SIMPLE IRA Plan Fix-It Guide

------Trends--------	------------------------------Tips------------------------------			
Potential Mistake	**How to Find the Mistake**	**How to Fix the Mistake**		**How to Avoid the Mistake**
		Corrective Action	**Correction Program(s) Available**	
1) Do you have more than 100 employees who earned at least $5,000 in compensation for the prior year? (More)	Review prior year's compensation data (from payroll records, W-2s, quarterly filings with the state) and determine if there were more than 100 employees who earned $5,000 or more in compensation during the previous year. (More)	EPCRS If the number of employees is in excess of 100, you must cease contributions to the SIMPLE IRA. You cannot make any new contributions, either from the employer or from the employee, to the SIMPLE IRA plan as long as the number of employees remains in excess of 100. (More)	VCP Audit CAP (More)	Prior to establishing a SIMPLE IRA plan, determine whether you are eligible to have a SIMPLE IRA plan. Do you have more than 100 employees? Are you a member of a controlled group or affiliated service group? (More)
2) Do you sponsor a SIMPLE IRA plan and also maintain another retirement plan? (More)	Determine whether any employee received an allocation of contributions or accrued a benefit in another qualified plan that you sponsored for any part of the calendar year. (More)	EPCRS If you maintain other retirement plans, you must cease all contributions to the SIMPLE IRA plan. (More)	VCP Audit CAP (More)	Verify that you and any members of a controlled group or affiliated service group of which you are a member do not maintain another qualified retirement plan. (More)
3) Does the plan document reflect the recent SIMPLE IRA law changes? (More)	Review the plan docu-ment and compare to the most recent IRS Model plan (Form 5304-SIMPLE, 5305-SIMPLE) or IRS approved SIMPLE IRA plan prototype, whichever is applicable. (More)	EPCRS Adopt a current IRS Model plan or IRS approved SIMPLE IRA prototype. (More)	VCP Audit CAP (More)	Make sure that the SIMPLE IRA plan document is the most current IRS Model plan or IRS approved SIMPLE IRA plan prototype, whichever is applicable. Monitor the IRS web site for IRS guidance on SIMPLE IRA plans. (More)
4) Were all eligible employees allowed to participate according to the SIMPLE IRA plan's eligibility requirements? (More)	Review plan document sections to understand the eligibility provisions. Review past payroll information. (More)	EPCRS If you have excluded eligible employees from the plan, you must contribute: (a) an amount that compensates the employee for the "missed deferral opportunity" and (b) an amount equal to the employer contribution required under the plan. (More)	SCP* VCP Audit CAP (More)	Establish plan administrative procedures that include a review of employees' census data each year to determine the employees that are eligible to participate in the SIMPLE IRA plan. (More)

------Trends--------	--Tips--			
Potential Mistake	**How to Find the Mistake**	**How to Fix the Mistake**		**How to Avoid the Mistake**
		Corrective Action	**Correction Program(s) Available**	
5) Were correct employer contributions made on behalf of the eligible employees? (More)	Review plan document provisions relating to employer contributions and compare to actual contributions. (More)	EPCRS Determine the correct employer contribution based on the selected option in the plan. (More)	SCP* VCP Audit CAP (More)	Establish plan administrative procedures to ensure that you make the correct employer contributions to the employees' SIMPLE IRAs. (More)
6) Is the plan's definition of compensation for all deferrals and allocations used correctly? (More)	Review employee compensation data. (More)	EPCRS You must contribute an amount equal to (a) 50% of the employee's deferral percentage under the plan times the excluded compensation and (b) the employer contribution required under the plan times the excluded compensation. Adjust the amounts contributed for earnings. (More)	SCP* VCP Audit CAP (More)	Establish plan administrative procedures that require an annual review of employees' compensation. (More)
7) Were employee salary deferral contributions timely deposited to employees' SIMPLE IRAs after withholding from the employees' salary? (More)	Review the date on which you withheld the salary deferral contributions from the employees' salary and compare with the date on which you contributed the salary deferral contributions to the employees' SIMPLE IRA accounts. (More)	EPCRS Make a contribution on behalf of each employee equal to the earnings for the period you did not deposit the employee contributions in the employees' accounts. (More)	SCP* VCP Audit CAP DOL (Voluntary Fiduciary Correction Program) (More)	Establish plan administrative procedures to ensure that you make employees' salary deferral contributions to the employees' SIMPLE IRAs timely. (More)
8) Were employer contributions made timely to the employees' SIMPLE IRAs? (More)	Review employee data, payroll remittances, and other applicable records. (More)	EPCRS You must make a contribution on behalf of each participant. (More)	SCP* VCP Audit CAP (More)	Review the SIMPLE IRA plan rules concerning the timing of employer contributions and adopt administrative procedures to implement proper timing. (More)
9) Have all SIMPLE IRA plan notification requirements been satisfied? (More)	Review the SIMPLE IRA plan notification requirements and verify you have followed them. (More)	EPCRS Correct the plan administrative procedures to ensure that you meet the notice requirement for future years. (More)	SCP* VCP Audit CAP (More)	Establish plan administrative procedures to alert you of the timing of the notice requirements. (More)

------Trends--------	--Tips--			
Potential Mistake	**How to Find the Mistake**	**How to Fix the Mistake**		**How to Avoid the Mistake**
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10) Did you make employer contributions to all eligible employees whether or not they terminated during the plan year? (More)	Review employee payroll data. (More)	EPCRS Make an employer contribution for all eligible employees whether or not they terminated employment during the plan year. (More)	SCP* VCP Audit CAP (More)	Review the SIMPLE IRA plan rules concerning employer contributions. Establish administrative procedures that include listing all eligible employees for each plan year. (More)

