

THE NATIONAL UNDERWRITER COMPANY

2015 TAX FACTS ON INSURANCE & EMPLOYEE BENEFITS

Robert Bloink, Esq., LL.M.,
William H. Byrnes, Esq., LL.M, CWM®

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VOLUME 2

2015 TAX FACTS

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Pensions and Profit Sharing • Structured Settlements
Taxation of Individuals**

**Robert Bloink, Esq., LL.M.
William H. Byrnes, Esq., LL.M., CWM®**

2015 Edition

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- Property That Can Be Given Under Uniform Gifts to Minors Act (by state)
- Donee's Age When Custodianship Established under UGMA or UTMA Ends
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INTRODUCTION TO 2015 TAX FACTS ON INSURANCE & EMPLOYEE BENEFITS

Welcome to the 2015 edition of *Tax Facts on Insurance & Employee Benefits*. This year's *Tax Facts* features both new and enhanced content designed to help you provide clients with the most relevant tax planning advice possible. We have added this material in order to provide the content that our subscribers have requested—incorporating analysis of the most important recent judicial rulings and Internal Revenue Service guidance in the areas that are most relevant to your business.

We are excited to introduce a significant expansion of our section on international law to include the most pressing tax issues faced by U.S. individuals who have frequent business or other ties with Canada. Additionally, we have once again expanded our popular annuities materials in order to provide more information on the myriad annuity options available to clients today.

Our coverage of IRAs has expanded to include the complex area of inherited IRAs as it applies to spouses as well as other designated beneficiaries. We also expanded our coverage of Roth conversions from traditional IRAs. Included are questions on conversions to both Roth IRAs and Roth 401(k)s. We also introduce questions this year on the new myRAs dealing with eligibility, distributions and restrictions.

Coverage of the Affordable Care Act has been expanded to deal with compliance issues and tax credits in regard to the individual mandate.

 *Tax Facts on Investments* also contains important new content, including an expanded section devoted to tax considerations in regard to real estate investment trusts (REITS). In addition, we expanded coverage of our section on reverse mortgages to include key developments from the past year.

Throughout *Tax Facts*, you will find an expansion of our “planning points,” each offering a piece of practical advice written by a practitioner who is an expert in his or her field, which will assist you in providing your clients with the most knowledgeable guidance possible. We have continued to reorganize many of our more complicated questions, splitting almost 75 questions into discrete subparts that make these questions simpler and easier to understand. When combined with our updated Code-based index, we believe this will streamline your research process and save you time and effort.

As always, please keep in mind that updated information on critical tax law changes will be available as they occur for all subscribers at www.TaxFactsUpdates.com. This includes any tax code changes that may emerge from the negotiations over the various expired tax code provisions that continue to progress through Congress as we go to press with this edition.

Additional changes throughout the year—including revenue rulings, case law decisions, and legislative and regulatory activity—are available through subscription to our online tax service, *Tax Facts Online*. *Tax Facts Intelligence*, a monthly newsletter that provides the most current analysis of recent IRS rulings and industry developments, rounds out the suite of *Tax Facts* publications.

This edition of *Tax Facts* was developed with the assistance of authors Professor William H. Byrnes and Professor Robert Bloink. Prof. Byrnes currently serves as the Dean of Thomas Jefferson Law School and has been the author of numerous books, treatises and scholarly articles. Prof. Bloink is an insurance industry expert whose practice incorporates sophisticated wealth transfer techniques, as well as counseling institutions in the context of their insurance portfolios. He is also a professor of tax for the Graduate Program of International Tax and Financial Services, Thomas Jefferson School of Law.

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ABOUT THE AUTHORS

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Previously, Mr. Bloink served as Senior Attorney in the IRS Office of Chief Counsel, Large and Mid-Sized Business Division, where he litigated many cases in the U.S. Tax Court, served as Liaison Counsel for the Offshore Compliance Technical Assistance Program, coordinated examination programs audit teams on the development of issues for large corporate taxpayers, and taught continuing education seminars to Senior Revenue Agents involved in Large Case Exams. In his governmental capacity, Mr. Bloink became recognized as an expert in the taxation of financial structured products and was responsible for the IRS' first FSA addressing variable forward contracts. Mr. Bloink's core competencies led to his involvement in prosecuting some of the biggest corporate tax shelters in the history of our country.

William H. Byrnes, Esq., LL.M.

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William Byrnes' weekly articles are published in National Underwriter Advanced Markets, Tax Facts Online, ThinkAdvisor and LifeHealthPro. "The authors' knowledge and experience in tax law and practice provides the expert guidance for National Underwriter to once again deliver a valuable resource for the financial advising community," (Reuters, January 21, 2014). "In the field of international tax, Prof. William Byrnes is among LexisNexis's best-selling authors ..." Ray Camiscioli, Esq., LexisNexis, Inc.

William Byrnes served in senior positions of Coopers and Lybrand where he consulted for multinationals and high net wealth business owners. He has been commissioned and consulted by a number of governments on their tax, fiscal, and education policy. He was a tenured law faculty member in Miami, Florida, and in the early nineties pioneered online tax and financial services

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He has a B.S. in Accounting from Pennsylvania State University, J.D. from Widener University, and LL.M. (Taxation) from Temple University. In addition, Mr. Ellis is Executive Editor and Co-author, and along with Stephen Leimberg, et.al., of *Tools and Techniques of Estate Planning*, 16th Edition, The National Underwriter Company, as well as a Co-Author of the 15th Edition. Also, Mr. Ellis is the author of the book “Drafting Wills and Trusts in Pennsylvania”, 2010 Edition for PBI Press. Mr. Ellis is also a member of the Editorial Advisory Board for Tax Facts 2012 through 2015, The National Underwriter Company. In addition, he is the author of 30 articles for Pennsylvania Tax Service Insights (LexisNexis Matthew Bender). Finally, he is a former member of the Adjunct Faculty at Villanova Law School where he taught Family Wealth Planning.

Mr. Ellis frequently speaks to a variety of groups, including attorneys, accountants and financial planners throughout Pennsylvania, New Jersey, Delaware and Maryland. Mr. Ellis is also the Course Planner for the PBI Courses “Drafting Wills and Trusts in Pennsylvania”, “Wills v. Trusts: A Primer on the Right Tool for Your Clients”, “Use of Trusts”, and “Post-Mortem Estate Planning”, and a participant in a variety of additional courses for PBI. He is also an annual participant in the Villanova University’s annual tax conference, cosponsored with the Internal Revenue Service.

