Retirement Plans for Small Business

(SEP, SIMPLE, and Qualified Plans)

For use in preparing 2009 Returns

What’s New

Waiver of required minimum distributions for 2009. Required minimum distributions (RMDs) for 2009 are waived for defined contribution plans and IRAs, including SEP-IRAs and SIMPLE IRAs. See Distributions in chapters 2, 3, and 4.

Form 5500-SF. Form 5500-SF is a new simplified reporting form available to meet the filing requirements of certain small pension and welfare benefit plans. See Reporting Requirements on page 21.

Electronic filing of Forms 5500 and 5500-SF. For plan years beginning on or after January 1, 2009, all Form 5500 and 5500-SF annual returns are required to be filed electronically with the Department of Labor through EFAST2. "One-participant" plans will have the option of filing Form 5500-SF electronically, if eligible, rather than filing a Form 5500-EZ on paper with the IRS. For more information, see the Instructions for Forms 5500, 5500-SF, 5500-EZ and www.efast.dol.gov/
Reminders

Repayment of qualified disaster recovery assistance distributions. Special rules apply to the use of retirement funds by qualified individuals who suffered an economic loss as a result of the Kansas and Midwestern disasters. While qualified distributions can no longer be made after 2009, special rules apply to the repayment of these distributions. See Publication 4442-A, Information for Taxpayers Affected by the May 4, 2007, Kansas Storms and Tornadoes and Publication 4440-B, Information for Affected Taxpayers in the Midwestern Disaster Areas.

Credit for startup costs. You may be able to claim a tax credit for part of the ordinary and necessary costs of starting a SEP, SIMPLE, or qualified plan. The credit equals 50% of the cost to set up and administer the plan and educate employees about the plan, up to a maximum of $500 per year for each of the first 3 years of the plan. In general, you may choose to start claiming the credit in the tax year before the tax year in which the plan becomes effective. You must have had 100 or fewer employees who received at least $5,000 in compensation from you for the preceding year. At least one participant must be a non-highly compensated employee. The employee generally cannot be substantially the same employees for whom contributions were made or benefits accrued under a plan of any of the following employers in the 3-tax-year period immediately before the first year to which the credit applies.

1. You.
2. A member of a controlled group that includes you.
3. A predecessor of (1) or (2).

The credit is part of the general business credit that can be carried back or forward to other tax years if it cannot be used in the current year. However, the part of the general business credit attributable to the small employer pension plan startup cost credit cannot be carried back to a tax year beginning January 1, 2002. You cannot deduct the part of the startup costs equal to the credit claimed for a tax year, but you can choose not to claim the allowable credit for a tax year.

To take the credit, use Form 8881, Credit for Small Employer Pension Plan Startup Costs.

Retirement savings contributions credit. Retirement plan participants (including self-employed individuals) who make contributions to their plan may qualify for the retirement savings contributions credit. The maximum contribution eligible for the credit is $2,000. Form 8880, Credit for Qualified Retirement Savings Contributions, and the instructions explain how to figure the amount of the credit.

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-6078) if you recognize a child.

SEP plans. SEPs provide a simplified method for you to make contributions to a retirement plan for yourself and your employees. Instead of setting up a profit-sharing or money purchase plan with a trust, you can adopt a SEP plan on a combined basis, thus reducing the administrative burdens and costs of maintaining separate plans.

This publication discusses retirement plans you can set up and maintain for yourself and your employees. In this publication, “you” refers to the employer. See chapter 1 for the definition of the term employer and the definitions of other terms used in this publication. This publication covers the following types of retirement plans. See Table 1.

• SEP (simplified employee pension) plans.
• SIMPLE (savings incentive match plan for employees) plans.
• Qualified plans (also called H.R. 10 plans or Keogh plans when covering self-employed individuals), including 401(k) plans.

SEP, SIMPLE, and qualified plans offer you and your employees a tax-favored way to save for retirement. You can deduct contributions you make to the plan for your employees. If you are a sole proprietor, you can deduct contributions you make to the plan for yourself. You can also deduct trustees’ fees if contributions to the plan do not cover them. Earnings on the contributions are generally tax free until you or your employees receive distributions from the plan. Under a 401(k) plan, employees can have you contribute limited amounts of their before-tax (after-tax, in the case of a qualified Roth contribution program) pay to the plan. These amounts (and the earnings on them) are generally tax free until you receive distributions from the plan or, in the case of a qualified distribution from a designated Roth account, completely tax free.

What this publication covers. This publication contains the information you need to understand the following topics.

• What type of plan to set up.
• How to set up a plan.
• How much you can contribute to a plan.
• How much of your contribution is deductible.
• How to treat certain distributions.
• How to report information about the plan to the IRS and your employees.
• Basic features of SEP, SIMPLE, and qualified plans. The key rules for SEP, SIMPLE, and qualified plans are outlined in Table 1.

SEP plans. SEPs provide a simplified method for you to make contributions to a retirement plan for yourself and your employees. Instead of setting up a profit-sharing or money purchase plan with a trust, you can adopt a SEP agreement and make contributions directly to a traditional individual retirement account or a traditional individual retirement annuity (SEP-IRA) set up for yourself and each eligible employee.

SIMPLE plans. Generally, if you had 100 or fewer employees who received at least $5,000 in compensation last year, you can set up a SIMPLE plan. Under a SIMPLE plan, employees can choose to make salary reduction contributions rather than receiving these amounts as
Table 1. Key Retirement Plan Rules for 2009

<table>
<thead>
<tr>
<th>Type of Plan</th>
<th>Last Date for Contribution</th>
<th>Maximum Contribution</th>
<th>Maximum Deduction</th>
<th>When To Set Up Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEP</td>
<td>Due date of employer’s return (including extensions)</td>
<td>Smaller of $49,000 or 25% of participant’s compensation.(^2)</td>
<td>25%(^1) of all participants’ compensation.(^2)</td>
<td>Any time up to the due date of employer’s return (including extensions).</td>
</tr>
<tr>
<td>SIMPLE IRA and SIMPLE 401(k)</td>
<td>Salary reduction contributions: 30 days after the end of the month for which the contributions are to be made.(^4)</td>
<td>Employee contribution: Salary reduction contribution up to $11,500, $14,000 if age 50 or over.</td>
<td>Same as maximum contribution.</td>
<td>Any time between 1/1 and 10/1 of the calendar year. For a new employer coming into existence after 10/1, as soon as administratively feasible.</td>
</tr>
<tr>
<td>Qualified Plan: Defined Contribution Plan</td>
<td>Elective deferral: Due date of employee’s return (including extensions).(^4)</td>
<td>Employer contribution: Elective deferral up to $16,500, $22,000 if age 50 or over.</td>
<td>25%(^1) of all participants’ compensation(^2), plus amount of elective deferrals made.</td>
<td>By the end of the tax year.</td>
</tr>
<tr>
<td>Employer contribution: Money Purchase or Profit-Sharing: Due date of employer’s return (including extensions).</td>
<td>Employer Contribution: Money Purchase, Smaller of $49,000 or 100% of participant’s compensation.(^2)</td>
<td>Profit-Sharing: Smaller of $49,000 or 100% of participant’s compensation.(^2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualified Plan: Defined Benefit Plan</td>
<td>Contributions must be paid in quarterly installments depending on the plan year, due 15 days after the end of each quarter. See Minimum Funding Requirement in chapter 4.</td>
<td>Amount needed to provide an annual benefit no larger than the smaller of $195,000 or 100% of the participant’s average compensation for his or her highest 3 consecutive calendar years.</td>
<td>Based on actuarial assumptions and computations.</td>
<td>By the end of the tax year.</td>
</tr>
</tbody>
</table>

\(^1\) Net earnings from self-employment must take the contribution into account. See Deduction Limit for Self-Employed Individuals in chapters 2 and 4.
\(^2\) Compensation is generally limited to $245,000 in 2009.
\(^3\) Under a SIMPLE 401(k) plan, compensation is generally limited to $49,000 in 2009.
\(^4\) Certain plans subject to Department of Labor rules may have an earlier due date for salary reduction contributions and elective deferrals.
Definitions You Need To Know

Certain terms used in this publication are defined below. The same term used in another publication may have a slightly different meaning.

Annual additions. Annual additions are the total of all your contributions in a year, employee contributions (not including rollovers), and forfeitures allocated to a participant’s account.

Annual benefits. Annual benefits are the benefits to be paid yearly in the form of a straight life annuity (with no extra benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

Business. A business is an activity in which a profit motive is present and economic activity is involved. Service as a newspaper carrier under age 18 or as a public official is not a business.

Common-law employee. A common-law employee is any individual who, under common law, would have the status of an employee. A leased employee can also be a common-law employee.

A common-law employee is a person who performs services for an employer who has the right to control and direct the results of the work and the way in which it is done. For example, the employer:

- Provides the employee’s tools, materials, and workplace, and
- Can fire the employee.

Common-law employees are not self-employed and cannot set up retirement plans for income from their work, even if that income is self-employment income for social security tax purposes. For example, common-law employees who are ministers, members of religious orders, full-time insurance salespeople, and U.S. citizens employed in the United States by foreign governments cannot set up retirement plans for their earnings from those employments, even though their earnings are treated as self-employment income.

However, an individual may be a common-law employee and a self-employed person as well. For example, an attorney can be a corporate common-law employee during regular working hours and also practice law in the evening as a self-employed person. In another example, a minister employed by a congregation for a salary is a common-law employee even though the salary is treated as self-employment income for social security tax purposes. However, fees reported on Schedule C (Form 1040), Profit or Loss From Business, for performing marriages, baptisms, and other personal services are self-employment earnings for qualified plan purposes.

Compensation. Compensation for plan allocation is the pay a participant received from you for personal services for a year. You can generally define compensation as including all the following payments:

1. Wages and salaries.
2. Fees for professional services.
3. Other amounts received (cash or noncash) from personal services actually rendered by an employee, including, but not limited to, the following items:
   a. Commissions and tips.
   b. Fringe benefits.
   c. Bonuses.

A self-employed individual, compensation means the earned income, discussed later, of that individual.

Compensation generally includes amounts deferred in the following employee benefit plans:

- Qualified cash or deferred arrangement (section 401(k) plan).
- Salary reduction agreement to contribute to a tax-sheltered annuity (section 403(b) plan), a SIMPLE IRA plan, or a SARSEP.
- Section 457 nonqualified deferred compensation plan.
- Section 125 cafeteria plan.

However, an employer can choose to exclude elective deferrals under the above plans from the definition of compensation. The limit on elective deferrals is discussed in chapter 2 under Salary Reduction Simplified Employee Pension (SARSEP) and in chapter 4.

Other options. In figuring the compensation of a participant, you can treat any of the following amounts as the employee’s compensation:

- The employee’s wages as defined for income tax withholding purposes.
- The employee’s wages you report in box 1 of Form W-2, Wage and Tax Statement.
- The employee’s social security wages (including elective deferrals).

Compensation generally cannot include either of the following items:

- Nontaxable reimbursements or other expense allowances.
- Deferred compensation (other than elective deferrals).

Contribution. A contribution is an amount you pay into a plan for all those participating in the plan, including self-employed individuals. Limits apply to how much, under the contribution formula of the plan, can be contributed each year for a participant.

Deduction. A deduction is the plan contributions you can subtract from gross income on your federal income tax return. Limits apply to the amount deductible.

Earned income. Earned income is net earnings from self-employment, discussed later, from a business in which your services materially helped to produce the income.

You can also have earned income from property your personal efforts helped create, such as royalties from your books or inventions. Earned income includes net earnings from selling or otherwise disposing of the property, but it does not include capital gains. It includes income from licensing the use of property other than goodwill.

Earned income includes amounts received for services by self-employed members of recognized religious sects opposed to social security benefits who are exempt from self-employment tax.

If you have more than one business, but only one has a retirement plan, only the earned income from that business is considered for that plan.

Employer. An employer is generally any person for whom an individual performs or did perform any service, of whatever nature, as an employee. A sole proprietor is treated as his or her own employer for retirement plan purposes. However, a partner is not an employer for retirement plan purposes. Instead, the partnership is treated as the employer of each partner.

Highly compensated employee. A highly compensated employee is an individual who:

- Owned more than 5% of the interest in your business at any time during the year or the preceding year, regardless of how much compensation that person earned or received, or
- For the preceding year, received compensation from you of more than $105,000 (if the preceding year is 2008, $110,000 if the preceding year is 2009 or 2010, and if you so choose, was in the top 20% of employees when ranked by compensation).

Leased employee. A leased employee who is not your common-law employee must generally be treated as your employee for retirement plan purposes if he or she does all the following:

- Provides services to you under an agreement between you and a leasing organization.
Has performed services for you (or for you and related persons) substantially full time for at least 1 year.
Performs services under your primary direction or control.

Exception. A leased employee is not treated as your employee if all the following conditions are met.
1. Leased employees are not more than 20% of your non-highly compensated work force.
2. The employee is covered under the leasing organization’s qualified pension plan.
3. The leasing organization’s plan is a money purchase pension plan that has all the following provisions.
a. Immediate participation. (This requirement does not apply to any individual whose compensation from the leasing organization in each plan year during the 4-year period ending with the plan year is less than $1,000.)
b. Full and immediate vesting.
c. A nonintegrated employer contribution rate of at least 10% of compensation for each participant.

However, if the leased employee is your common-law employee, that employee will be your employee for all purposes, regardless of any pension plan of the leasing organization.

Net earnings from self-employment. For SEP and qualified plans, net earnings from self-employment is your gross income from your trade or business (provided your personal services are a material income-producing factor) minus allowable business deductions. Allowable deductions include contributions to SEP and qualified plans for common-law employees and the deduction allowed for one-half of your self-employment tax.

Net earnings from self-employment do not include items excluded from gross income (or their related deductions) other than foreign earned income and foreign housing cost amounts.

For the deduction limits, earned income is net earnings for personal services actually rendered to the business. You take into account the income tax deduction for one-half of your self-employment tax.

Qualified plan. A qualified plan is a retirement plan that offers a tax-favored way to save for retirement. You can deduct contributions made to the plan for your employees. Earnings on these contributions are generally tax free until distributed at retirement. Profit-sharing, money purchase, and defined benefit plans are qualified plans. A 401(k) plan is also a qualified plan.

Participant. A participant is an eligible employee who is covered by your retirement plan. See the discussions of the different types of plans for the definition of an employee eligible to participate in each type of plan.

Partner. A partner is an individual who shares ownership of an unincorporated trade or business with one or more persons. For retirement plans, a partner is treated as an employee of the partnership.

