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Sent: Thursday, April 17, 2008 2:22 PM

To: EBSA, E-ORI - EBSA

Subject: Comment EBSA Proposed Rule Volume 73, Number 41

Reference: Amendment of Regulation Relating to Definition of "plan Assets"--Participant Contributions [2/29/2008]

I echo and expand upon comments as submitted by others.

Please clarify, specifically how / if the seven day Safe Harbor affects employee deferrals in Salary Reduction SEPs and in SIMPLE IRAs. If this amendment does apply to SIMPLE IRA plans, the proposed change imposes an unreasonable burden on small businesses, particularly VERY small business where one and only one person can make the required deposit. Very small companies don't have ³payroll departments² which only need to make minor modifications in order to comply. Very small companies have one person who will have to make significant changes and sacrifice to comply.

Payroll companies do make errors<in my experience especially with calculations related to the catch-up provisions of SIMPLE IRAs, and it sometimes takes a week to get the payroll correctly calculated so the deposit can be made.

A third-party payroll service can be contracted to prepare a ³standing payroll² order to insure employees receive timely payment of their wages via direct deposit. Direct intervention by the employer or a payroll clerk is not required for the payroll to be paid in a timely fashion. However, the payroll company will not make the direct deposit of withholding into individual employee's SIMPLE IRA accounts. The employer or a designated employee (payroll clerk) must make this deposit. The ³depositor² must actively participate in the review of the payroll withholdings to verify accuracy, and process the SIMPLE IRA deposits as required.

This amendment means the employer or payroll clerk must always schedule vacations, and limit the duration of the vacation to accommodate deposit requirements. That person (and in a very small business it is usually only ONE person authorized to make this deposit) must never be out sick when a deposit needs to be processed. Holidays which involve a four-day weekend, and a bank holiday will add further scheduling issues, especially at year-end. In a very small company, the same person who manages the payroll must often be away on visits to customer sites, and extended selling trips.

In order to make money to pay the payroll customers must be satisfied. This amendment will impact significantly the support of customers and new business acquisition.

Another factor is the policy of the institution to which the deposit of funds is made. Most have a two-day delay from date the transfer of funds is initiated to the date when the deposit is ³deemed² to have been made. This delay, beyond the control of the employer, eats up 28.5% of the available seven-day time for making the deposit.

For very small companies this amendment requires not just a ³minor modification in order to take advantage of the safe harbor² but imposes a huge burden.

I propose the following changes to the amended policy:

- 1) Exempt very small companies (say 50 or less where it is very likely the entire burden of this amendment will fall on one person.) and / or
- 2) Provide for some averaging of the days on which the deposit is actually made to accommodate those periods when it is not reasonable to be able to meet the seven-day window, though it is met ³on average². (As stated in the regulatory impact section ³69% remitted participant contributions for at least some of the employer's payroll periods within 7 business days². For very small companies it will be possible to meet the 7 day window sometimes, but not always without significant disruption of business operations.) and /or
- 3) Provide for several ³exemptions² from the deposit date rule each year to allow for vacation, illness, bank holidays, computer failures, etc.

While it is a reasonable goal to encourage deposit to employee accounts of withholding rightly due them, it is unreasonable to impose the proposed burden on very small employers. This burden will only discourage more employers from providing this benefit to their employees and force hardworking owners of small companies into non-compliance unreasonably.

J. Ashley