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In addition to teaching, Mr. Gardner is a member of WealthCounsel, LLC, serves on the Editorial Board of *The Journal of Financial Planning*, and is former member of the Council on Examinations of the Certified Financial Planner Board of Standards. He is a member of the AICPA, the Missouri Society of CPAs, and the Kansas Bar Association. He has also written many articles for publications such as the *Journal of Financial Planning*, *Taxation for Accountants*, *Practical Tax Strategies*, and *Tax Adviser*.

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Johni is in demand as a national lecturer on estate and charitable planning, probate, living wills, annuities, life insurance, retirement planning and IRAs, as well as income, estate and gift taxation. Johni has been engaged in the practice of law with an emphasis in charitable and estate planning since 1993.

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stages of tax controversies, including all administrative and judicial levels from examination through court proceedings.

Mr. Hodges has represented a broad range of taxpayers, including individuals, estates, closely held businesses, tax-exempt organizations, and publicly traded corporations. A substantial number of these engagements have involved the defense of TEFRA partnerships and limited liability companies. He has represented taxpayers in many different federal courts, including the U.S. Tax Court, the U.S. District Court for the Northern District of Georgia, the U.S. District Courts for the Middle District and Southern District of Florida, the U.S. District Court for the Southern District of Mississippi, the U.S. District Court for the District of Arizona, the U.S. District Court for the District of South Carolina, the U.S. Court of Federal Claims, and the U.S. Court of Appeals for the Fifth, Ninth and Eleventh Circuits.

Mr. Hodges has been a key litigator in various cases earning him honors and recognition. He has been listed as a “Leader in the Field” for Taxation by Chambers USA: *America’s Leading Lawyers for Business* each year since 2005. He was recognized by his peers in the 2015 edition of *The Best Lawyers in America*®, and each of the five years immediately preceding, for the area of Tax Law. In 2014 and each of the five years immediately preceding, Mr. Hodges was named a Georgia “Super Lawyer” and previously a Georgia “Rising Star” by *SuperLawyers* magazine. Throughout his career, Mr. Hodges has provided insight as an industry leader for some of the nation’s top news outlets including the *Wall Street Journal*, *Bloomberg*, *BusinessWeek*, *Forbes* and *Law360*. He is AV® rated by Martindale-Hubbell.*

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In addition to being a coauthor of the 4th Edition of *The Tools & Techniques of Income Tax Planning*, Jay has penned seven published tax articles, including “An Offer in Compromise You Can’t Confuse: It is not the Opening Bid of a Delinquent Taxpayer to Play Let’s Make a Tax Deal with the Internal Revenue Service,” 81 *Miss. L.J.* 1673 (2012) (lead article); “The William O. Douglas Tax Factor: Where Did the Spin Stop and Who Was He Looking Out For?” 3 *Charlotte Law Review* 133 (2012) (lead article); and “The Untold Story of Crane v. Commissioner Reveals an Inconvenient Tax Truth: Useless Depreciation Deductions Cause Global Basis Erosion to Bait A Hazardous Tax Trap For Unwitting Taxpayers,” 30 *Va. Tax Rev.* 559 (2011).

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Mr. Keebler frequently represents clients before the IRS National Office in the private letter ruling process and in estate, gift, and income tax examinations and appeals, and he has received more than 150 favorable private letter rulings including several key rulings of first impression. He is the author of over 100 articles and columns and is the editor, author, or coauthor of many books and treatises on wealth transfer and taxation.

Sonya King, J.D., LL.M.



Sonya King has been involved with tax issues affecting estate, retirement, business, and charitable planning for fifteen years. Prior to joining New York Life’s Advanced Planning Group in 2010, Ms. King worked at the National Underwriter Company where she was an editor of *Tax Facts* and the *Tools & Techniques* series. She authored numerous articles on life insurance, annuities, retirement, income tax, health and welfare plans, and charitable and estate planning. Sonya is a coauthor of the *Tools & Techniques of Income Tax Planning*.

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Michael E. Kitces, MSFS, MTAX, CFP®, CLU, ChFC, RHU, REBC, CASI

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Beyond his website, Michael is an active writer and editor across the industry and has been featured in numerous publications and has coauthored several books. In addition, Michael has been recognized as financial planning's "Deep Thinker" influencer, a "Mover & Shaker," one of the "Power 20," and was selected as one of the 2010 recipients of the Financial Planning Association's "Heart of Financial Planning" awards for his extensive volunteer work in the financial planning community and dedication to advancing the profession.

Michael is also a cofounder of NexGen, a community of the next generation of financial planners that aims to ensure the transference of wisdom, tradition, and integrity, from the pioneers of financial planning to the next generation of the profession.

Alson R. Martin, J.D., LL.M.



Alson R. Martin is a Partner of Lathrop & Gage LLP in Overland Park, Kansas. The firm also has offices in Los Angeles, California; Denver & Boulder, Colorado; Washington, D.C.; Chicago, Illinois; Kansas City, St. Louis, Jefferson City, Springfield & Columbia, Missouri; Boston, Massachusetts; and New York, New York.

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Health Care, and Guide to Leading U.S. Tax Lawyers. He was selected by Best Lawyers as the 2010 Kansas City, KS Corporate Lawyer of the Year and 2013 Tax Lawyer of the Year.

Al is the author of *Healthcare Reform Facts* (2015), *Limited Liability Companies and Partnerships* (3rd edition, 2011) and coauthor of *Kansas Corporation Law & Practice (Including Tax Aspects)* (5th edition, 2011), and has written many articles in various publications. He was also Technical Editor of Panel Publication's monthly newsletter *The 401k Advisor* from 1990- 2012. He has published numerous articles and made hundreds of speeches. Mr. Martin was for many years Co-Chair and speaker at the Annual Advanced Course of Study Professional Service Organizations, a faculty member for the ALI-ABA Courses Estate Planning for the Family Business Owner and Sophisticated Estate Planning Techniques, as well as speaker at many national meetings of the American Bar Association Tax Section, the ESOP Association Annual Convention, Mountain States Pension Conference, Southern Federal Tax Conference, Notre Dame Estate Planning Symposium and the Ohio Pension Conference, as well as the Alabama, Georgia Federal, Kansas, Missouri, and Tennessee Tax conferences.