Self-employed individual. An individual in business for himself or herself, and whose business is not incorporated, is self-employed. Sole proprietors and partners are self-employed. Self-employment can include part-time work.

Not everyone who has net earnings from self-employment for social security tax purposes is self-employed for qualified plan purposes. See Common-law employee, earlier. Also see Net earnings from self-employment on this page.

In addition, certain fishermen may be considered self-employed for setting up a qualified plan. See Publication 595, Capital Construction Fund for Commercial Fishermen, for the special rules used to determine whether fishermen are self-employed.

Sole proprietor. A sole proprietor is an individual who owns an unincorporated business by himself or herself, including a single member limited liability company that is treated as a disregarded entity for tax purposes. For retirement plans, a sole proprietor is treated as both an employer and an employee.

Legal entity for tax purposes. For retirement plans, a sole proprietor is treated as both an employer and an employee.

Additional taxes
Reporting and disclosure requirements

Useful Items
You may want to see:

Publication
590 Individual Retirement Arrangements (IRAs)
3998 Choosing A Retirement Solution for Your Small Business
4285 SEP Checklist
4286 SARSEP Checklist
4333 SEP Retirement Plans for Small Businesses
4336 SARSEP for Small Businesses
4405 Have you had your Check-Up this year for SIMPLE IRAs, SEPs, and Similar Retirement Plans
4407 SARSEP—Key Issues and Assistance

Forms (and Instructions)
W-2 Wage and Tax Statement
1040 U.S. Individual Income Tax Return
5305-SEP Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement
5305A-SEP Salary Reduction Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement
8880 Credit for Qualified Retirement Savings Contributions
8881 Credit for Small Employer Pension Plan Startup Costs

A SEP is a written plan that allows you to make contributions toward your own retirement and your employees’ retirement without getting involved in a more complex qualified plan. Under a SEP, you make the contributions to a traditional individual retirement arrangement (called a SEP-IRA) set up by or for each eligible employee. A SEP-IRA is owned and controlled by the employee, and you make contributions to the financial institution where the SEP-IRA is maintained.

SEP-IRAs are set up for, at a minimum, each eligible employee (defined below). A SEP-IRA may have to be set up for a leased employee (defined in chapter 1), but does not need to be set up for excludeable employees (defined later).

Eligible employee. An eligible employee is an individual who meets all the following requirements.

Has reached age 21.
Has worked for you in at least 3 of the last 5 years.
Has received at least $550 in compensation from you in 2009. This amount remains the same in 2010.
You can use less restrictive participation requirements than those listed, but not more restrictive ones.

**Excludable employees.** The following employees can be excluded from coverage under a SEP.

- Employees covered by a union agreement and whose retirement benefits were bargained for in good faith by the employees' union and you.
- Nonresident alien employees who have received no U.S. source wages, salaries, or other personal services compensation from you. For more information about nonresident aliens, see Publication 519, U.S. Tax Guide for Aliens.

### Setting Up a SEP

There are three basic steps in setting up a SEP.

1. You must execute a formal written agreement to provide benefits to all eligible employees.
2. You must give each eligible employee certain information about the SEP.
3. A SEP-IRA must be set up by or for each eligible employee.

**Formal written agreement.** You must execute a formal written agreement to provide benefits to all eligible employees under a SEP. You can satisfy the written agreement requirement by adopting an IRS model SEP using Form 5305-SEP. However, see When not to use Form 5305-SEP, below.

If you adopt an IRS model SEP using Form 5305-SEP, no prior IRS approval or determination letter is required. Keep the original form. Do not file it with the IRS. Also, using Form 5305-SEP will usually relieve you from filing annual retirement plan information returns with the IRS and the Department of Labor. See the Form 5305-SEP instructions for details. If you choose not to use Form 5305-SEP, you should seek professional advice in adopting a SEP.

**When not to use Form 5305-SEP.**

You cannot use Form 5305-SEP if any of the following apply.

1. You currently maintain any other qualified retirement plan other than another SEP.
2. You have any eligible employees for whom IRAs have not been set up.
3. You use the services of leased employees, who are not your common-law employees (as described in chapter 1).
4. You are a member of any of the following unless all eligible employees of all the members of these groups, trades, or businesses participate under the SEP.

### How Much Can I Contribute?

The SEP rules permit you to contribute a limited amount of money each year to each employee's SEP-IRA. If you are self-employed, you can contribute to your own SEP-IRA. Contributions must be in the form of money (cash, check, or money order). You cannot contribute property. However, participants may be able to transfer or roll over certain property from one retirement plan to another. See Publication 590 for more information about rollovers.

You do not have to make contributions every year. But if you make contributions, they must be based on a written allocation formula and must not discriminate in favor of highly compensated employees (defined in chapter 1). When you contribute, you must contribute to the SEP-IRAs of all participants who actually performed personal services during the year for which the contributions are made, including employees who die or terminate employment before the contributions are made.

Contributions are deductible within limits, as discussed later, and generally are not taxable to the plan participants.

A SEP-IRA cannot be a Roth IRA. Employer contributions to a SEP-IRA will not affect the amount an individual can contribute to a Roth or traditional IRA.

**Time limit for making contributions.** To deduct contributions for a year, you must make the contributions by the due date (including extensions) of your tax return for the year.

### Contribution Limits

Contributions you make for 2009 to a common-law employee's SEP-IRA cannot exceed the lesser of 25% of the employee's compensation or $49,000 (same for 2010). Compensation generally does not include your contributions to the SEP. The SEP plan document will specify how the employer contribution is determined and how it will be allocated to participants.

**Example.** Your employee, Mary Plant, earned $21,000 for 2009. The maximum contribution you can make to her SEP-IRA is $5,250 (25% x $21,000).

**Contributions for yourself.** The annual limits on your contributions to a common-law employee's SEP-IRA also apply to contributions you make to your own SEP-IRA. However, special rules apply when figuring your maximum deductible contribution. See **Deduction Limit for Self-Employed Individuals**, later.

**Annual compensation limit.** You cannot consider the part of an employee's compensation over $245,000 when figuring your contribution limit for that employee. However, $49,000 is the maximum contribution for an eligible employee. These limits remain the same in 2010.

**Example.** Your employee, Susan Green, earned $210,000 for 2009. Because of the maximum contribution limit for 2009, you can only contribute $49,000 to her SEP-IRA.

**More than one plan.** If you contribute to a defined contribution plan (defined in chapter 4), annual additions to an account are limited to the lesser of $49,000 or 100% of the participant's compensation. When you figure this limit, you must add your contributions to all defined contribution plans. Because a SEP is considered a defined contribution plan for this limit, your contributions to a SEP must be added to your contributions to other defined contribution plans.

**Tax treatment of excess contributions.** Excess contributions are your contributions to an employee's SEP-IRA (or to your own SEP-IRA) for 2009 that exceed the lesser of the following amounts.

- 25% of the employee's compensation (or, for you, 20% of your net earnings from self-employment).
- $49,000 (same in 2010).

Excess contributions are included in the employee's income for the year and are treated as contributions by the employee to his or her SEP-IRA. For more information on employee tax treatment of excess contributions, see chapter 1 in Publication 590.

**Reporting on Form W-2.** Do not include SEP contributions on your employee's Form W-2 unless contributions were made under a salary reduction arrangement (discussed later).
Deducting Contributions

Generally, you can deduct the contributions you make each year to each employee’s SEP-IRA. If you are self-employed, you can deduct the contributions you make each year to your own SEP-IRA.

Deduction Limit for Contributions for Participants

The most you can deduct for your contributions to you or your employee’s SEP-IRA is the lesser of the following amounts:

1. Your contributions (including any excess contributions carryover).
2. 25% of the compensation (limited to $245,000 per participant) paid to the participants during 2009 from the business that has the plan, not to exceed $49,000 per participant.

In 2010, the $245,000 and $49,000 amounts in (2) above remain the same.

Deduction Limit for Self-Employed Individuals

If you contribute to your own SEP-IRA, you must make a special computation to figure your maximum deduction for these contributions. When figuring the deduction for contributions made to your own SEP-IRA, compensation is your net earnings from self-employment (defined in chapter 1), which takes into account both the following deductions.

- The deduction for one-half of your self-employment tax.
- The deduction for contributions to your own SEP-IRA.

The deduction for contributions to your own SEP-IRA and your net earnings depend on each other. For this reason, you determine the deduction for contributions to your own SEP-IRA indirectly by reducing the contribution rate called for in your plan. To do this, use the Rate Table for Self-Employed or the Worksheet for Self-Employed, whichever is appropriate for your plan’s contribution rate, in chapter 5. Then figure your maximum deduction by using the Deduction Worksheet for Self-Employed in chapter 5.

Carryover of Excess SEP Contributions

If you made SEP contributions that are more than the deduction limit (nondeductible contributions), you can carry over and deduct the difference in later years. However, the carryover, when combined with the contribution for the later year, is subject to the deduction limit for that year. If you also contributed to a defined benefit plan or defined contribution plan, see Carryover of Excess Contributions under Employer Deduction in chapter 4 for the carryover limit.

Excise tax. If you made nondeductible (excess) contributions to a SEP, you may be subject to a 10% excise tax. For information about the excise tax, see Excise Tax for Nondeductible (Excess) Contributions under Employer Deduction in chapter 4.

When To Deduct Contributions

When you can deduct contributions made for a year depends on the tax year on which the SEP is maintained.

- If the SEP is maintained on a calendar year basis, you deduct the contributions for the year within which the calendar year ends.
- If you file your tax return and maintain the SEP using a fiscal year or short tax year, you deduct contributions made for a year on your tax return for that year.

Example. You are a fiscal year taxpayer whose tax year ends June 30. You maintain a SEP on a calendar year basis. You deduct SEP contributions made for calendar year 2009 on your tax return for your tax year ending June 30, 2010.

Where To Deduct Contributions

Deduct the contributions you make for your common-law employees on your tax return. For example, sole proprietors deduct them on Schedule C (Form 1040), Profit or Loss From Business, or Schedule F (Form 1040), Profit or Loss From Farming; partnerships deduct them on Form 1065, U.S. Return of Partnership Income; and corporations deduct them on Form 1120, U.S. Corporation Income Tax Return, or Form 1120S, U.S. Income Tax Return for an S Corporation.

Sole proprietors and partners deduct contributions for themselves on line 28 of Form 1040, U.S. Individual Income Tax Return. (If you are a partner, contributions for yourself are shown on the Schedule K-1 (Form 1065), Partner’s Share of Income, Deductions, Credits, etc., you receive from the partnership.) Remember that sole proprietors and partners can’t deduct as a business expense contributions made to a SEP for themselves, only those made for their common-law employees.

Salary Reduction Simplified Employee Pension (SARSEP)

A SARSEP is a SEP set up before 1997 that includes a salary reduction arrangement. (See the Caution, next.) Under a SARSEP, your employee can choose to have you contribute part of their pay to their SEP-IRAs rather than receive it in cash. This contribution is called an “elective deferral” because employees choose (elect) to set aside the money, and they defer the tax on the money until it is distributed to them.

You are not allowed to set up a SARSEP after 1996. However, participants (including employees hired after 1996) in a SARSEP set up before 1997 can continue to have you contribute part of their pay to the plan. If you are interested in setting up a retirement plan that includes a salary reduction arrangement, see chapter 3.

Who can have a SARSEP? A SARSEP set up before 1997 is available to you and your eligible employees only if all the following requirements are met.

- At least 50% of your employees eligible to participate choose to make elective deferrals.
- You have 25 or fewer employees who were eligible to participate in the SEP at any time during the preceding year.
- The elective deferrals of your highly compensated employees meet the SARSEP ADP test.

SARSEP ADP test. Under the SARSEP ADP test, the amount deferred each year by each eligible highly compensated employee as a percentage of pay (the deferral percentage) cannot be more than 125% of the average deferral percentage (ADP) of all non-highly compensated employees eligible to participate. A highly compensated employee is defined in chapter 1.

Deferral percentage. The deferral percentage for an employee for a year is figured as follows.

The elective employer contributions (excluding certain catch-up contributions) paid to the SEP for the employee for the year.

Remember that sole proprietors and partners can’t deduct as a business expense contributions made to a SEP for themselves, only those made for their common-law employees.

The instructions for Form 5305A-SEP have a worksheet you can use to determine whether the elective deferrals of your highly compensated employees meet the SARSEP ADP test.

Employee compensation. For figuring the deferral percentage, compensation is generally the amount you pay to the employee for the year. Compensation includes the elective deferral and other amounts deferred in certain employee benefit plans. See Compensation in chapter 1. Elective deferrals under the SARSEP are included in figuring your employees’ deferral percentage even though they are not included in the income of your employees for income tax purposes.

Compensation of self-employed individuals. If you are self-employed, compensation is your net earnings from self-employment as defined in chapter 1.

Compensation does not include tax-free items (or deductions related to them) other than foreign earned income and housing cost amounts.

Choice not to treat deferrals as compensation. You can choose not to treat elective deferrals (and other amounts deferred in certain
employee benefit plans) for a year as compensation under your SARSEP.

Limit on Elective Deferrals

The most a participant can choose to defer for calendar year 2009 is the lesser of the following amounts:

1. 25% of the participant’s compensation (limited to $245,000 of the participant’s compensation in 2009 and unchanged in 2010).
2. $16,500 in 2009 and unchanged in 2010.

The $16,500 limit applies to the total elective deferrals the employee makes for the year to a SEP and any of the following:

- Cash or deferred arrangement (section 401(k) plan).
- Salary reduction arrangement under a tax-sheltered annuity plan (section 403(b) plan).
- SIMPLE IRA plan.

Catch-up contributions. A SARSEP can permit participants who are age 50 or over at the end of the calendar year to also make catch-up contributions. The catch-up contribution limit for 2009 is $5,500. This limit remains the same in 2010. Elective deferrals are not treated as catch-up contributions for 2009 until they exceed the elective deferral limit (the lesser of 25% of compensation or $16,500), the SARSEP ADP test limit discussed earlier, or the plan limit (if any). However, the catch-up contribution a participant can make for a year cannot exceed the lesser of the following amounts:

- The catch-up contribution limit.
- The excess of the participant’s compensation over the elective deferrals that are not catch-up contributions.

Catch-up contributions are not subject to the elective deferral limit (the lesser of 25% of compensation or $16,500 in 2009).

Overall limit on SEP contributions. If you also make nonelective contributions to a SEP-IRA, the total of the nonelective and elective contributions to that SEP-IRA cannot exceed the lesser of 25% of the employee’s compensation or $49,000 for 2009 (unchanged for 2010). The same rule applies to contributions you make to your own SEP-IRA. See Contribu- tion Limits, earlier.

