

You Get What You Pay For!



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We were recently hired by a leading Long Island company to assist them on an Internal Revenue Service (IRS) audit of their 401(k) Plan. Upon review of the contributions made to the Plan and the Plan document, the IRS agent determined that the matching contribution was done incorrectly.

The Third Party Administration (TPA) firm handling the Plan vehemently disagreed. Upon review, we determined that the TPA was wrong and the IRS agent was right. While the company was making the matching contribution to employees on a payroll basis, the Plan documents stated that the allocation is made annually. This creates a discrepancy because plan participants can change the amount of their salary deferral multiple times during the year and matching contributions are tied to the deferral. This discrepancy requires the Plan sponsor to make a true up contribution, so that the matching contribution equals the annual allocation formula set forth in the Plan. The TPA didn't make the true up, so now the company has to make it up including extra amounts to adjust for interest for the late payment.

The TPA claimed that this error was the fault of the Plan document. The problem was that the TPA drafted the Plan. This TPA has no ERISA attorney on staff or a paralegal or an actuary. Who drafted the Plan document? Obviously someone without the background to know what they are doing.

While people question the cost of an ERISA attorney, remember that retirement plan documents are legal documents. Would you want a retirement plan administrator drafting plan documents? Would you want your doctor drafting your living will or your broker drafting your estate plan?

Plan documents should be drafted by ERISA attorneys, they have the background to know how retirement plans should operate, according to law.

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