Swerdlin & Company
Actuaries ■ Employee Benefit Consultants
Celebrating 25 Years

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Your News Source on Retirement Plans

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What's Inside

In Every Issue

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Great News for the Cafeteria World!

On May 18, the IRS issued Notice 2005-42 that may bring a smile to your face and additional FICA savings for your company, especially if you haven't previously considered offering a cafeteria plan to your employees because of the "use-it-or-lose-it" rule.

Under current regulations, participants forfeit any unused amounts in their Medical or Dependent Daycare Flexible Spending Accounts (FSA) at the end of the plan year. This has often discouraged employees from participating in an FSA program.

The new regulation extends the time available for participants to use any remaining money they may have in their FSAs at the end of the plan year. Under the new rule, participants can use leftover amounts to pay for qualifying Medical and Dependent Daycare expenses incurred during a grace period following the end of the plan year. However, a medical FSA cannot be used for dependent care expenses, and vice versa.

The grace period can be for any time up to a maximum of 2½ months (March 15 for calendar year plans). Any unused amounts that remain at the end of the grace period must be forfeited.

For example, Jane has $250 remaining in her Medical FSA, but she is so busy she forgets to order more contacts by the December 31 plan year end. With the new grace period, she is able to order and pay for the contacts up to March 15.

If you want to add a grace period, you must amend your plan by the end of the plan year to which the grace period applies

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Dorn's Corner

Hello readers. This quarter I want to continue the conversation I started last year about Personal Vision. This is the Year of Personal Mastery at Swerdlin & Company (see Dorn's Corner, 4th quarter, 2004). Developing a Personal Vision is a first step in creating Personal Mastery.

My primary source for this article is The Path of Least Resistance by Robert Fritz. All quotes below come from this book. Robert Fritz outlines his approach to developing Personal Vision as:

1. Focus on the results.
2. Start with nothing.
3. Form it in pictures.
4. How clear should it be?
5. Concept to Vision.

1. Focus on the results: "The best place to begin the creative process is at the end." The

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Client of the Quarter

Havertys Furniture Company

We are pleased to feature Havertys Furniture Company as our Client of the Quarter. Swerdlin & Company provides daily recordkeeping and administrative services for their 401(k) plan.

In 1885, James Joseph Haverty invested $600 and opened a small furniture store that has now grown into the $800 million multi-state Havertys Furniture Company. During his early years, he pioneered mass buying from the manufacturer as well as installment payment plans for customers. Mr. Haverty believed in providing "every homemaker with the opportunity to obtain beautiful furniture to provide his family with more pleasant surroundings…"

Today, Havertys has more than 115 showrooms throughout 16 states. These showrooms feature fully decorated room displays, giving an in-home feel with artwork, lamps, rugs and other accessories. Havertys uses its vast experience and large buying power to offer their customers top quality furniture and accessories from the best names in the industry. Each store carries a variety of styles to help meet the needs and expectations of a diverse population, and most of the merchandise is in stock and available for delivery within one week. They assure customers the best value with their Low-Price Guarantee.

In 2002, Havertys opened their Eastern Distribution Center, a 500,000 square foot state-of-the-art facility in Braselton, Georgia. The Center contains 39 miles of racks holding furniture destined for homes throughout the Southeast. A new initiative such as this center allows Havertys to expand, and they have recently opened stores in Ohio and Maryland.

Their greatest asset is their high standard of customer service. From the moment a customer enters the store until long after the purchase is delivered, they want to ensure their customer's experience is pleasant and satisfying. To accomplish this goal, all employees receive in-depth training in their area of responsibility. For example, Management Trainees spend from 12 to 18 months working in and learning about all facets of the furniture business. Trainees also attend formal classes at Havertys corporate office in Atlanta.

