



Simple Cafeteria Plans for Small Businesses

Cafeteria Plans Come A Long Way



- Your clients want a cafeteria plan...but not the headaches of non-discrimination testing?
- New changes make that a reality!

Cafeteria Plans



- Provide for benefits on a pre-tax basis.
- Simplest form: POP. Ees use pre-tax \$\$\$ for insurance premiums.
- Non-discrimination rules make it unattractive to the small business.

Simple Cafeteria Plan



- Health Care Bill: “Simple Cafeteria Plan.”
- For businesses with <100 employees in the preceding two years.
 - ▶ Employee count may differ if States regs. rule.
 - ▶ Controlled groups treated the same as in retirement plans.

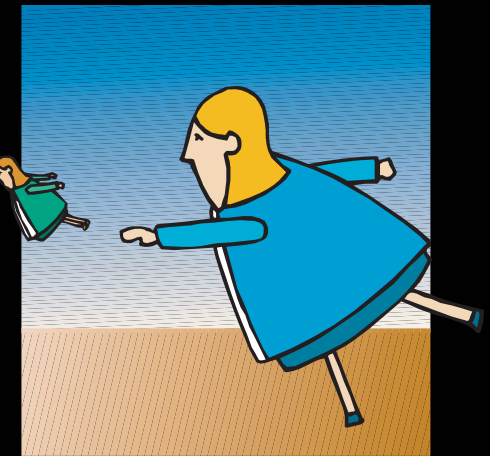
Simple Cafeteria Plan



- New employers base eligibility upon the # of employees they expect to employ in the 1st year.
- Can sponsor the plan until plan year in which company > 200 employees.

Simple Cafeteria Plan

- Eligible employee:
 - ▶ Worked 1,000 hours in previous year, and,
 - ▶ Is 21 yrs by the end of the plan year,
 - ▶ Not covered by collective bargaining agreement,
 - ▶ Not a non-resident alien.



A Simple Cafeteria Plan:

- No non-discrimination testing.
- Contribution for eligible employees:
 - ▶ 2% of salary, or;
 - ▶ The lesser of a matching contribution of 200% of the employees deferral or 6% of pay.



Simple Cafeteria Plan

- Starts for plan years beginning in 2011.
- Sole props and Sub-S 2% or more shareholders still not eligible to participate.
- Regulations will clarify questions...(maybe)

