

S I M P L E  
I R A P L A N

SAVINGS  
INCENTIVE  
MATCH PLAN  
FOR  
EMPLOYEES

5304-SIMPLE

### WHAT IS A SIMPLE PLAN?

A savings incentive match plan for employees (SIMPLE) is a type of retirement plan which allows you, the employer, to provide an important benefit to the employees of your business (including yourself if you perform services for the business). An "employer" may be a sole proprietor, partnership, or corporation. Amounts you contribute for your employees under a SIMPLE IRA plan are deposited into your employees' SIMPLE IRAs.

### WHAT ARE THE BENEFITS OF A SIMPLE IRA PLAN?

**Tax Advantages:** SIMPLE IRA plan contributions you make to your own SIMPLE IRA and your employees' SIMPLE IRAs are tax deductible to you, the employer. Because SIMPLE IRA plan contributions are made to a SIMPLE IRA, all earnings are tax-deferred, meaning the earnings are not taxed until they are withdrawn. In addition, the SIMPLE IRA plan helps you attract and retain quality employees while you help meet the increasing need for financial security at retirement.

### MUST I CONTRIBUTE EACH YEAR?

Each employee can specify the percentage of pay he or she wants you to withhold and contribute to the plan. The maximum amount which participants may defer each year is limited to \$10,500 for 2008 (after 2008 this amount is subject to cost-of-living adjustments). If an eligible employee is age 50 or older before the end of the calendar year, the above limitation is increased to \$13,000 for 2008 (after 2008 this amount is subject to cost-of-living adjustments). In addition, you must make either matching contributions, generally equal to the amount of each participant's elective deferrals up to three percent of his or her compensation, or nonelective contributions equal to two percent of each participant's compensation.

All contributions made under the plan must be directly deposited into each eligible employee's SIMPLE IRA at the financial organization selected by the employee.

### WHEN ARE CONTRIBUTIONS DUE?

You have until the due date for filing your business's tax return (plus extensions) to make matching and nonelective contributions under your SIMPLE IRA plan.

### MUST I INCLUDE ALL EMPLOYEES?

Not all employees have to be covered under the SIMPLE IRA plan. At your option, you can exclude employees who have not earned at least \$5,000 during any two preceding years and are not expected to earn at least \$5,000 during the current year. In addition, you may exclude certain union members.

### WHEN ARE DISTRIBUTIONS AVAILABLE?

Once SIMPLE IRA plan contributions are made, the normal IRA rules generally apply. For example, all earnings are tax-sheltered until they are withdrawn from the SIMPLE IRA and required minimum distributions must begin by April 1 of the year following the year the SIMPLE IRA holder reaches age 70½.

### EMPLOYEE COMMUNICATIONS

If you have employees, provide each eligible employee with a completed copy of the *Participation Notice & Summary Description* provided in this kit. You must provide this notice prior to the employees' initial 60 day election period (alternatively, you may provide employees with the IRS Model Notice to Eligible Employees and a copy of the SIMPLE Plan Agreement to satisfy the initial notice requirements). In addition, each year you must provide employees certain plan information prior to the election period. You must work with the trustees, custodians and issuers of your employees' SIMPLE IRAs to satisfy your subsequent annual notice requirements.

Make sure all participating employees have established SIMPLE IRAs.

Have all eligible employees complete and sign *Salary Reduction Agreements* (or the IRS Model Salary Reduction Agreement). You may reproduce the *Salary Reduction Agreement* in this kit to set up your employees' elections.

### SUMMARY

You should consult with your tax and legal advisors for guidance in determining whether this SIMPLE IRA plan is the right option for your business and, if so, in selecting the plan features which best suit your business's needs. Once you are ready to adopt the plan, refer to the enclosed instructions for completing these documents and properly establishing your plan.

The following instructions are designed to assist you in setting up your SIMPLE IRA plan. They are not intended as a substitute for guidance from your tax or legal advisor.

### STEPS TO FOLLOW:

- STEP 1.** Complete the "Employers Eligibility Checklist" below. The following questions are designed to help you, the employer, along with your attorney and tax advisor, determine if you are eligible to adopt a SIMPLE IRA plan. Answer the following questions:
- | YES                      | NO                       |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Do you own or control a business from which your personal services are an income producing factor? <i>If the answer is NO, STOP. You are not eligible to establish this Plan. If the answer to Question 1 is YES, go to Question 2.</i>                        |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Do you have more than 100 employees who received at least \$5,000 of compensation from you in the previous calendar year? <i>If the answer is YES, STOP. You are not eligible to establish this Plan. If the answer to Question 2 is NO, go to Question 3.</i> |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Have you maintained any other qualified plan during the current calendar year in which contributions were made or benefits were accrued? <i>If the answer is YES, STOP. You are not eligible to establish this Plan.</i>                                       |
- If you have properly answered all of the preceding questions, go on to Step 2.*
- STEP 2.** Complete and sign the 5304-SIMPLE Agreement (*see page 2*).
- STEP 3.** If you have employees, complete the "Employee Eligibility Checklist" below. The following questions are designed to help you, the employer, along with your attorney and tax advisor, identify the employees which are eligible to participate in your SIMPLE IRA plan. Answer the following questions:
- | YES                      | NO                       |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Is your business a member of a controlled group of corporations, businesses, or trades (whether or not incorporated) within the meaning of IRC Section 414(b) or 414(c)? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Is the business a member of an affiliated service group within the meaning of IRC Section 414(n)?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Does the business use the services of leased employees within the meaning of IRC Section 414(n)?   |
- If you answered any of the above questions 1 through 3 YES, you may have to include the leased employees and/or employees of the other business(es) in the Plan. Consult your tax advisor to determine what additional action, if any, you must take.*
- STEP 4.** If you have employees, complete the *Participation Notice & Summary Description* (*see page 8*) and provide a copy to each employee immediately before his or her election period begins.
- STEP 5.** Make sure all eligible employees have established SIMPLE IRAs with their financial organizations.
- STEP 6.** Have all eligible employees complete a *Salary Reduction Agreement* (*see page 10*).

## Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) — Not for Use With a Designated Financial Institution

Form **5304-SIMPLE**

(Rev. September 2008)

Department of the Treasury  
Internal Revenue Service

OMB No. 1545-1502

**Do not file**  
with the Internal  
Revenue Service

\_\_\_\_\_ establishes the following SIMPLE IRA plan under section 408(p) of the Internal Revenue Code and pursuant to the instructions contained in this form.  
Name of Employer \_\_\_\_\_

### Article I – Employee Eligibility Requirements *(complete applicable box(es) and blanks — see instructions)*

- 1 General Eligibility Requirements.** The Employer agrees to permit salary reduction contributions to be made in each calendar year to the SIMPLE IRA established by each employee who meets the following requirements (select either 1a or 1b):
- a  **Full Eligibility.** All employees are eligible.
  - b  **Limited Eligibility.** Eligibility is limited to employees who are described in both (i) and (ii) below:
    - (i) **Current compensation.** Employees who are reasonably expected to receive at least \$ \_\_\_\_\_ in compensation (not to exceed \$5,000) for the calendar year.
    - (ii) **Prior compensation.** Employees who have received at least \$ \_\_\_\_\_ in compensation (not to exceed \$5,000) during any \_\_\_\_\_ calendar year(s) (insert 0, 1, or 2) preceding the calendar year.
- 2 Excludable Employees.**
- The Employer elects to exclude employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining. **Note:** *This box is deemed checked if the Employer maintains a qualified plan covering only such employees.*

### Article II – Salary Reduction Agreements *(complete the box and blank, if applicable — see instructions)*

- 1 Salary Reduction Election.** An eligible employee may make an election to have his or her compensation for each pay period reduced. The total amount of the reduction in the employee's compensation for a calendar year cannot exceed the applicable amount for that year.
- 2 Timing of Salary Reduction Elections**
- a For a calendar year, an eligible employee may make or modify a salary reduction election during the 60-day period immediately preceding January 1 of that year. However, for the year in which the employee becomes eligible to make salary reduction contributions, the period during which the employee may make or modify the election is a 60-day period that includes either the date the employee becomes eligible or the day before.
  - b In addition to the election periods in 2a, eligible employees may make salary reduction elections or modify prior elections \_\_\_\_\_. If the Employer chooses this option, insert a period or periods (for example, semi-annually, quarterly, monthly, or daily) that will apply uniformly to all eligible employees.
  - c No salary reduction election may apply to compensation that an employee received, or had a right to immediately receive, before execution of the salary reduction election.
  - d An employee may terminate a salary reduction election at any time during the calendar year.  If this box is checked, an employee who terminates a salary reduction election not in accordance with 2b may not resume salary reduction contributions during the calendar year.

### Article III – Contributions *(complete the blank, if applicable — see instructions)*

- 1 Salary Reduction Contributions.** The amount by which the employee agrees to reduce his or her compensation will be contributed by the Employer to the employee's SIMPLE IRA.
- 2 a Matching Contributions**
- (i) For each calendar year, the Employer will contribute a matching contribution to each eligible employee's SIMPLE IRA equal to the employee's salary reduction contributions up to a limit of 3% of the employee's compensation for the calendar year.
  - (ii) The Employer may reduce the 3% limit for the calendar year in (i) only if:
    - (1) The limit is not reduced below 1%; (2) The limit is not reduced for more than 2 calendar years during the 5-year period ending with the calendar year the reduction is effective; and (3) Each employee is notified of the reduced limit within a reasonable period of time before the employees' 60-day election period for the calendar year (described in Article II, item 2a).
- b Nonelective Contributions**
- (i) For any calendar year, instead of making matching contributions, the Employer may make nonelective contributions equal to 2% of compensation for the calendar year to the SIMPLE IRA of each eligible employee who has at least \$ \_\_\_\_\_, (not more than \$5,000) in compensation for the calendar year. No more than \$230,000\* in compensation can be taken into account in determining the nonelective contribution for each eligible employee.
  - (ii) For any calendar year, the Employer may make 2% nonelective contributions instead of matching contributions only if:
    - (1) Each eligible employee is notified that a 2% nonelective contribution will be made instead of a matching contribution; and (2) This notification is provided within a reasonable period of time before the employees' 60-day election period for the calendar year (described in Article II, item 2a).
- 3 Time and Manner of Contributions**
- a The Employer will make the salary reduction contributions (described in 1 above) for each eligible employee to the SIMPLE IRA established at the financial institution selected by that employee no later than 30 days after the end of the month in which the money is withheld from the employee's pay. See instructions.
  - b The Employer will make the matching or nonelective contributions (described in 2a and 2b above) for each eligible employee to the SIMPLE IRA established at the financial institution selected by that employee no later than the due date for filing the Employer's tax return, including extensions, for the taxable year that includes the last day of the calendar year for which the contributions are made.