Havertys is involved with many charitable organizations and causes as part of their Helping Hands Community Service Program. Associates in stores throughout the Company participate in fundraising and awareness events such as food, clothing and toy drives, as well as other projects to benefit those in need. These organizations and events include Habitat for Humanity, City of Hope, United Way, the Pride for Parents toy drive, and WSB-TV's Family 2 Family Project.

Havertys specializes in friendly, knowledgeable, no-pressure service to ensure their customers feel comfortable browsing at leisure, knowing an associate is ready to answer questions or assist in any way. They attribute their longevity and success to their dedication to one goal: customer satisfaction.

Havertys strives to live up to its motto coined by Chairman Emeritus Rawson Haverty, Sr. "At the point of contact with the customer, you are the Havertys Furniture Company."■

Roth 401(k)

The Economic Growth and Tax Relief Reconciliation Act ("EGTRRA") was passed in 2001, but we are still experiencing some of the changes to employer-sponsored retirement plans. One of the later provisions to take effect is the addition of designated Roth 401(k) deferrals beginning January 1, 2006. This year, on March 2, the IRS issued proposed regulations on these new contributions.

Traditional 401(k) deferrals reduce a participant's income for federal and state tax purposes at the time of contribution. Those amounts grow on a tax-deferred basis until the participant takes a distribution, at which time it is taxable to the participant as ordinary income. On the other hand, Roth 401(k) deferrals are fully taxable to the participant at the time of contribution. However, if certain requirements are met, distributions of Roth deferrals and the earnings thereon are completely tax free. This is similar to the popular Roth IRA.

Here is an example to illustrate the potential impact of this new feature. John Doe is 35 years old and begins making deferrals of $5,000 per year until age 65. John's account grows at an average of 10% per year, and he is in a combined federal and state tax bracket of 34%.

	Total Deferrals	Tax Savings (34%)	Account Value at Age 65	Taxable Amount
Traditional - 401(k)	$150,000	$51,000	$904,717	$904,717
Roth - 401(k)	$150,000	$0	$904,717	$0

By making Roth deferrals, John only pays taxes on his $150,000 in deferrals over 30 years instead of paying taxes on his $904,717 account balance at retirement. This gives John the flexibility to take a single, lump sum distribution and not be moved into a higher tax bracket.

To take advantage of these tax-free withdrawals, the participant must make Roth 401(k) contributions for at least 5 years. Since this new feature does not become effective until 2006, the earliest a participant could be entitled to a tax-free distribution is 2011. In addition, the distribution must be due to death, disability, or the participant attaining age 59½.

One of the key differences between Roth IRAs and Roth 401(k) deferrals is the income limitation. Roth IRA contributions are phased out for individual taxpayers with adjusted gross income ("AGI") between $95,000 and $109,999. For married taxpayers filing jointly, the AGI phase-out is from $150,000 to $159,999. Significantly, there is no income phase-out tied to Roth 401(k) deferrals. Thus, those at any income level can take advantage of this provision. Another difference is that Roth 401(k) deferrals are subject to the age 70½ minimum distribution rules. However, an older worker can avoid these minimum distributions by simply rolling over Roth 401(k) balances into a Roth IRA prior to reaching age 70½.

Apart from the tax differences, Roth 401(k) deferrals work just like traditional deferrals for all plan purposes. The annual deferral limit ($15,000 in 2006) and non-discrimination requirements apply. Roth deferrals are also subject to the same withdrawal restrictions, i.e., death, disability, retirement, financial hardship, etc.

While there are many positives to Roth 401(k) deferrals, there are also some administrative drawbacks. These contributions must be maintained in a separate plan account just like traditional salary deferrals and employer contributions. A number of outstanding questions still remain regarding the tax treatment and reporting of certain distributions.

It's not mandatory that employers allow Roth 401(k) deferrals in their plans so it is necessary for plan sponsors to adopt amendments if they wish to offer this new feature beginning in 2006. Since the regulations are still in proposed form, the specifics and timing are still unclear. The IRS expects to finalize the regulations within a couple of months, and we'll continue to keep you posted.■

FAQ

Q We just discovered that an ineligible employee is making salary deferrals to the plan. Can we have the plan reimburse the employee?

