PORTNOFF FINANCIAL LLC
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Unbiased advice free from hidden fees

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IRA News & Tips

Your IRA Calender

Please make note of the following deadline:

May 31
If you made contributions to your individual retirement account (IRA) for 2011, your IRA Custodian is required to provide you with a statement for those contributions. This statement must be provided to you by May 31. The information is usually provided on IRS *Form 5498-IRA Contribution Information*. Your Form 5498 for 2011 should include the following information, if applicable:

- Contributions you made to your traditional IRA or Roth IRA **for** 2011. This includes contributions made between January 1, 2011 and December 31 **for** 2011, and contributions made between January 1, 2012 and April 17, 2012 that were designated **for** 2011;
- Rollover contributions from your traditional IRA, simplified employee pension IRA (SEP IRA), savings incentive match plan for employees IRA (SIMPLE IRA), Roth IRA or a qualified-employer plan such as a 401(k) or a 403(b) that were made to your IRA **during** 2011;
- Roth conversion amounts from your traditional IRA, SEP IRA , SIMPLE IRA or qualified-employer plan that were credited to your Roth IRA **during** 2011;
- Amounts that you recharacterized between a traditional IRA, SEP IRA, SIMPLE IRA and a Roth IRA **during** 2011; and,
- SEP IRA and SIMPLE IRA contributions made to your SEP IRA or SIMPLE IRA **during** 2011.

If you are at least age 70½ in 2012, the form also will indicate whether you need to take a required minimum distribution (RMD) for 2012■

Checking Your Form 5498

While Form 5498 is not required to be filed with your tax return, it provides an opportunity to verify related information that you may have reported on your tax return. Generally, the amounts reported on your Form 5498 should correspond with any amount that you report on your tax return for the year; however, exceptions can apply to rollover contributions amounts.

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Any discrepancies may raise questions from the IRS. However, these can be easily addressed.

When checking your Form 5498, consider the following:

- *IRA Contributions: Check to make sure that the amount you contributed for the year is the same amount that is reported on your Form 5498:* Your IRA contributions for 2011 must have been delivered to your IRA custodian by April 17, 2012. Sending the contribution in the mail via an IRS approved mail delivery service by April 17 counts as being delivered by April 17. However, if the contribution was delivered to the IRA custodian between January 1, 2012 and April 17, 2012, and you did not indicate that it should be applied to the 2011 tax year, the IRA custodian is allowed to treat it as a contribution for 2012. Even in cases where you make the proper designation, mistakes can be made at the data entry stage. Check to make sure that the amount you contributed for the year is the same amount that is reported on your Form 5498.
- *Rollover Contributions: The amount will not be on your 5498, if the rollover occurred this year:* If you took distributions in 2011 and properly rolled over these amounts, those amounts should have been reported as nontaxable distributions on your tax return. However, the reporting on your tax return completes only half of the IRS requirement. IRA custodians also need to do the correct tax reporting for amounts rolled over to an IRA. If an amount was reported as a rollover contribution on your tax return, and the IRS does not receive a Form 5498, they might request further information and/or amend your tax return to remove the rollover, thus increasing your taxable income for the year.

You might not receive a Form 5498 for a rollover of a distribution that you made in 2011, if either of the following occurred:

- A rollover contribution was made in 2012 for a distribution that was done in 2011. This is often the case for distributions that are taken late in the year. In such cases, the 5498 would be issued for 2012; or
- The rollover contribution was made to an employer plan such as a 401(k), 403(b) or pension plan. Forms 5498 are not issued for these plans.

In the event any of these apply and the IRS amends your tax return to remove the rollover or requests further information, proof of the rollover in the form of a copy of your IRA or employer plan statement showing the rollover is usually considered sufficient.

Please Call Us

If you detect errors on your Form 5498, and/or if you have any questions about your Form 5498 or your IRA in general, please contact us ■

Spousal Protection for Retirement Assets

One of the *'for better'* perks of the *'til death do us part'* promise made by married couples is the benefit that is received by being married to someone who owns a retirement account. This benefit includes having control over who is named as the beneficiary of your spouse's retirement account, and being able to prevent your spouse from taking non-annuitized distributions without your consent. These benefits are intended to protect the interest of the spouse of the retirement account owner, and availability depends on the type of retirement account.

The following are some of the protections that apply to you, if you are married to someone who owns a retirement account.

You Must be the Beneficiary of Qualified Plans

Generally, the owner of a retirement account is required to complete a beneficiary designation form to indicate who will inherit the account. For qualified plans, which include 401(k) and pension plans, you must be the primary beneficiary of your spouse's retirement account, unless you provide written permission for someone else to either share that role with you, or assume the role as the sole primary beneficiary. Your written authorization is required to be witnessed by an authorized representative of the qualified plan, or a notary public. If this written authorization is not provided and your spouse names someone other than (or in addition to) you as primary beneficiary, the beneficiary designation is automatically invalidated, leaving you as the primary beneficiary.

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Exception: Some qualified plans provide that the couple must be married for at least a year in order for the spouse to be automatically considered the beneficiary of the retirement account. The plan administrator is required to provide an explanation of the rules to the account owner.