Figuring the elective deferral. For figuring earlier. Also, you must give your employees information similar to that for Form W-2.

Reporting on Form W-2. Do not include elective deferrals in the “Wages, tips, other compensa- tion” box of Form W-2. You must, however, include them in the “Social security wages” and “Medicare wages and tips” boxes. You must also include them in box 12. Mark the “Retire- ment plan” checkbox in box 15. For more infor- mation, see the Form W-2 instructions.

Additional Taxes

The tax advantages of using SEP-IRAs for re- tirement savings can be offset by additional taxes that may be imposed for all the following actions:

- Making excess contributions.
- Making early withdrawals.
- Not making required withdrawals.

For information about these taxes, see chap- ter 1 in Publication 590. Also, a SEP-IRA may be disqualified, or an excise tax may apply, if the account is involved in a prohibited transaction, discussed next. Prohibited transaction. If an employee im- properly uses his or her SEP-IRA, such as by borrowing money from it, the employee has en- gated in a prohibited transaction. In that case, the SEP-IRA will no longer qualify as an IRA. For a list of prohibited transactions, see Prohibited Transactions in chapter 4. Effects on employee. If a SEP-IRA is dis- qualified because of a prohibited transaction, the assets in the account will be treated as having been distributed to the employee on the first day of the year in which the transaction occurred. The employee must include in income the fair market value of the assets (on the first day of the year) that is more than any cost basis in the account. Also, the employee may have to pay the additional tax for making early withdraw- als.

Distributions (Withdrawals)

As an employer, you cannot prohibit distribu- tions from a SEP-IRA. Also, you cannot make your contributions on the condition that any part of them must be kept in the account after you have made your contributions to the employee’s accounts.

Distributions are subject to IRA rules. Gener- ally, you or your employee must begin to receive distributions from a SEP-IRA by April 1 of the first year after the calendar year in which you or your employee reaches age 70½. However, under the Worker, Retiree, and Employer Re- covery Act of 2008, required minimum distribu- tions (RMDs) for 2009 are waived for IRAs, including SEP-IRAs. As a result, if you reach age 70½ in 2009 your first RMD, normally due by April 1, 2010 is waived. You are still required to take your RMD for 2010 on or before Decem- ber 31, 2010. For more information about IRA rules, including the tax treatment of distributions, rollovers, required distributions, and income tax withholding, see Publication 590.

Reporting and Disclosure Requirements

If you set up a SEP using Form 5305-SEP, you must give your eligible employees certain infor- mation about the SEP when you set it up. See Setting Up a SEP, earlier. Also, you must give your eligible employees a statement each year showing any contributions to their SEP-IRAs. You must also give them notice of any excess contributions. For details about other informa- tion you must give them, see the instructions for Form 5305-SEP or Form 5305A-SEP (for a sal- ary reduction SEP).

Even if you did not use Form 5305-SEP or Form 5305A-SEP to set up your SEP, you must give your employees information similar to that described above. For more information, see the instructions for either Form 5305-SEP or Form 5305A-SEP.
3. SIMPLE Plans

Topics
This chapter discusses:

- SIMPLE IRA plan
- SIMPLE 401(k) plan

Useful Items
You may want to see:

- Publications
  - 3998 Choosing a Retirement Solution for Your Small Business
  - 4284 SIMPLE IRA Plan Checklist
  - 4334 SIMPLE IRA Plans for Small Businesses
  - 4405 Have you had your Check-Up this year? for SIMPLE IRAs, SEPs, and Similar Retirement Plans

- Forms (and Instructions)
  - W-2 Wage and Tax Statement
  - 5304-SIMPLE Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)–Not for Use With a Designated Financial Institution
  - 5305-SIMPLE Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)–For Use With a Designated Financial Institution
  - 8880 Credit for Qualified Retirement Savings Contributions
  - 8881 Credit for Small Employer Pension Plan Startup Costs

SIMPLE IRA Plan
A SIMPLE IRA plan is a retirement plan that uses SIMPLE IRAs for each eligible employee. Under a SIMPLE IRA plan, a SIMPLE IRA must be set up for each eligible employee. For the definition of an eligible employee, see Who Can Participate in a SIMPLE IRA Plan, later.

Who Can Set Up a SIMPLE IRA Plan?
You can set up a SIMPLE IRA plan if you meet both the following requirements.

- You meet the employee limit.
- You do not maintain another qualified plan unless the other plan is for collective bargaining employees.

Employee limit. You can set up a SIMPLE IRA plan only if you had 100 or fewer employees who received $5,000 or more in compensation from you for the preceding year. Under this rule, you must take into account all employees employed at any time during the calendar year regardless of whether they are eligible to participate. Employees include self-employed individuals who received earned income and leased employees (defined in chapter 1).

Form 5304-SIMPLE or Form 5305-SIMPLE. If you require plan. You can use Form 5304-SIMPLE if you allow each which you make contributions, or to which benefits accrue, for service in any year beginning with the year the SIMPLE IRA plan becomes effective.

Grace period for employers who cease to meet the 100-employee limit. If you maintain the SIMPLE IRA plan for at least 1 year and you cease to meet the 100-employee limit in a later year, you will be treated as meeting it for the 2 calendar years immediately following the calendar year for which you lost it.

A different rule applies if you do not meet the 100-employee limit because of an acquisition, disposition, or similar transaction. Under this rule, the SIMPLE IRA plan will be treated as meeting the 100-employee limit for the year of the transaction and the 2 following years if both the following conditions are satisfied.

- Coverage under the plan has not significantly changed during the grace period.
- The SIMPLE IRA plan would have continued to qualify after the transaction if you had remained a separate employer.

Who Can Participate in a SIMPLE IRA Plan?
Eligible employee. Any employee who received at least $5,000 in compensation during any 2 years preceding the current calendar year and is reasonably expected to receive at least $5,000 during the current calendar year is eligible to participate. The term “employee” includes a self-employed individual who received earned income.

You can use less restrictive eligibility requirements (but not more restrictive ones) by eliminating or reducing the prior year compensation requirements, the current year compensation requirements, or both. For example, you can allow participation for employees who received at least $3,000 in compensation during any preceding calendar year. However, you cannot impose any other conditions for participating in a SIMPLE IRA plan.

Excludable employees. The following employees do not need to be covered under a SIMPLE IRA plan.

- Employees who are covered by a union agreement and whose retirement benefits were bargained for in good faith by the employees’ union and you.
- Nonresident alien employees who have received no U.S. source wages, salaries, or other personal services compensation from you.

Compensation. Compensation for employees is the total wages, tips, and other compensation that you pay, subtracting any contributions made by your small business to the plan. Compensation also includes the employer’s salary reduction contributions made under this plan and, if applicable, elective deferrals under section 401(k) plan, a SARSEP, or a section 403(b) annuity contract and compensation deferred under a section 401(k) plan required to be reported by the employer on Form W-2.

How To Set Up a SIMPLE IRA Plan
You can use Form 5304-SIMPLE or Form 5305-SIMPLE to set up a SIMPLE IRA plan. Each form is a model savings incentive match plan for employees (SIMPLE) plan document. Which form you use depends on whether you select a financial institution or your employees select the institution that will receive the contributions.

Use Form 5304-SIMPLE if you allow each plan participant to select the financial institution for receiving his or her SIMPLE IRA plan contributions. Use Form 5305-SIMPLE if you require that all contributions under the SIMPLE IRA plan be deposited initially at a designated financial institution.

The SIMPLE IRA plan is adopted when you have completed all appropriate boxes and
blanks on the form and you (and the designated financial institution, if any) have signed it. Keep the original form. Do not file it with the IRS.

**Other uses of the forms.** If you set up a SIMPLE IRA plan using Form 5304-SIMPLE or Form 5305-SIMPLE, you can use the form to satisfy other requirements, including the following:

- Meeting employer notification requirements for the SIMPLE IRA plan. Page 3 of Form 5304-SIMPLE and Page 3 of Form 5305-SIMPLE contain a Model Notification to Eligible Employees that provides the necessary information to the employee.
- Maintaining the SIMPLE IRA plan records and proving you set up a SIMPLE IRA plan for employees.

**Deadline for setting up a SIMPLE IRA plan.** You can set up a SIMPLE IRA plan effective on any date from January 1 through October 1 of a year, provided you did not previously maintain a SIMPLE IRA plan. The requirement does not apply if you are 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 your business comes into existence. If you previously maintained a SIMPLE IRA plan, you 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.

**Setting up a SIMPLE IRA.** SIMPLE IRAs are the individual retirement accounts or annuities into which the contributions are deposited. A SIMPLE IRA must be set up for each eligible employee. Forms 5305-S, SIMPLE Individual Retirement Account, and 5305-SA, SIMPLE Individual Retirement Custodial Account, are model trust and custodial account documents the participant and the trustee (or custodian) can use for this purpose.

A SIMPLE IRA cannot be a Roth IRA. Contributions to a SIMPLE IRA will not affect the amount an individual can contribute to a Roth or traditional IRA.

**Deadline for setting up a SIMPLE IRA.** A SIMPLE IRA must be set up for an employee before the first date by which a contribution is required to be deposited into the employee’s IRA. See Time limits for contributing funds, later, under Contribution Limits.

**Credit for startup costs.** You may be able to claim a tax credit for part of the ordinary and necessary costs of starting a SIMPLE IRA plan that first became effective in 2009. For more information, see Credit for startup costs under Reminders, earlier.

**Notification Requirement**

If you adopt a SIMPLE IRA plan, you must notify each eligible employee of the following information the beginning of the election period:

1. The employee’s opportunity to make or change a salary reduction choice under a SIMPLE IRA plan.
2. Your decision to make either matching contributions or nonelective contributions (discussed later).
3. A summary description provided by the financial institution.
4. Written notice that his or her balance can be transferred without cost or penalty if they use a designated financial institution.

**Election period.** The election period is generally the 60-day period immediately preceding January 1 of a calendar year (November 2 to December 31 of the preceding calendar year). However, the dates of this period are modified if you set up a SIMPLE IRA plan in mid-year (for example, on July 1) or if the 60-day period falls before the first day an employee becomes eligible to participate in the SIMPLE IRA plan.

A SIMPLE IRA plan can provide longer periods for permitting employees to enter into salary reduction agreements or to modify prior agreements. For example, a SIMPLE IRA plan can provide a 90-day election period instead of the 60-day period. Similarly, in addition to the 60-day period, a SIMPLE IRA plan can provide quarterly election periods during the 30 days before each calendar quarter, other than the first quarter of each year.

**Contribution Limits.** Contributions are made up of salary reduction contributions and employer contributions. You, as the employer, must make either matching contributions or nonelective contributions, defined later. No other contributions can be made to the SIMPLE IRA plan. These contributions, which you can deduct, must be made timely. See Time limits for contributing funds, later.

**Salary reduction contributions.** The amount the employee chooses to have you contribute to a SIMPLE IRA on his or her behalf cannot be more than $11,500 for 2009 (same for 2010). These contributions must be expressed as a percentage of the employee’s compensation unless you permit the employee to express them as a specific dollar amount. You cannot place restrictions on the contribution amount (such as limiting the contribution percentage), except to comply with the $11,500 (same for 2010) limit.

If you or an employee participates in any other qualified plan during the year and you or your employee have salary reduction contributions (elective deferrals) under those plans, the salary reduction contributions under a SIMPLE IRA plan also count toward the overall annual limit ($16,500 for 2009 and same for 2010) on exclusion of salary reduction contributions and other elective deferrals.

**Catch-up contributions.** A SIMPLE IRA plan can permit participants who are age 50 or over at the end of the calendar year to also make catch-up contributions. The catch-up contribution limit for 2009 and 2010 for SIMPLE IRA plans is $2,500. Salary reduction contributions are not treated as catch-up contributions for 2009 until they exceed $1,000 (same for 2010). However, the catch-up contribution a participant can make for a year cannot exceed the lesser of the following amounts:

- The catch-up contribution limit.
- The excess of the participant’s compensation over the salary reduction contributions that are not catch-up contributions.

**Employer matching contributions.** You are generally required to match each employee’s salary reduction contributions on a dollar-for-dollar basis up to 3% of the employee’s compensation. This requirement does not apply if you make nonelective contributions as discussed later.

**Example.** In 2009, your employee, John Rose, earned $25,000 and chose to defer 5% of his salary. Your net earnings from self-employment are $40,000, and you choose to contribute 10% of your earnings to your SIMPLE IRA plan. You make 3% matching contributions. The total contribution you make for John is $2,000, figured as follows.

- Salary reduction contributions ($25,000 x 0.05) .............. . $1,250
- Employer matching contributions ($25,000 x 0.05) .............. . $1,250

Total contributions ............................................ $2,500

The total contribution you make for yourself is $5,200, figured as follows.

- Salary reduction contributions ($40,000 x 0.10) .............. . $4,000
- Employer matching contributions ($40,000 x 0.10) .............. . $4,000

Total contributions ............................................ $8,000

**Lower percentage.** If you choose a matching contribution less than 3%, the percentage must be at least 1%. You must notify the employees of the lower match within a reasonable period of time before the 60-day election period (discussed earlier) for the calendar year. You cannot choose a percentage less than 3% for more than 2 years during the 5-year period that ends with (and includes) the year for which the choice is effective.

**Nonelective contributions.** Instead of matching contributions, you can choose to make nonelective contributions of 2% of compensation on behalf of each eligible employee who has at least $5,000 (or some lower amount you select) of compensation from you for the year. If you make this choice, you must make nonelective contributions whether or not the employee chooses to make salary reduction contributions. Only $245,000 of the employee’s compensation can be taken into account to figure the contribution limit in 2009 (same for 2010).

If you choose this 2% contribution formula, you must notify the employees within a reasonable period of time before the 60-day election period (discussed earlier) for the calendar year.

**Example 1.** In 2009, your employee, Jane Wood, earned $36,000 and chose to have you contribute 10% of her salary. Your net earnings from self-employment are $50,000, and you choose to contribute 10% of your earnings to your SIMPLE IRA. You make a 2% nonelective contribution. Both of you are under age 50. The total contribution you make for Jane is $4,320, figured as follows.
Salary reduction contributions
($36,000 × 10) ........................................ $36,000
2% non elective contributions
($36,000 × 0.02) .................................... 720
Total contributions ................................ $36,720

The total contribution you make for yourself is $8,000, figured as follows.

Salary reduction contributions
($50,000 × 10) ........................................ $50,000
2% non elective contributions
($50,000 × 0.02) .................................... 1,000
Total contributions ................................ $51,000

Example 2. Using the same facts as in Example 1, above, the maximum contribution you make for Jane or for yourself if each earned $75,000 is $13,000, figured as follows.

