SWERDLIN & COMPANY
Actuaries and Employee Benefit Consultants

THE SWERDLIN QUARTERLY
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WHO IS THE SPOUSE?

The Supreme Court repealed Section 3, a key portion of the Defense of Marriage Act (DOMA), on June 26, 2013. Section 3 prevented the federal government from recognizing marriages of same-sex couples. Section 3 was declared unconstitutional because it violates the Constitution's equal protection promise.

On August 29, 2013, the Internal Revenue Service (IRS) issued Revenue Ruling 2013-17 providing guidance with regard to this repeal. For federal tax purposes, the terms "spouse", "husband and wife", "husband", and "wife" now include an individual married to a person of the same sex. The term "marriage" now includes a marriage between individuals of the same sex, as long as the individuals are married under any law that authorizes same-sex marriage, even if the couple resides in a state that does not recognize same-sex marriage. For qualified retirement plans, operational compliance is effective as of September 16, 2013.

What does this mean with regard to employee benefit plans? This can have a major effect on employers' health benefit plans. Generally, an employee is not taxed on health insurance provided by an employer or amounts received as reimbursement for medical care expenses. The exclusion is available for the medical expenses of the employee, his or her spouse, and dependents. With the repeal of Section 3 of DOMA, now coverage for a same-sex spouse is also not taxed.

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DORN'S CORNER

Dorn Swerdlin

Last quarter I declared 2014 as The Year of Commitment. In that article I compared the first of the 10 Commandments in the Bible with a related commitment from The 10 Commitments, a book by Dr. David Simon.

I continue this quarter with the 2nd Commandment:

Thou shall not make unto thee a graven image.

The comparable commitment according to Dr. Simon's book is:
I Commit to Authenticity

In his book, David Simon describes authenticity as "an alignment between beliefs, your desires, and your choices in the world." The word is derived from the Latin, authenticus, meaning coming from the real author. Being authentic means assuming the responsibility for writing the story of your life. We become the choices we make, but are often not conscious we are making choices. Becoming a conscious choice-maker translates into greater authenticity.

We are creatures of habit and these recurring habits can easily become addictions. An addiction is any habit that, when stopped, causes physical and/or emotional discomfort.

Addictions almost always cover up feelings (usually uncomfortable ones) and therefore reduce anxiety for the short term. However, they stuff our feelings and such feelings tend to stay with us and grow in intensity if not dealt with. This leads to stress in our minds and bodies.

So how do we deal with our addictions? We must first be aware that we are addicted. "I can stop anytime I want" is usually an indication of denial. We tend to work on NOT doing or saying the habit. However, our mind does not hear the NOT and focuses on the habit. As our focus is on the habit, the habit is reinforced rather than diminished. Another approach that doesn't work well is the attempt to change by will power. We must focus on how we want to be without the habit. This will ultimately replace the hard-

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SERVICE SPOTLIGHT:

"We think it is time to update your mortality table."

Many Swerdlin clients with traditional pension or retiree medical plans have been hearing this from their actuaries for the past year or so. Our defined contribution clients never have to hear a sentence that includes the words "mortality table update," but the conversation introduced by those words might interest them anyway.

Our actuaries use mortality tables to estimate how long people will live, mostly people receiving pensions and people receiving retiree medical and similar benefits. Our clients with those types of plans need to be sure their plans are adequately funded, so good estimates of longevity are a key component of our actuarial calculations.

Of course, actuaries can't say how long any one person will live or what to expect from a group of 100 or even 1,000 retirees. Actuaries study large groups: the most recent study—released this February in draft form—of pensioner mortality followed about 2 million people from calendar year 2004 through 2008. Social Security actuaries study tens of millions of Social Security recipients at a time. These large studies produce age-by-age mortality rates (e.g., a 70 year old healthy male retiree has a 1.7% probability of dying before turning age 71), separately by sex, by health status (healthy or disabled), and maybe by broad job classification (office, manufacturing).