\*This is the amount for 2008. For later years, the limit may be increased for cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS's internet website at [www.irs.gov](http://www.irs.gov).

## Article IV – Other Requirements and Provisions

- 1 Contributions in General.** The Employer will make no contributions to the SIMPLE IRAs other than salary reduction contributions (described in Article III, item 1) and matching or nonelective contributions (described in Article III, items 2a and 2b).
- 2 Vesting Requirements.** All contributions made under this SIMPLE IRA plan are fully vested and nonforfeitable.
- 3 No Withdrawal Restrictions.** The Employer may not require the employee to retain any portion of the contributions in his or her SIMPLE IRA or otherwise impose any withdrawal restrictions.
- 4 Selection of IRA Trustee.** The Employer must permit each eligible employee to select the financial institution that will serve as the trustee, custodian, or issuer of the SIMPLE IRA to which the Employer will make all contributions on behalf of that employee.
- 5 Amendments To This SIMPLE IRA Plan.** This SIMPLE IRA plan may not be amended except to modify the entries inserted in the blanks or boxes provided in Articles I, II, III, VI, and VII.
- 6 Effects Of Withdrawals and Rollovers**
  - a** An amount withdrawn from the SIMPLE IRA is generally includible in gross income. However, a SIMPLE IRA balance may be rolled over or transferred on a tax-free basis to another IRA designed solely to hold funds under a SIMPLE IRA plan. In addition, an individual may roll over or transfer his or her SIMPLE IRA balance to any IRA or eligible retirement plan after a 2-year period has expired since the individual first participated in any SIMPLE IRA plan of the Employer. Any rollover or transfer must comply with the requirements under section 408.
  - b** If an individual withdraws an amount from a SIMPLE IRA during the 2-year period beginning when the individual first participated in any SIMPLE IRA plan of the Employer and the amount is subject to the additional tax on early distributions under section 72(t), this additional tax is increased from 10% to 25%.

## Article V – Definitions

- 1 Compensation**
  - a General Definition of Compensation.** Compensation means the sum of the wages, tips, and other compensation from the Employer subject to federal income tax withholding (as described in section 6051(a)(3)), the amounts paid for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, and the employee's salary reduction contributions made under this plan, and, if applicable, elective deferrals under a section 401(k) plan, a SARSEP, or a section 403(b) annuity contract and compensation deferred under a section 457 plan required to be reported by the Employer on Form W-2 (as described in section 6051(a)(8)).
  - b Compensation for Self-Employed Individuals.** For self-employed individuals, compensation means the net earnings from self-employment determined under section 1402(a), without regard to section 1402(c)(6), prior to subtracting any contributions made pursuant to this plan on behalf of the individual.
- 2 Employee.** Employee means a common-law employee of the Employer. The term employee also includes a self-employed individual and a leased employee described in section 414(n) but does not include a nonresident alien who received no earned income from the Employer that constitutes income from sources within the United States.
- 3 Eligible Employee.** An eligible employee means an employee who satisfies the conditions in Article I, item 1 and is not excluded under Article I, item 2.
- 4 SIMPLE IRA.** A SIMPLE IRA is an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b), to which the only contributions that can be made are contributions under a SIMPLE IRA plan and rollovers or transfers from another SIMPLE IRA.

## Article VI – Procedures for Withdrawal

*(The employer will provide each employee with the procedures for withdrawals of contributions received by the financial institution selected by that employee, and that financial institution's name and address (by attaching that information or inserting it in the space below) unless: (1) that financial institution's procedures are unavailable, or (2) that financial institution provides the procedures directly to the employee. See **Employee Notification** on page 6.)*

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## Article VII – Effective Date

This SIMPLE IRA plan is effective \_\_\_\_\_ . See instructions.

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\_\_\_\_\_  
Name of Employer

\_\_\_\_\_  
By: Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address of Employer

\_\_\_\_\_  
Name and title

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## Model Notification to Eligible Employees

### I. Opportunity to Participate in the SIMPLE IRA Plan

You are eligible to make salary reduction contributions to the \_\_\_\_\_ SIMPLE IRA plan. This notice and the attached summary description provide you with information that you should consider before you decide whether to start, continue, or change your salary reduction agreement.

