

# 412(i) – The Nearly Perfect Benefit

by Shane Dez

Highly profitable small business owners have never had such an opportunity to create and transfer wealth or plan for their retirement. If your client's business generates high consistent income with few, if any, employees, it is the ideal candidate to take full or partial advantage of this law.

For those who qualify, the rewards are truly mind blowing. It the ultimate solution to using tax dollars - that is, the same money they would otherwise pay to the government would be used to optimize their net worth enormously. Simply put, instead of writing a check made payable to IRS, your client can have that same check made payable for himself or herself.

The 412 (i) lets your clients use tax dollars to secure financial freedom, build up for a dream retirement, or design the lifestyle of their choice or transfer wealth -- just to name a few alternatives to paying taxes. For a business owner with high revenue and a big profit margin, the biggest challenge is how much of their gain ends up going in their own bank account.

## Applying Leverage

Conventional retirement benefit and defined contribution plans such as 401 (k) and profit-sharing programs provide very little leverage and limited contributions to business owners. Lack of employees' contributions in 401(k) has further curtailed the ability for owner-employees to make significant contributions due to top heavy and discriminatory compliance law.

The 412 (i) *creates level* funding, allowing for certainty in current and future tax planning. Upon plan implementation, each employer can receive an IRS "Letter of Determination," thus satisfying any concern that the client's CPA or attorney may have.

Up until January 2000, if the business owner had a plan, the rules limited their ability to add a new benefit plan [The 1.0 and 1.4 rules of 13 415(e)]. However, as of January 1, 2000, it is now possible for business owners with profit sharing or 401(k) plans to add or upgrade to a defined benefit 412(1) program. This increases retirement benefits significantly, while using the old plan as a foundation.

Take the following example: A 55-year-old business owner does not have time to

accumulate significant benefits if limited to only \$41,000 each per year under a defined-contribution plan. The new defined benefit 412 (i) allows for greater pre-tax contributions. It provides substantial guaranteed retirement benefit at age 65.

The 412(1) can be used to reduce or eliminate over-funding in old defined benefit plans removing the necessity for distribution with enormous tax consequences or other methods that deplete the assets of the plan.

## Fully-Guaranteed Benefits

Substantial tax deductions are only a part of benefits to business owners. The plan provides guaranteed retirement benefits and wealth accumulation with full or partial rollover opportunities or the ability to transfer assets to the insured's next generation- all with pre-tax dollars with minimal or no risk of asset de-valuation.

## Asset Protection

Business owners are constantly exposed to a high risk of litigation. "Asset protection" has become a planning buzzword with many types of uncertain remedies. The 412 (i) also provides full asset protection, which is a substantial for business owners.

There is no market risk in the new 412 (i) program because all benefits must be fully guaranteed by pre-qualified, superrated, major insurance companies in order to qualify. There is no contribution limit as long as it satisfies the generous maximum benefits defined by 412 (i) law.

The plan design process starts with determining the client's goals. Some of the questions that need to be addressed are:

- How much do you want to contribute each year?
- What are the long-term plans for your business? Is there a retirement scenario? If there is more than one owner, what will happen to the younger owner when the older one retires and vice versa?
- Is there an existing qualified retirement plan? If so, what type is it and what are the benefits and contributions?
- How long do you want to continue with your business? Are you thinking of selling your business?
- Do you have a stated pre-retirement death benefit need that is derived from recent financial planning?

Is the contribution level being consid-

ered realistic in light of the cash flow and tax rate of your business?

- What type of business entity is it?
  - Do you control or have ownership interest in any 9414(b), (c) or (m)?
  - Do you have any asset protection concerns?
- In a nutshell, some benefits to business owner/owners include the following:
- To be able to make sizable deductible contributions from the business.
  - To eliminate current personal taxes.
  - To minimize employee costs.
  - To be able to continue to fund the plan into the future without facing stringent limits.
  - To minimize or eliminate risk.
  - To have a plan that is IRS-approved in advance and is not based on uncertain interpretations of the tax code.
  - To provide asset protection.
  - To offer estate planning and wealth transfer to the business owner's next generation on a pre-tax basis.
  - To be able to continue deferral of benefits even after retirement for tax planning purposes.

The most important aspect of the new 412(1) defined benefit plan is that it is IRS approved in advance. It is not based on uncertain interpretations of the Tax Code. In conclusion, the American tax system has never worked so well in favor of small business owners. If your client's business is highly profitable, but they have to give away the lion's share of their money to IRS, it could make sense to find out if they qualify to use this new tax law. That way, you can help your client keep the lion's share of the company's profit instead of handing it over to the IRS. □

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