ROETZEL

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(Almost) Tax-Free Retirement

By Daniel B. Waters

The 2020-2021 Ohio Biennial Budget has passed, and one important aspect for businesses is the statutory exclusion of Supplemental Executive Retirement Plans ("SERPs") from municipal taxation. The new law codifies the Ohio Supreme Court's decision in *MacDonald v. Cleveland Income Tax Bd. of Rev.*, 151 Ohio St.3d 114, 2017. In *MacDonald*, the Ohio Supreme Court defines SERPs as a pension, contra to the Internal Revenue Code that defines them as wages. Because the Court defines SERPs as a pension, the plans are not subject to the Cleveland income tax.

Now, the legislature has taken this definition and applied it to all municipalities in Ohio. The legislature has provided companies flexibility in structuring the vesting of SERPs by defining these plans as those that provide, "benefits to individuals either on or after their termination of service because of retirement or disability." SERPs are excellent tools to assist with recruiting/retaining key personnel and assisting in transition of executives in closely-held businesses.

Companies thinking of drafting a nonqualified deferred compensation plan ("NQDC"), now have a strong incentive to structure their plans as a SERP, to provide additional incentives for their key executives. Additionally, companies with current plans should review their plans to ensure that the goals of the company are being met and to see if their plans qualifies under these new exemptions.

The attorneys at Roetzel are happy to discuss whether a SERP or other NQDC is right for your business, assist with the establishment of your NQDC plan, review your current plan, or assist with amending your plan to take advantage of this new exemption.

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