

PRESIDENT'S MESSAGE
July 2009

President's Message:

To My Fellow ICBC Members:

**Network with the Pros So You Can Survive
Networking, Relevance, and Professional Career Development**

We all know that the current crisis that we are in has not been easy and that there will be more challenges ahead. Are you a survivor in this stormy market? [Now is not the time to jump overboard.](#) Instead, now is the best time for networking with our industry leaders to gain insight, pick up nuggets of knowledge, and develop your professional skills with additional education.

As you make travel arrangements to come to Minneapolis, September 23-26, 2009, for the ICBC Annual Conference, which will be held jointly with the NEBB Institute and the Society of Business Analysts, please make sure that you arrive early enough on Wednesday to attend the Member Reception at 5:30 PM. This is an opportunity for ICBC members to get more involved and for non-members to get to know more about the ICBC. And believe me, ICBC is changing as part of our continuing effort to attract and retain members.

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As mentioned in our April-May Newsletter, your Board has set a new strategic direction which includes a major re-design of the old web site, enabling it to be used to create templates by members to forward their business information to their clients and prospects. Your Membership committee is also working on, among other things, creating and posting a press release template for new members to use. The Education committee is working on the development of core educational courses that will be a requirement to achieve the CBC designation.

Our new mission statement is:

ICBC'S mission is to be the premier association of business transfer, planning and support professionals through the team application of integrated disciplines designed to meet the unique needs of business owners, their employees and other stakeholders.”

Read on and you will see that this year's upcoming ICBC Conference has the best agenda of its kind and certainly meets our new mission statement. Where else will you be able to find this collection of talent: business valuation and machinery and equipment appraisers, main street business brokers and merger and acquisition specialists, tax and exit planning experts, financing sources and an update on SBA lending to name a few. You'll come away with valuable tips on how to increase your bottom line. Come join your annual event for Networking, Relevance and Education to further your Success and your Professionalism.

See you in Minneapolis!

THE CERTIFIED BUSINESS COUNSELOR

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Editors Column

Fellow ICBC members:

Now is the time to book your trip to the 2009 ICBC Annual Conference! Here are just some of the reasons:

- **With the economy down, what better time to network with your colleagues**
- **Learn from experts in their fields**
- **Air fares are really low**
- **We need a vacation we can write off**
- **Chance to exchange stories with old friends.**

Looking forward to seeing you, in Minneapolis, September 23-26, 2009!!

Newsletter Editor



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SAVE THE DATE!!!

ICBC CONFERENCE 2009
MINNEAPOLIS
SEPTEMBER 23RD-26TH

MERGING GREAT MINDS TO TACKLE BUSINESS
SOLUTIONS FOR TODAY'S STRUGGLING
ECONOMY!



MARK YOUR CALENDAR
WE LOOK FORWARD TO SEEING YOU THERE!!

Don't Miss Our Exciting Line Up Of Speakers With A Wide Range Of Topics And Expertise!

Andy Amoroso, Business Development Specialist with U.S. Small Business Administration
“Criteria, Guidelines, and Regulations Of Appraisals And New SBA Recovery Highlights”

Grant Cook, Auctioneer,
“Move The Company F/F/E, Find Out How To Effectively Use Auctions”

Jim Cornell, President, MBA, MCBC, CMC, CM&AA, CTP, CPA, CVC, CPP
with Praxiis Business Advisors, “Update on Securities Licensure”

Dick Thorsen, CPA/ABV, CMEA, CVA,
“Pass Through Entities And How It Affects You”

Monty Walker, CPA, CBI, BCB, BBA, CBC with Walker Advisory Associates,
“Tax Strategies”

Tim Cleary, Vice President of Consulting with Principal Financial Group,
“ESOPs”

Neil Friedman with AVP Business Development First American Exchange
“1031 Exchanges”

Carl Lidstrom with Risk Management Resources Inc.
“Risk Management 101”

Joe Huguelet
“Transaction Due Diligence After The LOI”.

Randall Schostag with Minnesota Business Valuation Group
“Fair Value, The Standard Of Value Used For Accounting Applications Of Valuation”

BREAKOUTS SESSIONS:

George Abraham, MCBC, CMEA, CSBA, FCBI with Business Evaluation Systems
“Business Valuation 101”.

Mark Richardson, CMA, CM&AA, MBA, CMEA with JMR Capital Inc.
“How To Win With A Business Package”

John Harris, MCBC, ASA with Marketing and Consultant Services Inc.
“How To Place A Value of Equipment”

KC Conrad
“USPAP and You...Are You In Compliance?”

Debra Baker, Vice President with 31 Corporation and Sara Baker
“How To Get Results From Your Marketing”

CONFERENCE & EXPO REGISTRATION
MINNEAPOLIS, MN
SEPTEMBER 23 - 26, 2009

REGISTER EARLY AND SAVE!



In conjunction with NEBB ad SBA.

