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## Is Your Retirement Plan in Compliance?

By Cathy Roe, CPA

Retirement plans allow participants to defer taxes on contributions made to the plans and on the earnings of the plans. Because of this there are rules that all plans must follow. Failure to follow those rules can result in penalties being charged to the employer and in some cases, the plans can be disallowed and all contributions and earnings of the plan will become taxable to the participants.

The rules that have to be followed depend on the type of the plan. Plans such as IRAs and SEPs are the easiest plans to operate and do not require the filing of an annual report to the IRS. However, these plans generally have less flexibility than 401(k) or 403(b) plans, which have many more compliance requirements.

All retirement plans require a plan document that must contain certain provisions depending on the plan type. Usually the document must specify such things as participant eligibility, benefits provided, contribution limits, available investment options, and distributions. Plan documents need to be amended regularly to keep up with changes in the law. Once you have a plan document that is in compliance with the law, you must operate your plan according to your plan document. This means for instance, that you have to allow participants to enroll at the date specified by your plan, make contributions in the amounts specified by your plan, and deduct the proper amount from employee wages if this is a feature of your plan.

### FIX YOUR NONCOMPLIANT PLAN

The IRS provides a great deal of information on the Retirement Plans Community page of its website [www.irs.gov](http://www.irs.gov) about the various types of retirement plans including a "Retirement Plans Navigator" and a "Plan Comparison Table." It also has "Fix-It" guides for some plans to help you get back into compliance.

To help you maintain your plan, the guides recommend that you keep regular contact with the company that sold you the plan, review the participation status of all employees at least once a year, and review the plan terms to ensure that you are considering the correct amount of compensation when calculating contributions. The IRS also regularly offers a newsletter, webinars, and phone forums on retirement plans.

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## **403(b) FILING REQUIREMENTS**

Plans that are subject to the Employee Retirement Income Security Act (ERISA), such as 401(k) plans and many 403(b) plans, are also required to file an annual report with the IRS. These reports are due within seven months of the end of the plan year which should be specified in your plan document. With plan years beginning in 2009 or later, all retirement plans subject to ERISA are required to file Form 5500 if they are a large plan (100 or more participants) or Form 5500-SF if they are a small plan (fewer than 100 participants) or 5500-EZ when the only participant is the business owner. Prior to 2009 all plans filed Form 5500 or 5500-EZ.

Prior to 2009, 403(b) plans subject to ERISA were only required to give basic information such as the name of the plan and administrator. With plan years that began in 2009 or later, these 403(b) plans are required to provide income statements, balance sheets and demographic information about the participants. They also must answer questions about whether or not the plan is in compliance with various requirements. Large plans are now also required to attach a copy of audited financial statements prepared by Certified Public Accountants to their return.

Your 403(b) plan is subject to ERISA if there are employer contributions. Otherwise it may not be subject to ERISA if participation in the plan is voluntary and there is minimal administrative involvement by the plan sponsor. In particular, the plan sponsor cannot authorize plan-to-plan transfers, process distributions, establish hardship withdrawal eligibility, make qualified domestic relations order determinations, determine loan eligibility, enforce loans, or negotiate with plan vendors as it relates to terms of their product. The plan document also cannot specify that the plan is subject to ERISA.

## **DELINQUENT FILING RELIEF FOR RETIREMENT PLANS**

The Department of Labor has established the Delinquent Filer Voluntary Compliance Program (DFVCP) to allow retirement plans that have not filed the proper tax returns to file them at a reduced penalty. The program is especially attractive to 501(c)(3) organizations with plans with fewer than 100 participants because there is a penalty of only \$750 no matter how many returns for that plan are delinquent. The IRS has also agreed to provide penalty relief to these same plans. However, the required filings must be made before the plan administrator is advised in writing by the Department of Labor of a failure to file a timely annual report.

The delinquent returns must be filed electronically for each year that relief is requested. After the returns have been filed, the penalty is also paid electronically.

Contact the tax department at Jacobson Jarvis for assistance in filing your current and delinquent Forms 5500 and 5500-SF.

### ***About the Author***

*Tax Manager, Cathy Roe, CPA, joined Jacobson Jarvis in mid-2007 and has over 30 years experience in both the public and the not-for-profit sectors. She has directed finance and operations at both the South Carolina Association of Community Development Corporations and the YWCA of Greenville, SC, initiating new programs and growth for those organizations. At different stages of her career she has owned her own full-service accounting firm, and has served as partner in another. Cathy holds a BA in Mathematics from Duke University, a Masters in Accountancy from the College of Charleston and a second Masters in Mathematics from Rutgers University. She has taught accounting at the college level at three institutions. Cathy is a past-president of the Greenville, SC chapter of the American Society of Women Accountants.*