TAX EXEMPT AND GOVERNMENT ENTITIES
EMPLOYEE PLANS

MAA
MID-ATLANTIC AREA
PENSION LIAISON
GROUP
MEETING MINUTES

DATE OF ISSUANCE:  October 6, 2004
VOLUME 9-2004

Host
Tom Schendt, Alston & Bird

Guest Speaker
Mark O’Donnell – IRS CE&O

Liaison Attendees
Dan Brandenburg – Sanders, Schnabel & Brandenburg, PC
Barry Milberg – Milberg Consulting LLC
Marcia Hoover – PNC Advisors
B. Janell Grenier – The Greiner Law Office
Edward J. Adkins – Miles & Stockbridge, PC
Miriam Matrangola – Atlantic Pension Services Inc.
Melissa Kurtzman – Wolf, Block
Wayne Kamenitz – Ernst & Young
Lisa Germano – Actuarial Benefits & Design
Thomas R. Pevarnik – Deloitte & Touche
Alan Kanter – Alan N. Kanter & Associates
Susan Browning – Mercer Human Resource Consulting
Robert Landau – Hay Group
Paul Madden – Whiteford, Taylor, & Preston LLP
Debra Davis – Deloitte & Touche
Gerald Weslosky – Department of Labor - EBSA

Conferenced – In
Matthew Whitehorn - Pricewater House Coopers
Iris Bashi – Iris Bashi Associates
Michael Schenk - Kilpatrick Stockton LLP
Susan Lastowski – Mercer Human Resources Consulting

IRS Attendees
Iris Watts - Group Manager 7622 on behalf of Cathy Jones, EP Area Manager
Jacquelyn Jordan - Staff Assistant
Michael Sanders - Group Manager 7621
George Brim - Area Coordinator
Bonnie Schaumberg – CE&O Coordinator
A. Welcome:

Iris Watts welcomed everyone to the Mid Atlantic Area’s Quarterly Pension Liaison Meeting. Iris indicated that Cathy Jones was very sorry that she was unable to attend the meeting. Iris thanked Tom Schendt for hosting the meeting in his office in Washington DC. Since there are some new attendees Iris asked that everyone introduce themselves.

Tom Schendt introduced Mark O’Donnell, Director of Employee Plans (EP) Customer Education & Outreach (CE&O). Tom thanked Mark for agreeing to meet with the pension liaison members.

B. EP CE&O Programs:

Mark distributed the Simple IRA Plan Checksheet (Pub 4284) and inquired if any of the pension liaison members had seen the new checksheet. The checksheet could be a useful tool in determining if your plan may have an operational defect. Mark indicated that SEP Checklist (Pub 4285) and SARSEP Checklist (Pub 4286) are also available. Mark fielded questions concerning vendor promoters and employee deferrals being made timely.

EP CE&O communicates messages to their customer segments. The first message is to inform the public of the advantages of establishing a retirement plan, both to the employer and the employee. The second message is to inform the public of the responsibilities inherent to Retirement Plans. The responsibilities relate to all of EP CE&O’s customer segments and focus mainly on operational compliance.

There are four primary customer segments relating to retirement plans. EP CE&O’s main focus has been on the Plan Practitioner and Plan Sponsor customer segments. These customers are reached through both direct and indirect contact. EP CE&O reaches plan practitioners through seven geographically dispersed benefits conferences, speeches, panels, workshops and exhibiting efforts. In addition, Plan Practitioners are reached through the Employee Plans News, a quarterly electronic newsletter focused toward plan administrators. Through practitioner liaison and council groups, EP CE&O evaluates non-compliance trends to design and maintain proactive outreach products. Finally, the Retirement Plans web page at www.irs.gov/ep offers extensive information to Plan Practitioners on a variety of topics.

Plan Sponsors, primarily small businesses, have been an operating priority since the inception of EP CE&O. This customer segment is reached through speeches, panels, workshops and exhibiting efforts. In addition, the Retirement News for Employers is an electronic newsletter geared toward plan sponsors and business owners. In fiscal year 2005, the content of the Retirement Plans web page will be redrafted for the needs of the Plan Sponsor Customer Segment.

