

# The "Daily Plan-It"™

ESTATE & BUSINESS LAW GROUP, P.C.

Volume 8, Issue 9

5/4/2006

## Retirement Plans: Know the Differences

The purpose of a retirement plan is simple: to help an individual save for the day when he can kiss the 9-5 lifestyle goodbye. However, the government allows certain types of early withdrawals just in case someone needs access to these accumulated funds before that golden day arrives.

### All withdrawals are not created equal

The Internal Revenue Service has set forth specific guidelines overseeing early withdrawals from 401(k)s and IRAs. These include situations like the permanent disability or death of the IRA owner; the need to pay for non-reimbursed medical expenses; funds to pay for a first-time home purchase; and assistance in paying for higher education costs, to name a few. While there are similar and overlapping conditions between the various retirement plans, they are not always the same.

### Accountants should know better

Keith Jones, an accountant, resigned from his position at Deloitte & Touche in 1999 to pursue a PhD. In 2001, he withdrew a total of \$30,369 from his Deloitte 401(k) plan to pay for his educational expenses. While Mr. Jones properly reported the distribution as income on his tax return, he failed to pay the 10 percent early withdrawal penalty.

The eagle-eyed IRS noticed the error and sent Jones a delinquency notice. Jones, believing he was in compliance with the rules, filed a petition in the Tax Court.

### The Tax Court Speaks

According to Sec. 72(t), a penalty of 10 percent is required on early withdrawals (before the owner reaches age 59 1/2) from retirement plans, except for exemptions enumerated under the law. While there is an exemption for higher education expenses, it only applies to distributions from IRAs, *not* 401(k)s.

## Tell it to the Judge

In his defense, Jones argued that he always had the ability to transfer the funds in his 401(k) to an IRA ... he just didn't. The Tax Court held that, even though the difference between a 401(k) and IRA are only a matter of form, the penalty exemption applies exclusively to an IRA. And no matter how you slice it, a 401(k) is not an IRA, and the Court has repeatedly adhered to this position.

## Lessons learned

It's imperative that advisors be cognizant of the rules and regulations covering retirement withdrawals and early payment penalties. Otherwise, a client may inadvertently lose money to the tune of a 10 percent penalty. As this case shows, even accountants don't always know best.

## Workshop Schedule

### The Truth About Estate Planning Fundamentals of Proper Planning

Cost: no charge  
Time: 7:00 to 9:00 p.m.  
Dates: 5/9/06 Tuesday  
6/13/06 Tuesday  
7/11/06 Tuesday



**Registration:** Contact Mary Lang at (847) 367-4460

For online information about Estate Planning,  
please encourage your clients to visit us at  
<http://eblawgroup.com>

**ESTATE & BUSINESS LAW GROUP, P.C.**  
**Howard M. Lang, J.D. & Marguerite A. Kopke, J.D.**

*Wealth Strategies Planning*

**847-367-4460**

*Estate Planning • Estate & Trust Administration*

*Wills & Probate*

*Business Entity Formation & Compliance*

We invite you also to visit <http://beaconbridge.com> for resources  
on Business Exit & Succession Planning.