125 YEARS 1890 – 2015 STIFEL

Retirement Plans Quarterly

Third Quarter 2015

SAME-SEX MARRIAGES ARE RECOGNIZED IN ALL 50 STATES

Supreme Court Decision

On June 26, 2015, the U.S. Supreme Court, in a 5-4 ruling, held in Obergefell v. Hodges that the 14th Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

Recent Rulings

August 29, 2013, must be revisited. This is when the U.S. Department of the Treasury and the Internal Revenue Service (IRS) issued a joint news release pertaining to Revenue Ruling (RR) 2013-17, which declares that same-sex couples, legally married in jurisdictions that recognize their marriages, are treated as married for federal tax purposes. The ruling applied regardless of whether or not the couple lives in a jurisdiction that recognizes same-sex marriages.

Under RR 2013-17, same-sex couples are treated as married for all federal tax purposes, including income and gift and estate taxes. The ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA, enjoying spousal beneficiary provisions on Qualified Plans and IRAs, and claiming the earned income tax credit or child tax credit.

In all future tax years, legally married same-sex spouses must generally file their federal returns as married filing jointly or married filing separately. For all prior open tax years, same-sex spouses who file an original return on or after September 16, 2013 (the effective date of RR 2013-17) must also generally file as married filing jointly or married filing separately. For 2012 returns filed before September 16, 2013, and for all prior tax years that are still open under the statute of limitations, legally married same-sex couples may choose to amend their federal income tax returns to claim married filing jointly or married filing separately status. However, they are not required to do so.

Obergefell v. Hodges

Under the latest Supreme Court ruling, states that did not recognize same-sex marriage must now recognize these unions. And, any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory, or a foreign country will be covered by the ruling. However, one must note that Obergefell v. Hodges does not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under state law.

Conclusion

In closing, this ruling completely opens the doors for many opportunities for same-sex married couples, such as the ability to utilize a higher adjusted gross income limit (while filing a joint tax return) when making Traditional and/or Roth IRA contributions. Another advantage allowed is the ability to make a spousal contribution to Traditional and/or Roth IRAs. Yet another advantage is the opportunity for spousal beneficiary options with Qualified Plans (QP) and all types of IRAs. This allows a surviving spouse to make the QP or IRA his or her own or use an inherited IRA as a penalty-free source of income should one spouse pass away at a young age.

Future Guidance

The IRS has created a list of frequently asked questions regarding this subject, which is located at: http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples

This information is from sources believed to be reliable, but its accuracy is not guaranteed. All material is for educational purposes only, and it is always recommended that you seek the aid of a competent tax advisor or tax attorney who may assist you with proper tax advice and guidance.

DEADLINE TO RECHARACTERIZE IS OCTOBER 15, 2015

After an IRA is converted to a Roth, there may be situations where the individual wants to reverse the conversion. One example would be when a tax-filer converts a Traditional IRA to a Roth and afterwards the market value of converted securities decreases in value. In this case, an individual may recharacterize (reverse) the conversion back to a Traditional IRA and do so without taxation or penalty.

Recharacterization Example

To see how a reversal could benefit a taxpayer, let's assume he or she converted securities valued at $100,000. Since the conversion, the market value of the securities decreased to $75,000. The taxpayer will have to include $100,000 as ordinary income received (converted) on securities now valued at $25,000 less. However, if that same taxpayer reverses the conversion, no tax will be due at that time. The IRA holder will have another opportunity to reconvert later at the lower value, which means less ordinary income tax to pay. For tax-filers who reverse a conversion back to a Traditional IRA, a reconversion may only occur the later of: January 1 of the tax year following the conversion or 30 days after the recharacterization (reversal).

