THE Pension Digest

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ALSO IN THIS ISSUE –

Collin W. Fritz and Associates, Inc.,
"The Pension Specialists"

IRA and Pension Law Changes Within the Small Business Jobs Act of 2010

On September 27, 2010, President Obama signed into law "The Small Business Jobs Act of 2010."

This new law or act contains no express law change dealing with IRAs. However, this Act does increase the penalty amount for a financial institution preparing incorrect IRS reporting forms from $50.00 per form to $100.00 per form. This obviously impacts a financial institution serving as an IRA custodian in filing and preparing the 1099-R forms, 5498 forms, fair market value statements and RMD statements. The $100 per form penalty rules will apply to "incorrect" 2010 reporting forms filed in 2011.

Although this new law is titled "Small Business Jobs Act", a primary goal of the Obama administration and the IRS was to increase the penalty amounts to $100.00 per form from $50.00 per form and to increase radically certain maximum fine amounts present in current law. These "revenue raisers" (i.e. increased tax penalties) are discussed in more detail in the two articles on pages 2 and 3. It appears the IRS will be seeking to collect more revenue from financial institutions when required reporting forms either are not filed or filed incorrectly.

What about Qualified Charitable Distributions?

This Act does not authorize the making of a Tax Free IRA Charitable Distribution during 2010. This law change may come in future tax legislation to be considered by Congress after the November elections. It is one of many tax provisions which Congress will either adopt on a permanent basis, extend for a limited number of years or not adopt for 2010 or any subsequent year.

401(k) and Other Pension Changes

A 401(k) participant with standard pre-tax 401(k) funds (i.e. non-Roth funds) is now authorized to convert such funds into a Designated Roth 401(k) account within the 401(k) plan. The same tax rules applying to IRA conversions will apply to these 401(k) conversions. A 2010 conversion will be taxed 50% in 2011and 50% in 2012 unless the individual elects to be taxed 100% in 2010. This change is effective immediately and participants can make such conversions during the fourth quarter of 2010 and subsequent years.

The 401(k) industry has the ear of Congress and the IRS. Until this new legislation, the only individuals who could convert pre-tax funds into Roth funds were those who had funds within a traditional IRA. A similar conversion right has now been given to participants in a 401(k) plan if the plan is amended to authorize such a conversion.

The topic of converting traditional IRA funds into Roth IRA funds is a hot IRA topic. Many individuals have already converted traditional IRA funds to be Roth IRA funds in the first three quarters of

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Increased Tax Penalties for Failing to File Correct 2010 Information Returns With the IRS

There are increased tax reporting penalties within the Small Business Jobs Act of 2010. President Obama signed this Act into law on September 27, 2010. The new penalties are effective for most tax reporting forms filed after January 1, 2011. These new tax penalties apply to the filing of 2010 reporting forms.

As discussed below, various IRS penalties will increase by 100%-600% for the failure to file or the filing of incorrect reporting IRS tax forms.

As an IRA custodian/trustee, your institution will be preparing 2010 Form 1099-R's to report IRA and pension distributions, your institution will be preparing the 2010 Form 5498, fair market value statements and RMD notices or statements. These will be generally prepared in January of 2011.

Current law provides a standard penalty of $50 for each incorrect information which has been filed (and not corrected) with the IRS or not filed as of August 1 of the following year. The aggregate annual maximum penalty is $250,000. This $250,000 was reduced to $100,000 if the filer had gross receipts of less than $5,000,000. If the filer's failure was due to its intentional disregard of the filing rules, then the penalty amount was $100 per failure rather than $50.

For IRS reporting forms filed after 2010, the $50 standard penalty increases to $100 per information return for any incorrect information return which is filed (and not corrected) with the IRS by August 1 of the following year or is not filed as of August 1 of the following year. <u>The aggregate maximum penalty increases to $1,500,000 from $250,000.</u> The $1,500,000 is reduced to $500,000 if the filer has gross receipts of less than $5,000,000. An increase in the maximum penalty to $1,500,000 is quite severe as it is a 600% increase. If the filer's failure is due to its intentional disregard of the filing rules, then the penalty amount is $250 per failure rather than the $100 per failure.

Reduced Tax Penalties If Corrected As Early As Possible

Corrections Filed With IRS Within 30 Days.