Salary reduction contributions (maximum amount allowed) ................................ $11,500
2% non elective contributions
($75,000 × 0.02) .................................... 1,500
Total contributions ................................ $13,000

Time limits for contributing funds. You must make the salary reduction contributions to the SIMPLE IRA within 30 days after the end of the month in which the amounts would otherwise have been payable to the employee in cash. You must make matching contributions or nonelective contributions by the due date (including extensions) for filing your federal income tax return for the year. Certain plans subject to Department of Labor rules may have an earlier due date for salary reduction contributions.

When To Deduct Contributions

You can deduct SIMPLE IRA contributions in the tax year within which the calendar year for which contributions were made ends. You can deduct contributions for a particular tax year if they are made for that tax year and are made by the due date (including extensions) of your federal income tax return for that year.

Example 1. Your tax year is the fiscal year ending June 30. Contributions under a SIMPLE IRA plan for the calendar year 2009 (including contributions made in 2009 before July 1, 2009) are deductible in the tax year ending June 30, 2010.

Example 2. You are a sole proprietor whose tax year is the calendar year. Contributions under a SIMPLE IRA plan for the calendar year 2009 (including contributions made in 2010 by April 15, 2010) are deductible in the 2009 tax year.

Where To Deduct Contributions

Deduct the contributions you make for your common-law employees on your tax return. For example, sole proprietors deduct them on Schedule C (Form 1040), Profit or Loss From Farming, or Schedule F (Form 1040), Profit or Loss From Business, or Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., you receive from the partnership.

Tax Treatment of Contributions

You can deduct your contributions and your employee's contributions and nonelective contributions from their gross income. SIMPLE IRA plan contributions are not subject to federal income tax withholding. However, salary reduction contributions are subject to social security, Medicare, and federal unemployment (FUTA) taxes. Matching and nonelective contributions are not subject to these taxes.

Reporting on Form W-2. Do not include SIMPLE IRA plan contributions in the "Wages, tips, other compensation box" of Form W-2. However, salary reduction contributions must be included in the boxes for social security and Medicare wages. Also include the proper code in box 12. For more information, see the Instructions for Forms W-2 and W-3.

Distributions (Withdrawals)

Distributions from a SIMPLE IRA are subject to IRA rules and generally are includible in income for the year received. Tax-free rollovers can be made from one SIMPLE IRA into another SIMPLE IRA. However, a rollover from a SIMPLE IRA to a non-SIMPLE IRA can be made tax free only after a 2-year participation in the SIMPLE IRA plan.

Generally, you or your employee must begin to receive distributions from a SIMPLE-IRA by April 1 of the first year after the calendar year in which you or your employee reaches age 70½. However, under the Worker, Retiree, and Employee Recovery Act of 2008, required minimum distributions (RMDs) for 2009 are waived for SIMPLE IRAs. As a result, if you reach 70½ in 2009 your first RMD, normally due by April 1, 2010, is waived. You still are required to take your RMD for 2010 on or before December 31, 2010.

Early withdrawals generally are subject to a 10% additional tax. However, the additional tax is increased to 25% if funds are withdrawn within 5 years of beginning participation.

More information. See Publication 590 for information about IRA rules, including those on the tax treatment of distributions, rollovers, required distributions, and income tax withholding.

More Information on SIMPLE IRA Plans

If you need more help to set up and maintain SIMPLE IRA plans, see the following IRS notice.

Notice 98-4. This notice contains questions and answers about the implementation and operation of SIMPLE IRA plans, including the election and notice requirements for these plans. See Notice 98-4, 1998-1 C.B. 269.

SIMPLE 401(k) Plan

You can adopt a SIMPLE plan as part of a 401(k) plan if you meet the 100-employee limit as discussed earlier under SIMPLE IRA Plan. A SIMPLE 401(k) plan is a qualified retirement plan and generally must satisfy the rules discussed under Qualification Rules in chapter 4, including the required distribution rules. However, a SIMPLE 401(k) plan is not subject to the nondiscrimination and top-heavy rules discussed in chapter 4 if the plan meets the conditions listed below.

1. Under the plan, an employee can choose to have you make salary reduction contributions for the year to a trust in an amount expressed as a percentage of the employee's compensation, but not more than $11,500 for 2009 (same for 2010). If permitted under the plan, an employee who is age 50 or over can also make a catch-up contribution of up to $2,500 for 2009 (same for 2010). See Catch-up contributions earlier under Contribution Limits.

2. You must make either:
   a. Matching contributions up to 3% of compensation for the year, or
   b. Nonelective contributions of 2% of compensation on behalf of each eligible employee who has at least $5,000 of compensation from you for the year.

3. No other contributions can be made to the SIMPLE 401(k) plan.

4. No contributions are made, and no benefits accrue, for services during the year under any other qualified retirement plan sponsored by you on behalf of any employee eligible to participate in the SIMPLE 401(k) plan.

5. The employee's rights to any contributions are nonforfeitable.

No more than $245,000 of the employee's compensation can be taken into account in figuring salary reduction contributions, matching contributions, and nonelective contributions in 2009 (same for 2010).

Employee notification. The notification requirement that applies to SIMPLE IRA plans also applies to SIMPLE 401(k) plans. See Notification Requirement in this chapter.

Credit for startup costs. You may be able to claim a tax credit for part of the ordinary and necessary costs of starting a SIMPLE 401(k) plan that first became effective in 2009. For more information, see Credit for startup costs under Reminders, earlier.

Note on Forms. Please note that Forms 5304-SIMPLE and 5305-SIMPLE can not be used to establish a SIMPLE 401(k) plan. To set...
up a SIMPLE 401(k) plan, see “Adopting a Writ-

ten Plan” in chapter 4.

4.

Qualified Plans

Topics
This chapter discusses:
• Kinds of plans
• Qualification rules
• Setting up a qualified plan
• Minimum funding requirement
• Contributions
• Employer deduction
• Elective deferrals (401(k) plans)
• Qualified Roth contribution program
• Distributions
• Prohibited transactions
• Reporting requirements

Useful Items
You may want to see:
Publications
- 575 Pension and Annuity Income
- 3066 Have you had your Check-Up for this year? for 401(k) Retirement Plans
- 3998 Choosing A Retirement Solution for Your Small Business
- 4222 401(k) Plans for Small Businesses
- 4530 Designated Roth Accounts Under a 401(k) or 403(b) Plan
- 4531 401(k) Plan Checklist

Forms (and Instructions)
- W-2 Wage and Tax Statement
- Schedule K-1 (Form 1065) Partner’s Share of Income, Deductions, Credits, etc.
- 1099-R Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
- 1040-U.S. Individual Income Tax Return
- Schedule C (Form 1040) Profit or Loss From Business
- Schedule F (Form 1040) Profit or Loss From Farming
- 5300 Application for Determination for Employee Benefit Plan

Kinds of Plans
There are two basic kinds of qualified plans—
defined contribution plans and defined benefit plans—and different rules apply to each. You can have more than one qualified plan, but your contributions to all the plans must not total more than the overall limits discussed under Contributions and Employer Deduction, later.

Defined Contribution Plan
A defined contribution plan provides an individ-
ual account for each participant in the plan. It provides benefits to a participant largely based on the amount contributed to that participant’s account. Benefits are also affected by any in-
come, expenses, gains, losses, and forfeitures of other accounts that may be allocated to an account. A defined contribution plan can be ei-
ther a profit-sharing plan or a money purchase pension plan.

Profit-sharing plan. Although it is called a “profit-sharing plan,” you do not actually have to
make a business profit for the year in order to make a contribution (except for yourself if you are self-employed as discussed under “Self-employed Individual” later). A profit-sharing plan can be set up to allow for discretionary employer contributions, meaning the amount contributed each year to the plan is not fixed. An employer may even make no con-
tribution to the plan for a given year.

The plan must provide a definite formula for allocating the contribution among the partici-
pants and for distributing the accumulated funds to the employees after they reach a certain age, after a fixed number of years, or upon certain other occurrences.

In general, you can be more flexible in mak-
ing contributions to a profit-sharing plan than to a money purchase pension plan (discussed next) or a defined benefit plan (discussed later).

Money purchase pension plan. Contributions to a money purchase pension plan are fixed and are not based on your business profits. For example, if the plan requires that contribu-
tions be 10% of the participants’ compensation without regard to whether you have profits (or the self-employed person has earned income), the plan is a money purchase pension plan. This applies even though the compensation of a self-employed individual as a participant is based on earned income derived from business profits.

Defined Benefit Plan
A defined benefit plan is any plan that is not a defined contribution plan. Contributions to a de-

fined benefit plan are based on what is needed to provide definitely determinable benefits to plan participants. Actuarial assumptions and computations are required to figure these contri-

butions. Generally, you will need continuing pro-

fessional help to have a defined benefit plan.

Qualification Rules
To qualify for the tax benefits available to quali-

fied plans, a plan must meet certain require-
ments (qualification rules) of the tax law. Generally, unless you write your own plan, the financial institution that provided your plan will take the continuing responsibility for meeting qualification rules that are later changed. The following is a brief overview of important qualifi-
cation rules that generally have not yet been discussed. It is not intended to be all-inclusive.

Generally, the following qualification rules also apply to a SIMPLE 401(k) retirement plan. A SIMPLE 401(k) plan is, however, not subject to the top-heavy plan rules and nondiscrimination rules if the plan sat-

ifies the provisions discussed in chapter 3 under SIMPLE 401(k) Plan.

Plan assets must not be diverted. Your plan must make it impossible for its assets to be used for, or diverted to, purposes other than the bene-
fit of employees and their beneficiaries. As a general rule, the assets cannot be diverted to the employer.
Minimum coverage requirement must be met. To be a qualified plan, a defined benefit plan must benefit at least the lesser of the following:

1. 50 employees.
2. The greater of:
   a. 40% of all employees, or
   b. Two employees.

If there is only one employee, the plan must benefit that employee.

Contributions or benefits must not discriminate.

Under the plan, contributions or benefits to be provided must not discriminate in favor of highly compensated employees.

Contributions and benefits must not be more than certain limits. Your plan must provide for contributions or benefits that are more than certain limits. The limits apply to the annual contributions and other additions to the account of a participant in a defined contribution plan and to the annual benefit payable to a participant in a defined benefit plan. These limits are discussed later in this chapter under Contributions.

Minimum vesting standard must be met.

Your plan must satisfy certain requirements regarding when benefits vest. A benefit is vested (you have a fixed right to it) when it becomes nonforfeitable. A benefit is nonforfeitable if it cannot be lost upon the happening, or failure to happen, of any event. Special rules apply to forfeited benefit amounts. In defined contribution plans, forfeitures can be allocated to the accounts of remaining participants in a nondiscriminatory way, or they can be used to reduce your contributions.

Forfeitures under a defined benefit plan cannot be used to increase the benefits any employee would otherwise receive under the plan. Forfeitures must be used instead to reduce employer contributions.

Participation. In general, an employee must be allowed to participate in your plan if he or she meets both the following requirements:

• Has reached age 21.
• Has at least 1 year of service (2 years if the plan is not a 401(k) plan and provides that after not more than 2 years of service the employee has a nonforfeitable right to all his or her accrued benefit).

A plan cannot exclude an employee because he or she has reached a specified age.

Leased employee. A leased employee, defined in chapter 1, who performs services for you (recipient of the services) is treated as your employee for plan qualification rules. These rules include those in all the following areas.

• Nondiscrimination in coverage, contributions, and benefits.
• Minimum age and service requirements.
• Vesting.
• Limits on contributions and benefits.
• Top-heavy plan requirements.

Contributions or benefits provided by the leasing organization for services performed for you are treated as provided by you.

Benefit payment must begin when required. Your plan must provide that, unless the participant chooses otherwise, the payment of benefits to the participant must begin within 60 days after the close of the latest of the following periods:

• The plan year in which the participant reaches the earlier of age 65 or the normal retirement age specified in the plan.
• The plan year in which the 10th anniversary of the year in which the participant began participating in the plan occurs.
• The plan year in which the participant separates from service.

Early retirement. Your plan can provide for payment of retirement benefits before the normal retirement age. If your plan offers an early retirement benefit, a participant who separates from service before satisfying the early retirement age requirement is entitled to that benefit if he or she meets both the following requirements:

• Satisfies the service requirement for the early retirement benefit.
• Separates from service with a nonforfeitable right to an accrued benefit. The benefit, which may be actuarially reduced, is payable when the early retirement age requirement is met.

Required minimum distributions. Special rules require minimum annual distributions from qualified plans, generally beginning after age 70 1/2. See Required Distributions, under Distributions, later.

Survivor benefits. Defined benefit and money purchase pension plans must provide automatic survivor benefits in both the following forms:

• A qualified joint and survivor annuity for a vested participant who does not die before the annuity starting date.
• A qualified pre-retirement survivor annuity for a vested participant who dies before the annuity starting date and who has a surviving spouse.

The automatic survivor benefit also applies to any participant under a profit-sharing plan unless all the following conditions are met:

• The participant does not choose benefits in the form of a life annuity.
• The plan pays the full vested account balance to the participant’s surviving spouse (or other beneficiary if the surviving spouse consents or if there is no surviving spouse) if the participant dies.
• The plan is not a direct or indirect transfer of a plan loan must provide automatic survivor benefits.

Loan secured by benefits. If survivor benefits are required for a spouse under a plan, he or she must consent to a loan that uses as security the accrued benefits in the plan.

Waiver of survivor benefits. Each plan participant may be permitted to waive the joint and survivor annuity or the pre-retirement survivor annuity (or both), but only if the participant has the written consent of the spouse. The plan also must allow the participant to withdraw the waiver. The spouse’s consent must be witnessed by a plan representative or notary public.

Waiver of 30-day waiting period before annuity starting date. A plan may permit a participant to waive (with spousal consent) the 30-day minimum waiting period after a written explanation of the terms and conditions of a joint and survivor annuity is provided to each participant.

The waiver is allowed only if the distribution begins more than 7 days after the written explanation is provided.

Involuntary cash-out of benefits not more than dollar limit. A plan may provide for the immediate distribution of the participant’s benefits under the plan if the present value of the benefit is not greater than $5,000.

However, the distribution cannot be made after the annuity starting date unless the participant and the spouse or surviving spouse of a participant who died (if automatic survivor benefits are required for a spouse under the plan) consents in writing to the distribution. If the present value is greater than $5,000, the plan must have the written consent of the participant and the spouse or surviving spouse (if automatic survivor benefits are required for a spouse under the plan) for any immediate distribution of the benefit.

Benefits attributable to rollover contributions and earnings on them can be ignored in determining the present value of these benefits.