*** In order to utilize SCP, the plan sponsor must have established practices and procedures reasonably designed to promote and facilitate overall compliance with applicable Internal Revenue Code requirements. Also, an analysis of whether mistakes in the aggregate are significant or insignificant needs to be made. If insignificant, correction generally can be made at any time. However, if the mistakes are significant in the aggregate, then you must use VCP to correct the mistake.**

SIMPLE IRA Plan - Overview

A **S**avings **I**ncentive **M**atch **Pl**an for **E**mployees of Small Employers (SIMPLE) IRA plan is a written arrangement that provides you and your employees with a simplified way to make contributions to provide retirement income. Under a SIMPLE IRA plan, employees can elect to make salary deferral contributions to the plan rather than receiving these amounts as part of regular pay. The salary deferrals can be as much as $11,500 in 2009; for eligible employees who have attained age 50 in 2009, the salary deferral contribution could be as much as $14,000. These limits are subject to cost-of-living increases in later years) In addition, you must make either a matching contribution or a nonelective contribution on behalf of each eligible employee. A matching contribution is an employer contribution that is designed to match elective deferrals made by employees. The purpose of making such a contribution is to encourage employees to make salary deferral contributions to the plan. Subject to the provisions of the plan's matching contribution formula, the greater the level of an employee's elective deferral, the greater the matching contribution made by the employer on behalf of the employee. If an employee does not make any elective deferral, then the employer does not make a contribution on behalf of that employee.

Example: If a plan provides for a 100% match of all deferrals up to 3% of compensation, then if an employee makes no deferrals, the employer does not contribute on behalf of that employee. On the other hand, if an employee makes a salary reduction contribution of 3 or more percent of compensation, then the employer will make a matching contribution of 3% of compensation on behalf of that employee.

A nonelective contribution is an employer contribution that does not depend on the salary reduction contributions made by its employees. The employer will contribute this amount on behalf of each employee, regardless of whether the employee makes a salary reduction contribution and regardless of the amount of an employee's salary reduction contribution.

If you choose to make a matching contribution, you must match your employee's salary deferral contributions on a dollar-for-dollar basis, up to a maximum of 3% of each employee's pay. You may elect to reduce the 3% matching contribution requirement if: (i) the matching contribution on behalf of an employee is not less than 1% of pay; (ii) the reduction from the 3% matching contribution did not occur more frequently than 2 years during the five-year period ending in the year for which the election was made; and (iii) each employee was notified of the reduced match within a reasonable time before the employee's 60-day election period.

Example: If a plan provides for a 2% nonelective contribution, then the employer is committing to make a contribution of 2% of compensation on behalf of each of its eligible employees, regardless of whether those employees made salary reduction contributions to the plan.

You can set up a SIMPLE IRA plan effective on any date between January 1 and October 1 of a year, provided you did not previously maintain a SIMPLE IRA plan. This requirement does not apply if you are a new employer that comes into existence after October 1 of the year and you set up a SIMPLE IRA plan as soon as administratively feasible after coming into existence. If you previously maintained a SIMPLE IRA plan, you can set up a SIMPLE IRA plan effective only on January 1 of a year. A SIMPLE IRA

plan cannot have an effective date that is before the date you actually adopt the plan. You can only maintain SIMPLE IRA plans on a calendar-year basis.

You can use Form 5304-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) - Not for Use With a Designated Financial Institution*, or Form 5305-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) - for Use With a Designated Financial Institution*, to set up a SIMPLE IRA plan. Each form is a SIMPLE IRA plan document. Use Form 5304-SIMPLE if you permit each plan participant to select the financial institution for receiving his or her SIMPLE IRA plan contributions. Use Form 5305-SIMPLE if you require all contributions under the SIMPLE IRA plan to be deposited initially at a designated financial institution.

The SIMPLE IRA plan is adopted when you have completed all appropriate boxes and blanks on the form and you (and the designated financial institution, if any) have signed it. Keep the original form. Do not file it with the IRS.

If you set up a SIMPLE IRA plan using Form 5304-SIMPLE or Form 5305-SIMPLE, you can also use the form to:

- Meet the employer notification requirements for the SIMPLE IRA plan. Page 3 of Forms 5304-SIMPLE and 5305-SIMPLE contain a "Model Notification to Eligible Employees" that provides the necessary information to the employee.
- Provide employees with a salary reduction agreement. Page 3 also contains a "Model Salary Reduction Agreement."

Additionally, you may establish a SIMPLE IRA plan through the adoption of a prototype SIMPLE IRA plan document (usually through a mutual fund, insurance company, bank, or other qualified financial institution).

SIMPLE IRAs are the individual retirement accounts or annuities into which the contributions are deposited. A SIMPLE IRA must be set up for each eligible employee. Forms 5305-S, *SIMPLE Individual Retirement Trust Account*, and 5305-SA, *SIMPLE Individual Retirement Custodial Account*, are model trust and custodial account documents the participant and the trustee (or custodian) can use for this purpose.

A SIMPLE IRA cannot be designated as a Roth IRA. Contributions to a SIMPLE IRA will not affect the amount an individual can contribute to a Roth IRA or a traditional IRA. However, contributions to a SIMPLE IRA may preclude an individual from receiving a tax deduction for contributions to a traditional IRA.

