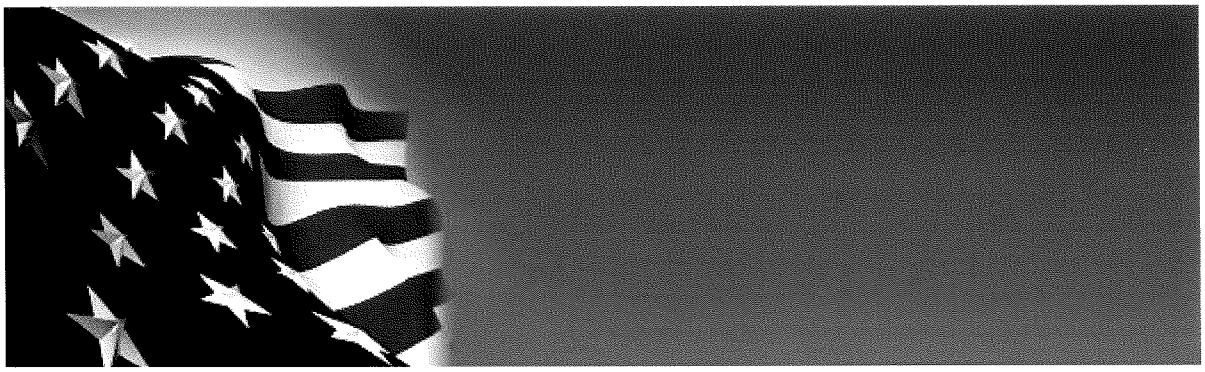

CYPEN & CYPEN NEWSLETTER SPECIAL SUPPLEMENT for MARCH 23, 2015

Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

IRS APPARENTLY RESOLVES DROP ISSUES!

We have been made aware of credible information that Internal Revenue Service has resolved the so-called qualification issues relating to governmental defined contribution DROP arrangements. The following is a short explanation of the history of this issue, provided to us by Florida attorney Rick Burke.

As you know, in 2007 and 2014, the IRS National Office adopted the position that (i) defined contribution (DC) DROPs are defined contribution plans (DCPs) for purposes of applying the IRS limit on plan contributions/benefits and that (ii) the annual DROP deposits (*i.e.*, the annual sum of the monthly retirement benefit amounts credited to a participant's DROP account) are subject to the "annual additions" limitation applicable to DCPs (currently $53,000). A DC DROP is one where DROP accounts are adjusted for the actual investment experience of the particular investment options.

That interpretation would have adversely affected many governmental DC DROP arrangements. However, IRS recently reversed its position: on December 8, 2014, the IRS National Office issued a memorandum to its field personnel indicating, that DROP deposits are not subject to the annual additions limitation applicable to DCPs. At the time, we thought the memorandum resolved all IRS issues relating to DC DROPs (See C & C Newsletter Special Supplement for January 8, 2015).

But we were wrong. In early January, 2015, the IRS National Office informed the IRS Cincinnati District Office (which is in charge of the governmental plan favorable determination letter project) that the memorandum was only intended to address the application of the rules relating to the IRS limit on plan contributions/benefits and no other qualification requirement. Unfortunately, due to technical issues relating to the National Office's change of position, the IRS Cincinnati District Office became concerned as to how DC DROPs satisfy the "definitely determinable benefit" requirement (See C & C Newsletter Special Supplement for February 18, 2015). Essentially, the rule requires that the level of benefits must be determinable from an examination of the plan documents and from factors not within control of the sponsoring employer. Based on this concern, the Cincinnati District Office requested an explanation from representatives of the approximately 75 pending governmental plan favorable determination letter requests containing DC DROPs as to how these arrangements satisfy the "definitely determinable benefit" rule.

As a result of these requests, the IRS Cincinnati District Office was informed of the existence of various IRS pronouncements (including Revenue Ruling 71-24, Revenue Ruling 68-647 and PLR 8206033) concluding that arrangements very similar to DC DROPs satisfy the requirement.

Based on these authorities, Burke has received credible information that IRS now agrees that DC DROPs satisfy the "definitely determinable benefit" rule.

Assuming this information is accurate (and we do), most governmental DC DROPs should be able to continue to operate as

they have in the past.

GREAT NEWS!

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