EP CE&O has developed and posted to the web, "Check-Ups" to help Plan Sponsors who sponsor IRA-based retirement plans (SIMPLE IRA plans, SEPs or SARSEPs) develop a better understanding of the requirements for their plans. The "Check-Ups" offer handy tools to help an owner begin a retirement plan check-up. The goal of the "Check-Ups" is increased awareness by business owners of the need to properly operate retirement plans, pointing them to further information and services. The
centerpiece of each "Check-Up" is a one-page checklist highlighting some of the basic requirements for operating the plan.

Each "Check-Up" contains:
- A checklist of basic operational questions for each of three IRA-based plans: SIMPLE IRA Plan Checklist, SEP Checklist or SARSEP Checklist. Note: Each online checklist includes expanded explanations for each question.
- Publication 4224, Retirement Plan Correction Programs brochure.

Taxpayers should not file checklists with the IRS. The "Check-Up" tools are designed for the voluntary use of business owners. The tools - while not comprehensive - have been designed to highlight issues where our examiners and specialists have found noncompliance.

After reviewing the plan and completing the appropriate checklist, a business owner may find an error in the operation of the plan. Any error can likely be corrected using the Employee Plans Compliance Resolution System ("EPCRS") described in the Retirement Plan Correction Programs brochure. EPCRS allows business owners to correct plan errors (often without contacting the IRS) and thereby continue providing employees with retirement benefits on a tax-favored basis.

The check-up for 401(k) plans is currently under development. Check-ups for 403(b) and 457 plans are planned for FY 05.

C. DOL Sessions: Gerald Weslosky

Gerald discussed some upcoming events which the DOL is sponsoring.

- September 30, 2004 – Voluntary Fiduciary Seminar held in Philadelphia in morning and afternoon sessions which will discuss advantages, process and problems.
- October 15, 2004 – Philadelphia Fiduciary Education Seminar – Getting it Right (prohibited transactions, timely contributions, etc.
- November 16-17, 2004 – Dover Delaware Health Benefit Education Campaign (HBEC). DOL is coordinating with Delaware Insurance Department. Some items covered COBRA, HIPPA, and Health Care Matters.
- November 30, 2004 – Maryland Educating Insurance Brokers/Agents covering Maryland, Delaware, and Washington DC.
- April 25, 2004 -Annual DOL Conference which is being sponsored in cooperation with ASPA.

If you would like to attend or have any questions, please contact Gerald Weslosky, he can be reached at 215-861-5318.

D. Employee Plans External Guide: Michael Sanders

Michael discussed the External Guide which will be a Web-Based Audit Process Guide (on the Retirement Plans Web Page (Internet)) for use by EP External Customers that addresses:
- Overview to EP;
- Examinations;
- Initiation of An Examination;
- Communications During Examination;
- Audit Guidelines;
- Closing an Exam;
- Appeals;
- Customer Education and Outreach;
- Participant & Plan Events;
- Compliance Monitoring Procedures; and
- Customer Feedback.

After the web-based guide has been fully established on the Retirement Plans Web Page, one way that the Guide will be marketed to external customers will be via a CD/ROM with hyper-links to the web-based guide.

The External Guide Team Members Include:

External Members

Dan Brandenburg – Sanders, Schnabel & Brandenburg, PC
Alan Kanter – Alan N. Kanter & Associates, Inc.
Clare O’Callaghan – Lockheed Martin Corp
Wayne Kamenitz – Ernst & Young LLP
Susan Browning - Mercer Human Resource Consulting
George Whitfield - Warner Norcross & Judd LLP
Mike Gradisek – Duane Morris, LLP

Internal IRS Members

Joseph Albano – Brooklyn, NY
Dan Gardner – Independence, OH
Joseph LaBianca – Brooklyn, NY
Kim Sharkey – Pittsburgh, PA
Lori Brozek – Wilmington, DE
Bruce Karem – Louisville, KY
Mike Sanders – Philadelphia, PA

Section One Overview of the EP Examination Process will include an explanation of the EP Examinations process from the initial contact through the final conclusion, a description of the future direction of EP Examinations, and a listing of EP CE&O Talking Points.