A SIMPLE IRA must be set up for an employee before the first date by which a contribution is required to be deposited into the employee's IRA.

You may be able to claim a tax credit for part of the ordinary and necessary costs of starting a SIMPLE IRA plan. (See Form 8881, *Credit for Small Employer Pension Plan Startup Costs*.)

Employee Plans Compliance Resolution System (EPCRS) – Overview

If you make mistakes with respect to your SIMPLE IRA plan, you may utilize the IRS's Employee Plans Compliance Resolution System (EPCRS) to remedy mistakes and avoid the consequences of disqualification of the SIMPLE IRAs of employees. A correction for a mistake should be reasonable and appropriate. The correction methodology should resemble one already provided for in the Internal Revenue Code (Code) and you should consider all applicable facts and circumstances. Rev. Proc. 2008-50, 2008-35 I.R.B. 464 sets forth the EPCRS. There are three components of EPCRS:

1) **Self-Correction Program (SCP)** - permits a plan sponsor to correct certain plan failures without contacting the IRS.
2) **Voluntary Correction Program (VCP)** - permits a plan sponsor to, any time before audit, pay a limited fee, and receive the IRS's approval for correction of plan failures.
3) **Audit Closing Agreement Program (Audit CAP)** - permits a plan sponsor to pay a sanction and correct a plan failure while the plan is under audit.

A general description of each component of EPCRS is provided below:

SCP:

- In order to be eligible for SCP, the plan sponsor or administrator of a plan must have established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance with applicable IRS requirements. A plan document alone does not constitute evidence of established procedures.
- SCP is available for correcting operational problems only – that is, the failure to follow the terms of the plan. SCP is not available for other types of problems, such as the failure to keep the plan document up to date to reflect changes in the law.
- SCP is available for a SIMPLE IRA plan to correct Insignificant Operational Failures only.
- The plan sponsor effects correction using the General Correction Principles for SIMPLE IRA plans set forth in Rev. Proc. 2008-50, section 6.
- A plan sponsor that corrects a mistake listed in, and in accordance with the correction methods included in Appendix A or Appendix B of Rev. Proc. 2008-50 may be certain that the correction effected is reasonable and appropriate for the failure.
- If needed, the plan sponsor effects changes to its administrative procedures to ensure the mistakes do not recur.
- When using SCP, the plan sponsor should maintain adequate records to demonstrate correction in the event of an audit of the plan.
- There is no fee for self-correction.

VCP:

- The plan sponsor identifies the mistakes.
- The plan sponsor proposes correction using the General Correction Principles for SIMPLE IRA plans set forth in Rev. Proc. 2008-50, section 6.

- The plan sponsor proposes changes to its administrative procedures to ensure the mistakes do not recur.
- The plan sponsor pays a compliance fee for a SIMPLE IRA plan submission of $250.
- The IRS issues a Compliance Statement with respect to the plan detailing the mistakes identified by the employer and the applicable correction methods approved by the IRS.
- The plan sponsor corrects the identified mistakes within 150 days of the issuance of the Compliance Statement.
- While the submission is pending, the plan will not be examined by Employee Plans, except under unusual circumstances.

Audit CAP:

- The plan sponsor or plan is under examination.
- The plan sponsor enters into a Closing Agreement with the IRS.
- The plan sponsor effects correction prior to entering into the Closing Agreement.
- The plan sponsor pays a sanction negotiated with the IRS.
- The sanction paid under Audit CAP should be greater than the fee paid under VCP.
- For SIMPLE IRA plans intended to satisfy §408(p) of the Code, the sanction under Audit CAP is a negotiated percentage of the Maximum Payment Amount (MPA) based on the sum for all open taxable years. The MPA is an estimate of the tax consequences that arise if the IRS revoked the tax-favored status of the SIMPLE IRA plan (e.g., requiring that contributions made on behalf on an employee and elective deferrals made by an employee be included in income, imposition of excise taxes on both the employer and the employee for excess contributions made to the IRA vehicle).
- For plans intended to be qualified, the sanction under Audit CAP is a negotiated percentage of the **Maximum Payment Amount (MPA)** based on the sum for all open taxable years of the:
    - Additional income tax resulting from income inclusion for employees in the plan (Form 1040), including the tax on plan distributions that have been rolled over to other IRAs (and any interest and penalties applicable to the employees' tax return).
    - Additional tax resulting from the 6% tax imposed under §4973 of the Code on excess contributions to IRAs.

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1) Do you have more than 100 employees who earned at least $5,000 in compensation for the prior year?

Only an employer with 100 or fewer employees who earned at least $5,000 in compensation for the prior year may adopt a SIMPLE IRA plan.

Employers must take into account all employees including full-time, part-time, seasonal, and leased employees. In addition, if the employer is a member of a controlled group or an affiliated service group, all employees of the members are considered employees of the employer.

If an employer maintains a SIMPLE IRA plan for at least 1 year and ceases to meet the 100-employee limit in a later year, a 2-year grace period may apply.

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How to Find the Mistake:

Review the prior year's compensation data (from payroll records, W-2s, quarterly filings with the state) and determine if there were more than 100 employees who earned $5,000 or more in compensation during the previous year. When reviewing prior year's compensation, make sure that you count all compensation, including overtime, bonuses, commissions (not just base compensation).