Current law provides if the information return is corrected within 30 days, then the penalty amount is $15 per information return rather than $50 per information return. The aggregate maximum penalty is reduced to $75,000 from $250,000 if the filer has gross receipts of $5,000,000 or more. However, if the filer had gross receipts of less than $5,000,000, then the maximum penalty $25,000.

For IRS reporting forms filed after 2010, if the information return is corrected within 30 days, then the penalty amount will be $30 per return (up from $15). The aggregate maximum penalty will be $250,000 (up from $75,000) if the filer has gross receipts of $5,000,000 or more. However, if the filer had gross receipts of less than $5,000,000, then the maximum penalty will be $75,000 (up from $25,000).

Corrections Filed With IRS After 30 Days But By August 1.

Current law provides if the information return was not corrected within 30 days, but was corrected by August 1, then the penalty amount is $60 per information return (up from $30). The aggregate maximum penalty is now $500,000 (up from $150,000) if the filer has gross receipts of $5,000,000 or more. However, if the filer has gross receipts of less than $5,000,000, then the maximum penalty is $200,000 (up from $50,000).

COLA Adjustment To Apply To Tax Penalty and Limits Commencing in 2017.

Commencing with 2017, the tax penalty amounts and the various limits will be adjusted by a COLA. These penalty amounts will be adjusted by the COLA in multiples of $10 (i.e. $100 to $110, $30 to $4, $60 to $70 and $250 to $260) and will increase over time. Such amounts are rounded to the next lowest $10 multiple It could take a number of five-year periods to adjust the $30 and $60 amounts. The $100 and $250 amounts should change at the end of the first five-year period.

The penalty limitation amounts will be adjusted by the COLA in multiples of $500. Considering the size of the maximum penalty amounts, these limits can be expected to change quite often and substantially. Example, the general maximum limit is $1,500,00. If the COLA for the period of 2012-2016 is 6.5%, then the new limit will be $1,597,500. Such amounts are rounded to the next lowest $500 multiple.

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Increased Tax Penalties for Failing to Furnish Payees With Correct 2010 Information Returns

There are increased tax reporting penalties within the Small Business Jobs Act of 2010. The new penalties are effective for most tax reporting forms filed after January 1, 2011. These new tax penalties apply to the filing of 2010 reporting forms.

Tax penalties are assessed if the payee is not furnished a correct reporting form in a timely fashion.

These penalties mirror the penalties applying for failing to file correct returns with the IRS. There are two types of failures subject to IRS penalties. Type #1 - any failure to furnish a payee statement on or before the applicable deadline to a person required to be furnished such statement. Type #2 - any failure to include all of the information which is required to be completed and the inclusion of incorrect information is defined to be a failure.

Current law provides a standard penalty of $50 for each incorrect information which has been furnished (and not corrected) to the payee or not filed as of August 1 of the following year. The aggregate annual maximum penalty is $250,000. This $250,000 was reduced to $100,000 if the filer had gross receipts of less than $5,000,000. If the filer's failure was due to its intentional disregard of the filing rules, then the penalty amount was $100 per failure rather than $50.

For IRS reporting forms filed after 2010, the $50 standard penalty increases to $100 per information return for any incorrect information return which is furnished to the payee (and not corrected) by August 1 of the following year or is not filed as of August 1 of the following year. The aggregate maximum penalty increases to $1,500,000 from $250,000. The $1,500,000 is reduced to $500,000 if the filer has gross receipts of less than $5,000,000. An increase in the maximum penalty to $1,500,000 is quite severe as it is a 600% increase.

If the filer's failure is due to its intentional disregard of the filing rules, then the penalty amount is $250 per failure rather than the $100 per failure unless the following exception applies. The penalty amount is either 10% of the aggregate amount of the items required to be reported correctly other than a statement required under section 6045(b), 6041A(e), 6050H(d), 6050J(e), 6050K(b) or 6050L(c) or 5% of the aggregate amount of the items required to be reported under section 6045(b), 6050K(b) or 6050L(c).

The $250 per form penalty amount for intentional disregard is not limited by the maximum limit of $1,500,000, the rules allowing correction within 30 days or prior to August 1 and the de minimus correction rules.

Reduced Tax Penalties If Corrected As Early As Possible.

Corrections Furnished To the Payee Within 30 Days.