For distributions made on or after March 28, 2005, a plan must provide for the automatic rollover of any cash-out distribution of more than $1,000 to an individual retirement account, unless the participant chooses otherwise. A section 402(f) notice must be sent prior to an involuntary cash-out of an eligible rollover distribution. See Section 402(f) Notice under Distributions, later, for more details.

Consolidation, merger, or transfer of assets or liabilities. Your plan must provide that, in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each participant would (if the plan then terminated) receive a benefit equal to or more than the benefit he or she would have been entitled to just before the merger, etc. (if the plan had then terminated).

Benefits must not be assigned or alienated. Your plan must provide that its benefits cannot be assigned to or alienated from anyone other than plan participants or beneficiaries.

Exception for certain loans. A loan from the plan (not from a third party) to a participant or beneficiary is not treated as an assignment or alienation if the loan is secured by the participant’s accrued nonforfeitable benefit and is exempt from the tax on prohibited transactions under section 4975(d)(1) or would be exempt if the participant were a disqualified person. A disqualified person is defined later in this chapter under Prohibited Transactions.
Exception for QDRO. Compliance with a QDRO (qualified domestic relations order) does not result in a prohibited assignment or alienation of benefits.

Payments to an alternate payee under a QDRO before the participant attains age 59½ are not subject to the 10% additional tax that would otherwise apply under certain circumstances. The interest of the alternate payee is not taken into account in determining whether a distribution to the participant is a lump-sum distribution. Benefits distributed to an alternate payee under a QDRO can be rolled over tax free to an individual retirement account or to an individual retirement annuity.

No benefit reduction for social security increases. Your plan must not permit a benefit reduction for a post-separation increase in the social security benefit level or wage base for any participant or beneficiary who is receiving benefits under your plan, or who is separated from service and has nonforfeitable rights to benefits. This rule also applies to plans supplementing the benefits provided by other federal or state laws.

Elective deferrals must be limited. If your plan provides for elective deferrals, it must limit those deferrals to the amount in effect for that particular year. See Limit on Elective Deferrals, later in this chapter.

Top-heavy plan requirements. A top-heavy plan is one that mainly favors partners, sole proprietors, and other key employees. A plan is top-heavy for a plan year if, for the preceding plan year, the total value of accrued benefits or account balances of key employees is more than 60% of the total value of accrued benefits or account balances of all employees. Additional requirements apply to a top-heavy plan primarily to provide minimum benefits or contributions for non-key employees covered by the plan.

Most qualified plans, whether or not top-heavy, must contain provisions that meet the top-heavy requirements and will take effect in plan years in which the plans are top-heavy. These qualification requirements for top-heavy plans are explained in section 416 and its regulations.

SIMPLE and safe harbor 401(k) plan exception. The top-heavy plan requirements do not apply to SIMPLE 401(k) plans, discussed earlier in chapter 3, or to safe harbor 401(k) plans that consist solely of safe harbor contributions, discussed later in this chapter. QACAs (discussed later) also are not subject to top-heavy requirements.

Setting Up a Qualified Plan

There are two basic steps in setting up a qualified plan. First, you adopt a written plan. Then you invest the plan assets.

You, the employer, are responsible for setting up and maintaining the plan.

If you are self-employed, it is not necessary to have employees besides yourself to sponsor and set up a qualified plan. If you have employees, see Participation, under Qualification Rules, earlier.

Set-up deadline. To take a deduction for contributions for a tax year, your plan must be set up (adopted) by the last day of that year (December 31 for calendar year employers).

Credit for startup costs. You may be able to claim a tax credit for part of the ordinary and necessary costs of starting a qualified plan that first became effective in 2009. For more information, see Credit for startup costs under Re-minders, earlier.

Adopting a Written Plan

You must adopt a written plan. The plan can be an IRS-approved master or prototype plan offered by a sponsoring organization. Or it can be an individually designed plan.

Written plan requirement. To qualify, the plan you set up must be in writing and must be communicated to your employees. The plan's provisions must be stated in the plan. It is not sufficient for the plan to merely refer to a requirement of the Internal Revenue Code.

Master or prototype plans. Most qualified plans follow a standard form of plan (a master or prototype plan) approved by the IRS. Master and prototype plans are plans made available by plan providers for adoption by employers (including self-employed individuals). Under a master plan, a single trust or custodial account is established, as part of the plan, for the joint use of all adopting employers. Under a prototype plan, a separate trust or custodial account is established for each employer.

Plan providers. The following organizations generally can provide IRS-approved master or prototype plans.

• Banks (including some savings and loan associations and federally insured credit unions).
• Trade or professional organizations.
• Insurance companies.
• Mutual funds.

Individually designed plan. If you prefer, you can set up an individually designed plan to meet specific needs. Although advanced IRS approval is not required, you can apply for approval by paying a fee and requesting a determination letter. You may need professional help for this. See Rev. Proc. 2010-6, 2010-1 I.R.B., available at www.irs.gov/irb/2010-01_IRB/ar11.html, that may help you decide whether to apply for approval.

Minimum Funding Requirement

In general, if your plan is a money purchase pension plan or a defined benefit plan, you must actually pay enough into the plan to satisfy the minimum funding standard for each year. Determining the amount needed to satisfy the minimum funding standard for a defined benefit plan is complicated, and you should seek professional help in order to meet these contribution requirements. The amount is based on what should be contributed under the plan formula using actuarial assumptions and formulas. For information on this funding requirement, see section 412 and its regulations.

Quarterly installments of required contributions. If your plan is a defined benefit plan subject to the minimum funding requirements, you must make quarterly installment payments.

Investing Plan Assets

In setting up a qualified plan, you arrange how the plan's funds will be used to build its assets.

• You can establish a trust or custodial account to invest the funds.
• You, the trust, or the custodial account can buy an annuity contract from an insurance company. Life insurance can be included only if it is incidental to the retirement benefits.

You set up a trust by a legal instrument (written document). You may need professional help to do this.

You can set up a custodial account with a bank, savings and loan association, credit union, or other person who can act as the plan trustee.

You do not need a trust or custodial account, although you can have one, to invest the plan's funds in annuity contracts or face-amount certificates. If anyone other than a trustee holds them, however, the contracts or certificates must state they are not transferable.

Other plan requirements. For information on other important plan requirements, see Qualification Rules, earlier in this chapter.
of the required contributions. If you do not pay the full installments timely, you may have to pay interest on any underpayment for the period of the underpayment.

**Due dates.** The due dates for the installments are 15 days after the end of each quarter. For a calendar-year plan, the installments are due April 15, July 15, October 15, and January 15 (of the following year).

**Installment percentage.** Each quarterly installment must be 25% of the required annual payment.

**Extended period for making contributions.** Additional contributions required to satisfy the minimum funding requirement for a plan year will be considered timely if made by 8½ months after the end of that year.

### Limits on Contributions and Benefits

Your plan must provide that contributions or benefits cannot exceed certain limits. The limits differ depending on whether your plan is a defined contribution plan or a defined benefit plan.

#### Defined benefit plan.

For 2009, the annual benefit for a participant under a defined benefit plan cannot exceed the lesser of the following amounts.

1. 100% of the participant’s average compensation for his or her highest 3 consecutive calendar years.
2. $195,000 (same for 2010).

#### Defined contribution plan.

For 2009, a defined contribution plan’s annual contributions and other additions (excluding earnings) to the account of a participant cannot exceed the lesser of the following amounts.

1. 100% of the participant’s compensation.
2. $49,000 (same for 2010).

Catch-up contributions (discussed later under Limit on Elective Deferrals) are not subject to the above limit.

### Employee Contributions

Participating employees may be permitted to contribute nondeductible contributions to a plan in addition to your contributions. These contributions are not deductible, the earnings on them are tax free until distributed in later years. Also, these contributions must satisfy the nondiscrimination test of section 401(m).

**Self-employed individual.** You can make deductible contributions for a calendar year up to the due date of your return (plus extensions) for that year. You generally apply your plan contributions to your investments. If you have a net loss from self-employment, you cannot make contributions for yourself for the year, even if you can contribute for common-law employees based on their compensation.

### Employer Contributions

There are certain limits on the contributions and other annual additions you can make each year for plan participants. There are also limits on the amount you can deduct. See Deduction Limits, later.

### Employer's promissory note.

Your promissory note made out to the plan is not a payment that qualifies for the deduction. Also, issuing this note is a prohibited transaction subject to tax. See Prohibited Transactions, later.

### Employer Deduction

You can usually deduct, subject to limits, contributions you make to a qualified plan, including those made for your own retirement. The contributions (and earnings and gains on them) are generally tax free until distributed by the plan.

### Deduction limits

The deduction limit for your contributions to a qualified plan depends on the kind of plan you have.

#### Defined contribution plan.

The deduction for contributions to a defined contribution plan (profit-sharing plan or money purchase pension plan) cannot be more than 25% of the compensation paid (or accrued) during the year to your eligible employees participating in the plan. If you are self-employed, you must reduce this limit in figuring the deduction for contributions you make for your own account. See Deduction Limit for Self-Employed Individuals, later.

#### When figuring the deduction limit, the following rules apply.

- Elective deferrals (discussed later) are not subject to the limit.
- Compensation includes elective deferrals.
- The maximum compensation that can be taken into account for each employee in 2009 is $245,000 (same for 2010).

### Table 4–1. Carryover of Excess Contributions Illustrated—Profit-Sharing Plan (000’s omitted)

<table>
<thead>
<tr>
<th>Year</th>
<th>Participants’ compensation</th>
<th>Share of required contribution (10% of current year compensation)</th>
<th>Deductible limit for current year (25% of compensation)</th>
<th>Excess contribution carryover used</th>
<th>Excess deduction carryovers available at end of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>$1,000</td>
<td>$100</td>
<td>$250</td>
<td>$100</td>
<td>$0</td>
</tr>
<tr>
<td>2007</td>
<td>400</td>
<td>165</td>
<td>100</td>
<td>100</td>
<td>0</td>
</tr>
<tr>
<td>2008</td>
<td>500</td>
<td>100</td>
<td>125</td>
<td>100</td>
<td>25</td>
</tr>
<tr>
<td>2009</td>
<td>600</td>
<td>100</td>
<td>150</td>
<td>100</td>
<td>40</td>
</tr>
</tbody>
</table>

*There were no carryovers from years before 2006.*
Defined benefit plans. The deduction for contributions to a defined benefit plan is based on actuarial assumptions and computations. Consequently, an actuary must figure your de-
duct limit.

In figuring the deduction for contribu-
tions, you cannot take into account any contributions or benefits that are more than the limits discussed earlier under Limits on Contributions and Benefits. However, your de-
duction for contributions to a defined benefit plan can be as much as the plan’s unfunded current liability.

Deduction Limit for Self-Employed Individuals

If you make contributions for yourself, you need to make a special computation to figure your maximum deduction for these contributions. Compensation is your net earnings from self-employment, defined in chapter 1. This defi-
nition takes into account both the following items.

• The deduction for one-half of your self-employment tax.
• The deduction for contributions on your behalf to the plan.

The deduction for your own contributions and your net earnings depend on each other. For this reason, you determine the deduction for your own contributions indirectly by reducing the con-
tribution rate called for in your plan. To do this, use either the Rate Table for Self-Employed or the Rate Worksheet for Self-Employed in chap-
ter 5. Then figure your maximum deduction by using the Deduction Worksheet for Self-Employed in chapter 5.

Where To Deduct Contributions

Deduct the contributions you make for your common-law employees on your tax return. For example, sole proprietors deduct them on Schedule C (Form 1040), Profit or Loss From Business, or Schedule F (Form 1040), Profit or Loss From Farming; partnerships deduct them on Form 1065, U.S. Return of Partnership In-
come; and corporations deduct them on Form 1120, U.S. Corporation Income Tax Return, or Form 1120S, U.S. Income Tax Return for an S Corporation.

Sole proprietors and partners deduct contrib-
utions for themselves on line 28 of Form 1040, U.S. Individual Income Tax Return. (If you are a partner, contributions for yourself are shown on the Schedule K-1 (Form 1065), Partner’s Share of Income, Deduction, Credits, etc., you get from the partnership.)

Carryover of Excess Contributions

If you contribute more to the plans than you can deduct for the year, you can carry over and deduct the difference in later years, combined with your contributions for those years. Your combined deduction in a later year is limited to 25% of the participating employees’ compensa-
tion for that year. For purposes of this limit, a

SEP is treated as a profit-sharing (defined con-
tribution) plan. However, this percentage limit must be reduced to figure your maximum deduc-
tion for contributions you make for yourself. See Deduction Limit for Self-Employed Individuals, earlier. The amount you carry over and deduct may be subject to the excise tax discussed next.

Table 4-1 on the previous page illustrates the carryover of excess contributions to a profit-sharing plan.

Excise Tax for Nondeductible (Excess) Contributions

If you contribute more than your deduction limit to a retirement plan, you have made nondeduct-
able contributions and you may be liable for an excise tax. In general, a 10% excise tax applies to nondeductible contributions made to qualified pension and profit-sharing plans and to SEPs.

Special rule for self-employed individuals.

The 10% excise tax does not apply to any contri-
bution made to meet the minimum funding re-
quirements in a money purchase pension plan or a defined benefit plan. Even if that contri-
bution is more than your earned income from the trade or business for which the plan is set up, the difference is not subject to this excise tax. See Minimum Funding Requirement, earlier.

Reporting the tax.

You must report the tax on your nondeductible contributions on Form 5330. Form 5330 includes a computation of the tax. See the separate instructions for completing the form.

Elective Deferrals (401(k) Plans)

Your qualified plan can include a cash or de-
derred arrangement under which participants can choose to have you contribute part of their before-tax compensation to the plan rather than receive the compensation in cash. A plan with this type of arrangement is popularly known as a “401(k) plan.” (As a self-employed individual participating in the plan, you can contribute part of your before-tax net earnings from the busi-
ness.) This contribution is called an “elective deferral” because participants choose (elect) to defer receipt of the tax.

In general, a qualified plan can include a cash or deferred arrangement only if the quali-
ﬁed plan is one of the following plans.

• A proﬁt-sharing plan.
• A money purchase pension plan in exist-
tence on June 27, 1974, that included a salary reduction arrangement on that date.

Partnership. A partnership can have a 401(k) plan.

Restriction on conditions of participation.

The plan cannot require, as a condition of par-
ticipation, that an employee complete more than 1 year of service.

Matching contributions. If your plan permits, you can make matching contributions for an employee who makes an elective deferral to

your 401(k) plan. For example, the plan might provide that you will contribute 50 cents for each dollar your self-employed employees choose to defer under your 401(k) plan.