Generally, compensation means the sum of wages, tips, and other compensation subject to federal income tax withholding and the employee's salary deferral contributions made to the SIMPLE IRA plan.

"Employees" for purposes of determining who is an eligible employee under a SIMPLE IRA plan includes all employees of all related employers. Related employers include controlled groups of corporations that include your business, trades or businesses under common control with your business, and affiliated service groups that include your business. This means, for example, that if you and/or your family members own a controlling interest in another business, employees of that other business are "employees" for purposes of determining the 100-employee limit. The controlled group and affiliated service group rules are complex. The purpose of the examples, below, is to illustrate that if there are entities that have common ownership interests or are engaged in performing services for (or with) each other, there may be related entities that would be considered to be a part of a single controlled or affiliated service group. If you are in such a situation, you may need to consult with your tax adviser to determine whether you are a part of a controlled or affiliated service group.

Example:
If A owns at least 80% of B, A and B are members of a controlled group.

Example:
If 5 or fewer persons, each of whom have some ownership stake in A and B, collectively own at least 80% of A and B, A and B are members of a controlled group.

Example:
If A is a shareholder in B, and its primary purpose is the performance of services for B, then A and B may be members of an affiliated service group.

Example:
If A is a shareholder in B, and regularly associates with B in the performance of services for third parties, then A and B may be members of an affiliated service group.

Employees of an organization who are based on an agreement between the organization and an employer perform services for the employer on a substantially full-time basis and are under the control and direction of the employer ("leased employees") are specially considered to be employees of the employer and must be counted for determining the number of employees of an employer.

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How to Fix the Mistake:

Corrective Action:
If this is the first year of the plan or after the grace period, you should cease making any new contributions to the plan. You can file a VCP application requesting that contributions made for previous years in which the plan had more than 100 employees remain in the employees' SIMPLE IRA accounts. If relief is not requested (or granted) under VCP for previously made ineligible contributions, then those amounts, with applicable earnings, should be removed from the SIMPLE IRA accounts. You should return salary deferral contributions (and related earnings) to the employees. Report the returned amounts on Form 1099-R as a taxable distribution that is not eligible for rollover. Employer contributions (and related earnings) should be returned to you and reported on a Form 1099-R issued to the participant indicating the taxable amount as zero. In addition, since no contributions could have been made to the SIMPLE IRA, the contributions are excess contributions that are subject to excise tax. For each year that there are excess contributions in the SIMPLE IRA plan, you, the employer, are subject to excise tax under §4972 of the Code, and are required to file a Form 5330 excise tax return. In addition, for each year that excess contributions are made to a participant's SIMPLE IRA, the affected participant is liable for excise tax under §4973 of the Code and is required to file a Form 5329. The excise tax liabilities occur for each year until the excess contributions are removed from the SIMPLE IRAs.

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Correction Program(s) Available:

SCP:
This mistake cannot be corrected under SCP.

VCP:
If the plan is not under examination, you may make a submission under VCP to get approval for the proposed correction. The fee for this mistake would be $250.

Audit CAP:

If this mistake is discovered on audit, the relief that may be provided under VCP may still be available. However, in conjunction with any relief provided, you will have to pay a sanction. The sanction under Audit CAP is a percentage of the MPA.

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How to Avoid the Mistake:

Prior to establishing a SIMPLE IRA plan, determine whether you are eligible to have a SIMPLE IRA plan. Make sure that you take all employees into account for purposes of the "100-employee" count. This includes full-time, part-time, seasonal, and leased employees who earned more than $5,000 in compensation in the prior year. It also includes employees of other employers in the same controlled or affiliated service group. If you had less than 100 employees and the business grew to the point where it exceeded the 100-employee count, the rules provide for a grace period. Generally, the grace period is two calendar years following the year in which the 100-employee limitation was satisfied. (The grace period may be different if you exceed the limitation because of an acquisition or disposition involving your business.) During the grace period, you may still contribute on behalf of the affected employees. At the same time, you have the opportunity to set up another type of retirement plan that you would now be eligible to sponsor for the benefit of your employees, but only after the year of the last contributions to the SIMPLE IRA plan.

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2) Do you sponsor a SIMPLE IRA plan and also maintain another retirement plan?

You cannot make contributions to a SIMPLE IRA plan for any calendar year in which an employee either receives an allocation of contributions (in the case of a defined contribution plan such as a 401(k), profit-sharing, money purchase, 403(b), or SARSEP plan) or accrues a benefit (in the case of a defined benefit plan) for any plan year beginning or ending in that calendar year.

However, there is an exception to the rule described above. You can make contributions under a SIMPLE IRA plan for a calendar year even though you maintain another qualified plan if either:

(a) The other qualified plan you maintain covers only employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining and the SIMPLE IRA plan excludes these employees; or
(b) You maintain the other qualified plan during the calendar year in which an acquisition, disposition, or similar transaction occurs (or the following calendar year) and had the transaction not occurred the qualified plan would have been sponsored by an employer that is separate from you, the sponsor of the SIMPLE IRA plan.

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How to Find the Mistake:

Determine whether any employee (including any employee of the members of a controlled group or affiliated service group, if applicable) received an allocation of contributions or accrued a benefit in another qualified plan that you sponsored for any part of the calendar year.

