

## **Top Ten Pitfalls For Employers Who Do Not Analyze Retirement Plans At The Sale, Acquisition, Or Merger Of Dealerships**

By R. David Wentz, J.D., CLU, ChFC, Tax Favored Benefits, Inc.

- Acquiring dealer assumes unwanted liability for required pension contributions and administration expenses on newly acquired employees.
- Plan culture and provision differences between the acquiring dealer's plan and the selling dealer's plan are so great that desired employees of the acquired dealer terminate employment.
- Selling dealer's plan is terminated, rather than merged into the acquiring dealer's plan, resulting in automatic full vesting and distribution of all participant balances to desired employees of the selling dealer who decide not to transfer employment to the new dealer.
- Consideration of plan issues are not made until after the purchase or merger date which results in duplicated costs for contributions and administration of more than one plan for at least one year.
- Investment options in the acquiring dealer's plan are less diverse and of lower quality than those of the selling dealer's plan which results in bad feeling by the newly acquired employees.
- Communication of provisions and investments in the new or merged plan is not properly made to the newly acquired employees which results in confusion and possible fiduciary liability for the acquiring dealer.
- Violation of the government's "anti-cutback" rule which protects plan participants from an employer's reducing or eliminating certain benefits such as an early-retirement benefit, retirement-type subsidy or optional forms of benefit under the terms of the plan. Violation of the anti-cutback rule may result in plan disqualification with employer penalties and adverse tax consequences.
- Meeting government requirements, such as timely filing of IRS Form 5500, "fall through the crack" by the selling or merging dealer and results in significant IRS fines.
- Business objectives of the new dealer organization have changed and the provisions of the successor plan have not been amended to help meet the new objectives and reward the most valuable employees.
- Fiduciary liability for not meeting the requirements of ERISA Section 404(c).

For further information contact Tax Favored Benefits, Inc. at 800-683-3440 or [tfb@taxfavoredbenefits.com](mailto:tfb@taxfavoredbenefits.com). Tax Favored Benefits, Inc. is an Association recommended service provider for retirement plan and human resource services.