### II. Employer Contribution Election

For the \_\_\_\_\_ calendar year, the Employer elects to contribute to your SIMPLE IRA (*employer must select either (1), (2), or (3)*):

- (1) A matching contribution equal to your salary reduction contributions up to a limit of 3% of your compensation for the year;
- (2) A matching contribution equal to your salary reduction contributions up to a limit of \_\_\_\_\_% (*employer must insert a number from 1 to 3 and is subject to certain restrictions*) of your compensation for the year; or
- (3) A nonelective contribution equal to 2% of your compensation for the year (limited to \$230,000\*) if you are an employee who makes at least \$\_\_\_\_\_ (*employer must insert an amount that is \$5,000 or less*) in compensation for the year.

### III. Administrative Procedures

To start or change your salary reduction contributions, you must complete the salary reduction agreement and return it to \_\_\_\_\_ (*employer should designate a place or individual*) by \_\_\_\_\_ (*employer should insert a date that is not less than 60 days after notice is given*).

### IV. Employee Selection of Financial Institution

You must select the financial institution that will serve as the trustee, custodian, or issuer of your SIMPLE IRA and notify your Employer of your selection.

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## Model Salary Reduction Agreement

### I. Salary Reduction Election

Subject to the requirements of the SIMPLE IRA plan of \_\_\_\_\_ (*name of employer*) I authorize \_\_\_\_\_% or \$\_\_\_\_\_ (which equals \_\_\_\_\_% of my current rate of pay) to be withheld from my pay for each pay period and contributed to my SIMPLE IRA as a salary reduction contribution.

### II. Maximum Salary Reduction

I understand that the total amount of my salary reduction contributions in any calendar year cannot exceed the applicable amount for that year. See instructions.

### III. Date Salary Reduction Begins

I understand that my salary reduction contributions will start as soon as permitted under the SIMPLE IRA plan and as soon as administratively feasible or, if later, \_\_\_\_\_. (*Fill in the date you want the salary reduction contributions to begin. The date must be after you sign this agreement.*)

### IV. Employee Selection of Financial Institution

I select the following financial institution to serve as the trustee, custodian, or issuer of my SIMPLE IRA.

\_\_\_\_\_  
Name of financial institution

\_\_\_\_\_  
Address of financial institution

\_\_\_\_\_  
SIMPLE IRA account name and number

I understand that I must establish a SIMPLE IRA to receive any contributions made on my behalf under this SIMPLE IRA plan. If the information regarding my SIMPLE IRA is incomplete when I first submit my salary reduction agreement, I realize that it must be completed by the date contributions must be made under the SIMPLE IRA plan. If I fail to update my agreement to provide this information by that date, I understand that my Employer may select a financial institution for my SIMPLE IRA.

### V. Duration of Election

This salary reduction agreement replaces any earlier agreement and will remain in effect as long as I remain an eligible employee under the SIMPLE IRA plan or until I provide my Employer with a request to end my salary reduction contributions or provide a new salary reduction agreement as permitted under this SIMPLE IRA plan.

\_\_\_\_\_  
Signature of employee

\_\_\_\_\_  
Date

*\*This is the amount for 2008. For later years, the limit may be increased for cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS's internet website at [www.irs.gov](http://www.irs.gov).*

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose of Form

Form 5304-SIMPLE is a model Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) plan document that an employer may use to establish a SIMPLE IRA plan described in section 408(p), under which each eligible employee is permitted to select the financial institution for his or her SIMPLE IRA.

These instructions are designed to assist in the establishment and administration of the SIMPLE IRA plan. They are not intended to supersede any provision in the SIMPLE IRA plan.

Do not file Form 5304-SIMPLE with the IRS. Instead, keep it with your records.

For more information, see Pub. 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*, and Pub. 590, *Individual Retirement Arrangements (IRAs)*.

**Note.** If you used the March 2002 or August 2005 version of Form 5304-SIMPLE to establish a model Savings Incentive Match Plan, you are not required to use this version of the form.

### Which Employers May Establish and Maintain a SIMPLE IRA Plan?

To establish and maintain a SIMPLE IRA plan, you must meet both of the following requirements:

1. Last calendar year, you had no more than 100 employees (including self-employed individuals) who earned \$5,000 or more in compensation from you during the year. If you have a SIMPLE IRA plan but later exceed this 100-employee limit, you will be treated as meeting the limit for the 2 years following the calendar year in which you last satisfied the limit.

2. You do not maintain during any part of the calendar year another qualified plan with respect to which contributions are made, or benefits are accrued, for service in the calendar year. For this purpose, a qualified plan (defined in section 219(g)(5)) includes a qualified pension plan, a profit-sharing plan, a stock bonus plan, a qualified annuity plan, a tax-sheltered annuity plan, and a simplified employee pension (SEP) plan. A qualified plan that only covers employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining is disregarded if these employees are excluded from participating in the SIMPLE IRA plan. If the failure to continue to satisfy the 100-employee limit or the one-plan rule described in 1 and 2 above is due to an acquisition or similar transaction involving your business, special rules apply. Consult your tax advisor to find out if you can still maintain the plan after the transaction.