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How to Fix the Mistake:

Corrective Action:
If you maintain other retirement plans, you should cease making any new contributions to the SIMPLE IRA plan. You may be able to file a VCP application requesting that contributions made for previous years in which you maintained more than one plan remain in the employees' IRAs. If relief is not requested (or granted) under VCP for previously made ineligible contributions, then those amounts, with applicable earnings, should be removed from the SIMPLE IRA accounts. Salary deferral contributions (and related earnings) should be returned to the employees. The returned amounts should be reported on Form 1099-R as a taxable distribution that is not eligible for rollover. Employer contributions (and related earnings) should be returned to you and reported on a Form 1099-R issued to the participant indicating the taxable amount as zero. In addition, since no contributions could have been made to the SIMPLE IRA, the contributions are excess contributions that are subject to excise tax. For each year that there are excess contributions in the SIMPLE IRA plan, you, the employer, are subject to excise tax under §4972 of the Code, and are required to file a Form 5330 excise tax return. In addition, for each year that excess contributions are made to a participant's SIMPLE IRA, the affected participant may be liable for excise tax under §4973 of the Code and may be required to file a Form 5329. The excise tax liabilities occur for each year until the excess contributions are removed from the SIMPLE IRA plan.

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Correction Program(s) Available:

SCP:
This mistake cannot be corrected under SCP.

VCP:
You make a VCP submission to the IRS pursuant to Rev. Proc. 2008-50 identifying the mistake. The fee for the VCP submission is $250.

Audit CAP:
If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP should be very similar to correction under VCP. The sanction under Audit CAP is a percentage of the MPA.

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How to Avoid the Mistake:

You should make sure that you and any members of a controlled group or affiliated service group of which you are a member do not maintain another qualified retirement

plan. If you have another qualified plan and want to establish a SIMPLE IRA plan, then you need to take steps to terminate the qualified plan before the calendar year in which you contribute to the SIMPLE IRA plan.

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3) Does the plan document reflect the recent SIMPLE IRA law changes?

Laws related to retirement plans change quite frequently. There are statutory deadlines for which many provisions must become effective. The IRS generally establishes a firm deadline for adopting these changes. Also, these law changes might mean you can simplify some areas of plan administration or improve benefits. You will need to change plan language and operation to keep the plan within the law and to take advantage of increased benefit limits.

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How to Find the Mistake:

If you are using an IRS Model plan (Form 5304-SIMPLE or 5305-SIMPLE), review the top left-hand corner of the document for the revision date (e.g., "Rev. September 2008"), and compare it with the revision date for the current Model plans, linked above, to the IRS web site. If the revision date for your plan is earlier than the revision date on the document found at the IRS web site, then it is likely that your plan has not been updated to reflect the most recent law changes. (Note: please see the instructions for the latest document. For example, the instructions for the 5305-SIMPLE, with a revision date of September 2008, provides that if you used the March 2002 or August 2005 version of Form 5305-SIMPLE to establish a Model SIMPLE IRA plan, you are not required to use this version of the form.)

If you are using a financial institution's SIMPLE IRA prototype document, check with the financial institution if it has received an IRS opinion letter that ruled that the SIMPLE IRA prototype document complies with current law.

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How to Fix the Mistake:

Corrective Action:
You should adopt a current IRS SIMPLE IRA Model plan or IRS approved SIMPLE IRA prototype plan.

For years in which the plan was not governed by a valid plan document, the SIMPLE IRA could lose the tax benefits associated with contributions made to the SIMPLE IRA and the earnings accumulated in the SIMPLE IRA, unless VCP is used.

Example:
Employer Y established a SIMPLE IRA plan in 2000 using a prototype plan and never subsequently amended for any law changes. Starting in 2002, the plan began using the increased limits of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA).

Due to the changes made by EGTRRA (e.g., increased IRA limits) and the revised minimum distribution regulations under §401(a)(9) of the Code, the IRS issued revised Model SIMPLE IRA plan documents in 2002. Employers cannot use the pre-EGTRRA Model SIMPLE documents to establish a new SIMPLE IRA plan after October 1, 2002. If an employer is using a pre-EGTRRA Model SIMPLE IRA plan and wanted to take advantage of the EGTRRA changes in the 2002 plan year, the revised Model document (or an appropriate revised prototype document) had to have been adopted by the end of the 2002 plan year. If an employer is using a prototype SIMPLE IRA plan and wanted to take advantage of the EGTRRA changes in the 2002 plan year, it would have had to have adopted an EGTRRA-revised prototype document within 180 days after the IRS issued a favorable EGTRRA opinion letter to the sponsoring organization of the prototype SIMPLE IRA plan.

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Correction Program(s) Available:

SCP:
This mistake cannot be corrected under SCP.

VCP:
If you did not adopt an updated plan document on a timely basis and the plan is not under examination, you should make a submission under VCP to the IRS pursuant to Rev. Proc. 2008-50 requesting approval for the late adoption of the plan document. The fee for the VCP submission is $250.

Audit CAP:
If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP should be very similar to correction under VCP. The sanction under Audit CAP is a percentage of the MPA.

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How to Avoid the Mistake:

If you are using the IRS SIMPLE IRA Model plan (Form 5304-SIMPLE or 5305-SIMPLE), visit the IRS web site before the end of each calendar year, and find out whether the IRS has updated the applicable model plan. If there is a newer version of the form on the web site, then you should check the instructions to determine whether adopting the newer form is necessary.

If you are using a financial institution's SIMPLE IRA prototype, then check with the financial institution to ensure that there are proper procedures in place that will ensure that they send any required updates that need you need to sign in a timely manner.

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4) Were all eligible employees allowed to participate according to the SIMPLE IRA plan's eligibility requirements?