Current law provides if the information return was corrected within 30 days, then the penalty amount is $15 per information return rather than $50 per information return. The aggregate maximum penalty is reduced to $75,000 from $250,000 if the filer has gross receipts of $5,000,000 or more. However, if the filer had gross receipts of less than $5,000,000, then the maximum penalty is less at $25,000.

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Corrections Furnished Payee After 30 Days But By August 1.

Current law provides if the information return was not corrected within 30 days, but was corrected by August 1, then the penalty amount is $60 per information return (up from $30). The aggregate maximum penalty is now $500,000 (up from $150,000) if the filer has gross receipts of $5,000,000 or more. However, if the filer has gross receipts of less than $5,000,000, then the maximum penalty is $200,000 (up from $50,000).

Congress and the IRS has decided to adjust the dollar limitations discussed above to be adjusted for cost of

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living. That is, the various penalty amounts ($100, $1,500,000, etc.) will increase automatically as the cost of living increases.

Special De Minimus Rule For Furnishing Corrections To Payees.

There is a de minimus correction rule applying to corrections furnished to payees. If certain rules are met, even though the filer furnished incorrect reporting forms to the payees, such incorrect forms are treated as having been furnished correctly and timely.

There are two requirements. First, a correct form was furnished on or before August 1 of the calendar year in which the form was required to be filed. Second, the number of such incorrect payee statements is less than the greater of: (1) 10 or (2) one half of one percent (.005) of the total number of payee statements required to be filed during the calendar year. For example, if the filer was required to 5,000 Form 1099-R's, then even though it initially prepared 23 with errors, it would not be liable for the $100/form penalty of $2,300 since 23 is less than the maximum number of incorrect forms (i.e. 5,000 x .005 or 25).

A similar de minimus rule does not exist with respect to filing incorrect forms with the IRS.

This de minimus rule applies only to certain types of mistakes. It applies if the form has been furnished and it contained a mistake. It does not apply if the individual was never furnished the reporting form.

COLA Adjustment To Apply To Tax Penalty and Limits Commencing in 2017.

Commencing with 2017, the tax penalty amounts and the various limits will be adjusted by a COLA. These penalty amounts will be adjusted by the COLA in multiples of $10 (i.e. $100 to $110, $30 to $4, $60 to $70 and $250 to $260) and will increase over time. Such amounts are rounded to the next lowest $10 multiple It could take a number of five-year periods to adjust the $30 and $60 amounts. The $100 and $250 amounts should change at the end of the first five-year period.

The penalty limitation amounts will be adjusted by the COLA in multiples of $500. Considering the size of the maximum penalty amounts, these limits can be expected to change quite often and substantially.

Establishing a SIMPLE-IRA

A SIMPLE-IRA is established when a business executes a SIMPLE-IRA plan document, the eligible employees establish their respective SIMPLE-IRA plan agreements and contributions are made.

An employer has two choices for executing the SIMPLE-IRA plan document.

- IRS Form 5304-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) — Not for Use With a Designated Financial Institution, or
- IRS Form 5305-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) — for Use With a Designated Financial Institution.

  The model form you use will depend on whether you decide to select the financial institution that will receive contributions or to let your employees select their financial institutions.

- If employees are allowed to select the financial institutions that will receive their SIMPLE IRA plan contributions, you will fill out Form 5304-SIMPLE.
- If you require that all contributions under the SIMPLE IRA plan be initially deposited with a designated financial institution, you will fill out Form 5305-SIMPLE.

Each eligible employee must setup their SIMPLE-IRA to receive the SIMPLE-IRA contributions. This is done by completing either the IRS Model Form 5305-SA (custodial) or Form 5305-S (trust). This form is different from the standard traditional IRA form. CWF has three SIMPLE-IRA plan agreement forms – #940 (custodial), #941 (trust), and #942 (custodial self-directed).

The owner of a business will complete two forms – the 5305-SIMPLE form to establish the SIMPLE-IRA plan and the 5305-SA form in order to set up his or her own SIMPLE-IRA. Any eligible employees would also need to establish their SIMPLE-IRA by completing the 5305-SA for (e.g. CWF #940)

What is a SIMPLE-IRA plan?

A SIMPLE-IRA plan is a type of employer-sponsored retirement plan. A SIMPLE has its own special features which will make it attractive to some employers and

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unattractive to others. The purpose of this article is to explain the basic features of a SIMPLE-IRA plan. If you are an employee and not an employer, you will still benefit from understanding how a SIMPLE plan works. An employee may enjoy substantial tax benefits by participating in a SIMPLE-IRA plan.