A No. You cannot take the money from the plan. Your plan document may tell you how to handle this situation. If not, the IRS guidelines say you forfeit the deferral and make the employee whole outside the plan – that is, you give the employee his money back through payroll. This amount is considered part of the employee's income for the year in which it is paid back and will be reflected in the W-2 for that year.

Q What if we also made matching contributions for this ineligible employee?

A Any match made on ineligible deferrals must be forfeited.

Q Our plan fails the ADP/ACP test every year. Can we impose a limit on the deferrals made by our Highly Compensated Employees (HCE)?

A Yes. This limit can be made on an administrative basis or by amending the plan. For example, if deferrals are limited administratively to 10% of compensation and an HCE earns $120,000, his maximum deferral is $12,000. Since he does not exceed the IRS limit, he is not permitted to make a catch-up contribution.

However, if this limit is incorporated in the plan document, the HCE is allowed to defer the plan maximum of $12,000, and (in 2005) an additional $4,000 catch-up. The downside of this option is if an HCE inadvertently defers more than the maximum stated in the plan document, it must be refunded.■

Employee Benefit Provisions of BAPCA 2005

On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Act") was signed into law.

The Act:

- Creates a needs-based test to determine whether an individual is eligible for Chapter 7 (debt discharge) or Chapter 13 (debt reorganization).
- Adds several types of property to be protected from creditors in an individual bankruptcy.
- Expands protection for plan contributions when an employer files for bankruptcy.

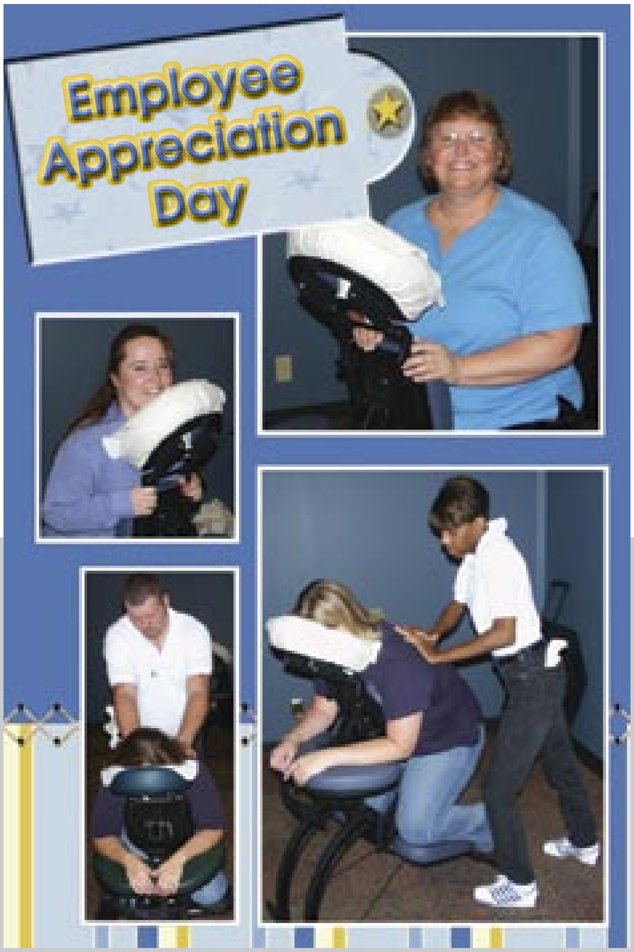
In 1992, the Supreme Court ruled that ERISA-qualified plans such as 401(k) and profit sharing plans are automatically excluded from the bankruptcy estate under federal law; however, non-ERISA plans such as IRAs, 457 plans and 403(b) plans were subject to the bankruptcy laws in the individual states. For example, an individual's IRA accounts can be included in the bankruptcy proceedings in some states but not in others. This new Act brings these various retirement plans under federal bankruptcy protection. For non-rollover IRAs, amounts up to $1 million are protected, but the courts are specifically permitted to increase this cap if "the interests of justice so require." Employer-sponsored plans, SEPs, SIMPLEs and IRA rollover accounts have unlimited protection.