Under the general participation rule for SIMPLE IRA plans, employees who you reasonably expect to receive at least $5,000 in compensation during a calendar year, and who did so in any prior 2 years, are eligible to participate in a SIMPLE IRA plan. You may increase the number of employees eligible to participate by lowering the $5,000 amount or by allowing all employees to participate regardless of how much they earn.

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How to Find the Mistake:

Review the SIMPLE IRA plan document to determine who you must allow to participate. Compare past payroll information with employees who participated in the SIMPLE IRA plan. For example, if the plan uses the strictest participation rule, begin with performing the following spot check. Review payroll data (W-2s, quarterly returns filed with the state (if applicable) and internal payroll records for prior years). List all employees who earned at least $5,000 during both of those years and who you employed for any part of the current year. Determine whether any of those employees did not either make salary deferral contributions or receive an allocation of employer contributions in either the prior years or the current year. Focus on that group of employees, by first determining whether their failure to make salary deferral contributions and receive employer contributions was due to their exclusion from the plan. If they were, find out whether their exclusions were appropriate and consistent with the plan's terms. If you find that there were one or more employees in this group who you improperly excluded from the plan, then this could be an indicator of a larger problem, and you could expand the search to include other employees. This might require a review of payroll data that is more than 2 years old.

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How to Fix the Mistake:

Corrective Action:
If you excluded eligible employee from the plan, you are required to make up for the employee's "missed deferral opportunity" by making a contribution of 1.5% of compensation for the period of the employee's exclusion plus earnings (calculated from the date that the salary deferral contributions should have been made through the date of correction). The "missed deferral opportunity" is the economic loss to an employee resulting from not having a portion of compensation deferred on a pre-tax basis to a vehicle where the amounts deferred can accumulate tax-free, until the employee takes a distribution. For this purpose, since the employee did not have a chance to make an election, it is assumed that the employee would have elected to make a deferral of 3% of compensation. The required corrective contribution to replace the missed deferral opportunity is 50% of the missed deferral or 1.5% of compensation.

If, under the plan, the employer contribution is a match, then the required employer contribution is 3% of compensation plus earnings (calculated from the date that you should have made the required contributions through the date of correction). If the improperly excluded employee made the 3% of compensation salary deferral as assumed in the prior paragraph, then the employee would have received a matching contribution equal to 3% of compensation. (Note: Base matching contributions on salary

deferral contributions that the employee would have made; not the corrective contributions made to replace the "missed deferral opportunity.")

If, under the plan, the employer contribution is a nonelective contribution (i.e., an employer contribution that does not depend on the salary reduction contributions made by its employees), then the required employer contribution is 2% of compensation plus earnings (calculated from the date that required contributions should have been made through the date of correction).

Example:
Nancy met the eligibility requirements under her employer's SIMPLE IRA plan but the employer did not permit her to make salary reduction contributions to the plan. During the year of exclusion, Nancy made $10,000 in compensation. The terms of the SIMPLE IRA plan require an employer contribution on behalf of each eligible employee in an amount equal to the employee's salary reduction contributions, up to a limit of 3% of the employee's compensation for the entire calendar year.

The required corrective employer contribution must replace Nancy's missed opportunity to make salary reduction contributions and any employer contributions that Nancy would be entitled to under the terms of the plan.

1) Missed deferral opportunity. Nancy's missed deferral is 3% times $10,000 or $300. The required corrective employer contribution to replace Nancy's missed deferral opportunity, before adjusting for earnings, is 50% of $300, or $150. Thus, the required corrective contribution for an employee who the employer improperly excluded from making elective deferrals to a SIMPLE IRA plan is equal to 1.5% of compensation (adjusted for earnings).
2) Employer contributions. Under the terms of the plan if Nancy's missed deferral was 3% of compensation, then she would have been entitled to an employer matching contribution equal to 3% of compensation. Thus, to replace the missed matching contribution, the required corrective employer contribution is 3% times $10,000, or $300. Adjust the corrective contribution for earnings.

Total corrective employer contribution. The total employer contribution on behalf of Nancy is equal to the corrective contributions required under 1) above to replace Nancy's missed deferral opportunity ($150 adjusted for earnings) and 2) above to replace the employer contributions that Nancy would have been entitled to under the terms of the plan if she had made a salary reduction contribution equal to 3% of compensation ($300 adjusted for earnings).

Example:
Richard met the eligibility requirements under his employer's SIMPLE IRA plan, but his employer did not permit him to make salary reduction contributions to the plan. During the year of exclusion, Richard made $10,000 in compensation. The terms of the SIMPLE IRA plan require an employer contribution on behalf of each eligible employee in an amount equal to 2% of the employee's compensation for the entire calendar year.

The required corrective employer contribution must replace Richard's missed opportunity to make salary reduction contributions and any employer contributions that Richard would be entitled to under the terms of the plan.

1) Missed deferral opportunity. Richard's missed deferral is 3% times $10,000 or $300. The required corrective employer contribution to replace Richard's missed deferral opportunity, before adjusting for earnings, is 50% of $300, or $150. Thus, the required corrective contribution for an employee who the employer improperly excluded from making elective deferrals to a SIMPLE IRA plan is equal to 1.5% of compensation (adjusted for earnings).
2) Employer contributions. Under the terms of the plan, Richard was also entitled to receive an employer contribution equal to 2% of compensation. Thus, to replace the missed employer contribution, the required corrective employer contribution is 2% times $10,000, or $200. Adjust the corrective contribution for earnings.