Certain related employers (trades or businesses under common control) must be treated as a single employer for purposes of the SIMPLE IRA requirements. These are: (1) a controlled group of corporations under section 414(b); (2) a partnership or sole proprietorship under common control under section 414(c); or (3) an affiliated service group under section 414(m). In addition, if you have leased employees required to be treated as your own employees under the rules of section 414(n), then you must count all such leased employees for the requirements listed above.

### What is a SIMPLE IRA Plan?

A SIMPLE IRA plan is a written arrangement that provides you and your employees with an easy way to make contributions to provide retirement income for your employees. Under a SIMPLE IRA plan, employees may choose whether to make salary reduction contributions to the SIMPLE IRA plan rather than receiving these amounts as part of their regular compensation. In addition, you will contribute matching or nonelective contributions on behalf of eligible employees (see *Employee Eligibility Requirements* below and *Contributions* on page 6). All contributions under this plan will be deposited into a SIMPLE individual retirement account or annuity established for each eligible employee with the financial institution selected by him or her.

### When To Use Form 5304-SIMPLE

A SIMPLE IRA plan may be established by using this Model Form or any other document that satisfies the statutory requirements.

Do not use Form 5304-SIMPLE if:

1. You want to require that all SIMPLE IRA plan contributions initially go to a financial institution designated by you. That is, you do not want to permit each of your eligible employees to choose a financial institution that will initially receive contributions. Instead, use Form 5305-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) — for Use With a Designated Financial Institution*;
2. You want employees who are nonresident aliens receiving no earned income from you that constitutes income from sources within the United States to be eligible under this plan; or
3. You want to establish a SIMPLE 401(k) plan.

### Completing Form 5304-SIMPLE

Pages 2 and 3 of Form 5304-SIMPLE contain the operative provisions of your SIMPLE IRA plan. This SIMPLE IRA plan is considered adopted when you have completed all applicable boxes and blanks and it has been executed by you.

The SIMPLE IRA plan is a legal document with important tax consequences for you and your employees. You may want to consult with your attorney or tax advisor before adopting this plan.

### Employee Eligibility Requirements (Article I)

Each year for which this SIMPLE IRA plan is effective, you must permit salary reduction contributions to be made by all of your employees who are reasonably expected to receive at least \$5,000 in compensation from you during the year, and who received at least \$5,000 in compensation from you in any 2 preceding years. However, you can expand the group of employees who are eligible to participate in the SIMPLE IRA plan by completing the options provided in Article I, items 1a and 1b. To choose full eligibility, check the box in Article I, item 1a. Alternatively, to choose limited eligibility, check the box in Article I, item 1b, and then insert "\$5,000" or a lower compensation amount (including zero) and "2" or a lower number of years of service in the blanks in (i) and (ii) of Article I, item 1b.

In addition, you can exclude from participation those employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining. You may do this by checking the box in Article I, item 2. Under certain circumstances, these employees must be excluded. See *Which Employers May Establish and Maintain a SIMPLE IRA Plan?* above.

## Salary Reduction Agreements (Article II)

As indicated in Article II, item 1, a salary reduction agreement permits an eligible employee to make a salary reduction election to have his or her compensation for each pay period reduced by a percentage (expressed as a percentage or dollar amount). The total amount of the reduction in the employee's compensation cannot exceed the applicable amount for any calendar year. The applicable amount is \$10,500 for 2008. After 2008, the \$10,500 amount may be increased for cost-of-living adjustments. In the case of an eligible employee who is 50 or older by the end of the calendar year, the above limitation is increased by \$2,500 for 2008. After 2008, the \$2,500 amount may be increased for cost-of-living adjustments.

### Timing of Salary Reduction Elections

For any calendar year, an eligible employee may make or modify a salary reduction election during the 60-day period immediately preceding January 1 of that year. However, for the year in which the employee becomes eligible to make salary reduction contributions, the period during which the employee may make or modify the election is a 60-day period that includes either the date the employee becomes eligible or the day before.

You can extend the 60-day election periods to provide additional opportunities for eligible employees to make or modify salary reduction elections using the blank in Article II, item 2b. For example, you can provide that eligible employees may make new salary reduction elections or modify prior elections for any calendar quarter during the 30 days before that quarter.

You may use the *Model Salary Reduction Agreement* on page 4 to enable eligible employees to make or modify salary reduction elections.

Employees must be permitted to terminate their salary reduction elections at any time. They may resume salary reduction contributions for the year if permitted under Article II, item 2b. However, by checking the box in Article II, item 2d, you may prohibit an employee who terminates a salary reduction election outside the normal election cycle from resuming salary reduction contributions during the remainder of the calendar year.

## Contributions (Article III)

Only contributions described below may be made to this SIMPLE IRA plan. No additional contributions may be made.

### Salary Reduction Contributions

As indicated in Article III, item 1, salary reduction contributions consist of the amount by which the employee agrees to reduce his or her compensation. You must contribute the salary reduction contributions to the financial institution selected by each eligible employee.

## Matching Contributions

In general, you must contribute a matching contribution to each eligible employee's SIMPLE IRA equal to the employee's salary reduction contributions. This matching contribution cannot exceed 3% of the employee's compensation. See *Definition of Compensation*, below.