The employee benefit related provisions of the Act address items that can be excluded from income as reasonably necessary living expenses. Under the Act, the obligation to repay a participant loan from an employer-sponsored retirement plan is not affected by a bankruptcy filing. Not only must a participant continue to make regularly scheduled payments pursuant to the loan agreement, but the payment is deducted from that individual's income in establishing whether the needs-based test is satisfied for discharge of other debts.

Certain health-related expenses are also excluded for purposes of the needs determination. The Act provides that amounts necessary for health insurance, disability insurance or Health Savings Account (HSA) expenses for the debtor, his spouse and dependents reduce his disposable income available to meet other obligations. Interestingly, the Act does not provide protection for amounts accumulated in HSA accounts. Since the Act began circulating in Congress before HSAs came into existence, there has been speculation that this lack of protection is simply an oversight that will be corrected. However, until there is specific guidance to the contrary, HSA accounts do not appear to enjoy the same creditor protection as cafeteria plans and retirement plans.

The Act also includes several new or expanded protections for plan contributions when an employer files for bankruptcy. Employee contributions to an employer-sponsored retirement plan, cafeteria plan and certain other healthcare arrangements are protected when they are withheld by the employer but have not been deposited at the time of the bankruptcy filing. Further, retirement plans have a priority claim for contributions up to $10,000 per participant that were due but not paid to the plan within 180 days prior to the filing.

The Act is generally effective for bankruptcy filings made on or after October 14, 2005.■



What's Happenin'

To celebrate Administrative Professionals Day this year, Swerdlin did something a little different. We declared it Employee Appreciation Day and provided breakfast for our employees and had a massage therapist give everyone a 10 minute chair massage. Everyone felt relaxed and enjoyed their "Day!"

Congratulations to Cynthia Navan Clark and her husband Kenny on the birth of their son, Donavan, who was born on April 23.

We are excited for Susan Petrirena who was recently elected to the WIPs (Women in Pensions) Board. Her particular areas of responsibility include the WIPs web site and WIPs involvement in charitable organizations

Please join us in celebrating the following anniversaries this quarter: Swerdlin & Company, 25 years; Jaynie Cormier 19 years; Donna Martin 12 years; Dee Robbins 9 years; Christy Crossway 8 years; Connie Woodmansee 4 years; Mary Butina 3 years; Trenton Teasdale 2 years and Barbara Sneed 1 year.

