

Increased Limits

<u>Type of Limitation</u>	<u>2018</u>	<u>2019</u>
Elective deferrals (401k, 403(b))	\$ 18,500	\$ 19,000
Defined benefit plans	\$220,000	\$225,000
Defined contribution plans	\$ 55,000	\$ 56,000
Compensation limit	\$275,000	\$280,000
Highly Compensated \$80,000 index	\$120,000	\$125,000
Age 50 Catch-up	\$ 6,000	\$ 6,000

New Tax Law

The effects of the new tax law still not completely understood. My advice is to discuss how the changes affect your situation with your accountant or other tax advisor. Many are paying less tax. Many small businesses qualify for the 20% credit.

My experience in the past year has been that accountants have been working with the new tax law to get their clients that 20% credit, sometimes by using contributions to qualified plans to move the income from not qualifying for the credit down to qualifying for the credit. Defined benefit pension plans (including cash balance plans) are particularly helpful in this as discussed in my next section.

Reasonable Compensation

The IRS has been somewhat vague in the past as to what reasonable compensation is and is not. The tax court cases have generally revolved around the issue of excessive compensation. In one of those decisions, the tax court made clear that pension and other tax qualified plan contributions are part of compensation. Thus, if a spouse of a business owner only provided enough services to justify reasonable compensation of \$50,000 then a \$100,000 contribution to a defined benefit pension plan meant the spouse was paid an unreasonably high compensation.

This tax court decision went the other way as well. If the IRS thinks that a business owner should be paying himself at least \$200,000 in compensation based on \$400,000 in profits, if the business owner received \$100,000 in W-2 compensation and a pension contribution of \$150,000, then the business owner was paid enough.

The IRS did issue proposed regulations on the 199A deduction last August, making the decision process extra complicated. As I stated above, my advice is to discuss how the changes affect your

situation with your accountant or other tax advisor and that I am open to working with your accountant or other tax advisor to help him or her create a strategy for your business.

Tax Legislation – Future

Bipartisan Tax legislation for retirement plans is actually a real possibility for 2019 despite the changes in the House.

Rep. Richie Neal (D-MA), now the ranking Democrat on the House Ways & Means Committee, and the man in line to become chairman of that powerful committee in January, has already cited several priorities on which he even thinks he might align with President Trump, and two of them — increasing retirement savings and protecting multiemployer pension plans — deal with retirement. Neal has long been focused on retirement issues and has, in just the past year, introduced his signature piece of retirement legislation, the Automatic Retirement Plan Act (ARPA), to address the retirement plan coverage gap.

ARPA would require all but the smallest employers to maintain at minimum a deferral-only 401(k) or 403(b) plan with a requirement to automatically enroll workers into the plan. But that is not all.

ARPA also expands the types of employees that have to be eligible to participate, to include all workers expected to work for an employer for more than three months, regardless of the number of hours worked. An employer would no longer be allowed to exclude up to 30% of its workforce from participating in a plan, and the current one-year/1,000-hour service requirement would be repealed. Employers with existing plans would have five years (seven years for smaller employers) to transition to these new coverage rules.

ASPPA have been in active discussions with Rep. Neal and his staff for months on sensible modifications to this legislation for the next Congress, including exempting the new coverage requirements from the top-heavy testing rules and significantly modifying the tax penalties for non-compliance. Neal and his staff have shown a sincere willingness to work with ASPPA to address concerns while still achieving their core policy objective of reducing the coverage gap.

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At the same time, proving that the spirit of bipartisanship is not dead, Sens. Rob Portman (R-OH) and Ben Cardin (D-MD) are once again teaming up on retirement security legislation. Most of us in the retirement industry came to refer to the Economic Growth Tax Relief and Recovery Act (EGTRRA) as “Portman-Cardin” for good reason, as they led the charge to passage in the U.S. House of Representatives that included a host of vital improvements for retirement savings.

This time the dynamic pension duo is taking up retirement security in the U.S. Senate, [introducing a comprehensive retirement security bill](#) Dec. 19 that includes provisions to encourage small plan startups, boost automatic enrollment and re-enrollment practices, expand employer matching contributions for student loan repayments, provide portability of lifetime income options, expand the Saver’s Credit, and reform required minimum distributions.

Sen. Grassley’s (R-IA) decision to return as Chairman of the powerful Senate Finance Committee following Sen. Hatch’s retirement also bodes well. Grassley previously has been a sponsor of comprehensive retirement legislation, including the Graham-Grassley legislation that formed the basis (along with the Portman-Cardin bill in the House) for the 2001 EGTRRA retirement reforms. He was also Chairman of the Finance Committee when Congress enacted the Pension Protection Act in 2006.

Beyond that, the Senate Finance Committee that he will now chair in 2016 unanimously passed the Retirement Enhancement and Savings Act (RESA), which would allow for “open” multiple employer plans (MEPs), facilitate in-plan lifetime income options and disclosures, and other key changes. The House version of that bill had 85 cosponsors in the House, and while it has been bogged down by procedural and policy disagreements, there remains hope that it could see action in the 116th Congress.

Just after Thanksgiving, House Republicans released a wide-ranging tax package — including a number of retirement savings provisions. We’re talking, and forgive me if I am starting to sound repetitive, “open” MEPs, enhancements for small businesses to start a retirement plan, changes to required minimum distributions (RMDs), an annuity purchase safe harbor for employers, provisions to enhance lifetime income portability, and an increase in the current cap on contributions under the automatic enrollment safe harbor (QACA) contributions, from 10% to 15%. The prospects for this particular bill to become law in its entirety are remote — but it is a positive sign that the 116th Congress could address bipartisan improvements to the retirement system along the lines of RESA.

And then there are the initiatives underway by the Trump administration: The President’s executive orders on association retirement plans, RMDs and e-delivery — the need for clarity on the fiduciary implications when advisors service retirement plans and advise participants on rollovers (a remnant concern of ours due to the DOL’s vacated fiduciary investment advice rule), and the emerging interest of individual states in crafting their own fiduciary standards.

Please call me if you have any questions.■