Why have a SIMPLE-IRA plan?

The main reason is – A person is allowed to save for retirement and receives substantial tax benefits as an incentive to do so.

What businesses or employers may establish a SIMPLE?

To be eligible to have a SIMPLE, an employer must meet two requirements. First, an employer will be eligible if it employed 100 or fewer employees on any day during the year who earned $5,500 or more in compensation from the employer during the year. Second, the employer (or any predecessor employer) cannot currently maintain, during any part of the calendar year, another employee sponsored plan.

May a sole proprietor establish a SIMPLE?

Yes. A sole proprietor may establish a SIMPLE as long as the rules discussed above are satisfied. When a self-employed individual sponsors a SIMPLE, he or she is considered to be both the employer and an employee.

If a person is self-employed, he or she is allowed to make an elective deferral up to the maximum permitted without regard to any "percentage of compensation" as is common with profit sharing and SEP-IRA plans. He or she is, however, not allowed to defer more than the lesser of: net earnings or the applicable annual limit.

Why do some small employers like SIMPLE-IRA plans rather than 401(k) plans?

The administrative costs of 401(k) plans can become expensive, since there is the requirement to file the annual Form 5500. In addition, there would not be as many fiduciary concerns with the SIMPLE-IRA as with the 401(k) plan.

Why would an employer and its employees want to have a SIMPLE-IRA?

There are six excellent reasons:

1. An employee, by making elective deferrals, can defer current income taxation.
2. An employer is allowed to deduct the cost of these elective deferrals.
3. Interest or the other income earned on the SIMPLE deferrals is sheltered from federal and most state income taxes while in the SIMPLE-IRA until withdrawn.
4. Due to the effects of compounding, the SIMPLE-IRA funds can grow into a sizable nest egg for retirement.
5. Administrative and legal costs are generally substantially less than would be incurred under a qualified plan.

Why do some small employers like SIMPLE-IRA plans rather than profit sharing or SEP-IRA plans?

In many cases, the cost of contributing for employees is less under a SIMPLE-IRA than it is if the employer sponsors a profit sharing or SEP-IRA plan. In general, the employer must put in the same percentage of compensation for the other employees as he or she contributes for himself or herself, whereas the maximum contribution for an employee is 3% of his or her compensation under a SIMPLE-IRA plan.

How does an employer establish a SIMPLE-IRA plan?

The employer must execute a written plan document that meets the requirements of Internal Revenue Code section 408(p). Normally an employer will do this by either signing the IRS Model Form 5305-SIMPLE or Form 5304-SIMPLE. The employer must also then have each eligible employee establish his or her own SIMPLE Individual Retirement Account (SIMPLE-IRA). A SIMPLE-IRA is similar to a traditional IRA but is different because a SIMPLE-IRA may only accept contributions made under a SIMPLE-IRA plan or certain qualifying rollover or transfer contributions.

What is the basic concept of the SIMPLE retirement plan?

A <u>SIMPLE is a simplified version of a 401(k) plan or salary- reduction SEP plan.</u> The basic concept is that an employee/participant will be eligible to contribute

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his/her own funds from his/her payroll or bonus, and that the employer will make matching contributions. Limits exist as to how much the employee may contribute (i.e. electively defer), and there are limits as to the matching contribution the employer must make. An employee may elect to defer an amount not to exceed the amount set forth in the following chart:

Tax Year	Younger Than Age 50	Age 50 or Older
2009	$11,500	$14,000
2010	$11,500	$14,000
2011	$11,500*	$14,000*

*IRS to issue COLA adjusted amounts in October 2010. May increase.

An employee is not eligible to defer more than this chart indicates or more than his or her compensation.

The amount which an employee defers must be expressed as a percentage of compensation. The employer must match on a dollar-for-dollar basis what the employee has chosen to electively defer, up to 3% of the employee's compensation. There is a special rule, as discussed later, which allows an employer to set its match at less than 3% (but not less than 1%) if certain rules are met.

A SIMPLE does not permit an employer to make any other type of contributions. An employer is not permitted to make a pro rata contribution (e.g. 8% of compensation) to the eligible employees, as permitted with a standard profit sharing plan or a SEP plan.