The age-by-age rates are published in tables, with ages going down the page and sex and other classifications going across. Mortality tables are generally published with a name that includes a year: the RP–2000 Mortality Table has rates representative of the year 2000. Give your Swerdlin actuary a call and she or he will send you a mortality table. If you do not have a Swerdlin actuary but still want a mortality table, your Swerdlin consultant can get one for you.

The conversation continues: these mortality-studying actuaries do not simply perform their studies in isolation. They compare them to studies from ten and twenty years earlier; they compare Social Security studies over a multi-year period. They are looking for how the mortality rates have changed. For example, 14 years ago, a 70 year old healthy male retiree was found to have a 2.2% probability of dying before his next birthday. The probabilities may not be familiar, but the underlying trend is familiar to almost everyone: people are living longer.

It's probably not surprising that, just as men and women have different mortality rates, women do live longer than men. This topic generates much biological and sociological study including lots of jokes. Different rates of improvement have been experienced over the last few centuries. Mortality improvement rates tend to vary by age and, based on studies in the last decade, seem to vary by year of birth.

Mortality improvement rates are also published in tabular form and given names like Scale AA and Scale BB. We can send you a copy of one of those, too.

Since many years pass between mortality table changes, the effect of a new table on retirement plan costs is usually pretty dramatic. The actuarial community typically continues to use the previous mortality tables to value retirement plans, only adopting the latest table over a few years. In a decade or so, a new table is published and the process repeats itself.

WHO IS THE SPOUSE? *(continued from page 1)*

Is an employer required to extend cafeteria plan benefits to a same-sex spouse? Under current federal law, an employee may now pay for health/dental coverage for a spouse of a legally married same-sex couple on a pre-tax basis and without imputing income to the employee. Cafeteria plans are governed by federal law and are now required to extend coverage to a spouse of a legally married same-sex couple.

Qualified retirement plans are governed by ERISA and the Internal Revenue Code. This means these plans are subject to federal law. Therefore, a spouse of a legally married same-sex couple is now recognized whether the couple resides in a jurisdiction that recognizes same-sex marriage or resides in one that does not.

A pension plan and certain other qualified retirement plans are generally required to pay a married participant's benefits in the form of a qualified joint and survivor annuity (QJSA) unless the participant elects otherwise. If the participant is married, the spouse must consent in writing to the participant's election.

A participant in a defined contribution plan, such as a 401(k) plan, can choose to leave the balance in the account to any beneficiary. However, if the participant is married, the amount can be left to a non-spouse beneficiary only if the participant's spouse consents to this in writing. Furthermore, the ability of a plan participant to take certain actions is limited if the plan participant is married. For example, if a qualified plan is subject to survivor annuity requirements, a married participant must obtain spousal consent for any plan loan if more than $5,000. On the other hand, the required minimum distribution (RMD) rules are generally more liberal for defined contribution plan participants who are married as opposed to those who are not. Thus, same-sex couples may benefit from the RMD rules.

May a same-sex spouse obtain a qualified domestic relations order (QDRO)? A same-sex spouse may now be covered by a QDRO. With a QDRO, a spouse has the right to share in the pension benefits of the other.

A SPOUSE OF A LEGALLY MARRIED SAME-SEX COUPLE IS NOW RECOGNIZED

Will a same-sex spouse be permitted to elect a direct rollover from a qualified retirement plan? Since a spouse of a legally married same-sex couple is now recognized as a spouse under federal law, the distribution of an employee's benefit to a same-sex spouse is permitted to be rolled over to another plan or to an individual retirement account in order to defer income tax. Because this is a federal tax rule, an employer cannot provide different treatment under their plan.

Can a participant be permitted to take a hardship distribution for expenses incurred by a same-sex spouse? Since a spouse of a legally married same-sex couple is recognized as a spouse under federal law, a hardship distribution is now permitted for the medical, educational, or funeral expenses for a same-sex spouse, regardless of whether the same-sex spouse qualifies as a dependent under the Code.

