



LAW FIRM MANAGEMENT

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SECURE 2.0

2024 changes you need to know about

How cost segregation
studies can reap tax savings

The continuing upside of
remote document review

Will AI threaten hourly billing?

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SECURE 2.0

2024 CHANGES YOU NEED TO KNOW ABOUT

In December 2022, President Biden signed into law the Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 Act. While some of the provisions in the sweeping retirement legislation have already taken effect, others have yet to kick in. Here are some of the most important changes for 2024 that could affect your law firm and your employees.

MATCHING CONTRIBUTIONS FOR STUDENT LOAN PAYMENTS

Younger attorneys and other staff sometimes struggle to take advantage of a firm's matching contributions to retirement plans because of their student loan obligations. SECURE 2.0 allows them to receive matching contributions to retirement plans based on their qualified student loan payments.

SECURE 2.0 allows taxpayers to receive matching contributions to retirement plans based on their qualified student loan payments.

Law firms can make matching contributions to a 401(k) plan or SIMPLE IRA; contributions based on student loan payments must be available to all match-eligible employees. You can conduct actual deferral percentage (ADP) testing separately for employees receiving student loan matches.

529 PLAN ROLLOVERS

Owners of certain Section 529 plans for qualified education expenses can move unused funds in the accounts directly to the plan beneficiary's Roth



IRA without paying any federal taxes or the 10% penalty for nonqualified withdrawals, subject to certain limitations. This privilege is limited to a lifetime maximum of \$35,000.

The rollovers are subject to the applicable Roth IRA annual contribution limit, and rollover amounts can't include any amounts contributed to the plan in the previous five years. In addition, the 529 account must have been open for at least 15 years.

STARTER 401(k)s

SECURE 2.0 creates a new type of retirement plan known as a starter 401(k). This is a cash or deferred arrangement that you generally can offer if you don't have another qualified retirement plan. All employees must be automatically enrolled at a deferral rate of at least 3%, but no more than 15%. The maximum annual deferral is \$6,000 (indexed for inflation) plus the annual IRA catch-up contribution amount for those over age 50.

You can impose age and service requirements, and employees can elect out. Employees also can elect to contribute at a different level. Employers may not contribute, though. No ADP or top-heavy testing of the plans is required.

LOOKING AHEAD TO 2025

The phased-in approach to implementing the provisions of SECURE 2.0 continues into 2025, with some major shifts taking place. For example, the annual catch-up contribution limit for individuals aged 60 to 63 will increase to \$10,000 or 150% of the regular catch-up limit — whichever is greater.

In addition, employers with 401(k) plans adopted after December 29, 2022, must automatically enroll eligible employees, with a deferral percentage of at least 3% but not more than 10%. The rate will automatically increase by 1% per year, up to at least 10% and no more than 15%. Employers with 10 or fewer employees and those that have been in business for less than three years are exempt from the automatic enrollment requirements.

Finally, long-term part-time employees aged 21 and older who work at least 500 hours per year for two consecutive years must be allowed to contribute to 401(k) plans. Currently, part-time employees must log at least 500 hours for three consecutive years.

EMERGENCY FUNDS

A Bankrate survey recently found that 57% of U.S. adults are unable to afford a \$1,000 emergency expense. SECURE 2.0 attempts to tackle this problem with multiple provisions related to emergency access to retirement savings. For example, employers now can link an emergency savings account (ESA) to employees' retirement accounts. The ESA will be treated as an after-tax account. You can automatically enroll non-highly compensated employees with a deferral of up to 3% of compensation but no more than \$2,500 annually (indexed), or lower if the employer chooses. Withdrawals are allowed tax- and penalty-free. You must allow at least one withdrawal per month, with no fee for the first four withdrawals each year.

SECURE 2.0 also provides for penalty-free early withdrawals from qualified retirement plans for “unforeseeable or immediate financial needs relating to personal or family emergency expenses.” Participants have three years to repay the early withdrawal, but no additional emergency withdrawals are allowed during the repayment period. The withdrawals are limited to once per year.

Domestic abuse victims are exempt from early withdrawal penalties for the lesser of \$10,000 or 50% of their vested account balance. The 10% penalty also doesn't apply to distributions to terminally ill individuals.

ROTH 401(k) REQUIRED MINIMUM DISTRIBUTIONS

Like traditional 401(k)s, Roth 401(k) plans have been subject to annual required minimum distributions (RMDs). Beginning in 2024, though, designated Roth 401(k) contributions aren't subject to RMDs until the owner's death.

A note of caution: participants with RMDs attributable to 2023 but payable in 2024 must still take the distribution.