Nonelective contributions. You can also make contributions (other than matching contri-
butions) for your participating employees with-
out giving them the choice to take cash instead. These are called nonelective contributions.

Employee compensation limit. No more than $245,000 of the employee’s compensation can be taken into account when figuring contri-
butions other than elective deferrals in 2009. This limit remains the same in 2010.

SIMPLE 401(k) plan. If you had 100 or fewer employees who earned $5,000 or more in com-
ensation during the preceding year, you may be able to set up a SIMPLE 401(k) plan. A SIMPLE 401(k) plan is not subject to the non-dis-
crimination and top-heavy plan requirements discussed earlier under Qualification Rules. For details about SIMPLE 401(k) plans, see SIMPLE 401(k) Plan in chapter 3.

Distributions. Certain rules apply to distribu-
tions from 401(k) plans. See Distributions From 401(k) Plans, later.

Limit on Elective Deferrals

There is a limit on the amount an employee can defer each year under these plans. This limit applies without regard to community property laws. Your plan must provide that your employ-
ees cannot defer more than the limit that applies for a particular year. For 2009, the basic limit on elective deferrals is $16,500. This amount re-
mains the same in 2010. This limit applies to all salary reduction contributions and elective de-
errals. If, in conjunction with other plans, the deferral limit is exceeded, the difference is in-
cluded in the employee’s gross income.

Catch-up contributions.

A 401(k) plan can permit participants who are age 50 or over at the end of the calendar year to also make catch-up contributions. The catch-up contribution limit for 2009 is $5,500. This amount remains the same in 2010. Elective deferrals are not treated as catch-up contributions for 2009 until they ex-
ceed the $16,500 limit, the ADP test limit of section 401(a)(3), or the plan limit (if any). How-
over, the catch-up contribution a participant can make for a year cannot exceed the lesser of the following amounts.

• The catch-up contribution limit.
• The excess of the participant’s compensa-
tion over the elective deferrals that are not catch-up contributions.

Treatment of contributions.

Your contribu-
tions to your own 401(k) plan are deductible by you for the year they are contributed to the plan. Matching or nonelective contribu-
tions made to the plan are also deductible by you in the year of contribution. Your employees’ elective deferrals other than designated Roth contributions are tax free until distributed from the plan. Elective deferrals are included in wages for social security, Medicare, and federal unemployment (FUTA) tax.


**Automatic Enrollment**

Your 401(k) plan can have an automatic enrollment feature. Under this feature, you can automatically reduce an employee's pay by a fixed percentage and contribute that amount to the 401(k) plan on his or her behalf unless the employee affirmatively chooses not to have his or her compensation reduced by a different percentage. These contributions are elective deferrals. An automatic enrollment feature will encourage employees to save for retirement and will help your plan pass nondiscrimination testing (if applicable). For more information, see Publication 4674, Automatic Enrollment 401(k) Plans for Small Businesses.

**Eligible automatic contribution arrangement.** Under an eligible automatic contribution arrangement (EACA), a participant is treated as having elected to have the employer make contributions in an amount equal to a uniform percentage of compensation. This automatic election will remain in place until the participant specifically elects not to have such deferral percentage made (or elects a different percentage). There is no required deferral percentage.

**Withdrawals.** Under an EACA, you may allow low participants to withdraw their automatic contributions to the plan if certain conditions are met:

- The participant must elect the withdrawal no later than 90 days after the date of the first elective contributions under the EACA.
- The participant must withdraw the entire amount of EACA default contributions, including any earnings thereon.

If the plan allows withdrawals under the EACA, the amount of the withdrawal other than the amount of any designated Roth contributions must be included in the employee's gross income for the tax year in which the distribution is made. The additional 10% tax on early distributions will not apply to the distribution.

**Notice requirement.** Under an EACA, employees must be given written notice of the terms of the EACA within a reasonable period of time before each plan year. The notice must be written in a manner calculated to be understood by the average employee and be sufficiently accurate and comprehensive in order to apprise the employee of his or her rights and obligations under the EACA. The notice must include an explanation of the employee's right to elect not to have elective contributions made on his or her behalf, or to elect a different percentage, and the employee must be given a reasonable period of time after receipt of the notice before the first elective contribution is made. The notice also must explain how contributions will be invested in the absence of an investment election by the employee.

**Qualified automatic contribution arrangement.** A qualified automatic contribution arrangement (QACA) is a new type of safe harbor arrangement where the contributions are elective deferrals. An automatic enrollment feature must apply to an employee and through the plan whenever the employee of his or her rights and obligations under the QACA must receive written notice of their rights and obligations under the QACA within a reasonable period before each plan year. The notice must be written in a manner calculated to be understood by the average employee, and it must be accurate and comprehensive. The notice must explain their right to elect not to have elective contributions made on their behalf, or to have contributions made at a different percentage than the default percentage. Additionally, the notice must explain how contributions will be invested in the absence of an investment election by the employee. The employee must have a reasonable period of time after receiving a notice to make such contribution and investment elections prior to the first contributions under the QACA.

**Treatment of Excess Deferrals**

If the total of an employee's deferrals is more than the limit for 2009, the employee can have the difference (called an excess deferral) paid out of any of the plans that permit these distributions. He or she must notify the plan by April 15, 2010, or an earlier date specified in the plan, of the amount to be paid from each plan. The plan must then pay the employee that amount by April 15, 2010. Excess withdrawn by April 15. If the employee takes out the excess deferral by April 15, 2010, it is not reported again by including it in the employee's gross income for 2010. However, any income earned on the excess deferral taken out is taxable in the tax year in which it is taken out. The distribution is not subject to the additional 10% tax on early distributions.

If the employee takes out part of the excess deferral and the income on it, the distribution is treated as made proportionately from the excess deferral and the income. Even if the employee takes out the excess deferral by April 15, the amount will be considered for purposes of nondiscrimination testing requirements of the plan, unless the distributed amount is for a non-highly compensated employee who participates in only one employer’s 401(k) plan or plans.

**Excess not withdrawn by April 15.** If the employee does not take out the excess deferral by April 15, 2010, the excess, though taxable in 2009, is not included in the employee's gross income for 2010. The excess deferral left in the plan is taxed twice, once when contributed and again when distributed. Also, if the entire deferral is allowed to stay in the plan, the plan may not be a qualified plan.

**Reporting corrective distributions on Form 1099-R.** Report corrective distributions of excess deferrals (including any earnings) on Form 1099-R. For specific information about reporting corrective distributions, see the Instructions for Forms 1099-R and 5498.

**Tax on excess contributions of highly compensated employees.** The law provides tests to detect discrimination in a plan. If tests, such as the actual deferral percentage test (ADP test)
(see section 401(k)(3)) and the actual contribu-
tion percentage test (ACP test) (see section
401(m)(2)), show that contributions for highly
compensated employees are more than the test
limits for these contributions, the employer may
have to pay a 10% excise tax. Report the tax on
Form 5330. The ADP test does not apply to a
safe harbor 401(k) plan (discussed below) nor to
a QACA. Also, the ACP test does not apply to
these plans if certain additional requirements
are met.

The tax for the year is 10% of the excess
contributions for the plan year ending in your tax
year. Excess contributions are elective deferral-
s, employee contributions, or employer
matching or nonelective contributions that are
more than the amount permitted under the ADP
test or the ACP test.

See Regulations sections 1.401(k)-2 and
1.401(m)-2 for further guidance relating to the
nondiscrimination rules under sections 401(k) and
401(m).

If the plan fails the ADP or ACP test, and the failure is not corrected by the
end of the next plan year, the plan can be disqualified.

Safe harbor 401(k) plan.

If you meet the requirements for a safe harbor
401(k) plan, you do not have to satisfy the ADP
test, nor the ACP test, if certain additional re-
quirements are met. For your plan to be a safe
harbor plan, you must meet the following condi-
tions.

1. Matching or nonelective contributions. You must make matching or nonelective contributions according to one of the fol-
lowing formulas.

a. Matching contributions. You must make matching contributions according to the following rules.

i. You must contribute an amount
equal to 100% of each non-highly compensated employee’s elective deferrals, up to 3% of compen-
sation.

ii. You must contribute an amount
equal to 50% of each non-highly compensated employee’s elective deferrals, from 3% up to 5% of com-
pensation.

iii. The rate of matching contributions
for highly compensated employees, including yourself, must not exceed the rates for non-highly compen-
sated employees.

b. Nonelective contributions. You must
make nonelective contributions, without regard to whether the employee made elective deferrals, on behalf of all
non-highly compensated employees eli-
gible to participate in the plan, equal to at least 3% of the employee’s compen-
sation.

These mandatory matching and nonelec-
tive contributions must be immediately 100%
vested and are subject to special withdrawal
restrictions.

2. Notice requirement. You must give eligi-
ble employees written notice of their rights
and obligations with regard to contributions
under the plan, within a reasonable period
before the plan year.

The other requirements for a 401(k) plan,
including withdrawal and vesting rules, must
also be met for your plan to qualify as a safe
harbor 401(k) plan.

Qualified Roth
Contribution Program

Under this program an eligible employee can
designate all or a portion of his or her elective deferrals as after-tax Roth contributions. Elec-
tive deferrals designated as Roth contributions
must be maintained in a separate Roth account.

However, unlike other elective deferrals, desig-
ned Roth contributions are not excluded from
delegates’ gross income, but qualified distribu-
tions from a Roth account are excluded from
delegates’ gross income.

Elective Deferrals

Under a qualified Roth contribution program, the
amount of elective deferrals that an employee
may designate as a Roth contribution is limited to
the maximum amount of elective deferrals excludable from gross income for the year
($16,500 for 2009 and 2010, $22,000 if age 50 or over) less the total amount of the employee’s
elective deferrals not designated as Rothcontri-
butions.

Designated Roth deferrals are treated the
same as pre-tax elective deferrals for most pur-
poses, including:

• The annual individual elective deferral limit
(total of all designated Roth contributions and
traditional, pre-tax elective deferrals)—$16,500 for 2009 (same for 2010),
with an additional $5,500 if age 50 or over
(same for 2010),

• Determining the maximum employee
and employer annual contributions—the lesser of 100% of compensation or $49,000
for 2009 (same for 2010) and subject to
cost-of-living adjustment thereafter,

• Nondiscrimination testing,

• Required distributions, and

• Elective deferrals not taken into account for purposes of deduction limits.

Qualified Distributions

A qualified distribution is a distribution that is
made after the employee’s nonexclusion period
and:

• On or after the employee attains age
591/2,

• On account of the employee’s being dis-
abled, or

• On or after the employee’s death.

An employee’s nonexclusion period for a plan
is the 5-tax-year period beginning with the ear-
lier of the following tax years:

• The first tax year in which the employee
made a designated Roth contribution to the
plan, or

• If a rollover contribution was made to the
employee’s designated Roth account from
a designated Roth account previously es-
tablished for the employee under another
plan, then the first tax year the employee
made a designated Roth contribution to the
previously established account.

Since 2006 was the first year an employee
could make designated Roth contributions, the
earliest a qualified distribution can be made is
January 1, 2011.

Rollover. A distribution from a designated
Roth account can only be rolled over to another
designated Roth account or a Roth IRA. Rol-
lover amounts do not apply toward the annual
deferral limit.

Reporting Requirements

You must report a contribution to a Roth account
on Form W-2 and a distribution from a Roth
account on Form 1099-R. See the Form W-2
and 1099-R instructions for detailed information.

Distributions

Amounts paid to plan participants from a quali-
ﬁed plan are called distributions. Distributions
may be nonperiodic, such as lump-sum distribu-
tions, or periodic, such as annuity payments.
Also, certain loans may be treated as distribu-
tions. See Loans Treated as Distributions in Publication 575.

Required Distributions

A qualiﬁed plan must provide that each partici-
pat will either:

• Receive his or her entire interest (beneﬁts)
in the plan by the required beginning date
(defined later), or

• Begin receiving regular periodic distribu-
tions by the required beginning date in an-
nual amounts calculated to distribute the
participant’s entire interest (beneﬁts) over
his or her life expectancy or over the joint
life expectancy of the participant and the
designated beneficiary (or over a shorter
period).

These distribution rules apply individually
to each qualiﬁed plan. You cannot satisfy the re-
quirement for one plan by taking a distribution
from another. The plan must provide that these
rules override any inconsistent distribution op-
tions previously offered.

Minimum distribution. If the account balance
of a qualiﬁed plan participant is to be distribu-
ted (other than as an annuity), the plan administra-
tor must ﬁgure the minimum amount required to
be distributed each distribution calendar year.
This minimum is ﬁgured by dividing the account
balance by the applicable life expectancy. For details on figuring the minimum distribution, see Tax on Excess Accumulation in Publication 575.

Required beginning date. Generally, each participant must receive his or her entire benef- its in the plan or begin to receive periodic distri- butions of benefits from the plan by the required beginning date.

A participant must begin to receive distribu- tions from his or her qualified retirement plan by April 1 of the first year after the later of the following years.

1. Calendar year in which he or she reaches age 70½.
2. Calendar year in which he or she retires from employment with the employer main-
   taining the plan.

However, the plan may require the participant to begin receiving distributions by April 1 of the year in which the participant reaches age 70½ even if the participant has not retired.

If the participant is a 5% owner of the em- ployer maintaining the plan, the participant must begin receiving distributions by April 1 of the first year after the calendar year in which the partici- pant reached age 70½. For more information, see Tax on Excess Accumulation in Publication 575.


Distributions after the starting year. The distribution required to be made by April 1 is treated as a distribution for the starting year. (The starting year is the year in which the partici- pant meets (1) or (2) above, whichever applies.) After the starting year, the participant must re- ceive the required distribution for each year by December 31 of that year. If no distribution is made in the starting year, required distributions for 2 years must be made in the next year (one by April 1 and one by December 31).

Distributions after participant’s death. See Publication 575 for the special rules cover- ing distributions made after the death of a par- ticipant.

Distributions From 401(k) Plans

Generally, distributions cannot be made until one of the following occurs.

• The employee retires, dies, becomes dis- abled, or otherwise severs employment.
• The plan ends and no other defined contri- bution plan is established or continued.
• In the case of a 401(k) plan that is part of a profit-sharing plan, the employee reaches age 59½ or suffers financial hard- ship. For the rules on hardship distribu- tions, including the limits on them, see Regulations section 1.401(k)-1(d).
• The employee becomes eligible for a qual- ified reservist distribution (defined below).

Certain distributions listed above may be subject to the tax on early distribu- tions discussed later.

Qualified reservist distributions. A qualified reservist distribution is a distribution from a qualified plan minus a pro-rated portion of any cost basis are subject to in- come tax in the year they are distributed. Since most recipients have no cost basis, a distribution is generally fully taxable. An exception is a distri- bution that is properly rolled over as discussed under Rollover, below.

