can take money from a company-sponsored plan penalty free. In between those ages, you're better off taking withdrawals from a company plan rather than from an IRA.

Mistake: **Rolling over appreciated employer stock.** If you roll over appreciated employer stock, or the sales proceeds from that stock, you may forfeit a substantial tax break.

Example: Your retirement plan account includes $100,000 worth of your employer's stock, which was worth $30,000 when contributed to your account. When you leave the company, you sell all the securities in your account and roll the cash into an IRA.

Result: That $100,000 will eventually be taxed at ordinary income rates—now as high as 38.6%—upon withdrawal. The same result will occur if you roll the shares into your IRA.

Strategy: Withdraw the employer shares while rolling the rest of your plan balance into an IRA. You'll owe tax immediately, but only on the value of the shares when contributed to the plan. The net unrealized appreciation (NUA) remains untaxed until the shares are sold, and may qualify for favorable capital gains rates as low as 8%.

In this example, you would pick up $30,000 in taxable income right away. However, you would not owe any tax on the remaining $70,000 until the shares are sold, and then you would owe tax at capital gains rates.

Caution: If the shares are now valued below what they were worth when contributed, don't take an immediate distribution. You'll pay the ordinary income tax, but only have a capital loss when you sell the stock.

Mistake: **Rolling over after-tax funds.** Your company retirement plan balance may include after-tax contributions. You usually can withdraw your after-tax contributions at any time without taxes or penalty, although you'll owe taxes on any income that has been earned and perhaps a 10% early withdrawal penalty.

The 2001 tax law permits such after-tax amounts to be rolled into an IRA. If you plan to leave your retirement plan intact for your beneficiaries, it pays to roll the after-tax money to an IRA, where it can continue to grow tax deferred.

Trap 1: Rolling over after-tax money is not a good idea if you'll need to tap your IRA for funds in the near future. You must keep a separate accounting and pay a partial tax on future withdrawals, which are treated as if they include taxable as well as after-tax money. (You can't opt to treat withdrawals as coming solely from after-tax amounts.)

Trap 2: Rolling over after-tax money into an IRA will keep you from rolling those funds into a future employer's plan, which you may prefer for the asset protection and loan availability of an employer plan.

Mistake: **Rolling an IRA over to a company plan when your marriage is on the rocks.** As mentioned, there may be some reasons for rolling an IRA into a company plan after you get a new job. You may benefit from stronger asset protection and access to loans.

Federal law generally requires married plan participants to name their spouse as beneficiary. In order to name a different beneficiary, your spouse must sign a waiver.

With an IRA, though, you can

BUSINESS WINNERS HOTLINE

$$$ **IRS loses. Mass confusion about law helps business beat charge.** A firm that auctioned used cars didn't report cash transactions exceeding $10,000 to the IRS on Form 8300, and the IRS charged it with intentionally disregarding the law. At trial, the firm's CEO said the failure wasn't intentional because the firm's accountant had advised it that the requirement didn't apply in the auction business. The jury acquitted the firm—but the IRS asked for a new trial because the jury had heard prejudicial testimony about the high noncompliance rate for Form 8300. *Court:* Evidence regarding the "mass confusion" about Form 8300 was relevant and supported the CEO's defense. New trial denied.
Kruse, Inc., DC ND Ind., No. 1:99-CV-428.

$$$ **IRS loses. President and sole shareholder not liable for firm's taxes.** When a company's employment taxes went unpaid, the IRS imposed personal liability for them on its president/sole shareholder. But he objected that he didn't really run the company. *Court:* The real owner who controlled the company couldn't officially be an officer or shareholder of it under its union contract because he also owned a nonunion business. So he ran it through a succession of pseudopresidents who did his bidding and nominally held his shares. The individual here was one of the pseudopresidents who had no real authority—so he wasn't liable for the tax.
Christopher H. Lyon, DC WD Va., No. 1:00-CV-178.

$$$ **IRS concedes. Payment to retirement plan to head off lawsuit is not a contribution.** An employer that maintains a retirement plan for employees made risky investments in it that have lost much of their value, and has heard that its employees are upset by the losses. Hoping to head off any lawsuit they may file, the employer intends to make a payment to the plan to make up for the investment losses. *IRS ruling:* The payment will not be a contribution to the plan subject to normal limits. Rather it will be a "restorative payment" made to avert liability for breach of fiduciary duty—even though voluntary and not the result of any legal action and not subject to excise tax on excess contributions.
Revenue Ruling 2002-45; IRB 2002-29, 1.

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