Caution: If you got married after your spouse opened his or her retirement account, steps must be taken to update the beneficiary designation form to properly reflect the account owner's beneficiary preference. If necessary, spousal consent should be obtained after the marriage, as any consent before the marriage is invalid. Failure to take these steps can result in the assets being inherited by a party other than who the account owner intended.

Spousal Consent On Loans and Distributions From Qualified Plans

If your spouse's retirement benefits are held under a defined benefit pension plan or a money purchase pension plan (pension plan), distributions cannot be made without your consent. Exceptions apply to distributions that are in the form of qualified joint and survivor annuity (QJSA) payments, or amounts that represent mandatory distribution, such as required minimum distributions (RMD). RMDs are required to begin the later of the year the account owner reaches age 70½, or the year of retirement. *Note: Deferring RMDs past age 70½ is permitted only if allowed under the retirement plan.*

Under pension plans, spousal consent is also required for any amount of the plan balance to be pledged as security for a loan.

These restrictions help to ensure that you are aware of how much is being withdrawn from the retirement account.

Spousal Beneficiary Waivers for IRAs: Some States

If you live in a community property state, your spouse may be required to obtain your consent in order to name someone other than (or in addition to) you as primary beneficiary of his or her IRA. These states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington. If you live in Alaska, you and your spouse can have the community property laws apply, by making an election to that effect. Wisconsin is a marital property state, and is subject to similar rules.

403(b) Accounts

There are two types of 403(b) accounts, and the category in which a 403(b) falls determines which of these rules apply. One type of 403(b) is governed by a set of laws known as The Employee Retirement Income Security Act of 1974 (ERISA). These are subject to similar rules that apply to qualified plans. 403(b) accounts that are not governed by ERISA are subject to the rules that apply to IRAs.

Let us Help You

The general idea behind these ruels is that the retirement savings are for both spouses, regardless of who holds the account. If you have questions about the rules that apply to your spouse or to you as the spouse of a retirement account owner, please contact our office. You may also contact us for assistance with determining whether you need to make changes to your existing documentation, and the extent to which any changes can be made■

Employer Stocks Require Special Distribution treatment

If you have tax-deferred amounts in accounts held under a qualified employer plan [such as a 401(k) plan], careful consideration must be given to the distribution strategy for those amounts so as to ensure that the most tax efficient option is chosen. Unlike other assets, where the option is usually limited to choosing between paying taxes now by taking the amount in income or continuing to defer taxes by rolling over the amount to another tax-deferred retirement account, distribution of employer stocks can get complicated.

Why Employer Stocks Are Different

Unlike distributions of other assets held in qualified employer plans, which are usually taxed as ordinary income, the gains that accrue on employer stock while the shares are held in a qualified plan, referred to as net unrealized appreciated (NUA), can be taxed at the capital gains rate if the stocks are part of a lump-sum distribution. Generally, a lump-sum distribution is defined as one where the entire account balance is distributed within the same taxable year; and the amount is payable due to the employee's death, after the employee attains age 59½, or the employee's separation from service (or – for self-employed individuals – after the employee has become disabled). We can help you to determine if you are eligible

for a lump-sum distribution, and whether any exceptions to this definition apply to any employer stocks you may own in your retirement account.

What's the Difference?

At a high level, choosing between NUA and rolling over employer stocks to another tax-deferred retirement account is largely based on which option will result in the least amount of income tax owed.

If the rollover option is chosen, income tax continues to be deferred on the entire rollover amount, which is later taxed as ordinary income for the year it is distributed. The amount of income tax owed would depend on your tax rate that applies for the year the distributions are made from your tax-deferred account.

If the NUA option is chosen, any pretax basis amount is taxed as ordinary income for the year the amount is distributed from the employer plan. You can choose to defer paying income tax on the NUA until the stock is sold, at which time the NUA amount is taxed at the long-term capital gains rate. Earnings that accrue on the stock after the distribution is made from the employer plan are taxed at the short or long-term capital gains rate, depending on how long it is held outside of the employer plan before being sold.

Is the NUA Option More Tax Efficient?

Typically, the NUA option is more tax efficient when the NUA is a large amount. The rollover option could be better if the NUA amount is small and you plan to hold the amount in a tax deferred account for an extended period. The tax efficiency of the rollover option is usually increased if you choose to rollover the amount to a Roth IRA and include the amount in income for the year of the rollover, as the earnings in the Roth IRA could be tax-free.

Ultimately, the most tax-efficient option for you will depend on your financial and tax profile and an assessment may need to be done to help you choose the best option.

How We Can Help

We can help you determine if your account balances include NUA amounts, and review the different options available to you, so as to make a reasonable determination as to which option could be the most tax efficient. Please feel free to contact our office to discuss this and other ways in which you can maximize the tax efficiency of your retirement accounts, including the distribution strategy that may be most suitable for you■

Questions and Answers

Q: I have a large traditional IRA balance and want to give some of it to my niece who has been taking care of my husband and me for the past few years. Is there any rule or provision that would allow me to give her any amount and exclude that amount from my taxable income?

A: No. Any amount that you gift from your IRA during your lifetime will be treated as a distribution to you and is required to be treated as ordinary income on your tax return for the year. You do have the option of designating her as a beneficiary of your IRA. Under this option, she would not receive the amount unless you predecease her. However, she would be responsible for paying any income tax due on the amount that she inherits from your IRA■