

**Rosen Seymour Shapss Martin & Company LLP**  
*Certified Public Accountants & Profitability Consultants*

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## BENEFITS BLAST

**Greetings!**

*Welcome to the Employee Benefits & Executive Compensation Service Group's Benefits Blast!* (a publication of Rosen Seymour Shapss Martin & Company). Here is where you will receive periodic updates on all your employee benefits and executive compensation needs.

Employee benefits programs and executive compensation issues are more complex than ever - tax laws and the applicable statutory schemes are continually changing, and increasingly employers must consider international implications. These issues also are critical to maintaining continuity in your workplace and retaining key employees.

We welcome your questions or comments about the topics discussed or related ones. Please feel free to contact us at 212-303-1806 or e-mail us a [aneumark@rssmcpa.com](mailto:aneumark@rssmcpa.com) and let us know how we can be of assistance.

Sincerely,

Avery E. Neumark, CPA, JD  
 Partner-in-Charge of Employee Benefits & Executive Compensation

### Do you know who your beneficiary is?

Remember your first day on the job. They just kept handing you papers to fill out. Probably included were forms dealing with various benefits - life insurance, long term disability and of course, the 401(k) plan. Do you remember who you

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designated as your beneficiary? If your firm merged with other firms was your information transferred correctly?

Over the years, you opened IRA, brokerage and insurance accounts, always designating a beneficiary. That beneficiary form is a very important piece of paper. It lets the rest of the world know who is to inherit your assets, when you are no longer here to tell us yourself. With regard to your retirement assets, your beneficiary designation has a significant impact on both the amount and timing of the distributions of those assets to your beneficiaries. Those beneficiary designation forms are an integral part of estate planning.

Do you periodically review your designations? Are they still valid? **Life changes and so should those forms.** People die, divorce, marry, move and so on. Laws that affect estates, trusts and benefit plans are constantly being revised. Those designation forms should be amended to reflect such changes. It is a hassle, and time consuming, but there could be a terrible price to pay for not taking the time to update those forms.

Take the time. Review your designations. And continue to review them periodically.

## IRA Charitable Donation - Do It Right

In an attempt to encourage charitable giving, the Pension Protection Act of 2006 permits a taxpayer, age 70 -1/2 and older to make a charitable contribution directly from his or her IRA or Roth IRA to a qualified charity. The amount contributed is not included in income and is not deducted as a charitable contribution. The taxpayer thereby gets the full benefit of a charitable contribution that might otherwise be limited as an itemized deduction. In addition, the contribution counts towards the taxpayer's annual minimum distribution requirement. The amount contributed is limited to \$100,000 and allowed for two years only (2006 and 2007). A qualifying distribution is completely tax free and not subject to early withdrawal penalties.

To qualify the contribution must meet various requirements - it must be made by a qualified taxpayer directly from a qualified account to a qualified charity. It is limited in amount and must be made within a certain time frame.

It is the responsibility of the **taxpayer**, not the IRA

custodian, to determine if all of the requirements for the charitable contribution have been satisfied. A taxpayer should check with his tax advisor prior to making such a contribution to make sure all the requirements have been addressed.

## Who is required to have an annual audit of their retirement plan?

The Employee Retirement Income Security Act ("ERISA") requires retirement plans to file an annual report with the Department of Labor ("DOL"); the report provides information to that agency and the IRS. That report consists of Form 5500, including appropriate schedules depending on the attributes of the plan and if applicable, audited financial statements. The report is due at the end of the seventh month following the close of the plan's year with a three and half month extension of time to file available.

DOL regulations distinguish between "small" and "large" plans. Small plans are those with less than 100 participants at the beginning of the plan year; large plans are those with 100 or more participants at the beginning of the plan year.

DOL regulations require that large plans include an audited financial statement with their annual filing, with a limited exception. For plans that fluctuate between 80 and up to and including 120 participants at the beginning of the plan year, the plan may elect to complete their current filing requirements based upon their designation the previous year.

The requirement to have an annual audit therefore hinges on the number of **participants** at the beginning of the plan year. All plan documents should be reviewed to determine the exact definition of a participant. Eligibility and participation differ from plan to plan. For plans with a 401(k) feature, however, all employees **eligible** to make an elective deferral are deemed participants, whether or not they actually choose to make a contribution. An employer with 100 or more employees who are eligible to make a 401(k) deferral, measured at the beginning of the plan year, is required to include an audited financial statement with the annual Form 5500, even if only a handful of employees actually participate and the employer makes no contribution to the plan.

It is vital to review plan documents and participation records to determine the appropriate forms required to meet your

annual filing requirement.

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