Swerdlin & Company
Actuaries ■ Pension Consultants
Shaping Your Retirement World

The Swerdlin Quarterly

Your News Source on Retirement Plans

4th Quarter 2004 ■ Volume 10 ■ Issue 4

What's Inside

In Every Issue

Published By

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New Dollar Limits

The following table summarizes the various limits affecting qualified plans for plan years beginning on or after January 1, 2005. We will be mailing out quick-reference plan limit cards soon or you can go to www.swerdlin.net and click on plan limits for a printable pocket limit card.■

IRS Dollar Limits	Code Section	2004	2005
Defined benefit plan annual benefit limit	415(b)(1)(A)	$165,000	$170,000
Defined contribution plan annual addition limit	415(c)(1)(A)	41,000	42,000
Maximum 401(k) deferral	402(g)(1)	13,000	14,000
Maximum 401(k) catch-up deferral	414(v)(2)(B)(i)	3,000	4,000
Maximum SIMPLE deferral	408(p)(2)(E)	9,000	10,000
Maximum 457 deferral	457(e)(15) & (c)(1)	13,000	14,000
Definition of HCE (highly compensated employee)	414(q)(1)(B)	90,000	95,000
Annual compensation limit	401(a)(17) & 404(l)	205,000	210,000
SEP coverage	408(k)(2)(C)	450	450
Social Security Taxable Wage Base		87,900	90,000

Dorn's Corner

Hi, Everybody! It's the fourth quarter again and time for me to announce my declaration for the coming year. I declare 2005 as the Year of Personal Mastery. Last quarter, I used *The Fifth Discipline* by Peter Senge as the basis for my Dorn's Corner. This quarter I continue that discussion by focusing on Personal Mastery, one of the 5 disciplines in his book.

Why would a business want its employees to have Personal Mastery? Senge quotes a very successful Japanese company leader, Kazuo Inamori, as follows:

"In every aspect of business, the active force is people and people have their own will, their own mind, and their own way of thinking. Tapping the potential of people will require new understanding of the subconscious mind, will power, and action of the heart … sincere desire to serve the world."

What is Personal Mastery? Personal Mastery goes beyond competence and skills and goes beyond spiritual growth, although it includes both. "It means approaching life as a creative work, living life from a creative as opposed to reactive viewpoint."

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Client of the Quarter

AAA Concrete

We are pleased to feature AAA Concrete Products Corporation (AAA Concrete) as our Client of the Quarter. Swerdlin & Company assisted AAA Concrete in the installation of an Employee Stock Ownership Plan (ESOP) several years ago. AAA Concrete wanted to reward long-term employees who help make the company successful. Swerdlin continues to provide the ongoing annual administrative services for the plan.

AAA Concrete is celebrating its 50th anniversary in 2005. The company was founded in 1955 by L. T. Sheffield, Paul V. Beech, Woodrow W. Beech and J. D. Bush. The original intent was to go into the manufacture of concrete block. However, a competitor who was already in the business told local contractors that if they bought block from AAA Concrete, they could not buy concrete from them. Result - AAA Concrete went into the ready mix concrete business.

Mr. Bush had acquired the interest of his other partners by 1960 and became the sole owner of the company. His son, J. Dell Bush, became President in 1963 and in 2001, Chairman of the Board and CEO. Don Barfield is now President and COO.

From a handful of employees in 1955, AAA Concrete now has 70 employees and is an industry leader in the area of ready mix concrete. In addition, they manufacture pre-cast septic tanks which are installed by their own installation crew as well as other local installers and shipped to tank dealers throughout Southwest Georgia.

Several years ago AAA Concrete personnel designed a way to continue using the existing forms to manufacture tanks to meet new Department of Human Resources Environmental Health Division regulations on design and construction. Use of the existing forms saved the company thousands of dollars. AAA Concrete personnel was also involved on a state level in assisting the Health Department in revising their regulations.

Don Barfield became active with Georgia Onsite Wastewater Association (GOWA) shortly after it was founded. This is a state association of persons and businesses interested in the onsite disposal of wastewater. Mr. Barfield will serve as President of GOWA for 2005.

