

## Qualified accounts shield assets

### 401(k) ADVISER

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Since you are taking the time to read this column, there is a good chance you are serious about saving for retirement.

You've probably mastered the concept of delayed gratification, putting some of today's earnings away for tomorrow, and have even devoted some time to learn the foreign language called "investing."

This quarter's column is all about hanging onto what you have accumulated. Investment gurus frequently talk about market risk, inflation risk and interest rate risk, but there's another kind of risk unique to those who have successfully built up their nest eggs: creditor risk.

Such risk arises from unforeseeable events such as a driving accident, the delivery driver slipping on your front porch or a professional malpractice claim. These everyday occurrences are why people carry insurance. However, if your insurance coverage isn't enough, you can count on somebody's attorney coming after your personal assets.

Here's where "tax-qualified" retirement accounts such as 401(k) accounts and IRAs help protect you.

"Since October 2005, the federal bankruptcy rules have been greatly simplified as they relate to assets in tax-qualified retirement accounts," said John A. Herbers, partner and tax law specialist at the law firm of Reinhart Boerner Van Deuren in Milwaukee. "Simply stated, in most cases, all amounts in tax-qualified retirement accounts are exempt from the reach of creditors under the bankruptcy code."

This means it's a good idea to build your nest egg within a tax-qualified retirement account, such as a 401(k) or IRA, to protect your assets in a fight with creditors.

Brian L. Anderson, partner and

retirement law expert at the law firm of DeWitt Ross & Stevens S.C. in Madison, makes a further distinction when it comes to protecting your retirement assets.

"States such as Wisconsin generally provide good protection of retirement assets in tax-qualified accounts under the laws that exempt certain assets from being seized to satisfy a judgment against the debtor," he said.

Anderson noted that even in Wisconsin, IRAs have second-class status as compared to plans such as a 401(k) and 403(b). Those plans have a federal protection in the form of an "anti-alienation" clause which prevents assets in a 401(k) account from being transferred to a creditor. The IRA owner might have to file bankruptcy to receive the same protection, he said.

A recent Wisconsin court ruling underscored the differences in protection when it determined that an "inherited IRA" was not protected from creditors because the IRA was not funded by the debtor. Had this been an "inherited 401(k) account," the result would have been much different because federal rules apply. That's something to consider before you roll your 401(k) account into an IRA.

Of course, there are exceptions even to the anti-alienation rule. Even your 401(k) account can be accessed by the IRS and your ex-spouse. Spouses have federally mandated beneficiary designation and marital property rights to each other's retirement assets, regardless of where the assets are held. A spouse can obtain a court order that is typically part of a divorce settlement.

The IRS is another creditor you do not want to mess with. They can access your retirement assets to collect taxes you owe, or they can put a lien on your account and collect taxes when you withdraw the assets.

For the highest level of protection,

many legal advisers suggest leaving your retirement assets in a federally protected tax-qualified retirement plan until you begin withdrawing the money to live on. Some plans allow you to set up distributions directly from the plan. Ask your plan administrator if this option is available. Understand that the additional level of protection you obtain by doing so pertains primarily to your beneficiaries if something were to happen to you.

In most situations, putting your retirement savings in tax-qualified accounts will keep them well protected against the claims of would-be creditors. But not all tax-qualified accounts provide you with the same amount of protection. If you have successfully accumulated retirement assets and want to maximize their protection from creditors, know your options, and, when in doubt, consult a knowledgeable adviser.

Source: Francis Investment Counsel LLC

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