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The Legal Yield

Mary Ellen Schill Attorney, Ruder Ware
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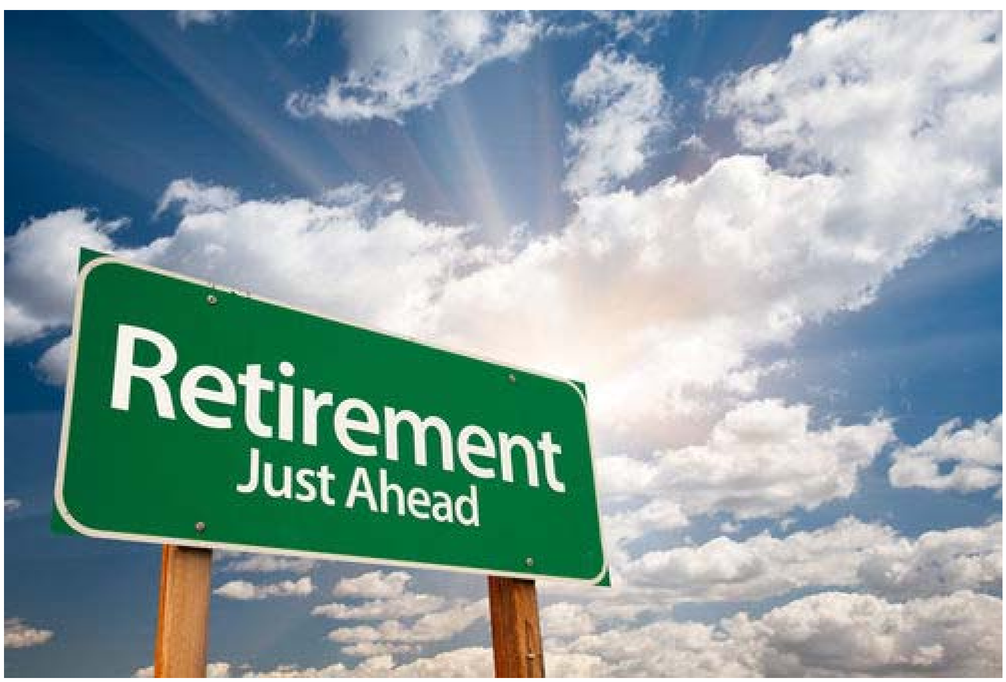

While retirement might be many years away, it will creep up on farmers before they know it. It's best to ex
that have tax benefits and don't put the entire financial nest egg in one basket.

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Workplace retirement programs play an important role in attracting and retaining employees. They help workers — and farm-business owners — save, providing significant tax advantages.

Employer contributions to qualified plans, such as 401(k) plans or Individual-Retirement Account-based plans, are deductible by the business when made. Recipients — employees and farm employers – are not taxed until benefits are actually received. Contributions are invested in tax-exempt trusts, and so grow tax-free.

Through the years tax laws have made it easier for smaller employers, such as farmers, to sponsor qualified retirement programs. The safe-harbor 401(k) plan is one such plan along with Individual-Retirement-Account-based plans such as a SIMPLE IRA plan. SIMPLE stands for Savings Incentive Match Plan for Employees.

Safe-harbor 401(k) plans and SIMPLE IRA programs provide the same tax advantages as their “big brothers” — namely immediate deductions for contributions and deferred taxation for participants. But they have the added benefit of avoiding some of the nondiscrimination rules that apply to traditional qualified plans. Unfortunately the lack of nondiscrimination rules means rather rigid rules about who must be able to participate and how often contributions must be made.

Focusing on the SIMPLE IRA, any employer with 100 or fewer employees who does not sponsor any other retirement program can sponsor a SIMPLE IRA for employees. A relatively simple tax form is used to establish the program. Either Form 5304-SIMPLE or Form 5305-SIMPLE is used. A bank or other financial institution must be used as the depository for the IRA accounts.

SIMPLE IRA programs allow both employer and pre-tax employee contributions. The employer can deduct contributions when made.

As with all good things, there are limits on contributions – both the employer's and employee's. For 2017 each employee is limited to $12,500 in contributions. But any employee age 50 or older during 2017 can contribute an additional $3,000.

As for employer contributions, there are two options.

1) Each calendar year the SIMPLE IRA is in effect, one or the other must be implemented. The first option is to match each employee's contribution at a rate of 100 percent of the first 3 percent of compensation deferred. The matching contribution rate can be reduced to as low as 1 percent of compensation in any two out of five years of SIMPLE IRA sponsorship.

2) Alternatively, an employer can contribute 2 percent of each eligible employee's compensation — referred to as an employer-nonelective contribution.

Under either option, the amount of compensation that can be considered for each employee is limited. The limit for 2017 is $270,000.

All employee and employer contributions are immediately 100 percent vested when made. Employees are able to withdraw both their own contributions and their employer's contributions at any time. But any withdrawals are subject to income taxes and an additional excise tax of 10 percent if withdrawn prior to attaining age 59.5.

In addition to contribution requirements for the SIMPLE IRA, there are also minimum-coverage rules to consider.

An employer must make the SIMPLE IRA available to any employee who

- has been compensated by the employer with at least $5,000 in any prior two years and
- is reasonably expected to earn at least $5,000 in the current year.

Business owners can participate in the SIMPLE IRA program just like other employees.

Eligible employees must be notified annually, at least 60 days prior to Jan. 1, of their ability to participate in the program. They must be notified what contribution option the employer selected — matching contributions or nonelective contributions.

Failure to give the required notice can have significant consequences. For example, the employer can be required to make a contribution in the amount of 1.5 percent of the employee's compensation, plus earnings, as well as any missed matching contributions for any employee who did not receive the required notice. An employer who sponsors a SIMPLE IRA must ensure all appropriate employee notices are given in a timely manner.

There are no annual filing requirements for an employer who sponsors a SIMPLE IRA program. Periodically tax laws change; Internal Revenue Service Form 5304-SIMPLE or Form 5305-SIMPLE must be updated. But typically a financial institution will notify the employer of the need to adopt an updated form.

Farmers likely have days when retirement seems a million years away. Unfortunately, no one has a million years to plan and invest for life after work. Social Security cannot be — and was never intended to be — the sole source of retirement income for retired workers. That's true especially if there is a need or desire to maintain one's current standard of living. A SIMPLE IRA program may be the solution for a farm or other type of agri-business.

With roots in central and west-central Wisconsin, the law firm of Ruder Ware provides services tailored to the agricultural industry. For nearly 100 years, its attorneys have counseled farmers and other agribusinesses on succession planning, business issues, employment law and litigation. Visit www.ruderware.com or call 800-477-8050 for more information.