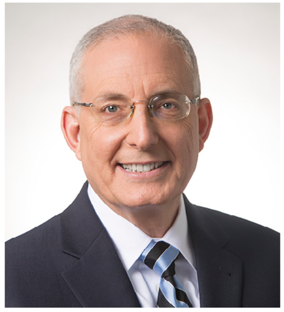

ED SLOTT'S IRA ADVISOR

August 2020

Tax & Estate Planning for Your Retirement Savings

WHAT'S INSIDE?

Bankruptcy and Lawsuits:
Are Your Retirement Assets Protected?

Retirement accounts carry a number of different protections. These layers of defense shield IRA owners and company plan participants from bankruptcy and general (non-bankruptcy) creditors.

However, not every retirement account possesses the same safeguards. In addition, levels of protection vary widely from state to state. In the current environment with so many small businesses on the brink of closing and struggling employees in limbo, increased bankruptcy filings could be around the corner. It is imperative to understand which accounts hold what protections, and how retirement assets are shielded from those anxious to get a piece of the nest egg.

ERISA Plans: The Gold Standard

Most employer-sponsored retirement plans, such as a 401(k)s, fall under the Employee Retirement Income Security Act of 1974 (ERISA) guidelines and receive creditor protection at the federal level. ERISA offers the "gold standard" of protection up to an unlimited amount against both bankruptcy and non-bankruptcy general creditor claims.

Example 1: Mark is a very successful contractor who flips houses. He has a 401(k) plan set up for him and the employees of his sole proprietorship. Mark's current plan balance is $1,500,000.

Recently, there was an accident at one of Mark's construction sites, and he is being sued personally. Even if Mark loses the lawsuit, the assets in his 401(k) remain protected by ERISA up to an unlimited amount. Additionally, if Mark were to declare bankruptcy, his 401(k) would be off limits to bankruptcy creditors.

The same does not hold true for solo 401(k) plans. Often, business owners worried about potential lawsuits keep their retirement funds in their "solo-K," because they believe them to be fully creditor-proof vs. an IRA. But solo 401(k) plans are not covered by ERISA and have no creditor (non-bankruptcy) protection under that law. Plan balances will only receive non-bankruptcy creditor protection available under applicable state law.

These plans do, however, receive full bankruptcy protection under the Bankruptcy Code. This is also the case with other non-ERISA company plans such as SEP and SIMPLE IRAs, non-ERISA 403(b) plans and 457(b) governmental plans.

Bankruptcy and IRAs

Traditional and Roth IRA contributions and earnings are protected from