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PAYROLL DEDUCTION IRA

By: Matt W. Zeigler, Esq.

The United States Department of Labor has recently published a bulletin, #99-1, dealing with the ability of an employer to allow employees to make deductions under a payroll deduction program and have those amounts forwarded to an Individual Retirement Account (IRA). The DOL reminds us that this has been in effect since 1975; however, the publication of this bulletin is designed to encourage more retirement savings.

The Department of Labor has estimated that approximately 73,000,000 workers are not covered by an employer sponsored pension plan. The employer's reluctance to establish a qualified plan is caused by many reasons, including the fiduciary liability of being a sponsor of a tax qualified retirement plan, the responsibilities of maintaining a qualified plan, the additional tax forms that must be filed and the expense, both legal and accounting, for maintaining a tax qualified plan under the Employee Retirement Income Security Act of 1974, as amended (ERISA). Now the Department of Labor, in attempting to encourage additional expansion of retirement plan coverage for employees, clarifies its rules on a payroll deduction IRA. The Department of Labor analogizes the new payroll deduction IRA to the same responsibilities that employers have had for years when they allow a deduction from the payroll of employees for the purchase of savings bonds.

Although the liability for an ERISA sponsored plan is important, the Department of Labor has clarified certain guidelines that will allow an employer to maintain the new payroll deduction IRA and still not become a plan sponsor of an ERISA retirement plan. The guidelines that the Department of Labor has established is a Safe Harbor set forth in the regulations at 29 CFR 2510.3, *et. seq.*:

1. **Employer neutrality**. The DOL states that as along as an employer remains completely neutral with respect to the bank, savings institution, brokerage house or insurance company (IRA Sponsor) in the communications with its employees.

2. **Employer encouragement is O.K.** The employer may encourage employees to save for retirement by offering general information, educational information, the advisability of saving for retirement and the tax advantages of making contributions to an IRA without becoming an employer sponsor of an ERISA qualified plan.

3. **Employer's role is limited.** The employer's role must be limited to collecting the payroll deduction amounts and remitting those dollar amounts promptly to the IRA Sponsor.

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4. Answers to the questions to the employer. The employer may answer questions about the mechanics of the payroll deduction IRA, may refer questions to the IRA Sponsor, may provide information and materials written by the IRA Sponsor, may request the IRFA Sponsor to prepare materials and the employer may review them for completeness, and the employer may even have its own logo on the IRA materials, all without becoming a sponsor of an ERISA qualified plan.

5. The employer may limit the number of sponsors. The employer may limit the number of IRA Sponsors that have the ability to talk to its employees under its payroll deduction IRA. The employer may even limit it to a single IRA Sponsor, or the employer can establish certain criteria for IRA Sponsors regarding education, forms and availability to answer questions and will review those standards periodically, all without becoming the sponsor of an ERISA qualified plan.

However, if an employer negotiates special terms and conditions with one or more IRA Sponsors, such terms and conditions that are not generally available to other IRA purchasers, like lower fees, special investment choices, or access to a special pool of invested amounts with certain minimum dollar contributions. All of those actions by an employer would then create those terms and conditions that are not generally available to an off-the-street purchaser of an IRA, and would then create liability for the employer. An employer may lose the safety of the Safe Harbor Payroll Deduction IRA if the employer exercises any influence over the investment choices.

6. Fees. The Department of Labor says that the employer sponsor can pay the IRA Sponsor fees so long as there is no profit to the employer. In addition, it is also acceptable for the employer sponsor to pay its internal overhead costs for maintenance of the plan documents as well as the cost of maintaining the payroll deduction and the related bookkeeping cost. However, the employer cannot pay for fees that are charged to an individual employee. Moreover, the employer could not negotiate any special business conditions like, for example, a line of credit from a bank, if the IRA Sponsor receives the employee contributions from this particular employer.

In conclusion, an employer can set up a plain vanilla Payroll Deduction IRA without causing any fiduciary liability for itself if it follows the very few common sense rules and does not create any special situations for itself or the employees. A Payroll Deduction IRA can serve those employees who have difficulty saving money on a regular basis.

A Payroll Deduction IRA allows for easy, regular deductions from the payroll, like savings bonds deductions, to assist employees in securing for their own retirement and encourage self-responsibility in caring for their retirement years. It is clear from all the statistics that the earlier employees begin to save, the more money they will have because of the compounding earning factor over the years.

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