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On June 10, 1991, the IRS issued Notice 91-17 to clarify the Form 5498 reporting duties for IRA custodians/trustees for certain Desert Storm participants.

As discussed in the April Pension Digest, certain Desert Storm participants may still make 1990 contributions to their IRAs. They, of course, must designate the contribution for that prior year (1990).

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Alternative #1: The trustee may report the contribution on the paper Form 5498 for the year for which the contribution is made.

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But, the 1990 Form 5498 must be filed on or before May 31, 1991. A contribution made on or before May 31, 1991 for 1990 by a Desert Storm participant could have been reported on the 1990 Form 5498. (For a normal IRA participant, the contribution cut-off date for 1990 contributions was April 15, 1991.)

Also, the IRS will allow an IRA trustee to prepare an "amended" or a

Special Form 5498 for Desert Storm GIs

How is the IRA custodian/trustee to report these otherwise late IRA contributions on a Form 5498 or its magnetic media equivalent?

Most IRA custodians today file Form 5498 information on magnetic media or electronic media. Because Desert Storm IRS reporting will require use of the paper form even for magnetic media filers, the paper form rules will be discussed first.

★ "corrected" 1990 Form 5498 to be used to report IRA contributions made by a Desert Storm participant(s) for 1990 between April 15th and December 31st, 1991.

★ This amended form is meant only to deal with Desert Storm IRA contributions, and should contain no other information.

★ Alternative #2: The trustee may report the contribution on a Form 5498 for a subsequent year (1990 contribution reported on a 1991 or 1992 Form 5498). When this

alternative is used, the IRA trustee must enter "DS", the year for which the contribution is made, and the amount of the contribution in any empty box except box 1. For example, the trustee must report a \$2,000 IRA contribution made on January 15, 1992 for 1990 as follows: it will prepare a 1991 or a 1992 Form 5498 and enter "DS 1990 \$2,000"; it will not report any amount in box 1.

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Paper Filing

The IRS gave two alternatives for reporting these "late" IRA contributions. However, because of their rule that the Form 5498 must be timely filed, the practical effect is that the first alternative (described below) is no longer available.

Also In This Issue — U.S. Population Approaching Peak Age, Savings Potential • FDIC Coverage of Beneficiary Interest • How "automatic" is spouse beneficiary designation? • Secretary of Labor Proposes Five Pension Reforms • "Pensions in Perspective" Summer Conference Planned • Review of 1990 Form 5500EZ Filing Requirements • ✓ Check It Out

Opinion

U.S. Population Approaching Peak Age, Savings Potential

(Information for the following analysis was obtained from testimony given May 16th to the Senate Finance Committee, which is considering various proposals to expand IRA eligibility and participation, and by so doing to boost the U.S. savings rate. Dr. Neal H. Cutler, Ph.D., presenter of the testimony, describes the great savings potential that lies before America as its "baby boomers" reach middle age, the period in life when earnings are traditionally greatest, and interest in planning for retirement highest. Cutler is President and Scientific Director of the Boettner Institute of Financial Gerontology, located at American College in Bryn Mawr, Pennsylvania. The Institute was founded to research the social and financial impacts of aging in the U.S. and other developing countries.)

While much attention has been paid to the population growth of people 65 and over, including the issues of long-term care, health and safety, financial security, etc., the next 25 years will actually see the fastest growth in the 45 to 64 age group. This represents a virtual reversal of previous population growth patterns.

While the 1960 to 1985 period saw the 65+ population grow at 71%, the 45 to 64 age group grew at 24%. But in the period 1990 to 2015, the 65+ population will continue to grow, but at only a predicted 39% rate, while the 45 to 64 age group zooms to a predicted 71% growth rate. The 65 year olds are still becoming more numerous, but the middle-agers are growing far faster.

Why is this significant? For one thing, it provides a partial explanation for the often-cited disparity between U.S. and Japanese savings rates. The "middle aging" of Japanese society has been steadily increasing since about 1950, according to Cutler. About 1975, Japan's 45 to 64 year olds became a larger part of their nation's population than U.S. 45 to 64 year olds, and continued to grow sharply, while our percentage dropped.