You may reduce this 3% limit to a lower percentage, but not lower than 1%. You cannot lower the 3% limit for more than 2 calendar years out of the 5-year period ending with the calendar year the reduction is effective.

**Note:** If any year in the 5-year period described above is a year before you first established any SIMPLE IRA plan, you will be treated as making a 3% matching contribution for that year for purposes of determining when you may reduce the employer matching contribution.

To elect this option, you must notify the employees of the reduced limit within a reasonable period of time before the applicable 60-day election periods for the year. See *Timing of Salary Reduction Elections* above.

### Nonelective Contributions

Instead of making a matching contribution, you may, for any year, make a nonelective contribution equal to 2% of compensation for each eligible employee who has at least \$5,000 in compensation for the year. Nonelective contributions may not be based on more than \$230,000\* of compensation.

To elect to make nonelective contributions, you must notify employees within a reasonable period of time before the applicable 60-day election periods for such year. See *Timing of Salary Reduction Elections* above.

**Note:** Insert "\$5,000" in Article III, item 2b(i) to impose the \$5,000 compensation requirement. You may expand the group of employees who are eligible for nonelective contributions by inserting a compensation amount lower than \$5,000.

## Effective Date (Article VII)

Insert in Article VII the date you want the provisions of the SIMPLE IRA plan to become effective. You must insert January 1 of the applicable year unless this is the first year for which you are adopting any SIMPLE IRA plan. If this is the first year for which you are adopting a SIMPLE IRA plan, you may insert any date between January 1 and October 1, inclusive of the applicable year.

## Additional Information Timing of Salary Reduction Contributions

The employer must make the salary reduction contributions to the financial institution selected by each eligible employee for his or her SIMPLE IRA no later than the 30th day of the month following the month in which the amounts would otherwise have been payable to the employee in cash.

The Department of Labor has indicated that most SIMPLE IRA plans are also subject to Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Under Department of Labor regulations at 29 CFR 2510.3-102, salary reduction contributions must be made to each participant's SIMPLE IRA as of the earliest date on which those contributions can reasonably be segregated from the employer's general assets, but in no event later than the 30-day deadline described previously.

## Definition of Compensation

"Compensation" means the amount described in section 6051(a)(3) (wages, tips, and other compensation from the employer subject to federal income tax withholding under section 3401(a)), and amounts paid for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. Usually, this is the amount shown in box 1 of Form W-2, *Wage and Tax Statement*. For further information, see Pub. 15, *Circular E, Employer's Tax Guide*. Compensation also includes the salary reduction contributions made under this plan, and, if applicable, compensation deferred under a section 457 plan. In determining an employee's compensation for prior years, the employee's elective deferrals under a section 401(k) plan, a SARSEP, or a section 403(b) annuity contract are also included in the employee's compensation.

For self-employed individuals, compensation means the net earnings from self-employment determined under section 1402(a), without regard to section 1402(c)(6), prior to subtracting any contributions made pursuant to this SIMPLE IRA plan on behalf of the individual.

## Employee Notification

You must notify each eligible employee prior to the employee's 60-day election period described above that he or she can make or change salary reduction elections and select the financial institution that will serve as the trustee, custodian, or issuer of the employee's SIMPLE IRA. In this notification, you must indicate whether you will provide:

1. A matching contribution equal to your employees' salary reduction contributions up to a limit of 3% of their compensation;

\*This is the amount for 2008. For later years, the limit may be increased for cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS's internet website at [www.irs.gov](http://www.irs.gov).

2. A matching contribution equal to your employees' salary reduction contributions subject to a percentage limit that is between 1 and 3% of their compensation; or
3. A nonelective contribution equal to 2% of your employees' compensation.

You can use the *Model Notification to Eligible Employees* on page 4 to satisfy these employee notification requirements for this SIMPLE IRA plan. A *Summary Description* must also be provided to eligible employees at this time. This summary description requirement may be satisfied by providing a completed copy of pages 2 and 3 of Form 5304-SIMPLE (including the information described in *Article VI – Procedures for Withdrawal*).

If you fail to provide the employee notification (including the summary description) described above, you will be liable for a penalty of \$50 per day until the notification is provided. If you can show that the failure was due to reasonable cause, the penalty will not be imposed.

If the financial institution's name, address, or withdrawal procedures are not available at the time the employee must be given the summary description, you must provide the summary description without this information. In that case, you will have reasonable cause for not including this information in the summary description, but only if you ensure that it is provided to the employee as soon as administratively feasible.

## Reporting Requirements

You are not required to file any annual information returns for your SIMPLE IRA plan, such as Form 5500, *Annual Return/Report of Employee Benefit Plan*, Form 5500-EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*. However, you must report to the IRS which eligible employees are active participants in the SIMPLE IRA plan and the amount of your employees' salary reduction contributions to the SIMPLE IRA plan on Form W-2. These contributions are subject to social security, Medicare, railroad retirement, and federal unemployment tax.

## Deducting Contributions

Contributions to this SIMPLE IRA plan are deductible in your tax year containing the end of the calendar year for which the contributions are made.