Both Mr. Bush and Mr. Barfield have served on the board of directors of Georgia Concrete and Products Association.

In January, 2003, AAA Concrete purchased Roto Rooter of Albany and acquired 4 new employees. The former owners agreed to remain as managers of this division of the company. Today, Roto Rooter has 17 employees. Additionally, a New Construction Plumbing Division was started in 2003 and is very heavily involved in the residential construction industry.

AAA Concrete is proud of its involvement and contributions to the local community. They have contributed financially or with material and/or labor to many local charities and organizations including Habitat for Humanity, Boy Scouts, Girl Scouts, Little Leaguers, YMCA, local religious and athletic organizations, Albany State University and Albany Chamber of Commerce.

Swerdlin & Company congratulates AAA Concrete on its recognition as Albany's 2005 Small Business of the Year!■

FAQ

Q I own a manufacturing company that sponsors a profit sharing plan. Recently, I bought a company that makes ski wear. Do I have to include the employees of my new company in the plan?

A Probably. Since the two companies are under common ownership, the employees of both companies must be treated as if they were employed by a single employer. There are certain limited exceptions to this rule, so if you think this might affect your company, you should contact your attorney, tax professional or third party administrator for assistance.

Q Our non-profit organization sponsors a 401(k) plan for our employees. Are we required to perform discrimination testing?

A Yes. Your plan must be tested just like a taxable entity. The only difference is the total of your annual contributions can be more than 25% of eligible compensation since non-profit organizations are not subject to this limit. Special rules may apply if you also sponsor a 403(b) plan.

Q How are excess contribution refunds taxed to a participant because of a failed ADP/ACP test?

A If the refund is made between January 1, 2005 and March 15, 2005, it is considered to be 2004 income and must be included on the participant's personal tax return for 2004.

If the refund is made after March 15, 2005, it must be treated as 2005 income to the participant and included on the 2005 personal tax return. Refunds are subject to federal and state taxes but are not subject to the mandatory 20% withholding or the 10% early withdrawal penalty. Since each participant's tax circumstances are unique, we recommend consulting a tax professional for specific advice.

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Lost and Found

It is not unusual for a plan to accumulate many terminated participants with small balances. Since administrative fees are often based on participant counts, employers are usually eager to clean up these small balances. However, if participants have been gone for several years, it may not be easy to locate them.

Employers can use several options to find lost participants. First, you should mail a distribution notice to the most recent address available. If the package is returned, checking the phone book or calling directory assistance may be all it takes. Employers can also review other plan records or contact designated beneficiaries to find current addresses for missing participants.

You may also search on the Internet. Some sites will allow a search in a specific city or state, while others search the entire country. Many private investigation firms will also locate missing participants for a small fee. As long as the fee is reasonable, the employer can charge it back to the participant's account.

Plan sponsors can also turn to the IRS or the Social Security Administration for assistance. Both agencies have letter-forwarding programs. Employers simply provide a list of names and social security numbers along with distribution notices in sealed envelopes, and the notices are forwarded to the most recent addresses on file. However, due to security and privacy concerns, neither agency will provide new addresses to the plan sponsor.

Withholding a missing participant's entire account balance as a federal income tax payment is specifically prohibited by the Department of Labor.

The DOL has now issued final regulations allowing balances of less than $5,000 to be automatically rolled over into an IRA (see article in this edition). Field Assistance Bulletin (FAB) 2004-02 includes some safe-harbors for terminating plans. Sponsors of such terminating plans must:

- Use certified mail for the initial distribution notice;
- Check related plan records;
- Check with a designated plan beneficiary; and
- Use one of the letter-forwarding services noted above.

If you complete all of these steps and you still cannot find the missing participant, even balances exceeding $5,000 can be automatically rolled over into an IRA.