AMENDING YOUR PLANS

As a result of the numerous changes in SECURE 2.0, many law firms will need to amend their retirement plans. The good news is that you generally have until the end of 2025 to make such amendments, provided that your plan complies with the amendments as of the respective effective date under the law. •

How cost segregation studies can reap tax savings

Real property and improvements to real property often rank among the costliest of a law firm's capital expenditures. Yet many firms fail to leverage these assets for their full tax benefits. A cost segregation study can help your firm make the most of the potential perks. And some of these perks currently are even greater than usual because of temporary opportunities under the Tax Cuts and Jobs Act (TCJA).

HIDDEN SAVINGS

For tax purposes, commercial real property generally is depreciated over 39 years. But most such properties include a wide range of components with much shorter depreciation recovery periods. These can include parts of various systems such as HVAC, plumbing, electrical, fire protection, alarm and security, as well as:

- Drywall,
- Doors,
- Fixtures,
- Data and communication ports,
- Flooring, and
- Cabinetry.

These assets could have useful lives of five, seven or 15 years — all significantly less than 39 years. By segregating such assets, you can claim greater depreciation deductions sooner. You'll claim the same total amount of depreciation on the asset but reduce your tax bill in the short term, providing greater cash flow.

That's especially true now, while the TCJA's generous bonus depreciation provision remains in effect. The law increased the Section 168(k) first-year bonus depreciation to 100% of the purchase price, through 2022. The allowable deduction drops by 20% each year after 2022, until it evaporates altogether in 2027 (absent congressional action).

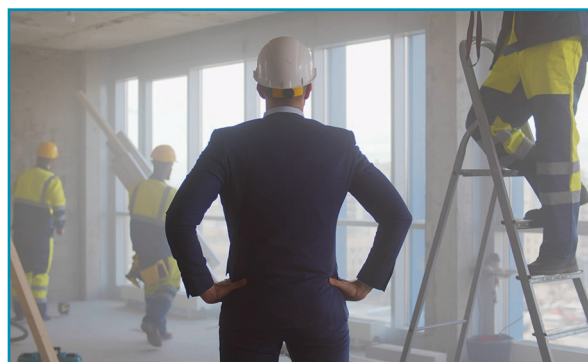
In addition, under Section 179, you currently can expense 100% of the purchase price of new and used eligible assets in the year you place them in service. Both deductions are available for a variety of capital assets, including certain improvements to nonresidential property (or "qualified improvement property").

COST SEGREGATION TO THE RESCUE

Cost segregation studies are the solution if you're among the law firms needlessly leaving depreciation deductions on the table. These studies can identify your property's different component assets according to recovery periods (five, seven, 15 or 39 years). Even if property was placed into service years ago, it may be possible to claim depreciation from previous tax years.

A qualified cost segregation provider will present you with a comprehensive report that will help you make your case to the IRS or other tax authority if a challenge should arise. The report should include thorough documentation and references in support of its findings, reducing the risk of penalties and interest for underpayment of taxes. According to the IRS, cost segregation is factually intensive and must be supported by corroborating evidence.

The study should follow IRS guidelines. For example, the agency has criticized cost segregation studies based solely on a "rule of thumb"



approach, which “uses little or no documentation and is based on a preparer’s ‘experience’ in a particular industry.” An unqualified preparer might estimate shorter-lived property as a fixed percentage of project cost by relying on previously determined industry averages.

The IRS has expressed a preference for studies performed by qualified individuals and professional firms that are competent in auditing and estimating procedures related to building construction. While it doesn’t prescribe a specific methodology, it indicates that certain approaches produce more accurate and reliable allocations — and that these approaches can expedite IRS review.

WORD OF CAUTION

It’s worth noting a potential downside to claiming depreciation deductions for assets according to their shorter recovery periods (versus the 39-year

period). When sold, these assets may be subject to what’s called “depreciation recapture.”

This occurs when a depreciated capital asset is sold at a price that exceeds its tax basis. The excess generally is taxed as ordinary income for Section 1245 property (capital property that isn’t a building or structural component) or at a rate of up to 25% for Section 1250 property (real estate property, such as buildings and land). The benefits of cost segregation may well outweigh any recapture tax, though, depending on an asset’s holding period.

WE CAN HELP

As the IRS has emphasized, a preparer’s credentials and level of expertise may have a bearing on the overall accuracy and quality of a study. We have the qualifications to provide you a study that can withstand IRS scrutiny. •

The continuing upside of remote document review

Remote document review may join the ranks of pandemic-induced changes to the legal industry that are here to stay. And that can be a good thing — for both law firms and clients. Here are some of the benefits of remote document review, along with a primer on efficiency and security issues.

