



Law Offices of

R. David Danziger, P.C.

TAX-ADVANTAGED RETIREMENT PLAN DESIGN, CONSULTING, & TPA

1111 Street Road, Suite 200
Southampton, PA 18966
p (215) 322-4202
f (215) 322-4364
www.DanzigerPlans.com

EGTRRA RESTATEMENT REQUIREMENT

Background

Qualified retirement plans offer unparalleled tax sheltering benefits. As a condition for these benefits the law requires that your plan:

- Operate in a non-discriminatory fashion. We help our clients comply with this on an ongoing basis; and
- The Form of your plan document must spell out all requirements under the law - even if some of those requirements do not currently apply to your plan in operation.

Whenever a new law or regulation impacting Qualified Plans is signed into effect, the law requires that your document be amended to reflect the change. Initially, the change is documented with “Interim” amendments. Over the last eight years we have provided five Interim Amendments. We delivered the most recent amendment – free of charge – early in 2008.

Why Do We Have to Restate Our Plan Document Now?

After a period of time, there are too many amendments to keep track of. IRS has declared that now is the time to require all plans be re-written (i.e. Restated) to incorporate past amendments into a single document. The last mandatory restatement was for a set of laws referred to as GUST. That process ended in 2001. Beginning with the current “EGTRRA” Restatement, the IRS has implemented a policy of requiring most plans to be restated every six years. **The deadline for the EGTRRA Restatement is April 10, 2010.** The next restatement won’t be due before 2016.

What Is EGTRRA?

EGTRRA is an acronym for the “Economic Growth and Tax Relief Reconciliation Act”, signed into law by President Bush in June, 2001. The EGTRRA Restatement will also reflect changes enacted under the Job Creation and Worker Assistance Act of 2002, (“JCWAA”), and the Sarbanes-Oxley Act of 2002, (“SOA”), along with several major changes in US Treasury Regulations.

What Changes Are Covered by the EGTRRA Restatement?

A complete list of the changes requires over four pages of fine print. Highlights include:

- Higher Compensation and Contribution Limits;
- “Catch-Up Contributions” for those age 50 or better;
- New ‘Minimum Distribution’ rules extending the time over which minimum distributions must be paid out;

- Mandatory Rollover Rules requiring participants to rollover distributions to an IRA unless they affirmatively elect otherwise;
- Final 401(k) Regulations simplifying plan operation and testing requirements; and
- Roth 401(k) Contributions allowing for tax-free growth without income limitations.

As mentioned above, all plans must be amended to reflect these and other law changes even if some of them do not immediately impact the operation of your Plan.

What Happens If We Don't Restate Our Plan by the April 10, 2010 Deadline?

If you do not restate your plan it will no longer be a "qualified" plan. It would lose its tax-favored status, causing the following repercussions:

- The company would retroactively lose the deductibility of employer contributions;
- Your employees' vested account balances would become immediately taxable;
- Prior tax-free rollovers would become taxable; and
- The trust would lose its tax-exempt status and become a taxable trust.

So-called non-amenders are sometimes able to retroactively correct for a missed deadline; however, there are very substantial monetary penalties. If a non-amender is caught on audit, there are even more substantial penalties. Please know, also, that we will resign as your service-provider if you do not restate your plan to comply with the law by the deadline.

Is There A Silver Lining?

You likely have already benefited from some of the changes described above. Before we draft your restatement, we will check with you to see if you want to make any other changes now. Another benefit is that we will restate your "Summary Plan Description" (SPD). This will allow you to distribute a new and up-to-date description of your Plan to all of your employees. Some of your employees may ignore the new SPD, but many of your best employees will be reminded to be thankful to you for providing them a retirement savings program.

In addition to the changes listed above, we will also want to ask you whether any of the following items will add value to your plan's design:

- Plan Eligibility – should it be accelerated to incent new hires, or lengthened if it is currently too quick?
- Plan Trustees – is it time for a change?
- Plan Loans – should they be added or removed?
- Automatic Enrollment & Default Investments – will this help to increase savings?
- Matching Contributions – should these be added; or reduced?
- Contribution Formulas – does your current formula still fit your needs?

We are looking forward to speaking with you well before the April, 2010 deadline. If you have any questions before we contact you, please give us a call any time.