NRS
NATIONAL RETIREMENT SERVICES, INC.

EXCLUDING PART TIME, TEMPORARY, AND SEASONAL EMPLOYEES CAN BE COMPLICATED

Many employers wrestling with retirement plan design eligibility issues encounter special problems associated with the common employer desire to include only full time employees and exclude all others. The natural response is to design a plan to exclude Part Time, Temporary, and Seasonal Employees, defined as those scheduled to work less than 1,000 hours per year. Such a provision runs contrary to Internal Revenue Code section 410(a) because that section prohibits a plan from requiring more than one Year of Service (two years for fully vested employer contributions) as an eligibility condition. A "Year of Service" for this purpose means a Plan Year during which the employee was paid for at least 1,000 hours. A plan that excluded all employees whose regularly scheduled time was less than 999 hours per year will be rejected by the IRS because one or more employees who are *scheduled* to work under 1,000 hours a year may *actually* be paid for 1,000 or more hours in a given plan year.

The situation described above is often solved by requiring a Year of Service as a condition of eligibility, where a Year of Service is defined as a Plan Year in which an employee is paid for 1,000 or more hours of service. This requirement effectively prevents part time or temporary people from entering the plan since they seldom complete a Year of Service. However, many employers want to establish eligibility rules with lower thresholds than one Year of Service. This often occurs, for example, when designing eligibility requirements for making 401(k) salary deferrals. Eliminating the one Year of Service condition can mean that all part time or temporary personnel become eligible for plan participation.

There is a solution for an employer who wishes to exclude part time staff, while at the same time permitting full time employees to enter the plan after a short (e.g. three month) eligibility period. NRS pre-approved plans include the ability to exclude Part Time, Temporary, and Seasonal employees who are regularly scheduled to work under 1,000 hours (a little over 19 hours per week). Provided, however, any such employee who *is actually paid for 1,000 or more hours in a year* becomes eligible for plan participation no later than the first day of the Plan Year immediately following the year in which the 1,000 hours were paid. This creates two separate sets of eligibility rules: full time employees need only meet the plan service requirement (e.g. three months), while other employees must complete 1,000 hours of service before becoming eligible in the following plan year. Such a provision may introduce complexities concerning meeting federal coverage requirements, but these are often easily solved.

START FISCAL YEAR END PLANNING NOW

Many tax advisors will tell you that good tax planning is a continuous process, rather than a last minute exercise. In turn, saving for retirement is not an easy task, but it is certainly on most people's minds. As discussed below, tax qualified retirement plans can deliver substantial reductions in current taxable income while providing for retirement. Whether an owner is thinking in terms of a defined contribution plan, defined benefit plan, or both, new plans need to be adopted before the applicable tax year ends.

Small businesses, such as a husband and wife with no full time employees, are able to set aside substantial sums by having the business adopt a 401(k) plan with a profit sharing feature.

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For example, if each has at least $138,000 of taxable income, the combined total annual deduction can be as high as $104,000. If both are age 50 or above the maximum deduction becomes $115,000. This is due to permitted "catch up" 401(k) contributions. Business owners age 40 or older who are seeking higher retirement benefits and deduction levels than the defined contribution plan figures described above would do well to consider adopting a defined benefit plan. The defined benefit plan might be in lieu of a defined contribution plan or it may be in addition to a defined contribution plan. As indicated by the table below, a defined benefit plan by itself can provide for higher retirement benefits and deductible contributions well in excess of those available in a defined contribution plan. The following figures are for a single high earning individual starting the plan at the indicated age.

Age	Maximum Deductible Contribution
65	$192,765*
60	$216,164
55	$162,012
50	$121,065
45	$ 90,467
40	$ 67,602

**This annual contribution is lower than the illustrated age 60 contribution because it anticipates retirement at age 70, while the other illustrations anticipate retirement at age 62.*

While current earnings are required in order to make deductible defined contribution plan contributions, a defined benefit plan can be designed that bases plan benefits on high three year average compensation. The average may include periods before the plan is adopted. This means that the contribution figures in the above chart apply as long as the participant has either a $210,000(+) prior three year compensation average or current taxable income is $210,000 or more. This is true even if the current year income is close to zero.

If additional retirement benefits and deductible contributions are desired, a 401(k) plan can be added that permits $17,500 annual contribution per person, plus another $5,500 per year if age 50 or older.

Individuals working in multiple businesses can often participate in multiple plans provided by each of the businesses, although certain individual limits may apply. Each non-affiliated business is considered a separate entity for pension purposes as long as more than 20% of the second company is owned by non-children or more than 50% is owned by adult children or parents.

Plan ahead! We are here to help.

REMINDERS FOR AUGUST

August 15 - **Defined contribution plan employer contributions** are due for employer tax returns due August 15 covering the fiscal year ending 05/31/2014 and for the fiscal year ending 11/30/2013 tax returns that are on extension to August 15.

August 15 - **Form 5500/8955-SSA** – Forms are due for the Plan Year Ending 10/31/2013 that are on extension.

September 2 - **Form 5500/8955-SSA** – Forms are due for Plan Year ending 01/31/14 that have not been placed on extension.

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FOR MORE INFORMATION OR TO REQUEST A PROPOSAL, PLEASE VISIT OUR WEBSITE AT WWW.NRSERVICES.COM, OR FOR SALES SUPPORT, PLEASE CONTACT:

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