He is President and Director of the Small Business Council of America, and he was a delegate to the 1995 White House Conference on Small Business and the 2006 Savers' Summit, Washington, D.C. Mr. Martin has testified in Congress.

Al graduated with Highest Distinction from Kansas University and was a Phi Beta Kappa, Summerfield Scholar, Student Body President. He received his J.D., *cum laude*, and LL.M. in taxation from New York University School of Law, where he was a Root-Tilden Scholar and Note & Comment Editor, *New York University Law Review*.

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Gregory Matthews is a principal and CEO and senior benefit and compliance consultant with Matthews Benefit Group, Inc., in St. Petersburg, Florida. He is the creator and author of the monthly employee benefits newsletter *401(k) Advisor*, author of the *Payroll Answer Book*, and coauthor of the *403(b) Answer Book Forms & Worksheets* for Aspen Publishers. He is a frequent speaker at regional and national benefit programs. Mr. Matthews also authored and taught Course 6 of the American Institute of CPAs' "Compensation and Benefits" in the Tax Certificate Program.



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Gregory is a graduate of the University of Tampa (mathematics) and completed his accounting and mathematical studies at Strayer University and American University, Washington, D.C.

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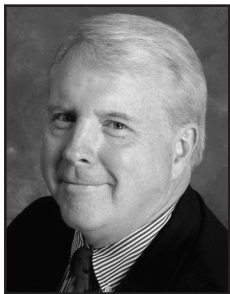


Caroline is a contributing author of the 16th edition of *The Tools & Techniques of Estate Planning* by Stephan Leimberg and previously has been published on [Wealth Management.com](http://WealthManagement.com).

Prior to joining John Hancock, Caroline was in private practice in the Boston area where she concentrated her practice on estate planning, probate, business succession planning, and charitable planning for moderate and high net worth individuals and companies.

Caroline received her Bachelor of Arts degree, *magna cum laude*, in History from Colby College in Waterville, Maine, and her Juris Doctor degree *cum laude* from Suffolk University Law School, Boston, Massachusetts. While at Suffolk Law, she was a member of the Law Review and was published in the Suffolk University Law Review. Upon receiving her J.D., Caroline spent one year clerking for the Honorable Chief Justice Paul Suttell of the Rhode Island Supreme Court.

Jonathan Neal



Jonathan Neal has more than thirty years of experience in the retirement planning industry dealing directly with seniors. He writes both public and industry related articles on retirement planning issues and products that are primarily focused on the senior marketplace. In April 2009 his book "Reverse Mortgages – What Every Financial Advisor Should Know" was released. This book tackles the complexities of reverse mortgages and the various perceptions that seniors, financial and insurance advisors, and mortgage brokers are presently dealing with.

Over the years his articles have introduced some unique ideas and tools designed to help seniors better understand different insurance and investing concepts, such as The LTC Calculator, which is a tool that helps LTCi representatives and seniors work together to find a realistic daily LTCi coverage needs. Another example is the premium versus cost formula he developed in order to provide advisors with an functional mathematical formula to provide seniors with realistic quantified numbers based on their individual situation to help them understand not only what it would take to fund a LTCi policy, but also identify where those funds can be found in their present portfolio.

In addition to his articles, he has written twenty-five continuing education courses that have been approved by various state insurance departments, which include but are not limited to the following: Basic Long-Term Care, Long-Term Care, The History of Long-Term Care in the United States,

Service Providers for Long-Term Care Patients, The Stats, Facts & Myths of Long-Term Care Planning, Funding Long-Term Care Annuities, Long-Term Care Annuities, Life Long-Term Care, Fixed Annuities, Immediate Annuities, Basic Variable Annuities, The Fundamentals of Long-Term Care Policies, Professional Ethics, Retirement Planning, IRA Fundamentals, Stretch IRA Concepts, Retirement Plans, and Reverse Mortgages.

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John Olsen is a financial and estate planner practicing in St. Louis County, Missouri. He has been active in the financial services industry for more than forty years. John is a past President of the St. Louis chapter of the National Association of Insurance and Financial Advisors, a current Board member of the St. Louis chapter of the Society of Financial Service Professionals, and the current Vice President of the St. Louis Estate Planning Council.

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David Pratt

David Pratt was born in England and received a law degree from Oxford University. He worked for law firms in London and Cleveland before moving to Albany, New York. In Albany, he practiced with a law firm and two accounting firms before joining the faculty of Albany Law School in 1994. He continues to advise clients and serves as an expert witness on employee benefits issues.

He has written numerous articles on employee compensation and benefits topics, and is a Senior Editor of the *Journal of Pension Benefits* and a fellow of the American College of Employee Benefits Counsel. He is the author of *The Social Security and Medicare Answer Book* and the coauthor of *Pension and Employee Benefit Law*, 5th edition (with John Langbein and Susan Stabile), *Taxation of Distributions from Qualified Plans* (with Dianne Bennett and others) and *ERISA and Employee Benefit Law: the Essentials* (with Sharon Reese, ABA Publications).



Louis R. Richey, J.D.



Lou Richey is recognized as an experienced executive and employee benefits attorney and consultant, with special expertise on 409A nonqualified deferred compensation plans and other retirement plans. He has over 30 years of experience in executive and employee benefits compensation consulting, planning and insurance for Fortune 1000 public companies as well as closely-held and tax-exempt organizations and their employees. He is also the founder of the Retirement Plans Nexus, an organization that designs and implements retirement & benefit plans for companies.

Currently Mr. Richey serves as Senior Vice-President with Infosys McCamish Systems LLC, located in Atlanta, Georgia. Infosys McCamish Systems is one of the nation's leading providers of outsourced administrative and other back-office support services for life insurance carriers, and other major financial services organizations. Mr. Richey helps lead the *McCamish Retirement Services Group* and is the legal & content expert for all of Infosys McCamish's executive, employee and qualified and nonqualified pension benefit web-based marketing, design and plan administration platforms.

At earlier points in his career, Mr. Richey served as a senior marketing officer, or technical compensation & senior consultant with employers like American Express Company, the General American Life Insurance Company, William M. Mercer, Magner Network & several offices of the Management Compensation Group (MCG) and M Group.