In light of these recent developments, employers should establish a process to identify married participants. All plan documentation needs to be carefully reviewed for the definition of "spouse" to determine whether any changes are necessary. Please feel free to contact your Swerdlin representative to assist you with this review process.

below: Adrian Farnon at Mommy Shower. Bill White at his retirement party with Connie Woodmansee and Joanne Swerdlin

Anniversaries we celebrate this quarter: Susan Petrirena, 19 years; Julie Isom and Kim Hall, 17 years; Kristin Hamilton, 10 years; Linda Mathews and Shenita Spivery, 7 years; Christi Koberg, 5 years; David Benoit, Mary Butina and Tiffany Enoch, 4 years; Christine Fu, 3 years; and Waveney Blackman, 2 years.

In January, a long time ESOP and 401(k) client, Bill White, retired from Stevenson & Palmer Engineering. On January 4, Connie Woodmansee and Joanne Swerdlin attended a retirement party to honor Bill and his years of service with Stevenson & Palmer.

On January 23, many of the Swerdlin women attended the first Women in Pensions (WIPs) dinner held for 2014. Susan Petrirena's term for serving as a Board Member of the organization was up. Elections for the new Board were held that evening. We were excited that Kim Hall was elected as a new Board Member. Congratulations, Kim!

Congratulations to Adrian Farnon and her husband, Sean! They are expecting their first child in March. We held a "Mommy Shower" and lunch in honor of Adrian on February 17 at the office. Sean came at the end to help pack up the car with all the gifts they received. Chances are the baby will arrive before this newsletter goes out!

Our client, Bobby Dodd Institute, holds a Breakfast of Champions each year. Swerdlin always sponsors a table. This year we sponsored a table for 8 of our employees who attended the event on March 27 at the Cobb Galleria.

In January, we rolled out our enhanced website. If you have not had the opportunity to visit the site, we invite you to do so now! Use www.swerdlin.net as your resource for benefit news and information. Also, the participants' site is more intuitive and easier to navigate. It contains embedded tutorials to assist participants with transactions.

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FAQs

Q. Our partners' income was not determined until March 31, 2014. Can they make their 2013 deferrals now?

A. If they had an election in place by December 31, 2013, and the deferrals were made to the plan by March 15, 2014, the deferrals would be treated as 2013 contributions. However, since in your example the deferrals were made to the plan after March 15, 2014, they must be treated as 2014 deferrals.

Q. In a 401(k) plan with immediate entry, an employee was hired on December 28, 2013 and his first pay check was issued to him in January, 2014. Is he considered an eligible employee and counted in all the testing for 2013?

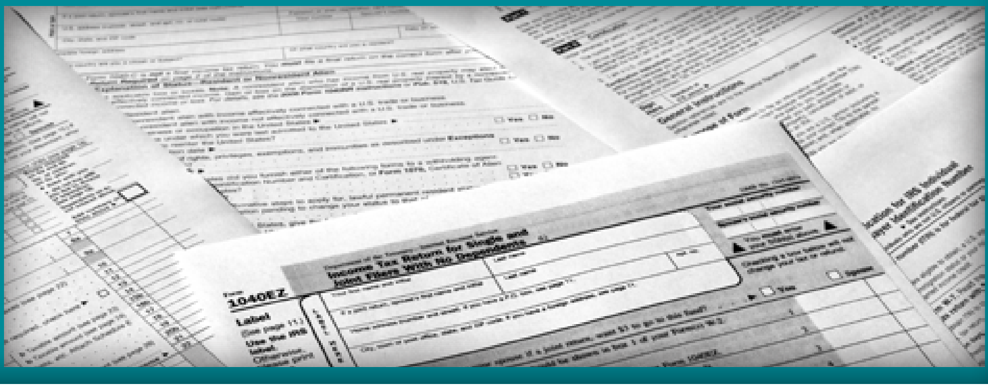
A. No. This employee would be treated as ineligible since he had no compensation in that year, therefore preventing him from making any salary deferrals.