Recharacterization Between IRAs

In addition to reversing conversions, the IRS allows taxpayers who contribute to either a Traditional or Roth IRA the opportunity to recharacterize (move) that contribution (plus earnings or less the loss) to the other type of IRA. This may be a good strategy for those who discover their Traditional IRA contribution is not deductible and, therefore, elect to make it a Roth IRA contribution or that they exceeded the income limit for Roth contribution eligibility and, therefore, elect to make it a non-deductible Traditional IRA. Note that in order to move a Traditional IRA contribution to a Roth IRA, the taxpayer's AGI must be under the allowable limits for the year the contribution is intended ($129,000 for a single filer and $191,000 for married couples filing a joint return for 2014). However, there are no AGI limits for non-deductible contributions to Traditional IRAs, and therefore, taxpayers may recharacterize Roth contributions to a Traditional IRA if the IRA owner is under the age of 70½ for the intended contribution year.

Deadline

Note that to qualify for a recharacterization of contributions between IRAs, the reversal must be completed by October 15 of the year following the year the contribution was made and the individual must have filed his or her Federal income tax return by the normal filing deadline, plus extensions. So for 2014 conversions and contributions, the deadline is quickly approaching.

Recharacterization steps:

1. Inform the custodian to complete a transfer of the original contribution/conversion amount from one IRA account to another. The transfer must include any net income (or loss) from the original date of the contribution, which the custodian will calculate.
2. File an amended tax return if the recharacterization is for a previous year's contribution/conversion.
3. File IRS Form 8606 to report a non-deductible contribution that was recharacterized from a Roth IRA to a Traditional IRA.

Individuals should consider this as an opportunity to take advantage of the flexibility of being able to recharacterize/ reverse their ineligible IRA contribution or underperforming Roth IRA conversion. Remember a recharacterization must occur by tax filing deadline plus extension (October 15).
It is always recommended that individuals seek the aid of a competent tax advisor or tax attorney to assist with tax advice and guidance.

SIMPLE IRAs – OCTOBER 1 DEADLINE

The SIMPLE IRA is an employer-sponsored plan that allows eligible employees to make pre-tax salary deferrals into an IRA account and requires the employer to make annual contributions into the IRA account of each eligible employee. SIMPLE IRA plans must be maintained on a calendar-year basis (IRC Sec. 408(p)(6)(C)).

New Plans

October 1 is an important date for new SIMPLE plans, as there is a requirement that all new plans be established by October 1 of the year for which deferrals will be made. In addition, within a 60-day period preceding a plan year, the employer must allow eligible employees to make deferral elections (IRC Sec. 408(p)(5)(C)). **The 60-day election period for new plans must begin by October 1 to include 2015 deferrals.**

There is one exception to the October 1 establishment deadline. Newly established companies may open SIMPLE IRA plans as soon as administratively feasible to accept contributions immediately.

Existing Plans

For existing plans, employers must furnish a 60-day election notice and salary deferral notice by November 1 each year. This notice allows newly eligible employees to make elections or existing employees to modify elections for the upcoming year.

October 1 is quickly approaching, and employers wishing to establish a SIMPLE plan for 2015 should do so immediately, as plans established after this date are effective for 2016.

EXTENSION DEADLINE FOR EMPLOYER CONTRIBUTIONS

Employers may wait until the company's tax filing due date plus extensions to make company contributions to SEP or SIMPLE IRAs and to Qualified Retirement Plans.

For fiscal-year business owners, the normal filing date is the 15th day of the 3rd month after the end of the corporation's tax year. Extensions stretch the employer funding and filing deadline an additional six months following the normal filing date.

For calendar-year filers, March 15, 2015, was the 2014 filing date for Corporations and for S-Corps. The normal 2015 filing date for the self-employed was April 15, 2015.

Extension Deadlines

Business owners may request automatic extensions for tax filing and for contributing by submitting appropriate forms by their normal filing date. If an extension is granted, September 15, 2015, is the final day a corporation may make company contributions and submit its tax returns. For the self-employed, October 15, 2015, is the final day employer contributions may be accepted and tax returns filed.

THE SOLO 401(k) ADVANTAGE

For many business owners without employees or eligible employees (especially owners with a spouse on the payroll), the Solo 401(k) plan can increase tax deductions over those available in a Simplified Employee Pension (SEP) IRA.