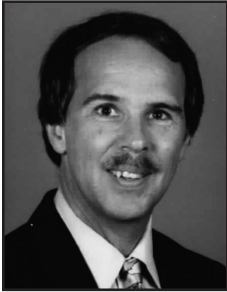
Lou is a graduate of Wabash College in Indiana, a cum laude graduate of the Indiana University Law School and is a member of the Indiana & Georgia Bars as well as the Federal Bar. He is currently a member of the BNA & The National Underwriter Editorial Advisory Boards and has served on the editorial advisory boards of several other major industry publications. He is also a retired Chairman of the Board of Visitors of the Indiana University Law School, Indianapolis. He has been named a Kentucky Colonel and an Arkansas Traveler in recognition of his professional contributions to the legal profession.

Mr. Richey lectures widely on the impact and implications of 409A, executive and employee benefit topics, retirement planning, financial services marketing, insurance, and financial planning, including major conferences and institutes such as the New York University Federal Tax Institute, the Southwest Federal Tax Conference, the Notre Dame Estate Planning Institute, the American Society of Actuaries Annual Conference, the LIMRA Advance Marketing Conference, the NACD and a host of other professional services conferences and local meetings.

Mr. Richey's comments have appeared in *Business Week*, *The Wall Street Journal*, *Forbes Magazine*, and *Investor's Daily*, and he has appeared on the Financial News Network for National Public Radio. He has authored or co-authored a number of books, and BNA portfolios, plus more than 300 articles, audios and videos on compensation and tax topics.

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Jeff Sadler



Jeff Sadler began his career as an underwriter in the disability income brokerage division of the Paul Revere Life Insurance Company following his graduation from the University of Vermont in 1975. Disability income and long-term care insurance have been the primary focus of his career, leading to the founding of Sadler Disability Services, Inc. with his father, Raymond Sadler, in 1989.

Over the last several years, Mr. Sadler has authored a number of insurance books, including *The Long Term Care Handbook* (1996, 1998 and 2003), *How To Sell Long Term Care Insurance* (2001 and 2006), *Disability Income: The Sale, The Product, The Market* (1991 and 1995), *How To Sell Disability Income* (2005), and *The Managed Care and Group Health Handbook* (1997), all published by the National Underwriter Company. Other books by Mr. Sadler include *Business Disability Income* (1993) and *Understanding LTC Insurance* (1992).

He has been very active in the industry, currently serving as the Chair of the National Association of Health Underwriters' Long-Term Care Advisory Group. He is a past president of the Central Florida Association of Health Underwriters, the Gulf Coast Health Underwriters, the Florida Association of Health Underwriters, and the Central Florida General Agents and Managers Association. He is a past winner of the Stanley Greenspun Health Insurance Person of the Year Award and the NAHU Distinguished Service Award.

Jamie Scott, J.D.

Jamie Scott serves as Chair of Cincinnati law firm Graydon Head's Employee Benefits and Executive Compensation Practice Group. He has worked with clients of all sizes to design and implement qualified retirement plans (including ESOPs), nonqualified deferred compensation plans, incentive compensation plans, and welfare benefit plans.

He also has significant experience in working with the Internal Revenue Service and Department of Labor on compliance issues. Mr. Scott has extensive estate planning experience, which enables him to advise clients on estate planning issues that arise when a large part of a client's estate consists of retirement plan assets. In 2010, he was named an "Ohio Super Lawyer" by Super Lawyers Magazine for his work in Employee Benefits/ERISA. Based on the grading and comments of his peers, Jamie is recognized with an AV Rating, the highest rating given to lawyers by Martindale-Hubbell.



Mr. Scott received his J.D. from Brigham Young University in 1983 and a B.B.A in Accounting from the University of Cincinnati in 1978. He is admitted to practice law in Ohio and Texas. He is member and former chair of the Cincinnati Bar Association, Employee Benefits Committee; Warren County Bar Association; ASPPA Benefits Council of Greater Cincinnati; Warren County MRDD Board Member; and member of the Lebanon City Schools Citizens Audit Advisory Committee.

Lou Shuntich, J.D., LL.M.

Lou Shuntich has a wealth of knowledge and expert advice to offer in the Advanced Planning arena. He earned his B.S. Cum Laude from Rider University, his J.D. from The College of William and Mary, and his LL.M. (in Taxation) from New York University. He is a Certified Retirement Counselor and is licensed for life, health, variable annuities, and Series 6 and 63.



He is the Associate Editor of the *Journal of Financial Service Professionals*. He previously served in the Law Department of Prudential-Financial as Vice President and Corporate Counsel specializing in business insurance, estate planning, and compensation planning. He also served as Senior Vice President, Advanced Planning for Lincoln Benefit Life Company.

He is a member of the Association for Advanced Life Underwriting Business Insurance and Estate Planning and Nonqualified Plans Broad Committees. He is past chairman of the American Council of Life Insurance Split Dollar Task Force and has served on the Life Underwriter Training Council's Content and Techniques Committee.

In addition, he is a member of the Speakers Bureau of the Society of Financial Service Professionals and the Speakers Bureau of the National Association of Estate Planners and Councils. He has appeared on the CNBC Power Lunch and Health and Lifestyles programs answering questions about retirement and estate planning. He has five published books on advanced marketing subjects, including *The Estate Planning Today Handbook*, *The Complete Guide to Compensation Planning With Life Insurance*, and *The Life Insurance Handbook*, all published by Marketplace, as well as *Key Life Insurance Model Agreements* and *The Next Step, Successfully Graduating To Life Insurance Advanced Markets*, both published by the National Underwriter Company.

He has also published multiple articles including those in the *Journal of Financial Service Professionals*, *AALU Quarterly Magazine*, *BrokersWorld Magazine* and *Life Insurance Selling*.

Robert Toth, J.D., ACEBC



Bob Toth is the Principal of the Law Office of Robert J. Toth, Jr., LLC, and has been practicing employee benefits law since 1983. His practice focuses on the design, administration, and distribution of financial products and services for retirement plans, particularly on complex fiduciary and prohibited transaction issues, annuities in deferred compensation plans, and 403(b) plans. Mr. Toth is a Fellow of American College of Employee Benefits Counsel and is on the faculty of ALI-ABA Advance Law of Pensions. In addition, he managed the legal affairs of Lincoln Financial Group's retirement plan business. Mr. Toth is also an Adjunct Professor at John Marshall Law School where he teaches 403(b) and 457 plan courses.