Name: _____ Name on Badge: _____

Designations: _____

Company: _____

Address: _____ City: _____ State, ZIP: _____

Telephone: _____ Email: _____

Spouse Name: _____ Name on Badge: _____

Early Bird Conference Registration Fee Before August 1st 2009: \$495 _____

Spouse Registration Fee (Meals): \$150 _____

Conference Registration After August 1st 2009: \$595 _____

New Member's First Year Dues: \$100 _____

Lake Minnetonka Cruise Per person Thursday September 24th \$56 _____

Total Amount Due: \$ _____

Type of Credit Card (All types accepted): _____ Amount Authorized to Charge: _____

Card No. _____ Exp date: _____ Secure Code: _____

Check Accompanying Registration: Yes No

Fax: Completed Application To: 503-292-8237 or Mail To: 18831 Willamette Drive, West Linn, OR 97068

Have You Made Your Hotel Reservation Yet? Make Your Flight Registrations Early For A Low Cost Ticket!

Cancellation Policy: If you are required to cancel your registration for any reason, please be advised that cancellations must be in writing. You will receive a 50% refund 60 days before the Conference, a 10% refund 30 days before the Conference and 0% if you register but do not show up for the Conference.

Wealth Preservation Forum

Retirement Plans For Business Owners

By John Walch

I. INTRODUCTION

A. Three key factors govern the choice of retirement plan for business owner:

1. The advantages and disadvantages of the plan's tax qualified status;
2. The advantages and disadvantages of defined contribution vs. defined benefit plans;
3. How to tailor the plans design or features to fit the needs of your client.

B. Although we will focus on qualified plan's, non-qualified arrangements have become increasingly important as a method for deferring compensation for highly compensated individuals who are limited in the amounts they can defer under a qualified plan.

C. Further, it is not clear that deferring compensation is always in the best interest of a highly compensated individual. Factors favoring current payment rather than deferral include:

1. The likelihood of tax rate increases;
2. The creditworthiness of the obligor/employer; and
3. Possible increased regulation or limitations on deferred compensation.

II. THE ADVANTAGES AND DISADVANTAGES OF TAX QUALIFICATION

A. There are three principal advantages of a "qualified" plan:

1. The employer receives a current tax deduction (with limits) for its contributions.
2. The employee is not taxed until amounts are actually paid to him from the plan and then, possibly, at favorable rates.
 - a. Grandfathered 10-year averaging a capital gains rate
 - b. Rollover possibilities; and
 - c. Unrealized appreciation on employer securities.
3. The 'qualified' trust is tax-exempt, which allows the tax-free build up of the retirement fund. NOTE: The trust is subject to the tax on unrelated business taxable income.

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B. There are other, ancillary benefits that derive from tax qualification:

1. Assets in the qualified trust are protected from the employer and from creditors of both employer and from creditors of both employer and employee.
2. Participants in defined benefit plans may qualify for PBGC guarantees of certain levels of benefits.
3. Qualified plan benefits are often portable.

C. There are, however, significant disadvantages to qualification:

1. The formal requirements of section 401(a) are very complicated, technical and ever changing; section 401(a) alone now contains 37 subsections.
2. Qualified plans are subject to other tax penalties, such as excise taxes.
3. Qualified plans are often expensive to administer.

D. Nonqualified Plans:

1. The most common function for non-qualified retirement plans is to supplement benefits payable under the qualified plans of an employer.
2. Because non-qualified plans are “unfunded”, they do not need qualified status, and therefore do not need to be non-discriminatory. By design, they discriminate in favour of highly compensated employees.
3. Funding such plans through a “rabbi trust” does not create a “funded” plan for ERISA or income tax purposes.

III. DEFINED CONTRIBUTIONS VS. DEFINED BENEFIT PLANS

A. Defined Contribution Plans:

1. A defined contribution plan is “a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant’s account, and any income, expenses, gain and losses, and any forfeiture of accounts of other participants which may be allocated to such participant’s account.”
2. A defined contribution plan will usually be the plan of choice for a small business with relatively young, highly paid work force. It offers the following:
 - a. Inexpensive (or at least less expensive), easier administration;
 - b. Easy communication;
 - c. The employee bears the investment risk;

- d. The possibility of employees self-directing the investment of assets in his or her account, e.g., ERISA 404© plans;
 - e. No PBGC premiums (but, as a result, no PBGC insurance).
3. Defined contribution plan choices include:
- a. *Profit-Sharing Plans.* Contributions can vary each year at the discretion of the employer. The contributions are allocated according to a fixed formula (e.g., pro-rata based on compensation). The contributions must be “substantial and recurring.” Distributions may occur in-service after a fixed number of years (at least two) or upon the occurrence of certain events. Contributions need not be conditioned on the existence of profits—even non-profit, tax-exempt entities can sponsor profit-sharing plans.
 - b. *Stock Bonus Plans.* A stock bonus plan is like a profit sharing plan, except that the plan must offer distributions in the form of employer stock. Contributions are not conditioned on the existence of profits.
 - c. *ESOPs-Employee Stock Ownership Plans.* ESOPs invest primarily in employer securities. Special rules apply which allow leveraging and employer guarantees of indebtedness. ESOPs allow business owners to completely defer income tax on the proceeds of the sale of their business.