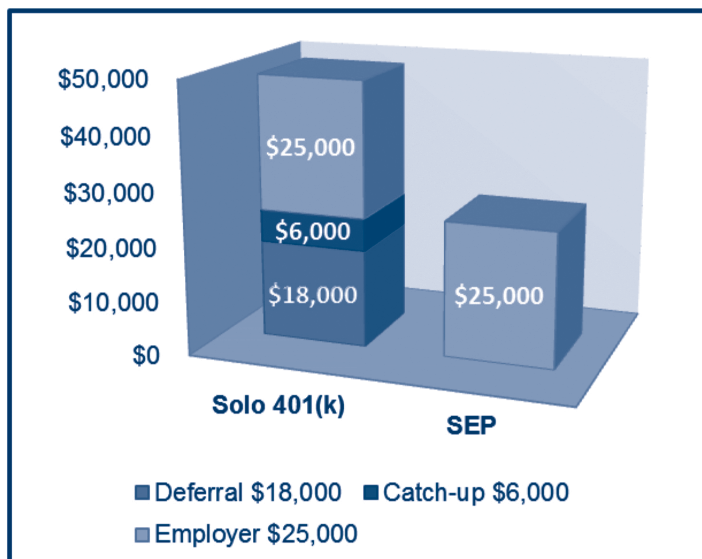
The secret to the Solo 401(k)'s success is that it offers three types of contributions:

1. Employee deferrals of up to $18,000 (2015),
2. Employer non-elective contributions of up to 25% of compensation, and
3. Catch-up contributions of up to $6,000 (2015) for participants age 50 or older.

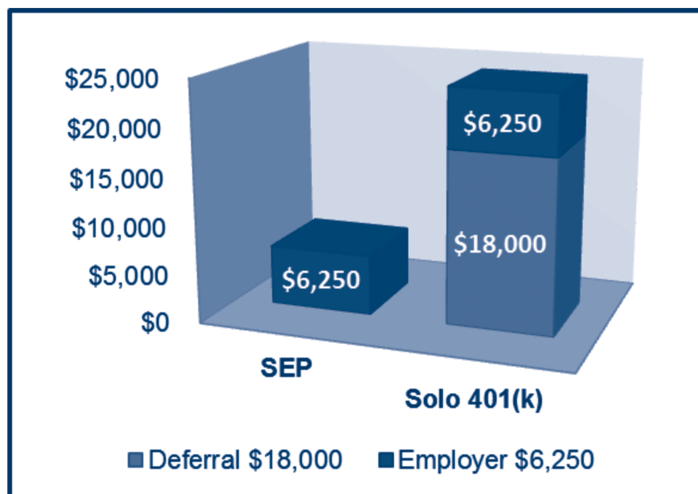
The SEP only allows the non-elective contributions of 25%.

Business owners younger than 50 who earn over $212,000 may prefer a SEP, as the 25% non-elective contribution can achieve their maximum deduction ($53,000 in 2015). However, for those earning less than $212,000, the charts below depict some examples of the Solo 401(k) advantage.

Based on $100,000 of salary, a Solo 401(k) can nearly double an age 50 business owner's tax deduction from $25,000 to $49,000.



Based on salary of $25,000, a business owner's 45-year-old spouse on the payroll can enjoy a $24,250 deduction in a Solo 401(k), compared to a SEP deduction of only $6,250.



In addition to the tax deductions, the Solo 401(k) plan may allow loans, enabling a business owner access to his/her money without being currently taxed.

A word on compensation: Owners of S and C corporations must use W-2 income as the basis of any plan contribution (for SEPs, Solo 401(k)s, and qualified plans) and may make salary deferrals to a 401(k) of only income they have not already been paid. This may reduce desired deferrals (including catch-ups) in 2015. For example, a business owner wants to defer $18,000 but will only be paid $10,000 in W-2 income between plan inception and December 31.

A Solo 401(k) requires some minimal plan administration. However, no IRS Form 5500 need be filed until the plan's assets reach $250,000. A CPA or a Third-Party Administrator (TPA) can help with plan administration. TPA costs may range from $300 to $500 per year.