Mr. Toth coauthored Thompson Publishing's *403(b) and 457 Technical Requirements Handbook* and is a contributing author to Aspen Publishing's *403(b) Answer Book*. He is also Chair of ASPPA's IRS Governmental Affairs Sub-Committee and writes on current employee benefits issues at the *businessofbenefits.com*, where more on his background, publications, and presentations can be found.

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William J. Wagner is a Senior Editor with Forefield, Inc., a provider of Web-based applications that facilitate the communication of financial planning knowledge and advice between financial institutions, their advisors, and their customers.

Mr. Wagner is the author of the *Ultimate IRA Resource* (including the IRA Calculator) and the *Ultimate Trust Resource* (including the Trust Calculator). Previously, he was a Senior Associate Editor of *Tax Facts on Insurance & Employee Benefits*, *Tax Facts on Investments*, and *Tax Facts News*, all published by The National Underwriter Company.

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Jayne Elizabeth Zanglein is a prolific writer on employee benefits. She contributes regularly to journals such as the *ABA Supreme Court Preview*, the *Journal of Taxation of Employee Benefits*, and the *NYU Review of Employee Benefits and Executive Compensation*. Her treatise, *ERISA Litigation*, was published in 2003 and is now in its fourth edition. She serves as an employee benefits expert and neutral in class action cases.



She is the cochair of the Fiduciary Duties Committee of the ABA Section on Labor and Employment Law's subcommittee on Employee Benefits. She has served on various task forces including Governor Cuomo's Task Force on Pension Fund Investments. She has worked on pension fund reform in Ontario and South Africa. She currently teaches law and dispute resolution at Western Carolina University.

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Mr. Zipse has written numerous articles on trust taxation, estate planning, and business succession planning, which have appeared in the *Journal of Financial Service Professionals*, *BrokerWorld*, *Estate Planning*, *Life Insurance Selling*, *LAN*, and the National Underwriter news magazines. He is coauthor with Stephan R. Leimberg of *Tools and Techniques of Charitable Planning*. He has also been a frequent lecturer at industry meetings, including AALU, International Forum, Million Dollar Round

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he has provided trust, tax and philanthropic financial planning advice to over 4,000 attorneys and 7,000 financial planners in all 50 states regarding more than 14,000 charitable remainder trusts, more than 800 charitable lead trusts, and numerous foundations, charitable gift annuities and donor-advised funds. Baker's advice has helped advisors close cases for their high net worth clients in the areas of charitable, investment, retirement, gift, estate and tax planning. Baker is currently an Advisory Board Member of the Chartered Advisor in Philanthropy designation at the American College, member of the Financial Planning Association, National Committee on Planned Giving and the Indiana Bar. Baker was previously VP, Charitable Fiduciary Risk Manager for the Merrill Lynch Center for Philanthropy & Nonprofit Management in Princeton, NJ. Baker speaks at national and local conferences for professional advisors, high net worth clients and charities regarding charitable gift planning, asset-allocation, investment modeling and tax issues.

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Martin A. Silfen, Esq., is an attorney and author with twenty-five years of practice in the areas of retirement planning and estate planning. Mr. Silfen was senior partner in the law firm of Silfen, Segal, Fryer & Shuster, P.C. in Atlanta. He is currently Senior Vice President of Brown Brothers Harriman Trust Company, New York, New York. Mr. Silfen is a nationally recognized expert in retirement tax planning, having authored *The Retirement Plan Distribution Advisor* and served as Retirement Planning columnist for *Personal Financial Planning*. He has also authored several articles for *Estate Planning*.

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Kelly has edited and contributed to numerous books and publications including the *Personal Auto Insurance Policy Coverage Guide*, *Cyberliability and Insurance*, *The National Underwriter Sales Essentials Series*, and *The Tools and Techniques of Risk Management for Financial Planners*.

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ABBREVIATIONS

Acq. (Nonacq.)	Commissioner's acquiescence (nonacquiescence) in decision
AFTR	American Federal Tax Reports (Research Institute of America, early decisions)
AFTR2d	American Federal Tax Reports (Research Institute of America, second series)
AJCA 2004	American Jobs Creation Act of 2004
ARRA 2009	American Recovery and Reinvestment Act of 2009
ATRA 2012	American Taxpayer Relief Act of 2012
BTA	Board of Tax Appeals decisions (now Tax Court)
BTA Memo	Board of Tax Appeals memorandum decisions
CA or -- Cir.	United States Court of Appeals
CB	Cumulative Bulletin of Internal Revenue Service
CCA	Chief Counsel Advice
Cl. Ct.	U.S. Claims Court (designated U.S. Court of Federal Claims in 1992)
CLASS Act	Community Living Assistance Services and Support Act
COBRA	Consolidated Omnibus Budget Reconciliation Act of 1985
CRTRA 2000	Community Renewal Tax Relief Act of 2000
Ct. Cl.	Court of Claims (designated U.S. Claims Court in 1982)
DOL Adv. Op.	Department of Labor Advisory Opinion
EGTRRA 2001	Economic Growth and Tax Relief Reconciliation Act of 2001
EIEA 2008	Energy Improvement and Extension Act of 2008
ERISA	Employee Retirement Income Security Act of 1974
ERTA	Economic Recovery Tax Act of 1981
Fed.	Federal Reporter (early decisions)
Fed. Cl.	U.S. Court of Federal Claims
Fed. Reg.	Federal Register
F.2d	Federal Reporter, second series (later decisions of U.S. Court of Appeals to Mid-1993)
F.3rd	Federal Reporter, third series (decisions of U.S. Court of Appeals since Mid-1993)
F. Supp.	Federal Supplement (decisions of U.S. District Courts)
FSA	Field Service Advice
FSA	Flexible spending account
FTE	Full-time equivalent employee
GCM	General Counsel Memorandum (IRS)
HCE	Highly compensated employee
HIPAA '96	Health Insurance Portability and Accountability Act
HHS	The Department of Health and Human Services
HRA	Health Reimbursement Account
HSA	Health Savings Account
IR	Internal Revenue News Release
HIREA (2010)	Hiring Incentives to Restore Employment Act
IRB	Internal Revenue Bulletin of Internal Revenue Service
IRC	Internal Revenue Code
IRS	Internal Revenue Service
IRSRA '98	IRS Restructuring and Reform Act of 1998
IT	Income Tax Ruling Series (IRS)
ITCA	Installment Tax Correction Act of 2000
JCWAA	Job Creation and Worker Assistance Act of 2002
JGTRRA 2003	Jobs and Growth Tax Relief Reconciliation Act of 2003
KETRA 2005	Katrina Emergency Tax Relief Act of 2005