B. Defined Benefit (Pension) Plans:

- 1. The principal characteristics of defined benefit plans are:
 - a. A fixed benefit formula that is “definitely determinable”;
 - b. Contributions are not fixed, but actuarially determined each year;
 - c. The employer retains the investment risk— since the employee’s benefit is fixed, the employer must make up investment losses though increased contributions;
 - d. The employer pays PBGC premiums to guarantee benefits;
 - e. In-service distributions are prohibited;
 - f. The joint and survivor annuity rules generally apply.

- 2. Defined benefit plans usually define a benefit as a percentage of compensation times years of service, e.g., 1.5 percent of compensation times years of service, where compensation can be for each year (career average plan) or the final average (final average plan). Other designs might offer a flat dollar amount as the pension, e.g. \$300 per month; or some set percentage of final pay, e.g., 25 percent of final pay.

3. Cash Balance Plans are defined plans that look, from the employee's point of view, like a defined contribution plan. Each employee's benefit is expressed as a lump sum equivalent to which "interest" is credited at a specified, guaranteed rate. The result is that each participant appears to have an individual account which is earning the stated interest rate. However, the plan does not really maintain individual accounts; the "balance" an employee sees is simply the lump sum actuarial equivalent of his accrued benefit, which may or may not be fully funded by assets actually in the trust.
4. Additional Aspects of Defined Benefit Plans:
 - a. Complex minimum funding requirements with quarterly contributions, with possible tax liens and penalties imposed for non-payment.
 - b. Title IV of ERISA applies; plan termination can result in PBGC claim (and lien) for any under funded benefit; controlled group liability.

C. Deduction Limitations:

1. Deduction limitations depend on the type of plan (pension, profit sharing, stock bonus, etc.).
2. Pension plan—the amount determined actuarially to be required to fund the defined benefit.
3. Profit sharing and stock bonus plans—25 percent of the compensation of participants covered by the plan.
4. Both pension and profit sharing plans by the same employer—limit is the greater of:
 - a. 25 percent of the compensation of participants under the plans, or
 - b. The amount of necessary to satisfy the minimum funding amount of the pension plan.
5. Special rules exist for ESOPs, terminating pension plans, carryovers, and timing of distributions.

D. Other Plan Design Features:

1. Pension plans typically do not maintain individual accounts for participants; assets are held in the trust fund without separate allocation, and invest as one portfolio. Individual participants have no influence over the investment of the fund, which is handled by plan fiduciaries or professional money managers.
2. Profit sharing, stock bonus, and other individual account plans typically maintain separate accounts for each participant. This permits a participant, if the plan so provides to direct the investment of some or all of his account.
3. Self-direction has become extremely popular. Most plans offering self-direction limit the choices to menu, e.g., a participant can divide her or his account among the investment options offered under the plan; other plans have gone further, offering the participant what is, in effect, his or her own brokerage account allowing investment in a wide variety of stocks and securities.

4. Treasury regulations prohibit discrimination regarding “rights or features”.
 - a. Included in the definition of “rights or feature” are:
 - (1) The right to self-invest one’s account balance; and
 - (2) The right to choose a particular form of investment (e.g., company stock).
 - b. Accordingly, the ability to self direct, or choose a particular investment option, cannot be limited to highly compensated employees.
5. Loans—Both DB and DC plans can permit loans to participants of up to the lesser of \$50,000 or one-half the value of their vested benefit.
6. Integration with Social Security— “permitted disparity”; contributions or benefits can be integrated with social security in determining whether the plan is discriminatory.
7. Section 401(k) Feature—limited to stock bonus and profit sharing plans, this feature permits an employee to elect to receive compensation in cash or contribute it to the plan without paying income tax on that amount. Current (2009) deferral limit is \$16,500 (plus a \$5,500 “catch-up contribution for employees age 50 or more).
8. Employer Match— often found as an additional feature in a plan with a 401(k) arrangement, this feature allows employees to earn an employer “match” for amounts contributed by the employee — e.g., the employer might contribute \$.50 for every dollar the employee contributes, up to, say, six percent of compensation.
9. Vesting Schedule— allow some flexibility; the principal choices being between immediate vesting, up to six year graduated vesting or three-year “cliff” vesting.
10. Form of Benefit Payment— defined benefit plans generally must offer an annuity form of benefit, but can offer other actuarially equivalent forms. Common choices include lump sums, period certain payments or level payment options coordinated with social security. Employer discretion in choosing the form of benefit to be paid to a particular employee is now prohibited.

About the Author

John Walch focuses on all aspects of qualified and non-qualified benefit plans, including equity-based incentive and compensation plans, nonqualified deferred compensation plans, qualified profit sharing plans, 401(k) plans, ESOPs, pension and welfare benefit plans.

John also works with employers to design deferred compensation, stock option, stock appreciation right, phantom stock and other incentive plans. He advises businesses on issues related to parachute payments, COBRA, and other benefit plan issues.

John also has extensive experience obtaining individual prohibited transaction exemptions from the U.S. Department of Labor, defending IRS audits of qualified plans and litigating ERISA cases.



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