

contributing

to multiple company retirement plans

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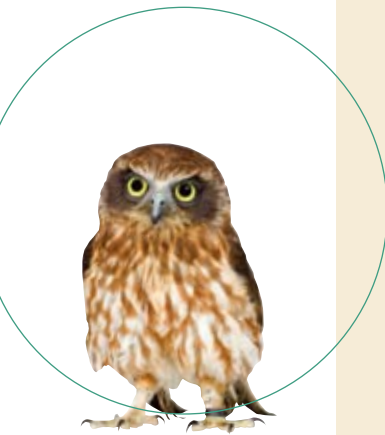


meet joe



meet joe's retirement plans

Today, it is not uncommon for individuals to participate in more than one company's retirement plan. For example, an individual may work for two different companies, or work at one company and also be self-employed. Regardless of the situation, tax advisors must help to ensure that the contributions do not exceed statutory limits, which could result in penalties, and potentially plan disqualification. For purposes of this article, we will assume that the employers are unrelated, and therefore not part of a controlled group or affiliated service group.



Salary deferral contributions

For 2010, the employee salary deferral limit for SIMPLE IRA retirement plans is \$11,500 (\$14,000 if age 50 or older). For other qualified retirement plans with a salary deferral feature such as 401(k), 403(b), 457(b) and SAR-SEP plans, the 2010 limit is \$16,500 (\$22,000 if age 50 or older). In addition to the age 50 or older catch-up provision, 403(b) and 457(b) plans have special catch-up rules that may apply.

Section 402(g) of the Internal Revenue Code (IRC) defines an aggregate limit that any individual may salary defer to any combination of salary deferral plans (excluding 457(b) plans) in a calendar year. For 2010, this limit is \$16,500 (\$22,000 if age 50 or older), not to exceed any limitations set by the plan.

EXAMPLE 1:

Joe is under 50 years old, and defers the maximum of \$16,500 from his salary into the ABC Company 401(k) plan. Joe accepts a second job at XYZ Company, where he becomes eligible for their SIMPLE IRA plan. Because Joe has already met the Section 402(g) limit of \$16,500 under the ABC Company 401(k) plan, he cannot defer any of his XYZ salary into the XYZ SIMPLE IRA plan.¹

EXAMPLE 2:

Let's assume the same facts as in Example 1, but Joe only defers \$10,000 from his salary into the ABC Company 401(k) plan. In this case, Joe could defer a maximum of \$6,500 (i.e., \$16,500 - \$10,000) from his XYZ salary into the XYZ SIMPLE IRA plan.¹

EXAMPLE 3:

Let's assume the same facts as in Example 1, but ABC Company is a governmental entity which has a 457(b) plan, not a 401(k) plan. Because employee salary deferrals made to a 457(b) plan do not count towards the Section 402(g) limit, Joe can defer \$16,500 from his ABC salary into the ABC Company 457(b) plan, and \$11,500 from his XYZ salary into the XYZ SIMPLE IRA plan.

¹This would be the same result regardless of whether XYZ Company had a 401(k), 403(b), or SAR-SEP plan.

Employer contributions

Under Section 404 of the Internal Revenue Code (IRC), an employer may generally contribute up to 25 percent of the compensation of eligible employees,² which includes both employer matching and/or profit sharing contributions. In addition, under Section 415 of the IRC, the sum of employee salary deferral contributions plus employer contributions for an individual employee at a particular company may not exceed \$49,000 (\$54,500 if age 50 or older) for 2010. Based on plan type, some exclusions may apply.

EXAMPLE 4:

Joe is under 50 years old, earns \$150,000 at ABC Company, and defers from his salary the maximum of \$16,500 into their 401(k) plan. ABC Company decides to make a 25% profit sharing contribution. Because the sum of Joe's employee salary deferral contributions of \$16,500 plus employer profit sharing contribution of \$37,500 (i.e., 25% x \$150,000) is \$54,000, and therefore exceeds the Section 415 limit of \$49,000, the profit sharing contribution for Joe would have to be reduced to \$32,500 (i.e., \$49,000 - \$16,500). Alternatively, the plan may provide that the excess of \$5,000 is returned to Joe from his elective contribution.

With this backdrop, and in keeping with the focus of this article on contributing to multiple company retirement plans, it is important to contrast the aggregate limits of employee salary deferral contributions versus employer contributions. Specifically, under Section 402(g), there is an aggregate salary deferral limit for individuals which cuts across companies (which is based on the calendar year). However, there is no such limit for employer contributions if the companies are unrelated. Indeed, with sufficiently high compensation levels, it would be possible to have total plan contributions of \$49,000 in two different company retirement plans as long as Section 402(g), 404, and 415 limits are met for each company.

Because people are increasingly getting a second job by being self-employed, the sole proprietor has control over what type of retirement plan to establish for his/her business. The following are examples of how sole proprietors could take advantage of multiple plan rules:

EXAMPLE 5:

Joe is under 50 years old, and defers the maximum of \$16,500 from his salary into the ABC Company 401(k) plan. Joe decides to establish his own business as a sole proprietor. Because Joe has already met the Section 402(g) limit of \$16,500

under the ABC Company 401(k) plan, Joe could benefit most by establishing an employer-funded plan such as a SEP or profit sharing plan. Since Joe has no employees, he could contribute the maximum percentage of 25 percent without having to contribute to other employees.

² The maximum employer contribution is 25% of total eligible compensation, which is the sum of compensation for all employees eligible for the plan. However, this may be allocated in a manner where an individual participant may receive more than 25% of compensation. This would generally be the case for age-weighted, cross-tested and integrated profit sharing plans, which are designed to provide larger allocations to older or more highly-paid employees.

EXAMPLE 6:

Joe is under 50 years old, and defers \$10,000 from his salary into the ABC Company 401(k) plan. Joe decides to establish his own business as a sole proprietor. Because Joe has not met the Section 402(g) limit of \$16,500 under the ABC Company 401(k) plan, Joe could benefit most by establishing a plan that has an employee salary deferral feature, and also allows for employer contributions. Therefore, Joe could establish a one-person 401k for his business. This would allow him to defer the remaining allowable \$6,500 from his salary (i.e., \$16,500 - \$10,000), and also make an employer profit sharing contribution subject to normal limits.

Conclusion

Clearly, contributing to multiple retirement plans can be complicated because it involves several Internal Revenue Code sections. Tax professionals must have sufficient knowledge to ask the right questions to identify potential problem areas, and have resource people who can identify which type of retirement plan is best. Employers with potential controlled group issues (which was beyond the scope of this article), or other questions about compliance would be advised to consult with an ERISA attorney.

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