Even without special savings incentives, this age group should have been expected to contribute to a very positive savings rate for Japan. In a sense, U.S. teenagers and young adults were part of the "savings competition" with Japan's middle-agers. But add to this the fact that Japan *has a national policy that encourages private savings*, and it's easy to understand why the U.S. has lagged behind.

Now the U.S. seems on the threshold of a quantum growth in this very productive 45 to 64 year age group. To maximize the U.S. savings rate, and to simultaneously reduce future pressure on tax-funded Social Security and health care programs, further incentives for U.S. workers to save for their retirement years seems a very wise course.

Expanding the eligibility and/or attractiveness of IRAs seems an excellent step in this direction. **P**

FDIC Coverage of Beneficiary Interest

The U.S. Court of Appeals, Fifth District, recently ruled in the following matter: a pension plan trust account at a failed S&L contained \$230,000 for one employee. The employee's wife was his named beneficiary.

As statutory successor to the FSLIC, the FDIC ruled that only \$100,000 was insured. The employee sued and appealed after losing in the lower court. He contended that as his named beneficiary, his wife was also entitled to \$100,000 of insurance.

The appellate court upheld the decision, stating that although FDIC insures \$100,000 for each trust estate (the term "trust estate" usually refers to the beneficiary interest in an irrevocable trust) when held in a fiduciary capacity, they agreed with the narrower interpretation of the FSLIC that — in this situation — the term "beneficiary" was synonymous with the term "participant," and therefore qualifies for insurance of only \$100,000 regardless of the number of beneficiary(ies) named. **P**



How "automatic" is spouse beneficiary designation?

Does an ERISA plan impose a one-year-of-marriage requirement before a spouse automatically becomes a beneficiary? Does a nonspouse designated as beneficiary prior to a marriage retain their beneficiary rights when no-redesignation is made prior to the participant's death?

These questions were answered in January of this year by the Missouri Court of Appeals in the following case:

A plan participant had designated his mother as his beneficiary, several years before his marriage. Less than two months after marriage he died, and the plan awarded his assets to his mother, the designated beneficiary, indicating that the plan contained a one-year-marriage requirement if a participant elected benefits other than a joint-and-survivor annuity for a non-spouse beneficiary.

The wife filed suit, and was awarded the participant's benefits. The mother and the plan appealed, arguing that the spouse was not automatically entitled to death benefits before one year of marriage.

The court of appeals upheld the lower court ruling in favor of the wife, stating that ERISA does not impose a one-year requirement on the automatic designation of a spouse as beneficiary. Rather, it only allows a plan this option without voiding the plan.

The court found that the one-year-of-marriage language in the plan as **written**, should be interpreted as applying to the election of benefits, not the automatic designation of a spouse as beneficiary.

Plan Language Misinterpreted

In other words, the plan administrators were misinterpreting their own plan language in this case. The plan could legally have provided for the very distribution of benefits the administrators argued for in court. But the plan provisions were not drawn up to reflect that intent. **P**

Secretary of Labor Proposes Five Pension Reforms

Adding to the growing number of IRA and pension reforms that have been suggested, on April 30, 1991, Secretary of Labor Lynn Martin described the Bush Administration's "POWER" Proposal. The Administration says Pension Opportunities for Workers' Expanded Retirement — POWER — would increase the financial security of millions of Americans. It calls for five basic changes:

ONE New Simplified Model Employee Pension Program

Employers with 100 employees or less would be exempt from non-discrimination pension plan tests as long as they make an annual minimum contribution for each employee of 2% of pay and have no other retirement plan. Employees could contribute up to \$4,200 additionally on a pre-tax basis. Employers could match up to 50% of those funds.

TWO Increased Eligibility

Tax Exempt Organizations and State and Local Governments would be eligible to establish 401(k) plans.

THREE Reporting Simplification

Tax and administrative reporting promises to be simplified. The IRS would broaden the Master and Prototype Program so that more companies could use this more affordable retirement plan documentation option.

FOUR Shorter Vesting Schedule

POWER provides that participants in multi-employer pension plans would be eligible for the same vesting privileges as other employer sponsored plans. They would no longer have to wait ten years to be fully vested. The typical vesting period would be five years.

