

Legislative Update and Tax Reminders

"EGTRRA" Amendments

The Economic Growth and Tax Relief Reconciliation Act, **EGTRRA**, was passed in 2001 and is generally effective for Plan Years starting in 2002. If you have adopted or intend on adopting the QBC Prototype Plan, you have an extended remedial amendment period until April 30, 2010 to amend your Plan to bring it into compliance. All qualified plans must be amended to comply with EGTRRA.

While the Internal Revenue Service was extending and extending the compliance date for EGTRRA, Congress passed another significant piece of pension legislation the Pension Protection Act of 2006, **PPA**, weighing in at an astounding 900 pages. The dilemma is that the PPA changes must be made by the end of the Plan Year beginning on or after 1/1/2009. This means that the PPA amendment is due by 12/31/2009 for calendar year plans which is before the EGTRRA compliance date of 4/30/2010! The PPA amendment is expected to be out in the summer of 2009. Because we would like to provide you with both the EGTRRA plan restatement and the PPA amendment at the same time we are waiting until this summer to begin the EGTRRA restatements under our prototype plan.

Individually designed Plans have a five year cycle that began two years ago to determine the remedial amendment period to comply with EGTRRA. However, if a plan sponsor executed an IRS Form 8905 indicating an intention to adopt the QBC Prototype Plan, they also have until 4/30/2010 to amend their plan regardless if they use QBC's prototype or not.

DOL Proposed Rulemaking

- **Participant Disclosures:** On July 23, 2008, the United States Department of Labor (DOL) issued new proposed regulations on disclosures for participant directed investing. These rules are designed to provide investment related, comparative performance data and fee disclosure information. The proposed rules prescribe both annual and quarterly disclosure requirements. The DOL intended that these rules be effective January 1, 2009. However the DOL has not yet finalized these regulations. We'll keep you posted.
- **401(k) Contribution Depositing Requirements:** Under DOL rules, 401(k) contributions must be deposited as soon as possible, but not later than 15 business days after the end of the month for which they were withheld. This requirement has been misinterpreted as a "15 business day" safe harbor. It is not a safe harbor. Rather, the depositing requirement is "as soon as the funds can reasonably be segregated from the employer's general assets." The DOL in March issued proposed rules to eliminate the confusion by establishing a true safe harbor. For plans of less than 100 participants, contributions would be timely if made by the 7th business day after they are withheld from wages. The DOL surmised that employers of over 100 participants didn't need a safe harbor because they are depositing sooner than the 7th business day rule. Although the DOL has yet to finalize these rules, we suggest that you operate within the proposed 7 day safe harbor to avoid potential prohibited transaction penalties and lost interest charges. Multiemployer plans may have less stringent requirements if made pursuant to a Collective Bargaining Agreement.

Economic Relief

The market and economic downturn has been brutal. Many proposals ranging from the government "taking over 401(k) plans" to relief from the defined benefit funding requirements have been proposed. As we go to press, on December 23rd, The Worker, Retiree and Employer Recovery Act of 2008 was signed into law which did contain defined benefit funding relief for both single and multiemployer defined benefit plans. Also defined contribution plans and IRAs need not make 70½ minimum distributions for 2009.

IRS Dollar Limits for Retirement Plans

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Elective 401(k) and 403(b) Deferrals	\$ 15,000	\$ 15,500	\$ 15,500	\$ 16,500
Catch-up Contributions (over age 50)	5,000	5,000	5,000	5,500
Maximum Defined Contribution Limit	44,000	45,000	46,000	49,000
Maximum Defined Benefit Limit	175,000	180,000	185,000	195,000
Maximum Compensation Limit	220,000	225,000	230,000	245,000

Miscellaneous

- ADP and ACP refunds are now taxed in the year distributed (rather than the year deferred) and GAP period income was eliminated.
- Blackout periods require minimum of 30 days advance notice.
- Combinations of Defined Benefit and Defined Contribution are not subject to the 25% aggregate limit if DC contributions are 6% or less. The 25% limit doesn't apply at all if the DB plan is covered by PBGC.
- Contributions must be made by your tax-filing time with extensions to be deductible and must be made within 8 ½ months of the Plan Year end if subject to Minimum Funding Standards.
- Controlled Groups are treated as a single employer for all retirement plan purposes.
- Sick and vacation pay paid after termination and by the later of the end of the Plan Year or 2-½ months should be counted unless you elect to exclude it in your plan document.