

Can I keep my IRA if I file for bankruptcy?

21 April 2011

The answer is: most likely. The exemption scheme you choose is important. To understand the basics of what is happening with respect to assets when someone files for bankruptcy, please read the blog posted 14 April 2011. Now that you have the introduction, we can take it to another level.

Protecting an IRA is important, as your future retirement may be at stake. Careful thought is needed. As stated in the other posting, both Massachusetts and Connecticut allow their residents to choose between: 1) bankruptcy exemptions; and 2) state exemptions and federal non-bankruptcy exemptions. In Massachusetts, state exemptions only protect IRA's to the extent the funds are reasonably necessary for the support of the debtor or his dependents. One might be inclined to think that a substantial IRA fund would be in jeopardy under a chapter 7 filing; However, the code needs to be read carefully. In *In re Euse*, a recent case in Nebraska, a bankruptcy court noted that the law allowed debtors choosing the state exemption scheme to also enjoy protection of their IRA in full. No. BK10-43179-TLS, 2011 WL 294143 (Bkrcty. D. Neb. Mar. 2, 2011). The *In re Euse* court observed that the bankruptcy code permitted a debtor to choose state exemptions, and had an additional provision allowing the exemption of "retirement funds to the extent those funds are exempt from taxation under specified provisions of the Internal Revenue Code." It based this decision on an addition to the bankruptcy code made under Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 codified at 11 U.S.C. § 522(b)(3). It found this provision encompassed IRAs. In that case, the debtor was entitled to keep his entire \$163K IRA.

Before you decide to make your own decision on how to apply exemptions in bankruptcy, take heed of some points. Understand that many bankruptcy decisions, including *In re Euse*, is not binding upon any other court. And although the court based its decision on a part of the bankruptcy code that applies whenever state exemptions are chosen, each person has a unique set of assets, financial situation, and considerations when filing bankruptcy. (The snake you are watching might not bite you, but the one you do not see might.) One should seek qualified counsel before making the decision to file for bankruptcy.

Contact: George E. Bourguignon, Jr.

Phone: (413) 746-8008

Website: www.bourguignonlaw.com

Bankruptcy exemptions/keep assets in bankruptcy/bankruptcy springfield ma/bankruptcy ludlow ma/bankruptcy holyoke ma/keeping assets in bankruptcy/bankruptcy Chicopee ma/keep IRA in bankruptcy/keep retirement account in bankruptcy