ERISA and the Internal Revenue Code
People: Bob Seng & Bob Radecki (aka: B^2)

Time	Notes
:41	**Topic:** • Employee Retirement Income Security Act of 1974 (ERISA) • Internal Revenue Code (IRC)
1:17	**Additional laws enacted over the years include things like:** • HIPAA • COBRA • GINA • Americans with Disability Act In many cases these acts include amendments to ERISA and the Internal Revenue Code.
1:40	**ERISA -- Participant protection:** • SPDs, documents, Form 5500s • Link to EBSA Form 5500 search tool (super-useful and free) • Fiduciary duty rules
2:22	**ERISA -- State law preemption:** • State laws that regulate employee benefit plans are generally (not always) preempted. • Preemption is how self-funded health plans avoid state mandated benefit rules. • State regulation of insurance law is a little more complicated. • The ERISA "saver clause" says state regulation of insurance is "saved" from preemption. (ERISA preemption and saver language courtesy of the Cornell Law School Legal Information Institute)
3:06	**Bob Radecki gets practical on the "saver" clause:** • The "saver clause" allows States to regulate the insurer. • This isn't about State regulation of the plan at the employer level. • State regulation of carriers has a clear impact on what kind of insured plan an employer may offer.
3:57	**Aside – how do the ERISA communication obligations create participant protection?**

	• **Bob Radecki:** "Why are you saying rules about plan documents and SPDs are about participant protection? Aren't they just requirements about what must be communicated?" • **Bob Seng:** "The regulators / policymakers hoped that communication and transparency would protect participants."
4:53	ERISA was primarily about retirement plans in the beginning. That's why the welfare rules tend to be more ambiguous.
5:30	Switch!
5:34	**Internal Revenue Code** • **Tax Exclusions** – I get something of value but I NEVER pay tax on it. Employer provided group health care as an example. • **Tax Deferrals** – I get something of value from my employer but I wait to pay tax on it. Employer-sponsored 401(k) plan as an example.
6:31	**Tax exclusion for employer-provided health care** • Employer provided health care is valuable • The value of the employer coverage is now reported on Box 12 of Form W-2. (IRS website) • But that value is NOT part of an individual's taxable income (National Tax Journal)
7:15	**Cafeteria Plans** • Cafeteria plans are an exception to the general rule that an employee has taxable income when an employer offers something of value to the employee (whether they take it or not). This is also known as the rule of "constructive receipt." (Investopedia) • If cafeteria plan rules are followed (including plan document rules) an employee can "turn their back" on taxable income and not be taxed.
7:53	**What's the catch?** • Lots of rules about elections, change in status, etc. • Nondiscrimination rules – Employer cannot limit cafeteria plan participation to highly paid employee
8:40	**Opportunities for Advocacy** • The cafeteria plan rules are confusing and ambiguous. • Here's a link to the Federal Register pages containing the 2007 revisions to the cafeteria plan rules. (Federal Register)
9:00	It's useful to consider Cafeteria Plan rules as tax rules.