The tax treatment of distributions depends on whether they are made periodically over sev- eral years or life (periodic distributions) or are nonperiodic distributions. See Taxation of Peri-
odic Payments and Taxation of Nonperiodic Payments in Publication 575 for a detailed description of how distributions are taxed, in- cluding the 10-year tax option or capital gain treatment of a lump-sum distribution.

Note. A recipient of a distribution from a designated Roth account will have a cost basis since designated Roth contributions are made on an after-tax basis. Also, a distribution from a designated Roth account is tax-free if certain conditions are met. See Qualified distributions under Qualified Roth Contribution Program, ear- lier.

Rollover. The recipient of an eligible rollover distribution from a qualified plan can defer the tax on it by rolling it over into a traditional IRA or another qualified retirement plan. However, it may be subject to withholding as discussed under Rollover and Withholding requirement, later. Beginning in 2010, a rollover can be made to a Roth IRA from a qualified plan regardless of your income or filing status.

Eligible rollover distribution. This is a dis- tribution of all or any part of an employee’s balance in a qualified retirement plan that is not any of the following.

1. A required minimum distribution. See Re- quired Distributions, earlier.
2. Any of a series of substantially equal pay- ments made at least once a year over any of the following periods.
   a. The employee’s life or life expectancy.
   b. The joint lives or life expectancies of the employee and beneficiary.
   c. A period of 10 years or longer.
3. A hardship distribution.
4. The portion of a distribution that represents the return of an employee’s non deductible contributions to the plan. See Employee Contributions, earlier, and Rollover of non-taxable amounts, below.
5. Loans treated as distributions.
6. Dividends on employer securities.
7. The cost of any life insurance coverage provided under a qualified retirement plan.
8. Similar items designated by the IRS in published guidance. See, for example, the Instructions for Forms 1099-R and 5498.

Rollover of nontaxable amounts. You may be able to roll over the nontaxable part of a distribution to another qualified retirement plan or a section 403(b) plan, or to a traditional IRA. The transfer must be made either through a direct (trustee-to-trustee) rollover to a qualified retirement plan or a section 403(b) plan that separately accounts for the taxable and nontax- able parts of the rollover or through a rollover to an IRA.

Note. A distribution from a designated Roth account can be rolled over to another design- ated Roth account or to a Roth IRA. If the rollover to a Roth IRA, it can be rolled over by any rollover method, but if the rollover is to another designated Roth account, it must be rolled over directly (trustee-to-trustee).

More information. For more information about rollovers, see Rollovers in Pubs. 575 and 590.

Withholding requirement. If, during a year, a qualified plan pays to a participant one or more eligible rollover distributions (defined earlier) that are reasonably expected to total $20 or more, the payor must withhold 20% of each distribution for federal income tax.

Exceptions. If, instead of having the distri- bution paid to him or her, the participant chooses to have the plan pay it directly to an IRA or another eligible retirement plan (a direct rollo- ver), no withholding is required.

If the distribution is not an eligible rollover distribution, defined earlier, the 20% withholding requirement does not apply. Other withholding rules apply to distributions such as long-term periodic distributions and required distributions (periodic or nonperiodic). However, the partici- pant can still choose not to have tax withheld from these distributions. If the participant does not make this choice, the following withholding rules apply.

• For periodic distributions, withholding is based on their treatment as wages.
• For nonperiodic distributions, 10% of the taxable part is withheld.

Estimated tax payments. If no income tax is withheld or not enough tax is withheld, the recipient of a distribution may have to make estimated tax payments. For more information, see Withholding Tax and Estimated Tax in Pub- lication 575.
Section 402(f) Notice. If a distribution is an eligible rollover distribution, as discussed earlier, you must provide a written notice to the recipient that explains the following rules regarding such distributions.

1. That the distribution may be directly transferred to an eligible retirement plan and information about which distributions are eligible for this direct transfer.

2. That the tax will be withheld from the distribution if it is not directly transferred to an eligible retirement plan.

3. That the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date the recipient receives the distribution.

4. Certain other rules that may be applicable.


Timing of notice. The notice generally must be provided no less than 30 days and no more than 90 days before the date of a distribution.

Method of notice. The written notice must be provided individually to each distributee of an eligible rollover distribution. Posting of the notice is not sufficient. However, the written requirement may be satisfied through the use of electronic media if certain additional conditions are met. See Regulations section 1.401(a)-21.

Tax on failure to give notice. Failure to give 402(f) notice will result in a tax of $100 for each failure, with a total not exceeding $50,000 per calendar year. The tax will not be imposed if it is shown that such failure is due to reasonable cause and not to willful neglect.

Tax on Early Distributions

If a distribution is made to an employee under the plan before he or she reaches age 59½, the employee may have to pay a 10% additional tax on the distribution. This tax applies to the amount received that the employee must include in income.

Exceptions. The 10% tax will not apply if distributions before age 59½ are made in any of the following circumstances.

• Made to a beneficiary (or to the estate of the employee) on or after the death of the employee.
• Made due to the employee having a qualifying disability.
• Made as part of a series of substantially equal periodic payments beginning after separation from service and made at least annually for the life or life expectancy of the employee or the joint lives or life expectancies of the employee and his or her designated beneficiary. (The payments under this exception, except in the case of death or disability, must continue for at least 5 years or until the employee reaches age 59½, whichever is the longer period.)
• Made to an employee after separation from service if the separation occurred during or after the calendar year in which the employee reached age 55.
• Made to an alternate payee under a QDRO.
• Made to an employee for medical care up to the amount allowable as a medical expense deduction (determined without regard to whether the employee itemizes deductions).
• Timely made to reduce excess contributions under a 401(k) plan.
• Timely made to reduce excess employee or matching employer contributions (excess aggregate contributions).
• Timely made to reduce excess elective deferrals.
• Made because of an IRS levy on the plan.
• Made as a qualified reservist distribution.
• Made as a permissible withdrawal from an EACA.

Reporting the tax. To report the tax on early distributions, file Form 5329, Additional Taxes Reporting the Tax, in the year the tax is due.

Tax on Excess Benefits

If you are or have been a 5% owner of the business maintaining the plan, amounts you receive at any age that are more than the benefits provided for you under the plan formula are subject to an additional tax. This tax also applies to amounts received by your successor. The tax is 10% of the excess benefit includable in income.

To determine whether or not you are a 5% owner, see section 416.

Reporting the tax. Include on Form 1040, line 59, any tax you owe for an excess benefit. On the dotted line next to the total, write “Sec. 72(m)(5)” and write in the amount.

Lump-sum distribution. The amount subject to the additional tax is not eligible for the optional methods of figuring income tax on a lump-sum distribution. The optional methods are discussed under Lump-Sum Distributions in Publication 575.

Excise Tax on Reversion of Plan Assets

A 20% or 50% excise tax is generally imposed on the cash and fair market value of other property an employer receives directly or indirectly from a qualified plan. If you owe this tax, report it on Schedule I of Form 5330. See the form instructions for more information.

Notification of Significant Benefit Accrual Reduction

An employer or the plan will have to pay an excess tax if both the following occur.

• A defined benefit plan or money purchase pension plan is amended to provide for a significant reduction in the rate of future benefit accrual.
• The plan administrator fails to notify the affected individuals and the employee organizations representing them of the reduction in writing.

A plan amendment that eliminates or reduces any early retirement benefit or retirement-type subsidy reduces the rate of future benefit accrual.

The notice must be written in a manner calculated to be understood by the average plan participant and must provide enough information to allow each individual to understand the effect of the plan amendment. It must be provided within a reasonable time before the amendment takes effect.

The tax is $100 per participant or alternate payee for each day the notice is late, the total tax cannot be more than $500,000 during the tax year. It is imposed on the employer, or, in the case of a multi-employer plan, on the plan.

Prohibited Transactions

Prohibited transactions are transactions between the plan and a disqualified person that are prohibited by law. (However, see Exemption below.) If you are a disqualified person who takes part in a prohibited transaction, you must pay a tax (discussed later).

Prohibited transactions generally include the following transactions.

1. A transfer of plan income or assets to, or use of them by or for the benefit of, a disqualified person.
2. Any act of a fiduciary by which he or she deals with plan income or assets in his or her own interest.
3. The receipt of consideration by a fiduciary for his or her own account from any party dealing with the plan in a transaction that involves plan income or assets.
4. Any of the following acts between the plan and a disqualified person.
   a. Selling, exchanging, or leasing property.
   b. Lending money or extending credit.
   c. Furnishing goods, services, or facilities.

Exemption. Certain transactions are exempt from being treated as prohibited transactions. For example, a prohibited transaction does not take place if you are a disqualified person and receive any benefit to which you are entitled as a plan participant or beneficiary. However, the benefit must be figured and paid under the same terms as for all other participants and beneficiaries. For other transactions that are exempt, see section 4975 and the related regulations.

Disqualified person. You are a disqualified person if you are any of the following.
1. A fiduciary of the plan.
2. A person providing services to the plan.
3. An employer, any of whose employees are covered by the plan.
4. An employee organization, any of whose members are covered by the plan.
5. Any direct or indirect owner of 50% or more of any of the following.
   a. The combined voting power of all classes of stock entitled to vote, or the total value of shares of all classes of stock of a corporation that is an employer or employee organization described in (3) or (4).
   b. The capital interest or profits interest of a partnership that is an employer or employee organization described in (3) or (4).
   c. The beneficial interest of a trust or unincorporated enterprise that is an employer or employee organization described in (3) or (4).
6. A member of the family of any individual described in (1), (2), (3), or (5). (A member of a family is the spouse, ancestor, lineal descendant, or any spouse of a lineal descendant.)
7. A corporation, partnership, trust, or estate of which (or in which) any direct or indirect owner described in (1) through (5) holds 50% or more of any of the following.
   a. The combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation.
   b. The capital interest or profits interest of a partnership.
   c. The beneficial interest of a trust or estate.
8. An officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10% or more shareholder, or highly compensated employee (earning 10% or more of the yearly wages of an employer) of a person described in (3), (4), (5), or (7).
9. A 10% or more (in capital or profits) partner or joint venturer of a person described in (3), (4), (5), or (7).
10. Any disqualified person, as described in (1) through (9) above, who is a disqualified person with respect to any plan to which a section 501(c)(22) trust is permitted to make payments under section 4223 of ERISA.

Tax on Prohibited Transactions

The initial tax on a prohibited transaction is 15% of the amount involved for each year (or part of a year) in the taxable period. If the transaction is not corrected within the taxable period, an additional tax of 100% of the amount involved is imposed. For information on correcting the transaction, see Correcting a prohibited transaction, later.

Both taxes are payable by any disqualified person who participated in the transaction (other than a fiduciary acting only as such). If more than one person takes part in the transaction, each person can be jointly and severally liable for the entire tax.

Amount involved. The amount involved in a prohibited transaction is the greater of the following amounts.

- The money and fair market value of any property given.
- The money and fair market value of any property received.

If services are performed, the amount involved is any excess compensation given or received.

Taxable period. The taxable period starts on the transaction date and ends on the earliest of the following days.

- The day the IRS mails a notice of deficiency for the tax.
- The day the IRS assesses the tax.
- The day the correction of the transaction is completed.

Payment of the 15% tax. Pay the 15% tax with Form 5330.

Correcting a prohibited transaction. If you are a disqualified person who participated in a prohibited transaction, you can avoid the 100% tax by correcting the transaction as soon as possible. Correcting the transaction means undoing it as much as you can without putting the plan in a worse financial position than if you had acted under the highest fiduciary standards.

Correction period. If the prohibited transaction is not corrected during the taxable period, you usually have an additional 90 days after the day the IRS mails a notice of deficiency for the 100% tax to correct the transaction. This correction period (the taxable period plus the 90 days) can be extended if either of the following occurs.

- The IRS grants reasonable time needed to correct the transaction.
- You petition the Tax Court.

If you correct the transaction within this period, the IRS will abate, credit, or refund the 100% tax.

Reporting Requirements

You may have to file an annual return/report form by the last day of the 7th month after the plan year ends. See the following list of forms to choose the right form for your plan.

Form 5500-SF. Form 5500-SF is a new simplified annual reporting form. You can use Form 5500-SF if the plan meets all the following conditions.

- The plan is a small plan (generally fewer than 100 participants at the beginning of the plan year).
- The plan meets the conditions for being exempt from the requirements that the plan’s books and records be audited by an independent qualified public accountant.
- The plan has 100% of its assets invested in certain securities with a readily determinable fair value.
- The plan holds no employer securities.
- The plan is not a multiemployer plan.

If your plan is required to file an annual/report but is not eligible to file Form 5500-SF, the plan must file Form 5500 or Form 5500-EZ, as appropriate. For more details, see the Instructions for Form 5500-SF.

Form 5500-EZ. You may be able to use Form 5500-EZ if the plan is a one-participant plan, as defined below.

One-participant plan. Your plan is a one-participant plan if either of the following is true.

- The plan covers only you (or you and your spouse) and you (or you and your spouse) own the entire business (whether incorporated or unincorporated).
- The plan covers only one or more partners (or partner(s) and spouse(s)) in a business partnership.

Caution: A one-participant plan may not file an annual return on Form 5500 for 2009. Every one-participant plan required to file an annual return for 2009 must file either Form 5500-EZ or, if eligible, Form 5500-SF. See the instructions for Form 5500.

Form 5500-EZ not required. If your one-participant plan (or plans) had total assets of $250,000 or less at the end of the plan year, then you do not have to file Form 5500-EZ for that plan year. All plans should file a Form 5500-EZ for the final plan year to show that all plan assets have been distributed.

Example. You are a sole proprietor and your plan meets all the conditions for filing Form 5500-EZ. The total plan assets are more than $250,000. You should file Form 5500-EZ or Form 5500-SF, if eligible.

All one-participant plans should file Form 5500-EZ for their final plan year, even if the total plan assets have always been less than $100,000 for plans beginning on or before December 31, 2006, and $250,000 for plans beginning on or after January 1, 2007. The final plan year is the year in which distribution of all plan assets is completed.

Form 5500. If you do not meet the requirements for filing Form 5500-EZ or Form 5500-SF and a return/report is required, you must file Form 5500.

Form 5310. If you terminate your plan and are the plan sponsor or plan administrator, you can file Form 5310, Application for Determination for
## Deduction Worksheet for Self-Employed

**Step 1**
Enter your net profit from line 31, Schedule C (Form 1040); line 3, Schedule C-EZ (Form 1040); line 36, Schedule F (Form 1040); or box 14, code A*, Schedule K-1 (Form 1065).  
*General partners should reduce this amount by the same additional expenses subtracted from box 14, code A to determine the amount on line 1 or 2 of Schedule SE.