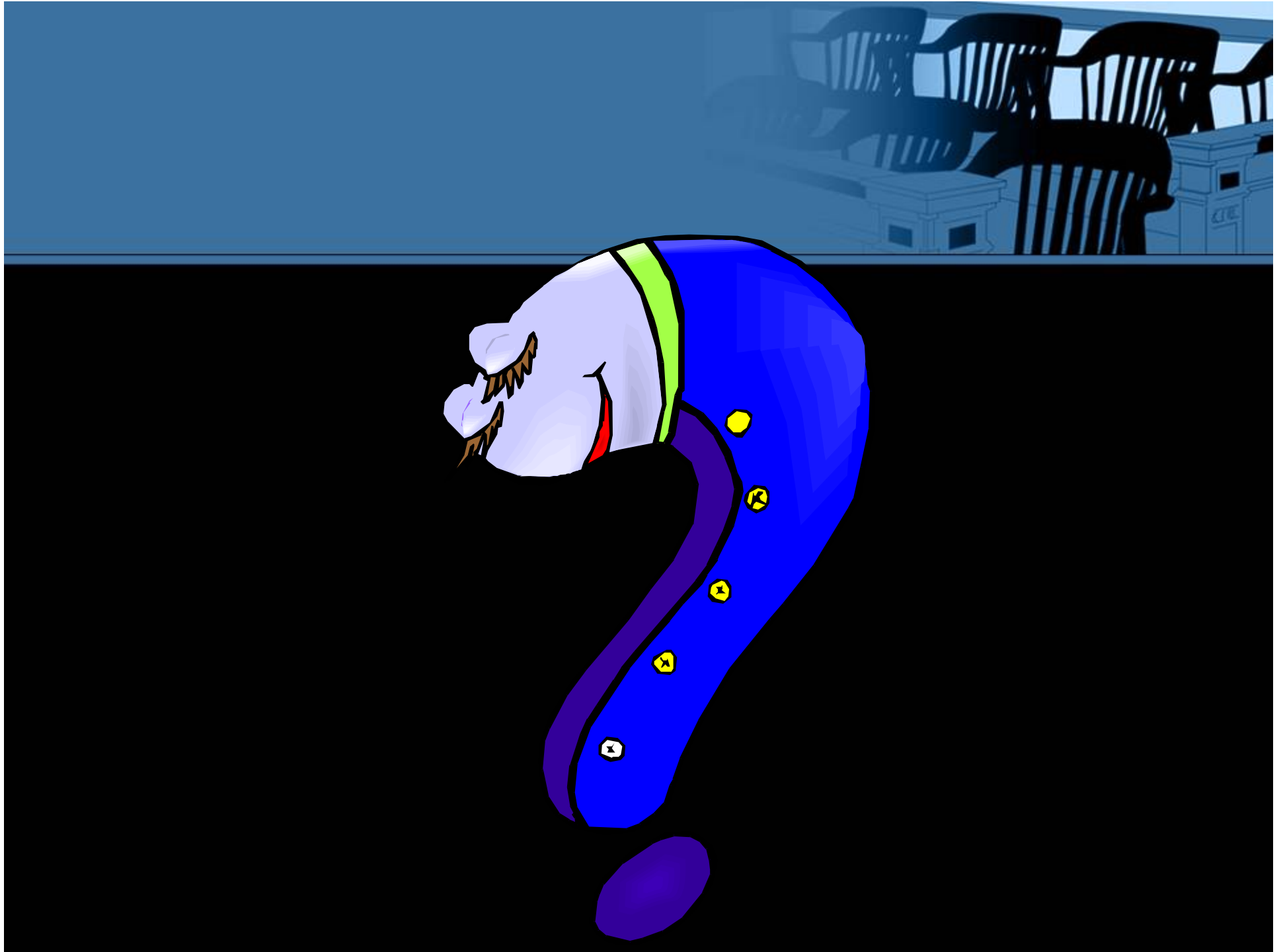
May 2010



Simple Cafeteria Plans



- Look for info in *For Your Benefit* newsletters.
- Let us know if you want us to send you information.





SEPs Misunderstood & Misused



(And on the IRS's radar)



“I’m just a guy whose intentions are good.
Oh Lord, please don’t let me be
misunderstood.”

The Animals, circa 1968

Who's Watching SEPs?



- No one!
- SEPs are often set up in a vacuum.
- The CPA reviews the contribution for the tax return.
- You have the chance to help your client!

What Are SEPs?



- Employer-sponsored IRAs.
- Set up on form 5305-SEP (sponsored by IRS).
 - ▶ Form 5305 will not allow another plan.
 - ▶ Business cannot have leased employees.
 - ▶ Can't be a controlled or affiliated service group unless all covered.



SEP: General Provisions

- Limited eligibility requirements.
- Level contributions for the employees.
- No vesting schedule, employees 100% vested on first deposit.
- Contribution is discretionary—up to 25% of eligible salaries.

SEP: Common Problems



- Plan document not current.
 - ▶ All SEPs should have a current revision date of December 2004.
- Plan document is not completed.
- Plan document set up with an eligibility requirement that owner cannot satisfy.

SEP: Common Problems



- Eligible employees not participating.
 - ▶ Must follow the document.
 - ▶ Employer ignores eligibility.
 - ▶ Document left eligibility requirements blank—all employees become eligible immediately.

SEP: Common Problems

- Employer has more than one business.
 - ▶ No review of controlled group issues.



Problem Solutions

- SEPs can use the IRS correction programs.
- Self correction available for operational failures only.



Examples

- Failure to include eligible employee.
 - ▶ Correction is for the employer to contribute for all missing years.
 - ▶ Can be very expensive.



Examples



- Failure to update the plan document:
 - ▶ Adopt revised Form 5305-SEP
 - ▶ Submission under VCP will assure IRS acceptance.
- Other controlled group members do not adopt the plan.
 - ▶ Employer contribution to bring in all eligible employees of the controlled group.

Slide 21

NM1

If controlled groups cannot adopt the 5305...is this a typo?

Nancy Michael, 5/4/2010

SEP



- SEPs have been ignored for many years.
- IRS is focusing on compliance.
- Review them now before the IRS steps in.

Updates and Audits



IRS's Common DC Problems



- Failure to have adequate bond.
 - ▶ Must be $> 10\%$ of the assets or 100% of any non-qualifying assets.
- Failure to amend timely for current regulations.
- Failure to make top-heavy contributions.



IRS's Common DC Problems

- Failure to deposit elective deferrals timely.
- Failure to distribute excess contributions timely.
- Failure to cover all eligible employees.
- Failure to make the required safe harbor contributions.

IRS's Common DC Problems



- IRS will mail information request to a number of 401(k) plan sponsors.
 - ▶ Clients should review with TPA prior to answering.
 - ▶ Probably will trigger an audit if no response.
 - ▶ Answered questions will not trigger an audit.

Updates/Audits



- Minimum distributions (RMD) are required for 2010.
- Deadline for the restatement of all DC plans was April 30, 2010.
 - ▶ VCP will provide for a 50% discount in the normal fee if restated and submitted within one year.

Updates/Audits



- Defined benefit plan restatements opened May 1, 2010.
 - ▶ Prototypes & volume submitter plans only.
 - ▶ Individual plans such as cash balance plans have a different cycle.
 - Based on EIN.

Questions?



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