Let. Rul.	Letter Ruling (issued by IRS)
MERP	Medical Expense Reimbursement Plan
MFDR 2007	Mortgage Forgiveness Debt Relief Act of 2007
MHPAEA	Mental Health Parity and Addiction Equity Act
MSA	Archer medical savings account
NHCE	Non highly compensated employee
NMHPA	Newborns' and Mothers' Health Protection Act
OBRA	Omnibus Budget Reconciliation Act of (year of enactment)
P.L.	Public Law
PLR	Private Letter Ruling
P&PS Rept.	Pension and Profit Sharing Report (Prentice-Hall)
PBGC	Pension Benefit Guaranty Corporation
PFEA 2004	Pension Funding Equity Act of 2004
PHSA	Public Health Service Act
PPA 2006	Pension Protection Act of 2006
PPACA	Patient Protection and Affordable Care Act
Prop. Reg.	Proposed Regulation
PTE	Prohibited Transaction Exemption
REA '84	Retirement Equity Act of 1984
Rev. Proc.	Revenue Procedure (issued by IRS)
Rev. Rul.	Revenue Ruling (issued by IRS)
SBJPA '96	Small Business Job Protection Act of 1996
SBWOTA 2007	Small Business and Work Opportunity Tax Act of 2007
SCA	IRS Service Center Advice
TAM	Technical Advice Memorandum (IRS)
TAMRA '88	Technical and Miscellaneous Revenue Act of 1988
TC	Tax Court (official reports)
TC Memo	Tax Court memorandum decisions (official reports)
TC Summary Opinion	Tax Court Summary Opinion
TD	Treasury Decision
TEAMTRA 2008	Tax Extenders and Alternative Minimum Tax Relief Act of 2008
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982
Temp. Reg.	Temporary Regulation
TIPA 2007	Tax Increase Prevention Act of 2007
TIPRA 2005	Tax Increase Prevention and Reconciliation Act of 2005
TIR	Technical Information Release (from the IRS)
TRA	Tax Reform Act of (year of enactment)
TRA '97	Taxpayer Relief Act of 1997
TRA 2010	Tax Relief Act of 2010
TRHCA 2006	Tax Relief and Health Care Act of 2006
TTCA 2007	Tax Technical Corrections Act of 2007
URAA '94	Uruguay Round Agreements Act of 1994
US	United States Supreme Court decisions
USERRA '94	Uniformed Services Employment and Reemployment Rights Act of 1994
USTC	United States Tax Cases (Commerce Clearing House)
VTTRA 2001	Victims of Terrorism Tax Relief Act of 2001
WFTRA 2004	Working Families Tax Relief Act of 2004
WHBAA 2009	Worker, Homeownership, and Business Assistance Act of 2009
WHCRA	Women's Health and Cancer Rights Act
WRERA 2008	Worker, Retiree, and Employer Recovery Act of 2008

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- 3850. Must a qualified plan loan be evidenced by a loan agreement to avoid taxation as a distribution?
- 3851. How long can a qualified plan loan remain outstanding in order to avoid being taxed as a distribution?
- 3852. What repayment requirements must apply to qualified plan loans?

- 3853. Are there limits on the amount that can be borrowed under a qualified plan loan?
- 3854. What other rules apply to loans from a qualified plan?
- 3855. How do renegotiations, extensions, renewals, or revisions work in the context of qualified plan loans?
- 3856. How does the interest deduction apply to qualified plan loans?
- 3857. How do refinancing transactions work in the context of qualified plan loans?
- 3858. Are deemed distributions treated as outstanding loans?
- 3859. How is an employee taxed on preretirement distributions from a qualified plan?
- 3860. What is an early distribution from a qualified plan, and what penalties relate to it?
- 3861. How is an employee taxed on postretirement distributions from a qualified plan?
- 3862. What is a lump sum distribution? What special tax treatment is available for a lump sum distribution from a qualified plan?
- 3863. How is net unrealized appreciation taxed when employer securities are distributed from a qualified plan?
- 3864. How is an employee's cost basis determined for an interest in a qualified plan ?
- 3865. When an employee dies before retirement, how is the employee's beneficiary taxed on a single sum cash payment of the death benefit payable under the employee's qualified plan?
- 3866. How is a beneficiary taxed on life income or installment payments of a death benefit under a qualified plan when an employee dies before retirement?
- 3867. How is an employee's beneficiary taxed on death benefit payments from a qualified plan when the employee dies after retirement?
- 3868. What general rules apply to withholding of income tax from qualified retirement plan benefits?
- 3869. When are the earnings of a qualified pension or profit sharing trust taxable to the trust or to participants? When does trust income constitute unrelated business income?
- 3870. What is the tax treatment of reversions of trust assets to a plan sponsor?
- 3871. What are prohibited transactions?
- 3872. What is a "disqualified person" for purposes of the prohibited transaction rules?
- 3873. What exemptions to the prohibited transactions rules are provided by the Internal Revenue Code?
- 3874. When is a plan loan exempted from the prohibited transactions rules?
- 3875. What are the administrative exemptions to the prohibited transactions rules?
- 3876. What are the penalties for engaging in a prohibited transaction?

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- 3877. Is the value of a death benefit payable from a qualified plan includable in the employee's gross estate?
- 3878. Is a death benefit payable under a Keogh plan includable in a self-employed individual's gross estate?
- 3879. How does community property law affect the estate taxation of qualified plan benefits?

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- 3880. What is a rollover or rollover contribution and what are its tax effects?
- 3881. What is a charitable IRA rollover or qualified charitable distribution?