Since the availability of some of these options is dependent on the terms of the plan in question,

Year-End Disclosure for Defined Benefit Plans

It's that time again…time to gather year-end asset information for Defined Benefit Plans and Other Postemployment Benefits (e.g., retiree medical plans). December 31, 2004 is the first time many employers must satisfy the latest revision to Statement of Financial Accounting Standard 132 (SFAS 132) which requires additional information in the disclosure. Some of the new requirements are:

- Expected employer contributions for the next year;
- Expected benefit payments for the next ten years;
- Disclosure of asset categories;
- Disclosure of investment policies and strategies; and
- Disclosure of the basis used to determine the assumed expected long-term rate of return on assets and the assumed discount rate.

If you have any questions, please contact your Client Manager.■

FAQ

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Q A participant in our Section 125/Cafeteria Plan has $250 of unused money in his Dependent Daycare Flexible Spending Account (FSA). Can he transfer the $250 to his Medical FSA since he has no money remaining in that account and has medical receipts he could submit?

A. No. A participant cannot transfer money from one type of FSA to another. Under the use-it-or-lose-it rule, participants forfeit all unused amounts left in the Dependent Daycare FSA. Participants can minimize the risk of loss by conservatively estimating projected expenses during the enrollment period.■

What's Happenin'

The Two Day Walk for Breast Cancer was held on October 23 and 24 in Alpharetta. Becky McDougal was one of the volunteers helping to register the 275 walkers each day. The Walk raised $1 million.

This year, we held our First Annual Fall Charity Fundraiser. Divided into 4 teams, each team prepared lunches for the week including Hotdogs, Meatball Subs, Hoagies, Chili and yummy desserts. Lunches were sold to our staff Monday through Thursday. On Friday, October 29, in culmination of the week's events, we celebrated Halloween by holding a mini carnival with games

Golf Outing 2004

and a costume contest to raise additional charity money (photos on pages 4 and 5). We are proud to have raised $980 during Halloween week.

Several of us attended the ESOP Conference in Las Vegas on November 4 & 5th. Susan Petrirena led a panel discussion on Age 55 Diversification in ESOPs.

Dee Robbins attended the Worldwide Employee Benefits (WEB) President's Conference in Scottsdale on November 5 & 6th.

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Viruses, Worms and Trojans - Oh, My!

There are various types of programs that can damage your computer. What are they? How do they work? How do they differ?

Viruses

While most people are aware of viruses, they are usually the least dangerous because they require human intervention to spread. A common definition for computer viruses is "A piece of computer code that attaches itself to a program or file so that it can spread." A virus infects computers as it spreads, usually as an attachment to an email message. Your entire computer is vulnerable to viral attack.

Worms

Worms are more dangerous than viruses because they spread automatically, without human intervention. They are similar to viruses in that they are designed to travel from computer to computer, infecting as they go. Once a worm infects a computer, it can use your email address book to send itself to everyone listed. It then infects those computers and sends itself using the address book on those computers, and so on. Worms can spread so quickly they actually clog local networks, bringing productive work to a screeching halt. They also have the same effect on the Internet by utilizing so much bandwidth that legitimate uses are impeded and even prevented.

Worms can also allow someone else remote access to your computer. Once they are in your computer, they can steal your personal information and use your computer to execute malicious codes and send viruses and SPAM. The options are limitless.

Most viruses and many worms cannot spread unless the user helps them along. Here are some simple rules to follow:

- Do not open any attachments you are not expecting, regardless of the source.
- Do not download software and programs from any source that you do not trust.
- Beware of free software; there may be strings attached. Make sure you know what those strings are before you install free software from the Internet.
- A virus can come in an email and be released simply by using the Navigation and Preview panes in email programs. When your emails are displayed in these screens, they are effectively opened, possibly releasing some very clever viruses and worms.

There are numerous programs for detecting various viruses and worms on your computer. Some come from very reputable vendors, some come from suspicious sources. Keep in mind, you get what you pay for. Free antivirus software could be a disguise for Adware, SPAM, or viruses.