SAVING COSTS AND HIRING STAFF

Cost saving is the most obvious benefit of remote review and a factor that often appeals to budget-conscious clients. With much lower overhead and minimal travel expenses, if any, the use of remote reviewers allows firms to pass the savings on to clients.

Another important driver is the ongoing labor shortage. Hiring squeezes can make it tough to find qualified reviewers locally at an affordable rate.

Similarly, allowing remote document review makes it significantly easier to scale up for large projects with a significant amount of material. Attorneys can assemble more inclusive teams than might otherwise be possible. They also enjoy greater access to reviewers who offer specific areas of expertise, such as intellectual property, engineering or scientific experience — or foreign language fluency.

MAINTAINING EFFICIENCY

Remote workers often are subject to suspicions about their diligence. Attention and screen monitoring software can help assuage this worry by demonstrating to clients that reviewers aren’t “dilly-dallying.” Numerous metrics also are available to measure productivity.

What about the collaboration and information sharing that comes from a group of reviewers



working together in the same space? Not to worry. Slack, Microsoft Teams and similar products can reproduce much of this synergy, combining the ability to have private or group chats with secure screen-sharing capabilities.

STAYING SECURE

Despite the advantages, attorneys may encounter some resistance to remote document review from clients. Remember, clients who had remote reviewers working on their cases throughout the pandemic may not even have been aware of it. Their primary concern probably will be the security of remote reviews.

Clients may imagine family members or customers in a coffee shop walking by the reviewer and getting a plain view of information that is confidential, or potentially damaging. But many tools are available to help ensure materials are kept secure.

Initially, remote reviewers should be held to the same minimum standards as other types of remote workers. These include the use of anti-virus and malware protection software on every device and other access management practices.

Beyond those security measures, consider requiring remote reviewers to install attention and screen monitoring software. These tools use biometrics and automatically log out when a reviewer steps away from the computer. It also

may be beneficial to strictly prohibit document downloading and to restrict use of all devices to only the reviewer.

The reviewer's physical work area must also be secure. Environment monitoring software can perform a 360-degree scan of the space, prior to permitting access, to confirm that no one else is in the vicinity. And reviewers shouldn't have unauthorized peripheral devices (such as printers, keyboards, mice, thumb drives and monitors) connected while working.

CONTRACTING SERVICES

If your firm doesn't want to take the time to set up its own remote document review program, you can hire firms that do this kind of work. These companies usually can do document review on an as-needed basis and can tailor their services to match your firm's requirements either on-site or remotely.

As with any other use of contract workers, be sure to perform your due diligence.

HERE TO STAY

Attorneys understand that document review is a critical component of discovery. Remote document review isn't going away just because the pandemic is over. With the above practices in place, this service can work for your firm. •

Will AI threaten hourly billing?

Since the launch of ChatGPT, there's been much speculation about how artificial intelligence (AI) will revolutionize a wide range of industries. A report from Goldman Sachs estimates that AI could automate 44% of the legal profession's current work tasks. That could have serious implications for law firms' long-term billing model.

THE EXPECTATIONS GAME

Most likely, your clients are hearing plenty about AI and its cost-saving benefits. While your firm may not be jumping onboard yet, it probably won't take long before your clients assume that you have done or will do so — and expect their invoices to reflect the new efficiencies. They won't be willing to pay hundreds of dollars for an associate to perform a task that AI could do much faster.

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AI also could lead to another kind of alternative legal service provider (ALSP), as tech firms move into the space. You won't be competing only with traditional ALSPs for price-sensitive clients and fungible tasks.

THE CASE FOR AFAs

Ultimately, AI could be another driver in the slowly evolving shift to value-based billing. Clients already increasingly seek to base their fees on outcomes rather than hours, and AI is tailored to that approach.

Many law firms have been slow to implement value-based alternative fee arrangements (AFAs), but AFAs have plenty of upsides for law firms that adopt AI. Properly deployed, the combination of AI and AFAs can improve your profitability.

For example, efficiencies from using AI for routine or mundane work can free up attorneys to focus more on desired outcomes. They'll also be able to work on more matters and build deeper relationships with clients. Close relationships will be particularly important as less skilled competitors enter the market solely on the basis of AI, not their own legal expertise or abilities.

Remember, clients are looking for solutions to their problems, not billed hours. That's why they often prefer AFAs that align your firm's interests with theirs.

DON'T GO IT ALONE

Hourly billing does have a simplicity that AFAs don't. If you're going to take advantage of AI and change your billing model in turn, you'll need to collaborate closely with your accounting and financial teams to ensure you don't undersell your services. •





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