THE MOST COMMON AND COSTLY MISTAKES OF QUALIFIED PLAN ADMINISTRATION

Trust Company of Illinois

And the 4 steps to avoid them.

By Tami Bowman, CPC, QPA

Failure by retirement plan sponsors – even common, simple mistakes - can result in significant costs.

Most plan sponsors sleep well knowing their record keepers and third party administrators handle most of their responsibilities. However, employers should recognize that they are solely responsible for certain administrative tasks and that failure can result in significant expenses.

The timely remittance of contributions is one of these often mishandled tasks, which has become a common area for IRS and DOL audits. But a little bit of proactive governance can help sponsors avoid costly corrective actions and penalties in the future.

THE LIABILITY OF NOT REMITTING QUICKLY

While most sponsors are conscientious about getting contributions to their plans' trusts in a timely manner, many don't realize that they may not be remitting them quickly enough.

Failure to deposit contributions on time may subject the employer to liability under both ERISA and the Internal Revenue Code (IRC). Under Section 406 of ERISA, a late deposit is considered a prohibited transaction because the employer has use of plan assets, and therefore can be assessed a civil penalty of 20% under ERISA 502(l) for breaching its fiduciary duty. Under Section 4975 of the IRC, a late deposit is considered a prohibited transaction, and the employer becomes subject to a 15% excise tax.

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Dollars withheld from paychecks are immediately considered plan assets, even if they have not yet been transmitted to the plan trust. A delay can mean the plan sponsor has taken a loan from the plan, which is a prohibited transaction with penalties attached. Yet few plan sponsors realize this, and even fewer understand what constitutes a "late" or "untimely" remittance.

HOW TO GUARD AGAINST UNTIMELY REMITTANCE

In January, 2010, the DOL announced that employee contributions to a "small" retirement plan (one with less than 100 participants) will be deemed to be made timely if those amounts are deposited within 7 business days after the payroll date. This "7-day safe harbor rule" gave clarity to small plan sponsors who previously relied on the so-called "15-day rule". Technically, there actually never was a "15-day rule." In fact, in its audits, the DOL has interpreted the deadline to be no more than a few days following withholding for some employers.

WHAT'S A PLAN SPONSOR TO DO?

Small plan sponsors have the 7-day safe harbor during which to make remittances, giving them a bit of wiggle room. However, large plan sponsors don't have the protection of the 7-day safe harbor. Absent evidence of necessary administrative delay, they are required to deposit deferrals as soon as possible and within no more than a few days.

Either way, plan sponsors/administrators should take several actions to guard themselves against penalties:

1. Review internal processes and determine how best to streamline so that dollars reach the plan as quickly as possible.

2. Create redundancy processes so that accidental scenarios (e.g., the payroll manager tasked with transmitting contributions goes on vacation or gets sick) don't disrupt the regular process.

3. If an administrative circumstance arises (e.g. a new pay type that requires additional internal review) that reasonably causes a delay, create an internal memo documenting the delay and why it may or may not continue with future payrolls.

4. Regularly review the timing of the steps that are required to make sure it remains consistent. If there are discrepancies, examine why they exist, whether they were reasonable and whether there is a more efficient manner in which quick, consistent timing may be achieved. ■

1901 Butterfield Road, Suite 1000 • Downers Grove, IL 60515 • 630-545-2200 • trustwealthadvisors.com