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Farewell to Arms

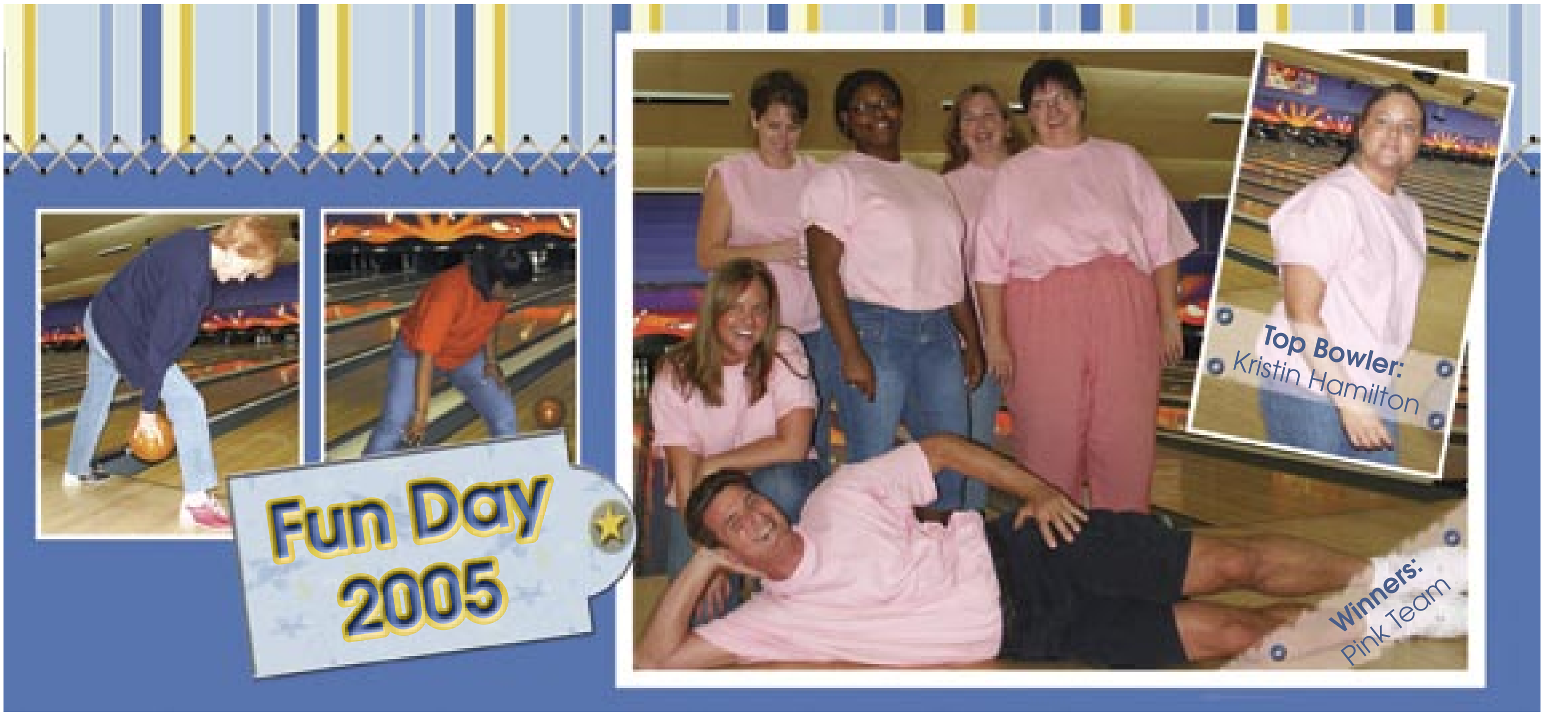
When employees return from military service, the Uniformed Services Employment and Re-employment Rights Act (USERRA) entitles them to benefits they would have received had they remained continuously employed. Vesting and benefit accruals continue as if the participant worked for you during this period. Upon return to work, you must credit his or her account with any company contributions and hours of service missed during the time spent on active duty.

If you have a 401(k) plan, your participants are allowed to make up salary deferrals missed while serving in the military. Participants can make up missed savings over a period equal to the earlier of 3 times the period of military service or 5 years. For example, a participant who is active in the military for 12 months will have 36 months to make up any missed 401(k) contributions. If matching contributions were made to the plan during this absence, you must also match these make up contributions. Participants cannot suffer a reduction or loss of benefits because of their required military absence.

USERRA allows an employee to suspend repayment of any plan loans during a period of active military service. If the employee elects to suspend loan payments while on active duty, the loan is not considered in default and is not considered a taxable distribution as long as the payments resume upon the employee's return to work.

To comply with USERRA, the employee must be given a Notice that can be printed from www.dol.gov/vets/programs/userra. In addition, when preparing your census data be sure to properly identify your employees who serve in the military. Upon their return, the employees immediately re-enter the plan.

