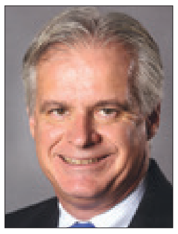
FOCUS ON TAX PLANNING

Feds lean on sponsors, advisers for 401k safeguards

By MICHAEL JOYCE
Special for Lehigh Valley Business

Employers who choose to include 401k plans in their benefits packages can experience significant boosts to business as a result of offering the plans, such as greater employee loyalty and the resulting increased productivity.


Joyce

But along with the upside of providing retirement savings plans comes the responsibility of managing and administering them.

And businesses need to understand that regulators are keeping an eye on both 401k plan sponsors and plan advisers on behalf of employees.

Since 401k plans can be offered to a wide range of employees, from lower-level staff to management, they often engender a sense of well-being across departments in a business. In addition to enjoying increased productivity, employers offering 401k's also benefit from a tax standpoint – since employers' contributions to employees' retirement savings are tax deductible.

When it comes to the responsibilities of 401k plan sponsors and plan advisers, businesses should be aware that unless a plan is set up through insurance contracts, all plan assets must be held in trust "to assure that assets are used solely to benefit the participants and their beneficiaries," according to the U.S. Department of Labor.

The plan's trustee then acts as fiduciary to the plan and also must manage employee contributions, plan investments and distributions – all of which can be delegated by hiring qualified service providers. It is important to note that a 401k plan trustee is personally liable for oversight of the plan.

Additionally, 401k plan sponsors must appoint a custodian to oversee a record-keeping system for the plan. This entity – be it an inside manager, outside financial institution or contract administrator – is responsible for establishing a record-keeping system that accurately keeps track of "contributions, earnings and losses, plan investments, expenses and benefit distributions," according to the Department of Labor.

UNIFORM STANDARDS

The ethical standard to which 401k plan sponsors and plan advisers are held has been growing more stringent.

In April, the White House Council of Economic Advisers found that conflicts of interest in the retirement savings industry resulted in $17 billion in annual losses to consumers. As a result, the Department of Labor issued a new proposed rule that would require the adoption of "the best interest standard across a broader range of retirement advice to protect more investors."

The new rule would compel all advisers to retirement savings vehicles, including 401k plans, to adopt the fiduciary standard. Currently, different types of advisers are held to different ethical standards.

DEFINING RESPONSIBILITIES

Given the Department of Labor's focus on the fiduciary standard, it would be prudent for businesses to hire an adviser that already is held to that standard, such as a registered investment adviser. The department defines the fiduciary's responsibilities as:

- Acting solely in the interest of the participants and their beneficiaries.
- Acting for the exclusive purpose of providing benefits to workers participating in the plan and their beneficiaries and defraying reasonable expenses of the plan.
- Carrying out duties with the care, skill, prudence and diligence of a prudent person familiar with such matters.
- Following the plan documents.
- Diversifying plan investments.

> The Supreme Court ruling … allows plan participants to sue plan sponsors if they fail to properly monitor funds.

MORE TEETH TO SUE SPONSORS

Another legal development is May's Supreme Court ruling in Tibble v. Edison International requiring plan sponsors to conduct more frequent reviews of plans and to negotiate lower fees. The decision allows plan participants to sue plan sponsors if they fail to property monitor funds.

The unanimous court also ruled that the existing six-year statute of limitations on suing plan sponsors and administrators is inadequate. Individual investors will now have more time to consider legal action when they question investment choices and fees.

Plan sponsors and advisers can be held legally responsible for investment decisions made for an as-yet-undetermined, but inevitably longer, period of time.

■

Today, stricter requirements of those overseeing 401k plans and a rapidly changing legal environment make choosing the best plan-adviser more important than ever.

With the right team at the helm, businesses can be assured that their retirement savings plans, so valued by employees, are responsibly managed.

Michael Joyce, founder and president of JoycePayne Partners of Bethlehem and Richmond, Va., is responsible for overall investment strategy, management of investment portfolios and financial counseling services. He can be reached at mjoyce@joycepaynepartners.com.

ESTATE PLANNING

continued from page 13

PROTECTING THE CHILDREN

First marriages with children from them likely won't have trust accounts set up unless a child is disabled, has special needs or financial provisions are required to care for a minor, Evans said.