**Step 2**
Enter your deduction for self-employment tax from line 27, Form 1040.

**Step 3**

**Step 4**
Enter your rate from the Rate Table for Self-Employed or Rate Worksheet for Self-Employed.

**Step 5**
Multiply step 3 by step 4.

**Step 6**
Multiply $245,000 by your plan contribution rate (not the reduced rate).

**Step 7**
Enter the smaller of step 5 or step 6.

**Step 8**

- **Contribution dollar limit**  
  $49,000

**Step 9**
Enter your allowable elective deferrals (including designated Roth contributions) made to your self-employed plan during 2009. Do not enter more than $16,500.

**Step 10**
Subtract step 9 from step 8.

**Step 11**
Subtract step 9 from step 3.

**Step 12**
Enter one-half of step 11.

**Step 13**
Enter the smallest of step 7, 10, or 12.

**Step 14**
Subtract step 13 from step 3.

**Step 15**
Enter the smaller of step 9 or step 14.
   - If you made any elective deferrals to your self-employed plan, go to step 9.
   - Otherwise, skip steps 9 through 20 and enter the smaller of step 7 or step 8 on step 21.

**Step 16**
Subtract step 15 from step 14.

**Step 17**
Enter your catch-up contributions (including designated Roth contributions), if any. Do not enter more than $5,500.

**Step 18**
Enter the smaller of step 16 or step 17.

**Step 19**
Add steps 13, 15, and 18.

**Step 20**
Enter the amount of designated Roth contributions included on lines 9 and 17.

**Step 21**
Subtract step 20 from step 19. This is your maximum deductible contribution.

Next: Enter this amount on line 28, Form 1040.

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**5. Table and Worksheets for the Self-Employed**

As discussed in chapters 2 and 4, if you are self-employed, you must use the following rate table or rate worksheet and deduction worksheet to figure your deduction for contributions you made for yourself to a SEP-IRA or qualified plan.

First, use either the rate table or rate worksheet to find your reduced contribution rate. Then complete the deduction worksheet to figure your deduction for contributions.

The table and the worksheets in chapter 5 apply only to self-employed individuals who have only one defined contribution plan, such as a profit-sharing plan. A SEP plan is treated as a profit-sharing plan. However, do not use this worksheet for SAR-SEPs.

**Rate table for self-employed.** If your plan’s contribution rate is a whole percentage (for example, 12% rather than 121/2%), you cannot use the plan on the next page to find your reduced contribution rate. Otherwise, use the rate worksheet provided below.

First, find your plan contribution rate (the contribution rate stated in your plan) in column A of the table. Then read across to the rate under column B. Enter the rate from column B in step 4 of the Deduction Worksheet for Self-Employed on this page.

**Example.** You are a sole proprietor with no employees. If your plan’s contribution rate is 10% of a participant’s compensation, your rate is 0.090909. Enter this rate in step 4 of the Deduction Worksheet for Self-Employed on this page.

**Rate worksheet for self-employed.** If your plan’s contribution rate is not a whole percentage (for example, 101/2%), you cannot use the Rate Table for Self-Employed. Use the following worksheet instead.

**Rate Worksheet for Self-Employed**

1) Plan contribution rate as a decimal  
   (for example, 10\% = 0.105) . . . . . . . . .

2) Rate in line 1 plus 1 (for example,  
   0.105 + 1 = 1.105) . . . . .

3) Self-employed rate as a decimal rounded to at least 3 decimal places  
   (line 1 + line 2) (for example, 0.105 + 1.105 = 0.095) . . . . .

**Figuring your deduction.** Now that you have your self-employed rate from either the rate table or rate worksheet, you can figure your maximum deduction for contributions for yourself by...
**Deduction Worksheet for Self-Employed**

**Step 1**
Enter your net profit from line 31, Schedule C (Form 1040); line 3, Schedule C-EZ (Form 1040); line 36, Schedule F (Form 1040); or box 14, code A*, Schedule K-1 (Form 1065) ........................................ $200,000

*General partners should reduce this amount by the same additional expenses subtracted from box 14, code A to determine the amount on line 1 or 2 of Schedule SE

**Step 2**
Enter your deduction for self-employment tax from line 27, Form 1040 ....... 9,300

**Step 3**
Net earnings from self-employment. Subtract step 2 from step 1 ....... 190,700

**Step 4**
Enter your rate from the Rate Table for Self-Employed or Rate Worksheet for Self-Employed

**Step 5**
Multiply step 3 by step 2 ....... 14,875

**Step 6**
Multiply $245,000 by your plan contribution rate (not the reduced rate) ....... 20,825

**Step 7**
Enter the smaller of step 5 or step 6 ....... 14,875

**Step 8**
Contribution dollar limit ........................................ $49,000

- If you made any elective deferrals to your self-employed plan, go to step 9.
- Otherwise, skip steps 9 through 20 and enter the smaller of step 7 or step 8 on step 21.

**Step 9**
Enter your allowable elective deferrals (including designated Roth contributions) made to your self-employed plan during 2009. Do not enter more than $16,500 ....... N/A

**Step 10**
Subtract step 9 from step 8 ....... N/A

**Step 11**
Subtract step 9 from step 3 ....... N/A

**Step 12**
Enter one-half of step 11 ....... N/A

**Step 13**
Enter the smaller of step 7, 10, or 12 ....... N/A

**Step 14**
Subtract step 13 from step 3 ....... N/A

**Step 15**
Enter the smaller of step 9 or step 14.
- If you made catch-up contributions, go to step 16.
- Otherwise, skip steps 16 through 18 and go to step 19.

**Step 16**
Subtract step 15 from step 14 ....... N/A

**Step 17**
Enter your catch-up contributions (including designated Roth contributions), if any. Do not enter more than $5,500 ....... N/A

**Step 18**
Enter the smaller of step 16 or step 17 ....... N/A

**Step 19**
Add steps 13, 15, and 18 ....... N/A

**Step 20**
Enter the amount of designated Roth contributions included on lines 9 and 17 ....... N/A

**Step 21**
Subtract step 20 from step 19. This is your maximum deductible contribution ....... $14,875

Next: Enter this amount on line 28, Form 1040.

**Rate Table for Self-Employed**

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<th>Column B (shown as decimal)</th>
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</tr>
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</table>

*The deduction for annual employer contributions (other than elective deferrals) to a SEP plan, a profit-sharing plan, or a money purchase plan cannot be more than 20% of your net earnings (figured without deducting contributions for yourself) from the business that has the plan.

**Example**

You are a sole proprietor with no employees. The terms of your plan provide that you contribute 81% (.85%) of your compensation to your plan. Your net profit from line 31, Schedule C (Form 1040) is $200,000. You have no elective deferrals or catch-up contributions.

You determine your self-employment tax deduction on line 27 of Form 1040 is $9,300. See the filled-in portions of both Schedule SE (Form 1040), Self-Employment Income, and Form 1040, later.

You figure your self-employed rate and maximum deduction for employer contributions you made for yourself as follows.

See the filled-in Deduction Worksheet for Self-Employed on this page.

**Rate Worksheet for Self-Employed**

1) Plan contribution rate as a decimal (for example, 10%/5 = 0.105) ....... 0.085
2) Rate in line 1 plus 1 (for example, 0.105 + 1 = 1.105) ....... 1.085
3) Self-employed rate as a decimal rounded to at least 3 decimal places (line 1 ÷ line 2) (for example, 0.105 ÷ 1.105 = 0.095) ....... 0.078

**Community property laws.** If you reside in a community property state and you are married and filing a separate return, disregard community property laws for step 1 of the Deduction Worksheet for Self-Employed. Enter on step 1 the total net profit you actually earned.
# Portion of Schedule SE (Form 1040)

## Section A—Short Schedule SE. Caution.
Read above to see if you can use Short Schedule SE.

1a Net farm profit or (loss) from Schedule F, line 36, and farm partnerships, Schedule K-1 (Form 1065), box 14, code A.

b If you received social security retirement or disability benefits, enter the amount of Conservation Reserve Program payments included on Schedule F, line 6b, or listed on Schedule K-1 (Form 1065), box 20, code Y.

2 Net profit or (loss) from Schedule C, line 31; Schedule C-EZ, line 3; Schedule K-1 (Form 1065), box 14, code A (other than farming); and Schedule K-1 (Form 1065-B), box 9, code J1. Ministers and members of religious orders, see page SE-1 for types of income to report on this line. See page SE-3 for other income to report.

3 Combine lines 1a, 1b, and 2.

4 Net earnings from self-employment. Multiply line 3 by 92.35% (.9235). If less than $400, do not file this schedule; you do not owe self-employment tax.

5 Self-employment tax. If the amount on line 4 is:
   - $106,800 or less, multiply line 4 by 15.3% (.153). Enter the result here and on Form 1040, line 56.
   - More than $106,800, multiply line 4 by 2.9% (.029). Then, add $13,243.20 to the result. Enter the total here and on Form 1040, line 56.

6 Deduction for one-half of self-employment tax. Multiply line 5 by 50% (.50). Enter the result here and on Form 1040, line 27.

## Adjusted Gross Income

| 23 | Educator expenses (see page 29) |
| 24 | Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ |
| 25 | Health savings account deduction. Attach Form 8889 |
| 26 | Moving expenses. Attach Form 3903 |
| 27 | One-half of self-employment tax. Attach Schedule SE. |
| 28 | Self-employed SEP, SIMPLE, and qualified plans |
| 29 | Self-employed health insurance deduction (see page 30) |
| 30 | Penalty on early withdrawal of savings |
| 31a | Alimony paid b Recipient’s SSN |
| 32 | IRA deduction (see page 31) |
| 33 | Student loan interest deduction (see page 34) |
| 34 | Tuition and fees deduction. Attach Form 8917 |
| 35 | Domestic production activities deduction. Attach Form 8803 |
| 36 | Add lines 23 through 31a and 32 through 35 |
| 37 | Subtract line 36 from line 22. This is your adjusted gross income |

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 97.

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The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.
6. How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate: The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should. Here are seven things every taxpayer should know about TAS:

- TAS is your voice at the IRS.
- Our service is free, confidential, and tailored to meet your needs.
- You may be eligible for TAS help if you have tried to resolve your tax problem through normal IRS channels and have gotten nowhere, or you believe an IRS procedure just isn't working as it should.
- TAS helps taxpayers whose problems are causing financial difficulty or significant cost, including the cost of professional representation. This includes businesses as well as individuals.
- TAS employees know the IRS and how to navigate it. We will listen to your problem, help you understand what needs to be done to resolve it, and stay with you every step of the way until your problem is resolved.
- TAS has at least one local taxpayer advocate in every state, the District of Columbia, and Puerto Rico. You can call your local advocate, whose number is in your phone book, in Pub. 1546, Taxpayer Advocate Service—Your Voice at the IRS, and on our website at www.irs.gov/advocate. You can also call our toll-free line at TTY/TDD 1-800-829-4059.
- You can learn about your rights and responsibilities as a taxpayer by visiting our online tax toolkit at www.taxtoolkit.irs.gov.

Free tax services. To find out what services are available, get Publication 910, IRS Guide to Free Tax Services. It contains lists of free tax information sources, including publications, services, and free tax education and assistance programs. It also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on your telephone.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.

Free help with your return. Free help in preparing your return is available nationwide from IRS-trained volunteers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-income taxpayers and the Tax Counseling for the Elderly (TCE) program is designed to assist taxpayers age 60 and older with their tax returns. Many VITA sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. To find the nearest VITA or TCE site, call 1-800-829-1040.

As part of the TCE program, AARP offers the Tax-Aide counseling program. To find the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit AARP’s website at www.aarp.org/money/taxaide.

For more information on these programs, go to www.irs.gov and enter keyword “VITA” in the upper right-hand corner.

Internet. You can access the IRS website at www.irs.gov 24 hours a day, 7 days a week to:
- E-file your return. Find out about commercial tax preparation and e-file services available free to eligible taxpayers.
- Check the status of your 2009 refund. Go to www.irs.gov and click on Where’s My Refund. Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2009 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund.
- Download forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- Use the online Internal Revenue Code, Regulations, or other official guidance.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using the withholding calculator online at www.irs.gov/individ.html.
- Determine if Form 6251 must be filed by using our Alternative Minimum Tax (AMT) Assistant.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.

Ordering forms, instructions, and publications. Call 1-800-TAX FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.

 Asking tax questions. Call the IRS with your tax questions at 1-800-829-1040.

 Solving problems. You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS laws, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under United States Government, Internal Revenue Service.

TTY/TDD equipment. If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.

TeleTax topics. Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.

 Refund information. To check the status of your 2009 refund, call 1-800-829-1954 during business hours or 1-800-829-4477 (automated refund information 24 hours a day, 7 days a week). Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2009 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund. Refunds are sent out weekly on Fridays. If you check the status of your refund and are not given the date it will be issued, please wait until the next week before checking back.

 Other refund information. To check the status of a prior year refund or amended return refund, call 1-800-829-1954.

 Evaluating the quality of our telephone services. To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.

Walk-ins. Many products and services are available on a walk-in basis.

- Products. You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office
supply stores have a collection of products available to print from a CD or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.

- **Services.** You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you are more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary—just walk in. If you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested. All other issues will be handled without an appointment. To find the number of your local office, go to www.irs.gov/localcontacts or look in the phone book under United States Government, Internal Revenue Service.

- **Mail.** You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

  Internal Revenue Service
  1201 N. Mitsubishi Motorway
  Bloomington, IL 61705-6613

- **DVD for tax products.** You can order Publication 1796, IRS Tax Products DVD, and obtain:
  - Current-year forms, instructions, and publications.
  - Prior-year forms, instructions, and publications.
  - Tax Map: an electronic research tool and finding aid.
  - Tax law frequently asked questions.
  - Tax Topics from the IRS telephone response system.
  - Internal Revenue Code—Title 26 of the U.S. Code.
  - Fill-in, print, and save features for most tax forms.
  - Internal Revenue Bulletins.
  - Toll-free and email technical support.
  - Two releases during the year.
    - The first release will ship the beginning of January 2010.
    - The final release will ship the beginning of March 2010.

  Purchase the DVD from National Technical Information Service (NTIS) at www.irs.gov/cdorders for $30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for $30 (plus a $6 handling fee).
Worksheets: (Cont.)
Rate Worksheet for Self-Employed  .......... 22
### Commonly Used Tax Forms

See **How To Get Tax Help** for a variety of ways to get forms, including by computer, phone, and mail.

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<td>Sch. K-1</td>
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