Call your Client Manager if you have any questions on this.■



What's Happenin'

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In early May, Joanne Swerdlin, Dee Robbins, Susan Petrirena and Connie Woodmansee attended the National ESOP Association conference in Washington, D.C. While there they visited with some of our congressmen on the Hill to request that ESOPs be included as part of the President's new "Ownership Culture."

Congratulations to Lee and Ellen Swerdlin who were married on May 8. They went to Jamaica for their honeymoon. We wish them happiness in their new life together.

Stephanie Davis and Dee Robbins were involved in the planning and presentation of a one-day Benefits Boot Camp presented by WEB (Worldwide Employee Benefits Network) on May 17. Eighty-six people attended the meeting which covered the basics of the employee benefits field.

Celebrating our 7th Annual Fun Day on April 22, Swerdlin employees competed in games of "silly bowling" at the Chamblee Bowling Lanes. We divided up into 6 teams and had a great time! The first prize went to the Pink Team. See pictures above: on floor - Tony Brizzolara, kneeling - Kristin Hamilton, back row - Adrian Johnson, Wendy Jackson, Patti Williams, and Nancy McMurtrie.

Adam Pozek, Carol Friend, Donna Martin, Mary Butina and Susan Petrirena attended an ASPPA (American Society of Pension Professionals and Actuaries) workshop conducted by Sal Tripodi. During the day, Sal covered many current issues affecting practitioners in the defined contribution field.■

ESOPs often own the Company

A recent survey conducted by the National Center for Employee Ownership (NCEO) revealed that 46% of the respondents indicated that the ESOP owned 100% of the company stock. Additionally, 26% of the ESOPs owned at least 50% of the company. Of those plans surveyed, 80% used the ESOP to buy out an owner.

Dorn's Corner

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final result should be independent from how you create it.

2. Start with nothing: "… start with a clean sheet, a blank canvas, a fresh beginning." The creative process works much better when preconceived ideas are not considered. With a clean slate, your vision comes easier.

3. Form it in pictures: Some psychologists say that people have different ways of processing information. Some people process best by visual interaction, others by hearing or touch, etc. In spite of this, most people can learn to be "visually competent."

One of the greatest benefits of being able to picture what you want to create is that you can assimilate an enormous amount of data at once. A visual image gives you information not available in words. Relationships among the different elements of the structure become clear. "The shape, contour, design, function, impression, feel, and life of your creation form and crystallize from even a simple picture."

4. How clear should it be? "Clear enough that you would recognize the result if you had it." Many say that the clearer the vision, the better. But in the creative process, the degree of clarity is not the best standard of measurement. As long as you would recognize the result if you created it, it is clear enough.

5. Concept to Vision: Concept is different from vision in that concept comes before vision. Concept is general, vision is specific. In the conceptual period, it is more like brainstorming where you consider all possibilities. This period has a feel of "playing around with concepts."

After the conceptual stage, the next step is to crystallize your personal vision. Given the various ways the concept might manifest itself, how do you want to see it manifested? The difference is in focus --- you are focusing many ways into a single way.

This year we are using these guidelines to help our employees develop their own Personal Vision. Why don't you create your personal vision and teach others how to do it?

Have a wonderful summer!■

Great News for the Cafeteria World!

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(December 31 for a calendar year plan). However, if you usually use forfeitures to offset any losses from terminated employees, you may want to carefully consider whether to include the new grace period option.

If you have any questions about how this change will affect your plan, please give us a call. We can review your forfeiture and loss history and help you identify potential FICA savings. If you are interested in amending your cafeteria plan or adding one to your benefits line-up, please contact Stephanie Davis at 678-775-5547 or sdavis@swerdlin.net.■

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.

Shaping Your Retirement World

Knowing the complexities and understanding the choices and options available in the retirement world shouldn't be a focus of your job; it's a focus of ours. We help you shape your retirement program to better meet the needs and goals of your company and your employees. Swerdlin & Company is the only resource you need to answer all of your retirement plan questions. Our job is to make yours easier!

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