Q. We failed the ADP test but everyone's refund is less than $50. Are we required to make these refunds?

A. The IRS says, "If the total corrective distribution due to a participant or beneficiary is $50 or less, the Plan Sponsor is not required to make the corrective distribution if the reasonable direct costs of processing and delivering the distribution to the participant or beneficiary would exceed the amount of the distribution."

Q. At the end of 2013, we discovered that even though a participant had elected to defer, his deferral amount was not deducted from his pay. How should this be corrected?

A. You are required to make a contribution on his behalf. For example, if he is a Non-Highly Compensated Employee (NHCE) and the average deferral for his group is 4%, you should make a contribution to the plan of 4% of his pay for the period of time that was missed. If applicable, you also need to make a matching contribution based on the corrected deferral amount.



FSA RULES CHANGE TO ALLOW $500 ROLLOVER

On October 31, 2013 the US Department of the Treasury and the IRS issued Notice 2013-71 modifying the infinite "use it or lose it" rule for health flexible spending arrangements. Employees with Flexible Spending Accounts (FSAs) can now have a little more flexibility with the new $500 carryover ruling.

Historically, one of the drawbacks for participating in an FSA is the difficulty in budgeting for healthcare expenses for the coming year. Also, at the end of the year, it is difficult for employees to rush and spend what is left of their FSA funds for unnecessary items just to avoid forfeiting these remaining dollars in their FSA accounts.

With this new ruling, hopefully employees will not shy away from participating in their FSAs. While the rollover rule does not increase the maximum contribution amount of $2,500, employees now have the option at the end of the plan year to roll over up to $500 of their unspent FSA funds to the next year's FSA, possibly giving them a starting balance of $3,000 for the next plan year.

Employees should maximize their FSA contributions since this allows them the opportunity to pay for eligible medical expenses with tax-free dollars. Remember that pre-tax contributions to an FSA lowers the amount of taxes taken from your paycheck. You save on the average of 25-30% on the dollar.

This new rule also allows the plan to offer either a grace period (2½ months to incur and submit claims after the plan year) or the $500 carryover option. Only one of these options can be chosen and the plan must be amended, if necessary.

We are excited about this new rule. Hopefully this change will encourage higher participation in FSAs for both employers and employees.

If you have any questions, please contact Cynthia Navan-Clark on our Cafeteria Team at (678) 775-5551.

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DORN'S CORNER *(continued from page 1)*

wired neural pathways developed over years of habitual activities with a new healthy activity to develop a new neural pathway.

In addition to behaviors, our thoughts can be addictive. Becoming aware of unhealthy recurring thoughts and replacing them with healthier thoughts is a way to stop the addiction. In previous writings I have expressed my addictive thought, "I am stupid." I say this to myself when I make a mistake or do anything I consider wrong. This does not enhance my self-image.

In order to deal with this, I first had to become aware of my thought. As I became aware, I was shocked at how often I say this to myself. My next step was to question the truthfulness of my statement. Am I really stupid? No! Then I say what is true: I made a mistake but that has nothing to do with my intelligence. I'm not stupid and making mistakes is human and is how I learn. As I catch myself more and more, I begin to build a new neural pathway to replace the old "I am stupid" one. Ultimately, I catch it before I say it to myself.

Another graven idol is the addiction to acquiring material things. There's nothing at all wrong with abundance; nature exhibits great abundance for us to enjoy. However, if you over invest your emotional energy in acquiring new stuff, the stuff owns you rather than you owning it. "I'll be happy when I can afford a new car." We know intellectually that stuff does not make us happy. This addiction also detracts from authenticity. Maybe it is time to simplify our lives while, at the same time, enjoying life's abundance.

The following points help summarize Dr.Simon's commitments to authenticity:

- Identify habits of behavior (and thoughts) that do not reflect your core values and consciously replace them with choices that do.
- Ask yourself how you would like to see the next chapter of your life unfold and take steps in alignment with that vision.
- Look at your material world and align it with your values by finding balance between simplicity and abundance.

Let's become aware and commit to removing from our lives the "false idols" that grow into forms of addiction. As always, I welcome your thoughts and comments and will be back next quarter.

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