Contributions will be treated as made for a particular tax year if they are made for that year and are made by the due date (including extensions) of your income tax return for that year.

## Summary Description

Each year the SIMPLE IRA plan is in effect, the financial institution for the SIMPLE IRA of each eligible employee must provide the employer the information described in section 408(l)(2)(B). This requirement may be satisfied by providing the employer a current copy of Form 5304-SIMPLE (including instructions) together with the financial institution's procedures for withdrawals from SIMPLE IRAs established at that financial institution, including the financial institution's name and address. The summary description must be received by the employer in sufficient time to comply with the *Employee Notification* requirements earlier.

There is a penalty of \$50 per day imposed on the financial institution for each failure to provide the summary description described above. However, if the failure was due to reasonable cause, the penalty will not be imposed.

**Paperwork Reduction Act Notice.** You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is:

**Recordkeeping** . . . . . 3 hr., 38 min.

**Learning about the law or the form** . . . . . 2 hr., 26 min.

**Preparing the form** . . . . . 47 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send this form to this address. Instead, keep it with your records.



**PARTICIPATION NOTICE & SUMMARY DESCRIPTION**

*IMPORTANT: Carefully read and consider the information on both sides of this form before you decide whether to start, continue, or change your salary reduction election.*

**SECTION A. GENERAL INFORMATION**

**Employer Information**

Name of Employer \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_

**Trustee/Custodian/Issuer Information**

Name of Trustee, Custodian, or Issuer \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**SECTION B. ELIGIBILITY REQUIREMENTS**

**Opportunity to Participate**

*This form is intended, in part, to notify you of your rights to choose, during the election period, to make salary reduction contributions under the savings incentive match plan for employees (SIMPLE) IRA plan established by your Employer. The election period is generally the 60-day period before the beginning of each calendar year and the 60-day period before the first day you become eligible to participate. This notice includes a summary description of your Employer's SIMPLE IRA plan.*

**Eligible Employees**

Except as provided below, you will be eligible to participate in this plan unless you are covered by a collective bargaining agreement (unless the collective bargaining agreement specifies that you will participate).

In spite of the preceding paragraph, you will be eligible to participate in your Employer's SIMPLE IRA plan even if you are covered by a collective bargaining agreement:  YES  NO

**Compensation and Service**

To become eligible to participate in the plan, you must have earned \$5,000 during any two preceding calendar years and you must be reasonably expected to earn such amount during the current calendar year, unless otherwise specified below.

You are required to earn at least \$\_\_\_\_\_ (may not exceed \$5,000) during any \_\_\_\_\_ (may not exceed 2) preceding calendar years and expected to earn at least \$\_\_\_\_\_ (may not exceed \$5,000) during the current calendar year to be eligible to participate in the Plan.

**SECTION C. PLAN CONTRIBUTIONS**

**Financial Institution**

You must select the financial organization that will serve as trustee, custodian or issuer of your SIMPLE IRA and notify your Employer by providing a completed *Salary Reduction Agreement*.

**Salary Reduction Contributions**

By completing a *Salary Reduction Agreement*, you agree to make Elective Deferrals to this Plan. Your Compensation will be reduced each pay period by an amount equal to the percentage of your Compensation you specify on the *Salary Reduction Agreement*. Generally, your Elective Deferrals (excluding Catch-Up Contributions) may not exceed \$10,500 for 2008 (after 2008, this limit is subject to cost-of-living adjustments).

Catch-Up Contributions  will  will not be permitted under the Plan.

If Catch-Up Contributions are available under the Plan and you will attain age 50 on or before the end of the Year, you are eligible to make Catch-Up Contributions. Your Catch-Up Contributions may not exceed \$2,500 for 2008 (after 2008, this amount is subject to cost-of-living adjustments).

You may change the amount of your salary reduction contributions by completing and signing a revised *Salary Reduction Agreement* during the election period or any other period specified below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You may discontinue making salary reduction contributions at any time during the calendar year by completing and signing a revised *Salary Reduction Agreement*. You are allowed to commence making salary reduction contributions the first day of the calendar year following the calendar year you cease deferring unless specified otherwise below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Employer Contributions**

For calendar year \_\_\_\_\_, your Employer will make matching contributions equal to 100 percent of your salary reduction contributions which do not exceed three percent of your compensation unless your Employer elects to make either the alternative matching contribution or the nonelective contribution described in Options 1 and 2 below.

**Option 1:**  Matching contributions in an amount equal to your salary reduction contributions which do not exceed \_\_\_\_\_% (must not be less than 1%).

**Option 2:**  Nonelective contributions equal to two percent of compensation on behalf of each eligible employee who earns at least \$5,000 during the year unless a different dollar amount is specified below. You are required to earn at least \$\_\_\_\_\_ (may not exceed \$5,000) during the calendar year to be eligible to receive nonelective contributions.

**SECTION D. DISTRIBUTIONS**

The following is a summary of the rules applicable to distributions from SIMPLE IRAs. You are advised to refer to your SIMPLE IRA documents and/or seek the assistance of a qualified tax advisor if you have additional questions.

