

Publications

IRS Takes a Bite Out of the “One-Bad-Apple” Rule

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The Internal Revenue Service (“IRS”) rules for multiple employer plans (“MEPs”) have historically provided that “the failure by one employer maintaining the plan (or by the plan itself) to satisfy an applicable qualification requirement will result in the disqualification of the [Section 413(c)] plan for all employers maintaining the plan.” [Treas. Reg. § 1.413-2(a)(3)(iv)] This rather harsh rule often is referred to as the “unified plan” or “one-bad-apple” rule, and for years has made employers and MEP providers anxious as to the implications of such a rule, especially in light of the very complex tax qualification rules that apply to MEPs. This is particularly true with the recent talk of so-called ‘open MEPs,’ under which unrelated employers may join in a common 401(k) plan, even though they have no connection to each other or the plan sponsor (other than the plan itself).

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