Section Two Compliance Monitoring Procedures will include a current accumulation of Employee Plans Technical Guidelines. Its purpose is to provide an appropriate overview and examination reference as to exam objectives and development of issues. The section will include information on compliance procedures and self-audits, and will link to EPCRS (EP Voluntary Compliance) topic on the Retirement Plans Web Page. Compliance procedure and self-audit section will include examination tips and techniques to use when examining IRC 401(k) plans, eligibility and coverage provisions, vesting provisions, and IRC 415(c) limitations.
Section Three Initiation of an Examination provides a general explanation and examples of the techniques and procedures used to select EP examinations, contact taxpayers and their representatives, schedule appointments, and request initial information. This section also contains a description of your rights as a taxpayer to be informed of the EP examination process.

Section Four Communications During Examination provides a general explanation of the techniques and procedures used during an EP examination to effectively communicate with taxpayers and their representatives. This section also contains examples of communications involving compliance issues that may occur during examinations and information on transferring cases.

Section Five Audit Guidelines is a compendium of IRS guidance and forms and other information applicable to employee plans examinations. As an approach, we will explain the purpose to the steps. This is a sample of what is generally a starting point. An individual case may warrant additional effort. Section Five will include:

- “Roadmap” of the audit – Pre-planning of the audit process;
- Internal Revenue Manual – Employee Plans Examinations Guidelines;
- Other guidance including procedures, rulings, recently published regulations, notices, announcements and technical advice memoranda;
- Form 5772 – Audit Plan: form used by EP Specialists to develop audit workplan;
- Form 6212 – Referral to DOL: form used by EP Specialists to refer issue to Department of Labor;
- Referral to PBGC; and
- Discrepancy Adjustments.

Section Six Resolution of Issue and Closing the Exam will include resources and procedures available to plan sponsor/authorized representative and EP Specialists for resolving issues and exam closing, including discussion of:

- Explanation of informal means of addressing issues that arise during audit;
- EPCRS Self-Correction;
- EPCRS Audit CAP;
- Technical Advice;
- Procedures for EP Agreed Cases; and
- Procedures for EP Unagreed Cases.

Section Seven Appeals involves a description of the process for appealing issues that cannot be resolved with the EP Specialist or through informal means. Topics covered include: statute protections, general explanation of appeals process and status of plan during pending of appeal, and IRS Publications on Rights and Appeals.

Section Eight Customer Education and Outreach will discuss educational products such as current materials on 403(b) and 457 Plans, compliance profile of 401(k) Plans, and customer satisfaction survey results. It will include articles on EP Examinations, EP Continuing Professional Education (CPE) topics and materials on EP Examinations, and the schedule of customer education and outreach opportunities such as sponsored conferences, forums and other educational events.

Section Nine Participant’s and Plan Events will include an explanation of what notices the participants should be receiving and when these notices should be issued. It will also contain hyperlinks to EBSA (DOL), PBGC, and Contacting Missing
Participants information. In addition, it will include the SB/SE Calendar, which now contains an EP section.

Section Ten Feedback is a mechanism for comments and suggestions concerning EP Examinations and/or this audit process guide. We welcome comments and suggestions to provide further information and clarification of the employee plans examination process. It will contain an e-mail address and phone numbers for comments and suggestions. It will give readers options to answer questions, such as Frequently Asked Questions about Retirement Plans. If the reader does not find the answer to a question, or has a comment or suggestion about the Retirement Plans content, another option is to select the topic "EP Customer Services" on the left navigational bar.

The External Guide should be completed in about 30 days; it will then go through a Special Review Process. After this review process the Guide will be updated to the web. The External Guide will be updated on a quarterly basis.