Total corrective employer contribution. The total corrective employer contribution on behalf of Richard is equal to the corrective contributions required under 1) above to replace Richard's missed deferral opportunity ($150 adjusted for earnings) and 2) above to replace the employer contributions that Richard would have been entitled to under the terms of the plan ($200 adjusted for earnings).

Return to Table

Correction Program(s) Available:

SCP:
The mistake may be corrected under SCP if you determine that the mistake is insignificant.

VCP:
You may make a VCP submission to the IRS pursuant to Rev. Proc. 2008-50 identifying the failure.

Audit CAP:
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Return to Table

How to Avoid the Mistake:

Before adopting this type of plan, you should understand the features of a SIMPLE IRA plan and determine whether the participation requirement for inclusion in this type of plan matches your goals. In the case of a SIMPLE IRA plan, you have limited flexibility to customize the criteria for participation in the plan.

The individuals administering the plan should be familiar with the terms of the plan document and there should be sufficient plan administrative procedures to ensure that the eligible employees are allowed to participate in the plan.

Before each November 1, you should take inventory of the individuals who are currently excluded from participation in the plan and compare with the plan terms. If you determine that any of the excluded employees will be eligible in the following calendar year, then you should provide notices informing the participants of their rights to make

salary reduction contributions before the election period that begins on November 1 (see Question #9, below).

Make sure you consider all employees of any controlled group or affiliated service group for determining the group of employees who you should provide with the opportunity to make salary deferral contributions and receive employer contributions under the plan.

Similarly, make sure that you consider all leased employees for purposes of determining who is eligible.

Return to Table

5) Were correct employer contributions made on behalf of the eligible employees?

The required employer contributions must be either:

- 2% of an employee's compensation regardless of whether they made a salary deferral contribution; or
- a matching contribution equal to an employee's salary deferral contribution (up to 3% of such employee's compensation).

Return to Table

How to Find the Mistake:

Review plan document provisions relating to employer contributions. Based on those provisions, and compensation data for all employees, calculate the employer contribution that you should have made on behalf of those participants. Compare the calculation with the amounts you actually contributed on behalf of the participants. If the amounts contributed differ, then there is a possibility that you are not following the plan's terms.

Return to Table

How to Fix the Mistake:

Corrective Action:
If additional amounts are required, contribute make-up amounts, adjusted for earnings from the date of the mistake to the date of correction. If you contributed amounts in excess of an employee's benefit, distribute the excess amount, adjusted for earnings through the date of correction. Report the distribution on Form 1099-R issued to the participant indicating the taxable amount as zero.

Return to Table

Correction Program(s) Available:

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Return to Table

How to Avoid the Mistake:

The individuals administering the SIMPLE IRA plan should be familiar with the terms of the plan document. After gaining familiarity with the key provisions of the plan document, the person administering can make sure that the plan procedures (e.g., checklists, software, manuals, method for calculating compensation, calculations of the required employer contributions, and methods for deposit and allocation) ensure compliance with plan terms.

Return to Table

6) Is the plan's definition of compensation for all deferrals and allocations used correctly?

Generally, compensation means the sum of wages, tips, and other compensation subject to federal income tax withholding and the employee's salary deferral contributions made to the SIMPLE IRA plan.

Return to Table

How to Find the Mistake:

Review the computations supporting the salary deferral contributions and employer contributions made on behalf of all employees. Make sure that you count all compensation (not just base compensation) in this review. This means the inclusion of bonuses, overtime, commissions, and all other categories of compensation. If upon analyzing the computations and amounts contributed, you determine you excluded categories of compensation, then additional contributions may be required.

Return to Table

How to Fix the Mistake:

Corrective Action:
Contribute an amount equal to (a) 50% of the employee's salary deferral percentage under the plan times the excluded compensation (Note: unlike the mistake in #4, above, in this case, you know the participant's salary deferral election) and (b) the employer contribution required under the plan times the excluded compensation. You must adjust the amounts contributed for earnings to the date of correction.

Example:
Susan elected to make a salary reduction contribution equal to 5% of compensation to the SIMPLE IRA plan. The terms of the plan require that the employer make a contribution equal to 2% of compensation on behalf of each employee. However, when determining the salary reduction contribution and the required employer contribution, the employer neglected to include $1,000 of overtime income. Thus, Susan was not able to make salary reduction contributions (based on her election of 5% of compensation) on overtime income, and overtime income was ignored for the purpose of determining the employer contribution that Susan was entitled to under the terms of the SIMPLE IRA plan.

The required corrective employer contribution must replace Susan's missed opportunity to make salary reduction contributions with respect to the overtime income and any employer contributions that Susan would be entitled to under the terms of the plan.

1) Missed deferral opportunity. Susan's missed deferral, based on her election is 5% times $1,000 or $50. The required corrective employer contribution to replace Susan's missed deferral opportunity, before adjusting for earnings, is 50% of $50 or $25.
2) Employer contributions. Under the terms of the plan, Susan was also entitled to receive an employer contribution equal to 2% of compensation, and the overtime income of $1,000 should have been included in the determination of compensation. Thus, to replace the missed employer contribution, with respect to overtime income, the required corrective employer contribution is 2% times $1,000 or $20. The corrective contribution must also be adjusted for earnings.