FIVE Portability Through Preservation

Liberalizing the rollover of lump sum distributions and discontinuing the 5 and 10 year averaging of payments would encourage people to save their retirement monies, even after changing employers. IRAs would take on added importance, allowing for the direct transfers of qualified distributions, now recorded as distributions. **PD**



"Pensions in Perspective" Summer Conference Planned

A three-day intensive workshop on IRAs and other retirement plans will be held August 4 to 7, conducted by Collin W. Fritz and Associates, Ltd. The conference will be held at Madden's Resort on Gull Lake, near Brainerd in north-central Minnesota. The site is approximately 125 miles north of Minneapolis/St. Paul.

Approximately 15 workshop topics will be presented in concurrent sessions, allowing attendees to choose those subjects that have the greatest application and appeal to them. The conference will combine a wide range of learning opportunities with one of the finest recreational settings in the Upper Midwest.

At Madden's Resort and Conference Center guests will enjoy natural beauties, a wide choice of active or easy-does-it recreations, great food and accommodations, shopping, and much more.

They will also discover meeting and learning facilities that rival the best metropolitan conference centers for space, design excellence and instructional amenities.

Madden's Resort and Conference Center is just 2-1/2 hours north of the Twin Cities of Minneapolis/St. Paul. If attendees prefer not to drive, daily air

access is available via Northwest Orient Airlines Air-Link service.

Some of the Conference subjects include:

- pensions as cornerstone accounts
- retirement plan marketing
- pensions as merger/purchase acquisitions
- advanced self-directed IRA subjects
- SEP prototypes vs. IRS documentation
- pension plan software developments
- creditors, divorce & retirement plans
- 401(k) Forum
- Who's getting the IRA & Keogh deposits?
- IRA beneficiary provisions
- IRA excess contributions
- Keogh considerations
- IRA minimum distribution topics
- IRA & QP rollovers & transfers
- the future of IRAs

For additional information or Conference brochures, contact Collin W. Fritz and Associates, at 800-346-3961. There is a reduced fee for early registration.

A wide variety of activities is available both on and off the resort premises for attendees, spouses and families. They include historic attractions, parks and amusements, shopping, tours, exceptional dining and lots more. An activity guide available at the conference will direct guests to an exceptional array of pastimes for those non-working hours. **PD**

Review of 1990 Form 5500EZ Filing Requirements

The filing requirements for the 1990 Form 5500EZ are nearly identical to those for the 1989 form. An employer having one or more one-participant plans is not required to file the Form 5500EZ as long as the plan(s) have \$100,000 or less in plan assets.

The one minor change: "All one-participant plans should file a Form 5500EZ for their final year, even though the plan assets at the end of the year are less than \$100,000." Why? The IRS probably wants to get that plan off its computer system and it may wish to audit the termination.

The IRS did not change the rule that a Form 5500EZ needs to be filed only when the \$100,000 limit is exceeded. Therefore, a brand new plan does not need to file a Form 5500EZ for its initial year.

Who is eligible to use the Form 5500EZ rather than the Form 5500-C/R?

The plan must be a one participant plan as of January 1, 1990. To be a one-participant plan, it must cover only the sole owner of the business and that person's spouse, or only partners and their spouses. The plan must meet the coverage requirements of section 410(b) without being combined with any other plan. The plan must not cover a business which is part of a controlled group, affiliated service group, or which uses leased employees.

Deadline for Filing. For most plans the deadline is July 31, 1991. Technically, the deadline is the last day of the 7th month following the close of the plan year. Extensions are possible, and in some situations automatic.

Where Filed: if required, the Form 5500EZ should be filed with the Internal Revenue Service Center, Andover, MA 05501. **PD**

Magnetic Media Filers

As mentioned earlier, most IRA trustees with a substantial number of IRA accounts use magnetic media to report contribution information. Obviously, the magnetic media rules have not been written to accommodate these special late contributions. Thus, special procedures must be used.

The IRS has instructed that a magnetic media filing institution can (and we recommend that you do) request an automatic waiver from filing Form 5498 on magnetic media for contributions made by participants of Desert Storm.