What employees must an employer cover in order to have a SIMPLE?

In essence, a SIMPLE has a maximum two-year participation requirement. Any employee who was paid at least $5,500 in compensation by the sponsoring employer during each of the preceding two years, and who is reasonably expected to receive at least $5,500 in compensation during the "upcoming" year, must be eligible to participate in the SIMPLE for the upcoming year. Note that under this plan it is the amount of compensation which will determine eligibility and not hours of service or age. Thus, under a SIMPLE, an employee must be eligible to make his or her elective deferrals and also to receive the mandatory employer matching contribution. An employer will be able to choose to exclude nonresident aliens and employees covered under a collective bargaining agreement. Compensation for an employee is defined to be the sum of his or her Form W-2 compensation plus any elective deferral amount. Self-employed individuals can participate in a SIMPLE. Compensation for a self-employed individual is defined to be his or her net earnings without regard to any contribution under the SIMPLE.

What is the Deadline for Setting up a SIMPLE-IRA Plan?

A person or business can set up a SIMPLE-IRA plan effective on any date between January 1 and October 1 of a year, provided if did not previously maintain a SIMPLE-IRA plan. This requirement does not apply if there is a new employer that comes into existence after October 1 of the year the SIMPLE-IRA plan is set up and you set up a SIMPLE-IRA plan as soon as administratively feasible after you come into existence. If it previously maintained a SIMPLE-IRA plan, it can set up a SIMPLE-IRA plan effective only on January 1 of a year. A SIMPLE-IRA plan cannot have an effective date that is before the date you actually adopt the plan.

Must an employee make an elective deferral each year?

No. The employee has total discretion whether or not to make a contribution each year.

What is the cost to the employer?

The employer will be required to make its matching contributions. SIMPLEs have relatively few government reporting requirements, and therefore, lower administrative costs.

Who is responsible to administer the SIMPLE?

The sponsoring employer is responsible for the SIMPLE administration. The employer may well need to consult with its tax and legal advisor. A financial institution's general role is to serve as the depository and not as the plan administrator.

When must employer contributions be made?

Employer matching contributions must be made by the time its tax returns for the year are filed.

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The Internal Revenue Code provides the rule that an employer must contribute an employee's elective contributions to his or her SIMPLE-IRA not later than 30 days after the month-end in which they are made. The Department of Labor (DOL) has a regulation which it believes applies to SIMPLE-IRA plans in addition to the rule set forth in the Internal Revenue Code. Such elective contributions must be segregated as of the earliest date the employer can reasonably segregate them from its general assets. The DOL has created an optional safe harbor – there is deemed compliance as along as such contributions are deposited no later than the 7th business day following the day on which such amount is received by the employer.

When may an employer make a matching contribution of less than 3%?

An employer may set its matching rate at as little as 1% of compensation, if two requirements are met. First, the employer must notify the employees of the lower percentage within a reasonable amount of time before the 60-day "decision" period commences. Second, the employer cannot set the percentage for the upcoming year at less than 3%, if the percentage had been set at less than 3% in two out of the four preceding years. If the SIMPLE was not in existence for all or any part of this four-year time period, then it is deemed that the employer's matching rate was 3% for such year.

May the employer avoid making a matching contribution by making a 2% nonelective contribution?

Yes. An employer is not required to make a 3% matching contribution if the employer elects to make a nonelective contribution of 2% of compensation for each employee who is eligible to participate in the SIMPLE and who has at least $5,500 of compensation for the current year. The employer must notify the employees within a reasonable amount of time before the 60-day period that it will be making this 2% contribution rather than the matching contribution. Compensation is limited to $200,000 for 2002 (as indexed) and subsequent years for purposes of this 2% nonelective contribution. For 2009, this limit changed to $245,000. For 2010, this limit is also $245,000. This limit could change for 2011.

What is the tax treatment of contributions?

Contributions to a SIMPLE are excludable from the gross income of the employee.

The employer will be able to deduct both its elective deferral contributions and its matching contributions. With respect to the employee elective contributions, a deduction is allowed only if the contributions are made by the due date (including extensions) of the employer's tax return.

The rules do allow the employer to make contributions after the end of the year if they are made on account of such taxable year and are made not later than the time prescribed by law for filing the return for such year (including extensions). The employee's elective contributions are to be treated as wages for employment tax purposes. That is, these elective deferrals will be subject to social security and medicare taxes. The employer's matching contribution will not be subject to such taxes.