A "SEP" in the Right Direction

Business owners on a 2014 tax extension can consider a SEP for a 2014 tax deduction (a SEP may be established by the due date of the tax return, including extensions) and then consider a Solo 401(k) for a larger deduction in 2015 and beyond.

Clearly, many business owners without employees or eligible employees who are considering a SEP should also consider a Solo 401(k)!

LATE 5500 FILER RELIEF PROGRAM FOR SOLO 401(k)S AND CERTAIN FOREIGN PLANS

The Internal Revenue Service (IRS) has implemented a permanent relief program for small businesses with Solo 401(k) plans and certain foreign plans that neglected to file 5500s. Effective June 3, 2015, this permanent relief program replaces the one-year pilot program that ended on June 2, 2015. Details of the new program are provided in IRS Revenue Procedure 2015-32.

When a Solo 401(k) plan is established, employers learn that as long as they do not have any eligible employees or over $250,000 in plan assets, they do not have to file an Annual Return/Report of Employee Benefit Plans, which is more

commonly known as the Form 5500*. However, by the time their Solo 401(k) plan reaches $250,000 in assets, many employers forget about the requirement and neglect to file. The IRS penalty for not filing a required 5500 can be stiff – $25 per day that the return is not filed, up to $15,000 per return. The Department of Labor (DOL) also can assess a penalty of $1,100 per day for late filers. Note that since both the IRS and DOL fines can be levied for each return in each year that is delinquent, an employer who hasn't filed multiple returns for multiple years could quickly reach penalties in the hundreds of thousands of dollars.

The relief program alleviates much of the assessed fines by limiting the fees to $500 for each delinquent return up to a maximum of $1,500 per plan. To be eligible for relief, the retirement plan must be either a Solo 401(k) plan or a foreign plan and must also be filing IRS Form 5500 EZ. A Solo 401(k) plan is a plan with one owner, an owner plus a spouse, an owner plus partner(s), or an owner plus partners and their spouses. There may not be any eligible employees. If an employer has received a delinquency notice from the IRS, known as the "CP 283 Penalty Charged on Your Form 5500 Return" notice, the employer is not eligible for the program for the plan year mentioned in the CP 283.

The foreign plan must be a plan maintained outside of the U.S. primarily for nonresident aliens. If the plan is subject to Title I of ERISA, meaning that the plan had employees for the year that the filing is delinquent, it is not eligible for relief under this program and must be corrected under the DOL's Delinquent Filer Voluntary Compliance Program (DFVC). The fees for the DFVC are limited to $750 per Form 5500 EZ with a per plan maximum of $1,500.

Late returns may not be filed electronically, so a paper return must be submitted for each year that is delinquent. Each paper return must be submitted on the Form 5500 for the actual year of the plan, rather than a current year form. For example, if the plan neglected to file a 2006 return, a paper 2006 Form 5500 must be used. However, since it is difficult to find physical 5500 forms prior to 1990, the IRS will allow the use of current year forms for any years prior to 1990.

The paper return(s) must be marked in red on the first page with the following language: "Delinquent return submitted under Rev. Proc. 2015-32, Eligible for Penalty Relief." All returns must be sent with IRS Form for Transmittal Schedule – Form 5500-EZ Delinquent Filer Penalty Relief Program, also known as Form 14704. Form 14704 is now available on the IRS web site. Each return and its accompanying Form 14704 must be mailed using an IRS-approved delivery service provider, such as FedEx, DHL, or UPS.

Employers who have a reasonable cause for their late filing may choose to avoid the delinquent filer program and opt to send in a delinquent filing with an attached statement describing the reasonable cause for the late return. Following this approach, however, automatically makes employers ineligible for the maximum $1,500 fee otherwise available if they submit under the delinquent filing program.

For a more detailed description of the IRS program and its requirements, visit: http://www.irs.gov/pub/irs-drop/rp-15-32.pdf.

* Note: All Solo 401(k) plans must also file a final 5500 after the plan has terminated and the assets are disbursed, even if the plan never reached the $250,000 threshold.

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