Everyone should have one antivirus software installed on their computer. More than one is not necessary because they can actually conflict with each other and defeat their purpose. When purchasing antivirus software, you want to get one that has a proven reputation and provides automatic updates to virus definition files. These files contain the signatures of all known viruses, and since there are over 60 new viruses a week, they need to be updated constantly. Installing the software and not updating it is only marginally better than no antivirus software at all.

Stay tuned to next quarter, when we talk about Trojans.■

Halloween 2004

What's Happenin'

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annual golf tournament at Fox Creek in Marietta. Fourteen employees and guests participated for a great day of fun and fellowship. Contributions from the participants were matched by Swerdlin & Company for a total of $244 (see photo on page 3).

Adam Pozek co-presented The Nuts & Bolts of IRAs, Roth IRAs, SIMPLEs and Other Retirement Plans on December 14th at the Atlanta Marriott Century Center.

Anniversaries we celebrate this quarter: Tony Brizzolara 18 years; Laura M. O'Connor 10 years; Lee Swerdlin, Trey Stephens, Cynthia N. Clark and Jodi Burkett 6 years; Beth Wright 4 years; Adrian Johnson, Ricky Cox and Jim Callea 2 years; Alicia Turner and Emily Spencer 1 year.

Congratulations to Lee Swerdlin on his engagement to Ellen Cohen! They are planning a spring wedding.■

The $5,000 New Deal

On September 27, 2004, the DOL issued final regulations on involuntary distributions and automatic rollovers. The new regs are effective March 27, 2005, but plan sponsors may rely on them now if they choose.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) changed the manner in which qualified retirement plans address the small balances of terminated participants. Terminated participants with vested balances and present values of accrued vested benefits of less than $5,000 can be paid involuntarily provided they are given a 30-day notice. Now that the Department of Labor (DOL) has issued final regulations, involuntary payments between $1,000 and $5,000 must be automatically rolled over into IRAs rather than paid out as taxable distributions. Balances of less than $1,000 may also be automatically rolled over.

So what does all of this mean in practical terms? Plans that include involuntary distribution language are required to form an agreement with one or more IRA providers to accept these automatic rollovers. The regulations relieve plan sponsors of liability for their selection of IRA custodians if the following safe-harbor provisions are met:

- The safe-harbor only applies to vested balances and present values of accrued vested benefits of less than $5,000, excluding amounts attributable to rollovers from other plans.
- Involuntary distributions can only be deposited with financial institutions that comply with all regulations applicable to institutions normally permitted to hold IRA accounts.
- The automatic rollover must be invested in vehicles designed to preserve the initial rollover amount and provide a reasonable rate of return. Examples include money market funds and CDs, as well as stable value products.
- Account establishment fees and normal distribution fees can be charged against account assets as long as the fees are consistent with those charged for regular IRAs. Ongoing maintenance fees can also be charged to the accounts.
- The plan's Summary Plan Description must include a description of the procedures for automatic rollovers, including the nature of the investments and the allocation of fees. It must also identify a contact that can provide specific information on the selected IRA provider(s).
- Plan fiduciaries cannot engage in prohibited transactions when selecting account providers and/or investments. This applies primarily to institutions acting as IRA custodians or providing investments that may be included in automatic rollover IRA accounts.

When a plan sponsor enters into a written agreement with an IRA provider in which all of the above requirements are met, plan fiduciaries are deemed to satisfy their responsibilities under ERISA. There is no requirement to follow up to ensure the selected institution complies with the terms of the agreement, unless the plan sponsor has direct knowledge to the contrary.

The financial institutions should begin offering IRA accounts designed to accommodate these safe-harbor requirements in the near future. The IRS is also expected to issue a model plan amendment by the end of the year.

Please give us a call if you have any questions.■

Halloween 2004

Costume contest winners:
3rd place - Trenton Teesdale,
2nd place - Lee Swerdlin and
1st place - Emily Spencer

S Corp ESOP Alert!

In 2001, Congress passed an anti-abuse law to prevent what it considered S Corporation ESOP abuses. The intent was to make it impractical to use an ESOP in an S Corporation just to benefit a few employees.