**Procedures** SIMPLE IRA assets are fully vested and may be withdrawn at any time subject to taxes and penalties as explained below. The trustee, custodian, or issuer of your SIMPLE IRA, and not your Employer, is responsible for making distributions to you upon your request.

**Federal Income Tax** Distributions from SIMPLE IRAs are taxed as ordinary income in the year in which you receive them. In addition, federal income tax withholding will be applied to your distribution at a rate of 10 percent unless you specify a higher rate or waive your right to withholding.

**Penalties** A 25 percent early distribution penalty applies to SIMPLE IRA distributions taken within two years of your initial participation in the plan, unless you are age 59½ or older or can claim an exemption from the early distribution penalty described in Internal Revenue Code (IRC) Sec. 72(t)(6). If you are under age 59½, have satisfied the two-year requirement and receive a distribution, you will be subject to a 10 percent early distribution penalty.

**Rollovers** SIMPLE IRA distributions may be rolled over to other SIMPLE IRAs. Rollovers from regular IRAs to your SIMPLE IRA are not permitted. If a SIMPLE IRA distribution is properly rolled over, your rollover amount will be excluded when determining the amount of your federal income tax or early distribution penalty. You may roll over SIMPLE IRA distributions to regular IRAs, qualified retirement plans, tax-sheltered annuities, and deferred compensation plans. However, you must generally wait two years from the date you become a participant before doing so.

**Required Minimum Distributions** You are generally required to begin taking minimum distributions from your SIMPLE IRA upon attainment of age 70½ in accordance with IRS regulations.

**Procedures for Withdrawals** If you wish to take a distribution from your SIMPLE IRA, you must complete a withdrawal statement provided by the trustee, custodian, or issuer of your SIMPLE IRA. In addition, the following procedures apply to you upon requesting a distribution.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**SALARY REDUCTION AGREEMENT**

*IMPORTANT: Carefully read all sections of this agreement before signing it.*

**SECTION A. GENERAL INFORMATION**

**Employer and Plan Information**

Name of Employer \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_

**Employee Information**

Name \_\_\_\_\_  
Home Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Employee Number \_\_\_\_\_ Social Security Number \_\_\_\_\_

**SECTION B. TERMS OF AGREEMENT To Be Completed By the Employer**

**Limits on Salary Reduction Contributions**

Subject to the requirements of the Employer's SIMPLE IRA Plan, each Employee who is eligible to enroll as a Contributing Participant may set aside a percentage of his or her pay into the Plan (Elective Deferrals) by signing this *Salary Reduction Agreement*. This *Salary Reduction Agreement* replaces any earlier *Salary Reduction Agreement* and will remain in effect as long as the Employee remains an eligible Employee or until he or she provides the Employer with a new *Salary Reduction Agreement* as permitted by the Plan. A Participant who is age 50 or older by the end of the Year may be allowed to make Catch-Up Contributions. A Participant's Elective Deferrals (excluding Catch-Up Contributions) may not exceed \$10,500 for 2008 (after 2008, this amount is subject to cost-of-living adjustments).

**Changing This Agreement**

An employee may change the percentage of pay he or she is setting aside into the plan. Any employee who wishes to make such a change must complete and sign a new *Salary Reduction Agreement* and give it to the employer during the election period or any other period the Employer specifies on the *Participation Notice & Summary Description*.

**Terminating This Agreement**

An employee may terminate this *Salary Reduction Agreement*. After terminating this Agreement, an employee cannot again begin making salary reduction contributions until the first day of the calendar year following the calendar year of termination or any other date the Employer specifies on the *Participation Notice & Summary Description*.

**Effective Date**

This *Salary Reduction Agreement* will be effective for the pay period which begins \_\_\_\_\_.

**SECTION C. AUTHORIZATION To Be Completed By the Employee**

**Elective Deferral Agreement**

I, the undersigned employee, wish to set aside, as salary reduction contributions, \_\_\_\_\_% or \$ \_\_\_\_\_ (which equals \_\_\_\_\_% of my current rate of pay) into my Employer's SIMPLE IRA plan by way of payroll deduction.

*NOTE: If you are eligible to defer and you attain age 50 before the close of the Plan Year, you may be able to make Catch-Up Contributions under the SIMPLE IRA Plan. Certain limits, as required by law, must be met prior to being eligible to make Catch-Up Contributions. Your election above will pertain to Elective Deferrals which may include Catch-Up Contributions. See your Employer for additional information, including the Catch-Up Contribution limit for the Year.*

I agree that my pay will be reduced in the manner I have indicated above, and I affirmatively elect to have this amount contributed to the investments listed below. This *Salary Reduction Agreement* will continue to be effective while I am employed, unless I change or terminate it as explained in Section B above. I acknowledge that I have read this entire agreement, I understand it and I agree to its terms. Furthermore, I acknowledge that I have received a copy of the *Participation Notice & Summary Description*.

**Trustee/Custodian/ Issuer Information**

Name of Trustee, Custodian, or Issuer \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Signatures**

\_\_\_\_\_  
Signature of Employee  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature for Employer  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date