

Can I keep an inherited IRA when I file for bankruptcy?

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There is no definite answer to this question, as the law is in a state of flux. So the answer is, maybe, maybe not. An initial suggestion for one who will file for bankruptcy and has an inherited IRA is to make sure that your lawyer (and you should have a lawyer) has an articulated approach to the issue in mind. If not, you may not want to file, or you may want to get another lawyer. Typically, an inherited IRA is a significant asset to the holder's balance sheet and thus is a major consideration prior to filing bankruptcy. Here are some particulars.

Legally, an inherited IRA is one that has been received from an individual who was not a former spouse. 26 U.S.C. § 408(d)(3)(C)(ii). The tax code treats an inherited IRA differently, and arguably it may be a different legal creature for bankruptcy purposes than when the IRA was held by the original holder. It is this type of "inherited IRA" that is in controversy. The legal question is whether the inherited IRA is exempt when the beneficiary (now the person contemplating bankruptcy) owns the account due to the original owner's demise. Specifically, the dispute usually involves the correct interpretation of 11 U.S. C. § 522(d)(12) which allows a debtor to exempt "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section . . . 408 . . . of the Internal Revenue Code." The question raises many issues, but the main controversy is whether the inherited IRA should be considered "retirement funds" per § 522(d)(12). Compare *In re Nessa*, 426 B.R. 312 (B.A.P. 8th Cir 2010) (inherited IRA exempt) with *In re Ard*, 435 B.R. 719 (M.D. Fla. 2010) (inherited IRA not exempt) and *In re Chilton*, 426 B.R. 612 (Bankr. E.D. Tex. 2010) (same).

In closing, many people think that the law is black and white. But when two arguably reasonably supported judge's interpretations differ then some gray is added to the mix. If you want to file for bankruptcy and have an inherited IRA, you should really trust your lawyer and be comfortable with accepting the range of possible outcomes. If you think that this office can be of help to you, feel free to give us a call.

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