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Is Your Employee Benefit Plan Being Properly Administered?

By Don Greenhalgh, CPA

Employee benefit plans represent the future of the hardworking employees who have contributed to the success of a company. The Form 5500, which is required of all employee benefit plans, is unique in that it is subject to review by both the U.S. Department of Labor (DOL) and the IRS. The DOL makes sure participants receive the benefits they are entitled to under the provisions of the plan, while the IRS reviews the tax-exempt status of the plan. Plan administrators and sponsors tend to encounter issues with the DOL and IRS when there is an oversight in filing and/or a plan is administered improperly.

Let's start with the basics. The DOL requires all employers with more than 100 eligible employee benefit plan participants to conduct employee benefit plan audits. It's important to note that the number of participants is based upon the number of people *eligible* to participate in the plan, not the actual number of people accumulating benefits in the plan. The plan administrator must compare eligible compensation per the plan document to that used in plan operations. Too often, administrators rely on the third-party payroll company to deduct the deferrals from payroll, which presents a problem if no one is monitoring the process.

A *funded* benefit plan with more than 100 eligible participants requires the Form 5500 along with audited financial statements. Plans include:

- 401(k) plans
- 403(b) plans
- Pension plans
- Profit-sharing plans
- Health and welfare plans

Audits are performed on the financial statements of the plan and typically include verification of plan assets and liabilities, as well as testing activity during the plan year. Testing includes investment results, contributions of employers and employees, distribution of benefits, and payment of expenses. In addition, the auditor is required to test the compliance of the administration of the plan with the provisions of the plan document as it relates to individual participant accounts. Simply put, they will check to make sure benefits are being distributed as designated by the plan. Eligibility of employees participating in the plan will also be reviewed as well as the distributions they receive.

Typical problems that may arise in plan administration include:

- Misuse of plan assets
- Improperly excluding a class of employees from participating in the plan
- Preferential benefits for highly compensated employees
- Inappropriate investments in the plan
- Improper charging of expenses to the plan

Failure to file, late filings, or deficient filings, may result in penalties up to $50,000 for each plan year until an appropriate filing is made and accepted. Improper administration could also jeopardize the tax-exempt status of the plan.

For questions regarding employee benefit plan audits, please contact Don Greenhalgh at 781-937-5339 or via email at dgreenhalgh@dgccpa.com.