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3882. What is required to roll over a distribution received from a qualified retirement plan or an eligible Section 457 governmental plan?
3883. What is an eligible retirement plan for purposes of the rollover rules?
3884. Must a participant receiving an eligible rollover distribution have the option of making a direct rollover to another qualified plan?
3885. Is there a safe harbor for plans that are subject to the direct rollover rules?
3886. What notice requirements must a plan satisfy if it is subject to the direct rollover rules?
3887. If a rollover is not made through a direct rollover, must income tax be withheld from the distribution?
3888. May an individual who is not a participant in a qualified plan roll over amounts received from the plan by reason of a divorce or separation agreement?
3889. May a participant who receives a distribution of an annuity from a qualified pension or profit sharing plan surrender the annuity and roll over the proceeds?
3890. When may a participant roll over permitted distributions from a Section 403(b) tax sheltered annuity?
3891. When may rollover contributions be made from an IRA by the owner of the plan?
3892. Can a required minimum distribution (RMD) from an IRA be rolled over into another account?
3893. May a surviving spouse make a rollover contribution?
3894. May a surviving non-spouse beneficiary make a rollover contribution?
3895. How is the 60-day time limit on rollovers applied?
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3900. When is a split dollar plan that was entered into or materially modified after September 17, 2003 governed by the economic benefit theory and what are the tax consequences?
3901. When is a split dollar plan that was entered into or materially modified after September 17, 2003 treated as a loan and what are the tax consequences?
3902. When will a split dollar plan that is entered into before September 17, 2003 found to be "materially modified" so that it is governed by the 2003 regulations?
3903. What are the income tax results of a split dollar plan entered into before September 18, 2003?
3904. What are the income tax consequences of the transfer or rollout of a policy subject to a split dollar arrangement?
3905. What is reverse split dollar and how is it taxed?
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3907. What are the tax benefits of a tax sheltered annuity?

3908. What organizations can make tax sheltered annuities available to their employees?

3909. How may a tax sheltered annuity plan be funded?

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3910. What nine requirements must a tax sheltered annuity contract meet?

3911. What prohibited distribution requirements apply to tax-sheltered annuity plans?

3912. What is the written plan requirement for 403(b) plans?

3913. What nondiscrimination requirements must a tax sheltered annuity meet?

3914. What nondiscrimination requirements apply to tax sheltered annuity plans offering salary reduction contributions?

3915. When does an employee participating in a tax-sheltered annuity plan have an “effective opportunity” to make elective deferrals for purposes of the nondiscrimination requirements applicable to plans that offer salary reduction contributions?

3916. What nondiscrimination requirements apply to a tax sheltered annuity plan that provides for contributions other than by salary reduction?

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3917. What limits are there on excludable contributions to a tax sheltered annuity?

3918. How does the Section 415 limit affect the excludable amount for a tax sheltered annuity?

3919. Are contributions to a 403(b) plan aggregated with other defined contribution plan contributions to determine the Section 415 limitation?

3920. What is the effect of making contributions to a tax sheltered annuity in excess of the overall limit?

3921. What is the limit on excludable amounts that may be contributed to tax sheltered annuity plans under salary reduction agreements?

3922. What is the special increase to the limit on amounts contributed to a tax sheltered annuity plan under a salary reduction agreement for employees who have completed fifteen years of service?

3923. What are the consequences of exceeding the limit on elective deferrals to a tax sheltered annuity plan?

3924. Can participants in a tax sheltered annuity plan who are age 50 and over contribute a “catch-up” contribution each year?

3925. Are the elective deferral limits for tax sheltered annuity plans coordinated with the limits applicable to IRC Section 457 plans?

3926. What special rules apply to tax sheltered annuities for church employees?

3927. What is an excess contribution and an excess aggregate contribution to a tax sheltered annuity? What excise taxes apply to them?

3928. What are the requirements for an automatic enrollment provision in a 403(b) plan?

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3929. Can an employer make post-retirement contributions to a tax sheltered annuity on behalf of a retired employee?

3930. What is a Roth 403(b) contribution program?

Changing Issuers

3931. May an employee exchange his or her tax sheltered annuity contract for another contract within the same plan?

3932. May an employee exchange his or her tax sheltered annuity contract for another contract in another 403(b) plan?

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3933. May an employee, the employee's surviving spouse, or a non-spouse beneficiary rollover a distribution from a tax sheltered annuity?

3934. May an employee transfer funds from a 403(b) account to purchase past service credit?

3935. Is an employee taxed on incidental life insurance protection and waiver of premium benefits under a tax sheltered annuity contract?

3936. How are dividends under a tax sheltered annuity treated for income tax purposes?

3937. Are amounts borrowed under a tax sheltered annuity taxable income?

3938. How long can a loan under a tax sheltered annuity remain outstanding and still avoid treatment as a deemed distribution and inclusion in the participant's taxable income?

3939. What is the substantially level amortization requirement applicable to a loan taken under a tax sheltered annuity that seeks to avoid taxation as a deemed distribution?

3940. Does a loan taken under a tax sheltered annuity plan have to be evidenced by an enforceable agreement in order to avoid taxation as a deemed distribution?

3941. Is there a dollar limit on the amount that a participant can borrow under a tax sheltered annuity and avoid the loan being treated as a taxable distribution?

3942. When is a loan taken under a tax sheltered annuity considered to be a deemed distribution? How does subsequent repayment of the loan, or subsequent failure to repay the loan, impact the participant's ability to receive additional loans?

3943. What is the process for determining whether loans taken under a tax sheltered annuity are taxable income when the participant receives multiple loans?

3944. Can loans taken under a tax sheltered annuity be refinanced? What is the effect of a refinancing on determining whether the outstanding loans constitute deemed distributions?

3945. When are amounts borrowed under a tax sheltered annuity taxable income as actual distributions?

3946. What is the tax treatment when amounts borrowed under a tax sheltered annuity are found to constitute deemed distributions?

3947. Is interest on a loan under a tax sheltered annuity deductible?

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3948. What distributions from a tax sheltered annuity are subject to a penalty for early or premature distributions?

3949. When must distributions begin from a tax sheltered annuity?

3950. What is the effect of failure to make timely distributions from a tax sheltered annuity?

3951. What minimum distributions must be made under Section 401(a)(9) from a tax sheltered annuity during the life of the participant?