To do so you must complete Form 8508, "Request for Waiver From Filing Information Return on Magnetic Media," and submit to:

By Mail—

IRS, Martinsburg Computing Center
P.O. Box 1359
Martinsburg, WV 25401-1359

By Truck or Air Freight—

IRS, Martinsburg Computing Center
Magnetic Media Reporting
Route 9 and Needy Road
Martinsburg, WV 25401

Having received your waiver from the IRS, you may use one of two reporting methods.

Method #1: Report all contributions by Desert Storm participants on paper—both late and current year contributions.

Method #2: Report current year contributions on magnetic media, but use the paper form for the "late" contributions. For example, if a Desert Storm participant made two (2) \$2,000 IRA contributions on June 15, 1991, one for 1990 and one for 1991, the IRA trustee would report the 1991 contribution on its 1991 magnetic media submissions and would use a paper form to report the 1990 contribution. Based on the above discussion, the 1991 Form 5498 (for 1990 contribution) would be prepared as follows: "DS 1990 \$2,000" would be inserted in an empty box (not Box 1) on the 1991 Form 5498.

In summary, the IRS has furnished special procedures for custodian/trustee reporting of IRA contributions by Desert Storm participants. You should proceed immediately to obtain the magnetic media waiver, if applicable. **B**

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Question: The IRS issued our institution its favorable opinion letters on July 17, 1990 for our qualified plan prototypes revised for TRA 86 and certain subsequent law changes. What is the deadline for our customers to sign the new adoption agreements?

✓ **Answer.** This is not an easy question to answer. Section 4.03 of Revenue Procedure 89-9 indicated that the employer must adopt the replacement plan by the later of: (1) the last day of the twelfth month beginning after the favorable opinion letter is issued or (2) the end of the remedial amendment period under section 401(b) of the Code and regulations thereunder.

For your customers, the last day of the twelfth month would be August 31st, 1991. The most conservative approach to amending and restating your qualified plans would be to have your business customers sign the updated adoption agreements on or before August 31st, 1991. Please note that your bank was issued its letters on July 17, 1990; the issuance date of the opinion letter for other institutions could be earlier or later than your date of July 17, 1990 and thus their compliance date would change accordingly.

The IRS in Notice 90-73 changed the expiration dates for the remedial amendment period. This notice was issued the latter part of November, 1990.

Under this Notice the expiration date of the remedial amendment period under section 401(b) of the Code for certain disqualifying provisions was extended until the end of the first plan year beginning after December 31, 1991.

Thus, plans that do not satisfy the requirements of section 401(a) because of such a disqualifying provisions may be retroactively amended to meet such requirements at any time up to and including the last day of the 1992 plan year. We understand these rules to apply to plans established via prototype documents as well as individually designed documents. Notice 90-73 modified Rev. Proc. 89-65 which had extended the deadline to be: the last day of the first plan year on or after January 1, 1991.

There is no doubt that the IRS has extended the remedial amendment period. However, they have done so for only certain disqualifying provisions which are defined in the Notice. For that reason we recommend that prototype customers sign the new adoption agreements on or before the end of the twelfth month following the date of the approval letter. Why take chances?

Question: Our bank has just started to offer self-directed IRAs. When the customer instructs us to purchase assets held by other institutions, they ask us how they should title the account, and for our tax identification number. What title and TIN should we instruct them to use?

✓ **Answer.** The title should be similar to the title you use for your internal IRA and Keogh accounts. For example, "First National Bank as IRA custodian for Sara Owens." We strongly recommend that your institution have a separate TIN for its duties as IRA custodian or trustee when assets are invested outside of your institution. If you use the TIN issued to your institution as a corporation, then if the other institution issues a Form 1099-INT or 1099-DIV to you, the IRS might well think that this income is reportable as taxable by your institution, when it is not since it is IRA or Keogh money.

A separate TIN may be obtained by filing a SS-4 form. We understand that it may now be possible for you to call the IRS and they will assign you a number which they will confirm in writing later. **B**

The Pension Digest invites your questions and comments.

Please address to "Check It Out," Collin W. Fritz & Associates, Ltd., P.O. Box 426, Brainerd, MN 56401.