> 'Name a neutral party as trustee, such as a bank with a trust department or a law firm experienced in dealing with estate planning and trust account setups.'
>
> — Kirby G. Upright, attorney

But for those married two or more times, especially when children from each marriage are involved, should consider trust accounts.

"If you don't set up a trust, there is no guarantee the kids from a first marriage will get the money," Evans said.

Since a third-party corporate trustee isn't emotionally tied to the estate, distribution of assets is less stress-provoking to family members, because everything is governed by regulations.

"There is complete transparency," he said.

NOT ONE-SIZE-FITS-ALL

Evans cautioned against using do-it-yourself models for setting up trusts.

"Getting a form from a book and going to a seminar, that is kind of dangerous," he said. "One form doesn't fit all."

Other reasons to set up a trust could include funding a charity or foundation, caring for a spouse or providing for costs for long-term medical care for a spouse or child.

"Find a document that complements [the] assets," Upright said of trust account language.

TAX IMPLICATIONS

Since the Pennsylvania government doesn't levy inheritance tax on a surviving spouse, but does on other named heirs, it's important to understand how tax laws work.

The American Taxpayer Relief Act of 2012 set federal taxes on estates above a combined amount of $10.86 million, which is adjusted for inflation every year and assumes a spousal couple.

That means that estates below $10.86 million don't pay federal inheritance taxes, Evans said.

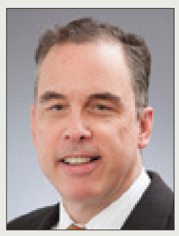
It also means that individual estates aren't taxed under $5.4 million, he said.

Pennsylvania is one of only six states with an inheritance tax. The tax is based on the relationship of the heir to the deceased.

In Pennsylvania, children 21 and older pay a state inheritance tax of 4.5 percent; a sibling pays 12 percent; and a distant relative, friend or other organization would pay 15 percent inheritance tax, according to the state Department of Revenue. Charitable and exempt institutes are exempt from the tax.

PICK THE BEST WAY TO DISTRIBUTE INCOME

- **Aim for transparency**, where everything is spelled out, said Bill Evans, trust and estate manager for ESSA Bank and Trust in Bethlehem.
- **Name guardians** for minor children; as a court will appoint guardians for those without legally specified guardians. "You don't want to leave that up to someone else," Evans said.
- **Set up trust accounts** when multiple marriages, children or stepchildren are involved, and clearly specify the distribution of assets – or who gets what, Evans said.

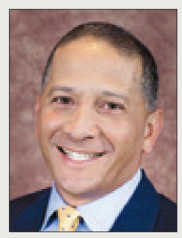

Evans

- **Beware of** "lifetime revocable trusts or trust mills" with boiler plate language and printable forms, promising tax savings and efficiency. "These can be a scam," said Kirby G. Upright, an attorney with King, Spry, Herman, Freund & Faul LLC in Bethlehem.
- **Portability is a way** for a surviving spouse to receive any tax benefits from an unused portion of the deceased spouse's estate, Evans said. Portability is included in the federal American Taxpayer Relief Act of 2012.

ELECTRONIC ACCESSIBILITY, SAFEGUARDS

Twenty years ago, estate assets all were on paper. "Now, about half come on paper and half are electronic," said Paul J. Marrella, managing partner of Marrella Financial Group LLC, Raymond James Financial Services Inc., based in Wyomissing. His advice:

- **Digital assets** mean passwords need to be accessible for online banking and other accounts because without them, survivors probably can't access critical information. "Get an organizer of some sort and do it so you know where all the information is," Marrella said.


Marrella

- **Have all passwords** written down – either on paper or electronically – and share the list with a trusted keeper.
- **Keep electronic inventories** of passwords, and password-protect them, Marrella said.
- **Secure online service providers** such as LastPass, Dashlane and KeePass will keep the digital house organized, Marrella said. LastPass is fee based, while Dashlane and KeePass are free, according to the companies.
- **Create an inventory** of digital assets, along with details about user names and passwords. "Yahoo, Comcast or Verizon won't know you have died until someone tells them," Marrella said.