Under this law, the ESOP may not allocate stock to a "disqualified person" during a "non-allocation year." For ESOPs in existence before March 14, 2001, the rules become effective for plan years beginning after December 31, 2004. For plans established after March 14, 2001, or for pre-existing C Corp ESOPs that switched to S status after this date, the rules became effective for plan years ending after March 14, 2001.

A disqualified person is an individual who owns at least 10% of the shares or who, together with family members, owns at least 20% of the shares of the company. It is important to note that when considering shares owned by an individual, you must consider synthetic equity which includes balances in certain deferred compensation arrangements.

If at least 50% of all shares of the company are owned by disqualified persons, you have a non-allocation year, and these individuals may not receive an allocation from the ESOP without a substantial tax penalty. If such an allocation occurs, it is taxed as a distribution to the recipient, and a 50% corporate excise tax is applied to the fair market value of the allocated stock. A 50% excise tax would also be applied to the synthetic equity owned by the recipient. In the first year in which it is determined that 50% or more of the shares of the company are owned by disqualified persons, a 50% tax on the fair market value of shares owned by them is applied. This tax applies even if no allocations are made to those individuals for that year.

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Dorn's Corner

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Personal Mastery is a discipline which embodies two underlying movements. The first is continually clarifying what is important to us. The second is continually learning how to see current reality more clearly.

People with a high level of Personal Mastery share several basic characteristics:

1. Their vision is a "calling" rather than just an idea.
2. They see current reality as an ally rather than an enemy.
3. They perceive and work with forces of change rather than resist those forces.
4. They see reality more and more accurately.
5. They feel connected to others and to life itself.
6. They feel part of a larger creative process, which influences but does not unilaterally control.

A critical component in the process of creating Personal Mastery is creating your own personal vision.

Personal vision comes from within and must include what you really want rather than what others want for you or what you think you should want.

The personal vision should also be in a positive form rather than a negative form. For example, a "negative vision" could be, "I want my mother-in-law to move out of my house" or "I want my back to stop hurting." These negative visions are not creative.

A positive form could be, "Law has always been my passion and my vision is to change careers, go to law school and become a successful lawyer within the next 10 years."

"Personal vision is intrinsic, not relative. It's something you desire for its intrinsic value" and should not be compared to others.

Your personal vision can include many facets:

- Money and material things,
- Health,
- Freedom,
- Service facets such as:
  - helping others
  - contributing to a field of knowledge
  - spiritual growth.

Society draws our attention to the material aspects such as looking "thin and young" and having money, rather than our desire to serve. It requires courage to hold our vision when it doesn't fit into mainstream society's views.

When the vision is considered a lifelong process, it carries you where you really want to go. "It's not what the vision is, it's what the vision does."

"There's nothing more powerful you can do to encourage others in their quest for Personal Mastery than to be serious in your own quest."

Our first step in pursuing Personal Mastery at Swerdlin & Company is to have all of us prepare a personal vision to discuss with me and perhaps to share with others.

Maybe you would like to come up with a personal vision for yourself for 2005!

I would like to wish everyone a Happy and Healthy Holiday Season! ■

S Corp ESOP Alert!

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Don't let this scare you away from S Corp ESOPs, because they provide extraordinary opportunities. Congress explicitly wrote the law to encourage companies to set up and expand their ESOPs, even to the point that they become 100% owned by their ESOP and are free from federal income tax. Congress' intent was to encourage ESOPs to cover most of the full-time people who have worked for the company for more than a year.

Fortunately, the vast majority of S Corp ESOPs satisfy the new anti-abuse rules. Many of these ESOPs go much further by creating a real culture of ownership. If you have an S Corp ESOP and have questions about the anti-abuse rule, give us a call. ■

Vision Statement

We strive for financial strength for our clients, our employees and our company by caring to be the best. We are committed to be the leading pension consulting firm in our market. We achieve this through cooperative teamwork, community building and continuous learning and development.

Mission Statement

We focus primarily on design and administration of retirement plans. Our mission is to develop relationships with our clients, our employees and our community so that all parties grow and develop financially and otherwise.

Seasons Greetings

from all of us at

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