offer to you (and your clients if you service 401(k) plans). Please contact Lee T. Jennings in our office if you are interested in our webinar. ◘

USPS Seeks Congressional Approval to Opt Out of ObamaCare

This does not relate to retirement plans but we felt compelled to share it with our readers. The US Postal Service announced that it will request Congress to pass legislation to permit the Postal Service to create its own health plan and opt out of ObamaCare. The USPS issued a statement saying it was broke and cannot afford the new health plan mandated under ObamaCare. Apparently the USPS is statutorily required to pay wages and benefits that are comparable to those in the private sector, but the USPS stated that due to various legislative mandates over the years, it can no longer afford any of it. ◘

Miscellaneous

- The IRS issued in September Notice 2011-72 summarizing the tax treatment of employer-provided (or reimbursed) cell phones. In quick summary the IRS will NOT require burdensome record keeping of business use in order to receive tax-free treatment but one CPA we talked to recommends employers adopt a written policy addressing the IRS requirements described in the Notice.

- According to the 2010 Taxpayer Attitude Survey, taxpayers honestly reported and paid their taxes for the following reasons:

  - Personal integrity 80%.

  - Third parties reporting your income 39%.

  - Fear of IRS audit 35%.

  - Belief your neighbors are honestly reporting 21%. ◘

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