The total corrective employer contribution on behalf of Susan is equal to the corrective contributions required under 1) above to replace Susan's missed deferral opportunity with respect to overtime compensation ($25 adjusted for earnings) and 2) above to replace the employer contributions that Susan would have been entitled to under the terms of the plan ($20 adjusted for earnings).

Return to Table

Correction Program(s) Available:

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Audit CAP:
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Return to Table

How to Avoid the Mistake:

Establish plan administrative procedures that require an annual review of employees' compensation. Verify that you consider all compensation, including overtime, bonuses, and commissions (not just base compensation) for determining employee salary deferral contributions and employer contributions.

Return to Table

7) Were employee salary deferral contributions timely deposited to employees' SIMPLE IRAs after withholding from the employees' salary?

Department of Labor (DOL) rules require that you must make the salary deferral contributions to the employees' SIMPLE IRA accounts at the earliest administratively feasible date after the deferrals are withheld from the employees' salary.

IRS rules require that you make the salary deferral contributions no later than 30 days following the month in which you withheld the deferrals from the employees' salary.

Return to Table

How to Find the Mistake:

For each pay period, review the date on which you withheld the salary deferral contributions from the employees' salary (typically the same date that you paid the net salaries to the employees) and compare with the date on which the salary deferral contributions were contributed to the employees' SIMPLE IRA accounts. If there is a significant gap between the dates, check whether the gap is unavoidable or whether the gaps are caused by avoidable delays.

Return to Table

How to the Fix the Mistake:

In addition to making contributions of the withheld elective deferral amounts to the employee's SIMPLE IRAs, you should also make a contribution of the earnings that those elective deferral amounts would have earned from the date that you should have deposited the amounts through the date of the actual deposit.

Return to Table

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You should also correct this mistake under the DOL's Voluntary Fiduciary Correction Program, if applicable.

Return to Table

How to Avoid the Mistake:

Establish plan administrative procedures to ensure that you make employees' salary deferral contributions to the employees' SIMPLE IRAs shortly after you withheld the amounts from their paychecks. (Note: The DOL timeframe for timely deposit is shorter than the IRS timeframe. Therefore, you should use the DOL timeframe as the criteria for designing administrative procedures.)

Return to Table

8) Were employer contributions made timely to the employees' SIMPLE IRAs?

You have until the due date, including extensions, of your business's tax return for a year to deposit matching contributions or nonelective contributions in the employees' SIMPLE IRAs for that year.

Return to Table

How to Find the Mistake:

Review employee data, payroll remittances, and other applicable accounting records to ascertain whether you made contributions timely.

Return to Table

How to Fix the Mistake:

Corrective Action:
Make the required contributions, plus the earnings that the contributions would have accrued had you made the contributions timely.

Return to Table

Correction Program(s) Available:

SCP:
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Audit CAP:
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Return to Table

How to Avoid the Mistake:

Review the SIMPLE IRA plan rules concerning the timing of employer contributions and adopt administrative procedures to implement proper timing. Create a procedure that will alert you to: (1) the upcoming due date for employer contributions and (2) check whether you made the necessary contributions.

Return to Table

9) Have all SIMPLE IRA plan notification requirements been satisfied?

Requirements include:

a) Providing employees with the opportunity to make a salary deferral election immediately before November 2, the beginning of the 60-day election period prior to each calendar year. For new hires, the notice must generally be provided on the date of hire
b) Informing employees of the ability to select a financial institution for their SIMPLE IRAs (if the plan provides for it).
c) Providing the Summary Plan Description.
d) Notifying employees of the employer's decision on whether to make nonelective contributions or matching contributions and the amount of such contributions.

Return to Table

How to Find the Mistake:

Review the SIMPLE IRA plan notification requirements and verify you have followed them in operation. You should review historical plan records to determine if and when you provided applicable notices to employees. In addition, review employee census data and the documents provided to employees.

Return to Table

How to Fix the Mistake:

Corrective Action:
Correct the plan administrative procedures to ensure that you meet the notice requirement in future years. Evaluate the impact of failing to provide notices timely. For example, if the failure caused an employee to be excluded from the plan, then corrective contributions may be required. See the discussion under Potential Mistake #4.

Return to Table

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Audit CAP:
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Return to Table

How to Avoid the Mistake:

Establish administrative procedures to alert you of the timing of the notice requirements. Ensure that the procedures include providing a notice to each eligible employee before the annual election period that informs them of the SIMPLE IRA plan and their right to make salary deferral contributions or modify a prior salary deferral agreement.

Return to Table

10) Did you make employer contributions to all eligible employees whether or not they terminated during the plan year?

An employer must make matching or nonelective contributions to all eligible employees. A SIMPLE IRA plan cannot require employment on a particular day, such as the last day of the year, in order to receive matching or nonelective contributions.

Return to Table

How to Find the Mistake:

Review employee payroll information to determine if any employee terminated employment during the year. Determine whether any of the terminated employees received an employer contribution for the year of termination.

Return to Table

How to Fix the Mistake:

Corrective Action:
Make an employer contribution to each eligible employee who did not receive a contribution for the plan year. You must also make a contribution of the earnings that the

employer contribution would have earned, determined from the date you should have made the contribution until the date you made the contribution.

Return to Table

Correction Program(s) Available:

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Audit CAP:
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Return to Table

How to Avoid the Mistake:

Review the SIMPLE IRA plan rules concerning employer contributions. Establish administrative procedures that include listing all eligible employees who should receive an employer contribution for each plan year. The list should include all eligible employees whether or not they terminate employment in that calendar year

Return to Table