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FLORIDA STAMP TAX

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If your 401(k) plan maintains a participant loan program, you may discover that you have compliance concerns thanks to a relatively obscure Florida tax statue.

Under its revenue laws, Florida imposes a document tax on loan transactions that are made, signed, executed, issued, or otherwise transacted in the State. The Florida Department of Revenue has specifically ruled that 401(k) plan loans are subject to the tax. The law further provides that no state court may enforce the provisions of a promissory note if the document tax is not paid.

We believe it would be a challenge to sustain a position that the Florida statute is preempted by ERISA. A failure to pay the tax, therefore, could mean that a 401(k) plan is extending loans that are not adequately secured, creating the potential for both prohibited transaction issues and plan operational failure issues.

The Florida statute arguably reaches not only plan loans extended to participants who are Florida residents but to plans with sponsors resident in Florida or third party administrators resident in Florida.

The Florida law does contemplate a process for paying past due taxes. The only other good news here is that no other state appears to have a similar transactional tax that would apply to plan loans.

MEET THE TEAM

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