The $70,000 Question

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8/25/2015

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During my many years of plan consulting, I have (probably) seen just about every kind of error that can be made in a retirement plan. Most of the time the errors are unintentional – made by well-meaning plan administrators who didn't know any better. In rare instances I have seen cases of intentional fiduciary misconduct and even theft. But the errors that leave me the most bewildered are the ones where **one simple question** could have saved a whole lot of time and trouble for a client. I call it, in this case, the $70,000 question.

Case in point: We were recently hired by a small firm to take over as Third Party Administrator (TPA) of their retirement plan. It seemed simple enough – just oversee the movement of plan assets from the current investment custodian to a new custodian and take over the annual ongoing compliance testing and Form 5500 preparation. As part of our normal onboarding process with all of our new clients, I scheduled a phone call with the client to discuss the plan, review the design changes they wanted, and to ask them questions from our internal compliance questionnaire. One of those questions is this, "Does anyone who has ownership in this company have ownership in any other companies?" This simple question has probably uncovered more errors than any other question we ask new clients.

For this particular client, in the course of about 10 minutes, we uncovered that the majority owner of the firm did indeed have a majority ownership in another, totally unrelated business that had been started two years prior. But the employees of that business had never been considered in any plan testing. And the plan document was a standardized prototype that required coverage of all members of the controlled group. And the previous TPA had never asked this one simple question…

Why am I calling this the $70,000 question? Obviously, the cost to correct this type of error can vary widely, depending on the situation. But in this case, the employer had been making hefty pro-rata compensation profit sharing contributions to its plan participants, which it had to go back and fund for two years to all eligible employees of the controlled group. And there will be a funding obligation for the 2015 plan year, as well. Plus lost earnings. Plus our charge for time and expense to coordinate the correction (our charges could have been significantly higher, had we been asked to calculate the corrective contributions, but in this case the previous TPA ran all the calculations). Plus attorney's fees.

Total cost? $70,000 +.

The attorney for this company advised self- correction, which did not require any IRS filing. Had it been necessary to file the correction with the IRS, there would have been additional filing fees, which vary by size of employer. And, this type of error can actually lead to disqualification of the plan, which no company even wants to think about.

With a little thoughtful consulting back in 2013 and a proactive approach where the TPA asks this type of question EVERY year to EVERY client, this situation could have been avoided entirely. Had the previous TPA drafted the plan document on a *nonstandardized* prototype, rather than a standardized prototype, the required contribution funding could have been reduced dramatically, because not all employees of the controlled group would have had to receive a corrective contribution – only enough employees to make the plan pass the necessary nondiscrimination testing.

For this client, the problem is going to be resolved for future plan years by implementing ownership changes that will take the companies out of control group status. And this brings me to my final thought on all of this. What was the cost to the client? $70,000. What is the value of a good TPA that knows what to ask and is willing to spend a little time with each client understanding their business and looking under rocks for these types of issues? *Priceless…*