

A Safe Harbor election ... one solution for owners with headaches caused by low employee contributions restricting the amounts owners and other key employees can shelter within their 401(k) accounts.

New 401(k) programs for this calendar year must be up and running by October 1, 2010....

Don't wait!! You will risk paying taxes that you could avoid, and you will lose another year of the maximum savings...The time to act is NOW!

MONEY ISN'T EVERYTHING – AS LONG AS YOU HAVE ENOUGH!

An MMG Case Study

The Client's Quest - A financial advisor called us concerning his client, a 34 year old physician who started a new practice in 2009 and wanted an appropriate retirement program. The physician said he was thinking long term and that his primary objectives were:

- “To help my family avoid any financial burden ...as [my wife and I] age and our health deteriorates.
- I want to provide money for my family to have after my death.
- I also intend to use this money to help maintain my lifestyle during retirement.”

Based on our conversations with the advisor and the physician, we were able to design an extremely tax-efficient plan that addressed each of the concerns. This is a great example of how thoughtful, experienced plan design capability solves headaches.

“Beating the Tax Man” Math - The physician confirmed that he had the income to comfortably contribute \$49,000 a year to his plan (the 2010 defined contribution maximum), but was concerned about what expense that would trigger for his staff of five. We explained that, without a plan, he would have to generate taxable income of at least \$70,000 to save \$49,000 after tax. So...if his out-of-pocket costs for the plan (including administrative fees and the staff contributions) were significantly less than \$21,000, he would be way ahead of the game. He agreed, and decided it was well worth asking us for a complimentary proposal.

The Perfect Program - We reviewed the physician's employee census and completed an analysis to determine the most efficient retirement plan design possible for his specific circumstances. By using a 401(k) program, the physician could shelter \$49,000 per year AND reduce the burden of his required contribution to his staff by about one-third!! That represented a savings of more than 7% of the eligible staff payroll each year! This result would not be possible using a SEP-IRA or a simple profit sharing plan.

What about my employees who can't afford to save and won't participate in the plan? - The physician expressed his concern that his employees lived

The MandMarblestone Group provides a complimentary 401(k) design consultation.

To learn more about our *OCP*[®] plan and how this may benefit your clients, please call the MandMarblestone Group at 215-222-5000.

paycheck to paycheck and would choose NOT to contribute to the 401(k) program. “Won’t that mean that I can’t save the maximum amount for myself? How will I be able to reach my goal of \$49,000 without the maximum deferral amount?”

The answer? A legal design feature called a “safe harbor election” will protect his maximum tax shelter, even if his employees don’t contribute a whole lot, and actually, even if NO employees choose to participate. The safe harbor employer contribution, which usually takes the form of a non-elective contribution of 3% of pay to all non-highly compensated participants, actually serves triple duty. Here’s how: This plan is almost certain to be top-heavy (more than 60% of the assets will belong to the physician-owner – which is a good thing!). A top-heavy plan legally requires a 3% of pay minimum contribution to non-key participants. The safe harbor employer contribution takes care of 3 things at once:

- Gives the plan a pass on 401(k) discrimination testing, resulting in maximum deferrals for the physician no matter how little or how much others choose to defer
- Serves as the 3% top-heavy employer contribution, required by law
- Serves as a baseline employer contribution to staff, which will allow more dollars to be sheltered for the physician if properly designed (3% may support a contribution of as much as 9% of pay for the owner!)

The Catch - The new plan must be up and running by October 1st to take advantage of the safe harbor election for 2010! With less than 60 days to go, there is little time to spare.

The Plan Design - With proper analysis of important plan provisions such as eligibility requirements, we were able to keep three of the physician’s late 2009 hires out of the plan until 2011. We also used our *OCP*[®] plan design to build in as much flexibility in the employer contribution as possible; we can change testing methodologies from year to year in order to deliver the best result possible to the physician without the necessity to amend the plan each year! The physician was also thrilled to learn that he could use a 6 year graduated vesting schedule for any employer contributions in excess of the 3% safe harbor dollars, so that he could reward employees who stayed with the practice.

The Results - In the end, we presented the physician with a design that we project will provide him **more than 95%** of the amount he contributes in 2010 (\$49,000 out of \$51,244), and **more than 86%** in 2011 (\$49,000 out of \$56,606), even with all five staff covered! When compared to taking the same amount out of the business as personal income and winding up with as little as 60% after paying taxes, this one’s a no-brainer!

If you’d like to discuss how we might help you, call or email Bob Mand, Ken Marblestone, Lori Gordon or Ian Haring at MandMarblestone. 215-222-5000, or email us at:

rmand@mand.com, marblestone@mand.com, lgordon@mand.com, iharing@mand.com

We also remediate problematic plans to full IRS compliance.

☒☒ You also may reach us through our website: www.mand.com.

Follow us:



If you do not wish to receive future copies of our Qualified Planning Ideas email, please reply to info@mand.com and type the word unsubscribe in the subject line. This email is sent in order to share general planning concepts. It is not intended to constitute legal advice. © August, 2010. All rights reserved.

IRS Circular 230 Disclosure: Unless expressly stated otherwise, any tax advice contained in this communication (including any attachments) was Not written and is not intended to be used, **and cannot be used by you, the taxpayer, or any advisor for the purpose of** (i) avoiding penalties Imposed by the Internal Revenue Code or (ii) promoting, marketing, or recommending any transaction or matter addressed herein to any other party.