

BY MIKE SCOTT

Oakland@mbizreview.com

Local businesses need to become better educated on the specifics of their retirement plans to boost compliance while avoiding penalties, one local expert on qualified benefits plans says.

Failure to understand these plans can result in the loss of tax and other financial benefits both to companies and individual employees, said Charles Lax, a shareholder with Southfield law firm Maddin, Hauser, Wartell, Roth & Heller P.C.

Lax recently completed a three-year term as a member of the Internal Revenue Service's Tax Exempt and Government Entities committee, a group charged with making recommendations to the IRS on policies and guidelines.

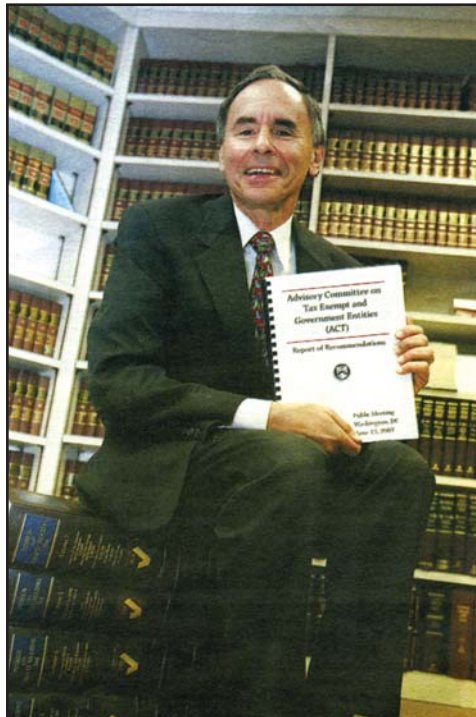
Lax was project leader and primary author of a 46-page report released in mid-June, "Improving Compliance for Adopters of Pre-Approved Plans," which refers to those standard 401(k) and other retirement plans provided to employees and available through such third-party administrators as banks, mutual funds and others.

"Pre-approved plans comprise probably around 95 percent of the defined benefits plans available to employers today," Lax said.

The other option is individually designed custom retirement plans, which give an employer more control and choice in how a plan is set up but can be very costly to design and implement, he said.

Pre-approved plans take the "cookie-cutter approach," he said, although they can perform as well as or better than individually designed plans. The problem that can arise with using pre-approved plans is that some of them aren't compliant with current IRS regulations, he said, which can result in significant headaches to employers and employees.

"What happens is that the (financial) institutions that offer these plans often don't do a good job explaining to customers the responsibilities and plan particulars, so there can be a level of non-compliance that isn't



Charles Lax helped the IRS develop retirement plan regulations

even realized," Lax said. "The financial impact of this can be significant."

At a broad level, such impact could include a loss of company or individual tax breaks or deductions. The before-tax benefits of such plans also may not be realized. In certain circumstances the IRS could take away funds as part of such retirements plans. The employer is the fiduciary of such plans, and Lax said they "arguably" could be liable for non-compliant plans, which could lead to lawsuits or further fines.

"This can be a challenge especially for small businesses that may not have the expertise or knowledge about how a 401(k) or other retirement plan works," Lax said. "One of the messages to get across is that the financial institutions that offer these plans can't be relied upon to provide employers with all the information they need to remain compliant."

The majority of employer concerns today about such plans rest with the fiduciary liabilities, said Larry Raymond, president of

Alliance Benefit Group of Michigan in Bingham Farms. Most plan administrators assume that they are compliant with federal laws and many are surprised when an audit results in non-compliance notice.

"Congress has set up some stringent rules for how these plans should be managed and many companies simply don't know what those rules entail," Raymond said.

The report authored by Lax and other attorneys from across the country on the IRS committee included a number of recommendations for employers to follow to help decrease the likelihood of non-compliance. One was that the IRS publish a self-audit checklist for adopters of these plans, or develop other educational outreach to help employers understand such plans.

The IRS Web site under "Retirement Plan Community" also can offer significant feedback and assistance, Lax said.

Defined benefit plans don't have to undergo an audit but should be reviewed on an annual basis, at the very least by internal staff, Raymond said. The cost of a formal defined benefit plan audit can be excessive for some small-to-mid-sized businesses and can run several thousand dollars, but there are other ways to engage in such a review.

The financial institutions that offer such plans do have resources that employers can utilize but they often come at an additional cost.

"The third party administrators should provide such services and structure a standardized process that educates benefit plan managers," Raymond said. "There is a fine line between needing an audit and securing compliance but some type of oversight – internal and/or external – is needed."

The external oversight can include an audit or another formal review process, Lax said.

"You do not want to rely upon your group of knowledgeable consultants like your accountant, your lawyer and your financial planner when possible," Lax said. "At the very least, this is a subject that businesses should be researching to ensure they are protected and benefiting from financially."