THE ROSENBAUM LAW FIRM P.C.

THE LAW FIRM REVIEW

A Publication for Plan Sponsors and Retirement Plan Professionals

When Your Fired 401(k) TPA Takes Things Personally

Aside from Airplane!, my favorite movie of all time is The Godfather and the underpinning is the complete and utter transformation of Michael Corleone from "college boy" war hero to mob boss. A very important scene in that transformation is when Michael suggests to Sonny and Tom Hagen that he kills Virgil Sollozzo and Captain McCluskey, the people behind the attempted assassination of their father, Don Vito Corleone. Sonny, the normal hothead starts laughing it off and suggests that Michael is taking things too personally. Michael convinces everyone in Don Vito's office that "it's not personal, it's strictly business." When you have to fire the third-party administrator (TPA) for your 401(k) plan, it should be business, not personal, and most of the time it is. However, the TPA may not take that way and I've spent 23 years helping plan sponsors with their soon-to-be former TPAs, who take things personally.

To read the article, please click [here](#)**.**

The Pet Peeves About Being A 401(k) Plan Sponsor And What You Can Do About It

Being a 401(k) plan sponsor isn't easy. Unlike most other employee benefits like health insurance and transit reimbursement, it's something that could land you in a whole host of trouble. Like with Larry David on Curb Your Enthusiasm, you may find a lot of pet peeves that you need to understand as a 401(k) plan sponsor and deal with. This article is a cheat sheet on how you can deal with the annoying parts and pet peeves of being a 401(k) plan sponsor.

To read the article, please click here**.**

How A Plan Sponsor Can Detect If Their Plan Provider Is Breaking Bad

I am the last to know anything, so I binge-watched the television series Breaking Bad months after the series had concluded its run on the American Movie Classics cable channel. Needles to say, I was mesmerized by how a nice and dying chemistry teacher named Walter White became a heartless methamphetamine drug lord. The show haunted me as no other show did. It's the modern-day version of Michael Corleone, someone who is so good that turns so bad. When it comes to retirement plan providers, I believe that the bad providers didn't start that way; they simply broke bad like Walter White. There are ways for plan sponsors to avoid having plan providers break bad when they are still clients of these providers, this article gives you some insight.

To read the article, please click here**.**

Don't forget Cycle 3 Restatements

With 2022 here, don't forget about Cycle 3.

This "Cycle 3" restatement means that all qualified pre-approved 401(k) plan documents will need to be amended, certified by the IRS, and adopted by the plan sponsor by the deadline of July 31, 2022. This is a mandatory IRS requirement with penalties for non-compliance.

Make sure the plan custodian know who your plan trustees are

If you're a closely held business or not, changes do happen. Whether it's leadership or who serves as your plan's trustee, change will likely happen. The problem sometimes is when the plan document has been updated to reflect who the current trustees are, yet the plan custodian doesn't. That could certainly be a problem if one of the trustees left on acrimonious terms and wants to go to business for themselves and take a distribution that they weren't entitled to.

So if you make a change of trustees, also make sure that your third-party administrator and plan custodian know as well, so the records and signings cards are updated. Otherwise, an unhappy trustee may think it's a 401(k) version of Supermarket Sweep.

The problem with loans

When I draft a new 401(k) plan for a client, I'll recommend a loan provision even though it can be an administrative headache. The reason that I add it is because I think participants need to have access to money if in their account if they need it.

However, there are some things that I put in place to take away some of the headaches. I always require a $1,000 minimum for loans, there is no reason a participant should take out a loan for $250 especially when the loan fee charged to their account is going to be $50 or $75. In general, you want it for people who need money and de minimis amounts aren't going to meet that need.

I also like to have one loan outstanding at a time. I've seen plans where participants have 8-9 loans outstanding and it can be an administrative headache to make sure all of them are paid on time.
Even with these provisions, they often become a headache especially when payroll mistakes fail to pay off a loan and you may have a prohibited transaction on the books if quarterly payments weren't made on the loan. There is nothing worse than to hand a participant a 1099 because you failed to make sure payroll pay off their outstanding loan.

They're also a headache in the sense that most errors dealing with loans only get discovered on a government audit or when there is a change of third-party administrator. That means errors are discovered years after they take place, creating a migraine or a headache if you're the plan sponsor that has to fix it.
So while you may want loans in your plan, be cautious in its operation.

Volume 13 Issue 3, March 2022

The Rosenbaum Law Firm P.C | 516-594-1557 |
734 Franklin Avenue, Suite 302, Garden City, NY 11530| therosenbaumlawfirm.com