3952. How is the designated beneficiary under a tax sheltered annuity determined?

3953. What is the minimum distribution incidental benefit requirement with respect to tax sheltered annuities?

3954. How are the minimum distribution requirements met after the death of a tax sheltered annuity participant?

3955. How are the minimum distribution requirements met after the death of a tax sheltered annuity participant who died before his or her required beginning date?

3956. How are the minimum distribution requirements met after the death of a tax sheltered annuity participant who died on or after the required beginning date?

3957. How is the designated beneficiary of a tax sheltered annuity determined after the participant's death?

3958. Are payments received under a tax sheltered annuity taxable income to the employee?

3959. How is a death benefit under a tax sheltered annuity taxed to an employee's beneficiary?

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3960. How is a reduction in salary for a tax sheltered annuity treated for Social Security tax and income tax withholding purposes?

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3961. What excise taxes and additional taxes apply to tax sheltered annuity contributions and distributions?

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3962. Can a 403(b) plan be frozen or terminated?

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3963. May an employer deduct contributions to a welfare benefit fund to provide medical, disability, and life insurance benefits, including postretirement medical and death benefits, for employees and independent contractors?

3964. When may an employer deduct contributions to a welfare benefit fund?

3965. What is the limit on the amount an employer may deduct for contributions to a welfare benefit fund to provide disability, medical, death, and other benefits to employees and independent contractors?

3966. What is the additional reserve for medical benefits of bona fide association plans?

3967. How do supplemental unemployment compensation ("SUB") and severance pay benefits apply in the context of a welfare benefit fund?

3968. How do the aggregation rules apply to welfare benefit funds?

3969. What are the tax consequences to an employer and to a welfare benefit fund if the employer contributes excess amounts to the fund?

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3970. What income of a tax-exempt welfare benefit fund is taxable as unrelated business taxable income?
3971. What special rules apply if postretirement medical or life insurance benefits are provided to a key employee through a welfare benefit fund?
3972. Must a welfare benefit fund providing postretirement life insurance or medical benefits meet nondiscrimination requirements?
3973. What is the penalty for providing certain disqualified benefits through a welfare benefit fund?
3974. Must a tax-exempt welfare benefit fund apply for recognition of its tax-exempt status?
3975. What exception applies to a welfare benefit fund that is part of a ten or more employer plan?
3976. What are the circumstances that will cause the IRS to classify a multi-employer welfare benefit plan as a listed transaction? What is the penalty that applies for this classification?
3977. What regulations govern the exception for a welfare benefit fund that is part of a ten or more employer plan?
3978. What is an experience-rating arrangement and what are the results if a welfare benefit plan is found to maintain such an arrangement?
3979. What characteristics indicate a plan is not a ten or more employer plan?
3980. What is an abusive 419(e) plan, and how is it taxed?
3981. What is a 501(c)(9) trust (“VEBA”)?
3982. What are the membership eligibility restrictions that apply to a 501(c)(9) trust (“VEBA”)?
3983. What nondiscrimination requirements apply to a 501(c)(9) trust (“VEBA”)?
3984. Who may control a 501(c)(9) trust (“VEBA”) in order for it to maintain its tax-exempt status?
3985. What is the prohibition on inurement of earnings to private individuals that is applicable to a 501(c)(9) trust (“VEBA”)?
3986. What benefits can a 501(c)(9) trust (“VEBA”) provide?
3987. What requirements apply to a 501(c)(9) trust (“VEBA”) that provides severance pay arrangements?
3988. Are an employer’s contributions to a 501(c)(9) trust (“VEBA”) deductible?
3989. How are contributions to and benefits payable under 501(c)(9) trusts (“VEBAs”) taxed to participants?

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3990. What are the fee disclosure requirements imposed by the Department of Labor (“DOL”)?
3991. What is the purpose of the Department of Labor (“DOL”) 408(b)(2) covered service provider disclosure regulations?
3992. What disclosures are required under the 408(b)(2) regulations?
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- 3995. How can a covered service provider correct a prohibited transaction arising from a failure to timely disclose required information?
- 3996. What penalties typically apply if there has been a prohibited transaction?
- 3997. What does a responsible plan fiduciary need to do to avoid the penalties of a prohibited transaction from a disclosure failure?
- 3998. Are new fiduciary responsibilities imposed upon plan fiduciaries under the DOL 408(b)(2) regulations?
- 3999. What is a responsible plan fiduciary?
- 4000. What is a reasonable service provider agreement?
- 4001. What are covered service providers?
- 4002. What plan services are impacted by the 408(b)(2) regulations?
- 4003. Are any service providers exempt from providing these disclosures to a covered plan?
- 4004. What disclosures will a bundled service provider need to provide?
- 4005. What are the general (or “initial”) required 408(b)(2) disclosures?
- 4006. How is a service provider’s expected compensation to be disclosed?
- 4007. What additional disclosures are required for fiduciaries and covered service providers who provide investment and recordkeeping services?
- 4008. What is the required format for the disclosures that service providers must make under the DOL regulations?
- 4009. When must covered service providers make the 408(b)(2) disclosures required under the DOL regulations?
- 4010. Are covered service providers required to make any subsequent disclosures after the initial disclosure is provided as mandated by the DOL regulations?
- 4011. Do the final regulations provide any protection for a responsible plan fiduciary if a covered service provider does not provide the required disclosures?
- 4012. What disclosures are required of a broker who sells a security to a defined benefit pension plan?
- 4013. What disclosures are required if a broker sells securities to a 401(k) plan?
- 4014. What disclosures are required of a CPA who reconciles a plan’s participant records?
- 4015. What disclosures are required of a 401(k) plan’s third party recordkeeper?
- 4016. What is the purpose of the Department of Labor (“DOL”) Section 404(a)(5) participant disclosure regulations?
- 4017. What plans do the 404(a)(5) participant fee disclosures apply to?
- 4018. What information must be disclosed to plan participants under the 404(a)(5) regulations?
- 4019. What information must be included in the “general disclosures” section of a 404(a)(5) disclosure?
- 4020. What information relating to administrative expenses must be included in a 404(a)(5) disclosure?
- 4021. What information must be disclosed relating to individual expenses under the 404(a)(5) disclosure regulations?
- 4022. What disclosures must be made with respect to investment-related information under the 404(a)(5) disclosure regulations?
- 4023. What is a designated investment alternative?