E. EPCRS ISSUES: George Brim

George Brim, the Area Coordinator for the Mid Atlantic Area discussed the following Closing Agreement and Self Correction Program Issues:

CHANGES TO THE EPCRS REVENUE PROCEDURE;

1) Orphan Plans
   a. DOL working on Regulations.
2) Nonamender Fee Schedule
   a. Fee schedule discussed at the prior meeting will be in this upcoming Rev. Proc.; it relates to sanction for cases that are requesting an F.D.L. & have no operational defect
3) Loans – “possible relief where default is not related to the participant”
   a. Currently in discussion with Treasury regarding relief
4) 401K Correction on 410(a)(4) – Possible economic benefit calculation where a participant was overlooked and not given an opportunity to defer.
   a. In discussion with counsel & treasury regarding method to use in lieu of making the ER contribute the ADP of the participant’s group.
      i. One, is 25% (?) of the contribution lost plus earnings
      ii. Two, ADP for the 1st year & then use i) above for years 2 and after

Audit CAP:

1) Clarification of Maximum Payment Amount (MPA) definition
   a. Including rollovers in the current MPA calculation
2) Effect on sanctions
   a. Increase MPA & make our negotiations easier

F. FY 2005 WORK PLAN -Operating Priorities and Program Guidance: Iris Watts
There have been three major changes in TE/GE Leadership recently: Steve Miller is the new TE/GE Commissioner, Sarah Hall Ingram is the new TE/GE Deputy Commissioner and Michael Julianelle is the Director of EP Examinations.

FY 2005 EP Operating Priorities

Employee Plans shares the IRS’s three strategic goals of top quality service to each taxpayer, top quality service to all taxpayers, and productivity through a quality work environment. To address the key challenges EP faces in achieving its organizational goals, ongoing efforts will be directed to understanding and improving compliance and reducing burden by meeting customer needs.

EP’s five operating priorities are:
- Abusive Tax Avoidance Transactions;
- Stabilize Determination Receipts Flow;
- Refine Compliance Risk Assessment with Data from Examinations;
- Create an Employee Plans Compliance Unit; and
- Increase Retirement Plan Information on IRS.Gov IRS.Gov Restructure by Customer Segment.

Abusive Tax Avoidance Transactions involve S-Corporation ESOPs that violated IRC Section 409(p) and 412(i) Plans with excessive deduction issues.

The Mid-Atlantic Area has only forty determination cases left in inventory and there will be no new starts for the FY 05 Year.

For FY 2004, the compliance risk assessment was broken out into the following categories:
- Construction Money Purchase Plans (MPP);
- Manufacturing Profit Sharing, Money Purchase Plans, and 401(k) Plans;
- Professional, Scientific, and Technical MPP; and
- Health Care and Social Assistance Defined Benefit (DB) and MPP.

The FY 2005 categories are:
- Construction DB Plans;
- Wholesale Profit Sharing and 401(k) Plans;
- Retail DB and MPP;
- Information DB Plans;
- Finance and Insurance 401(k) and Money Purchase Plans;
- Real Estate and Leasing DB Plans; and
- Accommodations and Food Services Profit Sharing Plans.

The new Employee Plans Compliance Unit (EPCU), set to begin in the first quarter of FY 2005, will be composed of Statisticians, Revenue Agents, & Para-Professionals. Dealing mostly in correspondence, they will focus on:
- Abusive Transaction Program Oversight;
- Minimum funding compliance checks;
- Non Non-filer compliance check program (TEDS vs. EPMF);
- Compliance checks on future-year referral follow-ups generated by EP Examinations; and
- EPCRS Program resolution compliance checks.

Examination Program Guidance
The current goals and objectives of EP Examination involve:

- Abusive Tax Avoidance Transactions;
- IRC 403(b)/457 Plans;
- IRC 401(k) Plans;
- Multi-Employer Plans;
- EPTA;
- Focused Examination Program; and
- Plan Based Compliance Project.

Customer Satisfaction surveys have been positive overall. Seventy-one percent of responders indicated they were satisfied with the service provided, while only 7% were dissatisfied.

G. Roundtable:

Dan Brandenburg asked questions regarding the Retroactive Annuity Starting Date under Revenue Procedure 2004-25. Dan will forward his concerns to Jacquelyn Jordan.

The next Pension Liaison Meeting will be held in Philadelphia in January 2005 (date to be determined).