The income earned by the contributions will not be taxed until a distribution occurs.

An employee is always 100% vested in any contribution to the SIMPLE account.

An employee who makes an elective contribution to a SIMPLE account will be an active participant for IRA deduction purposes.

What is the tax treatment of distributions?

Distributions will be taxed under the rules generally applicable to IRAs. Distributions prior to age 59½ will generally be subject to the 10% excise tax. However, a 25% tax will be imposed, rather than the 10% tax, if there is a withdrawal of contributions within the two-year period commencing on an employee's participation in the SIMPLE, unless the individual qualifies to use one of the exceptions (e.g. disability, death, etc.)

What administrative rules will apply to the elective deferrals?

An employee will use the 60-day period before the start of any year to decide to what extent he or she will make elective deferrals during the upcoming year, or change prior instructions. Prior to this 60-day period,

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the employer will inform the employees what its matching rate will be for the upcoming year.

A plan may be permitted to be written to allow a participant to increase or decrease his or her deferral instruction during the year, but the plan need not permit this. However, a participant must have the right to stop his or her elective deferrals at any time. Once a participant stops his or her elective deferrals, the plan may be written to not allow elective deferrals to start again until the next year.

May distributions from a SIMPLE-IRA be rolled over?

If a person receives a distribution (i.e. the check is made payable to the SIMPLE-IRA accountholder) of all or a part of his or her SIMPLE-IRA, he or she can redeposit the funds into a SIMPLE-IRA without being taxed on the receipt of the funds, if:

1. The funds are rolled over (i.e. redeposited) within 60 days,
2. The funds were not a required minimum distribution, and
3. The person has not rolled over a previous distribution from the same SIMPLE-IRA within the last year. The one-year period commences on the date the person received the previous distribution and not on the date of the redeposit.

It is permissible to roll over funds distributed from a SIMPLE-IRA to a traditional IRA if certain rules are met. The general rules which apply for SIMPLE-IRA-to-SIMPLE-IRA rollovers also apply in this situation. In addition, a rollover from a SIMPLE-IRA to a traditional IRA is only permissible if the distribution from the SIMPLE which you are rolling over occurred after the two-year period which commences on the date you first participated in the related SIMPLE plan.

A person may never roll over funds from an IRA to a SIMPLE-IRA.

What reports will the trustee (i.e. the financial institution) be required to prepare to comply with IRS and ERISA rules?

At least once a year the trustee must furnish a report to the IRS.

Within 31 days after the end of each calendar year (i.e. by January 31), the trustee must furnish each participant a statement showing the SIMPLE account balance as of December 31 of such year and the activity for such account during the calendar year.

The trustee must generally furnish the sponsoring employer a summary description in September of each year.

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2010 and there are other traditional IRA accountholders who will convert during the fourth quarter. The financial and tax planning goal is – any earnings within the “Roth” account will be tax free in future years when withdrawn either by the individual or his or her beneficiary(ies). The individual will have to pay some taxes to move the funds from the traditional IRA to the Roth IRA.

The new law authorizes a participant of a 401(k) plan with Designated Roth accounts to “convert” some or all of his or her Non-Roth funds to a Designated Roth account within the 401(k) plan. As with converting a traditional IRA, the participant will have to include the converted amount in his or her income. As with IRAs, the special 2011/2012 income tax averaging rule will apply to a participant’s conversion within a 401(k) plan unless elected otherwise. The 401(k) plan will have to be amended to authorize this conversion transaction.

Participants of non-40l(k) plans (profit sharing and money purchase plans) will NOT have this conversion right. An employer would need to revise (i.e amend) its profit sharing or money purchase plan to be a 401(k) plan in order for the conversion right to exist. We expect quite a few employers will choose to convert their existing plans to be a 401(k) plan having the Designated Roth feature.

The second pension law change arising from the Small Business Jobs Act is a technical correction. Since 2007, participants in 401(k) and 403(b) plans have been authorized to make either standard 40l(k) elective deferrals or Designated Roth elective deferrals. For whatever reason, this right was not given to participants in government section 457(b) plans. They will have the right to make Designated Roth deferrals on or after January 1, 2011 assuming their plan is amended to contain such a right.