

# In the United States Bankruptcy Court

## for the Northern District of Iowa

MICHAEL J. REMICK  
*Debtor(s).*

Bankruptcy No. X92-01050M  
Chapter 7

### ORDER RE: OBJECTION TO EXEMPTIONS

The matter before the court is an objection by the Trustee to a claim of exemption in Debtor's individual retirement account. The parties have agreed that evidentiary trial of this matter is not necessary; they have submitted the matter on a written stipulation of facts. Having considered the stipulation, the court now issues the following findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

#### FINDINGS OF FACT

Based upon the stipulation of the parties, the court finds:

1. This case was commenced by the filing of a Voluntary Petition by the Debtor on May 29, 1992.
2. The Debtor listed as an asset in his schedules an Individual Retirement Account ("IRA") at Metropolitan Federal Bank, Clear Lake, Iowa, having an approximate value of \$1,000.
3. The Debtor claimed the entire balance of the IRA as exempt pursuant to Iowa Code Section 627.6(8)(e).
4. Larry S. Eide was appointed as the Chapter 7 Trustee and has continued to serve as such during the administration of this case.
5. The meeting of creditors under Bankruptcy Code Section 341 was held and concluded on June 29, 1992.
6. An Objection to Exemptions with respect to the IRA was timely filed on July 13, 1992, by Trustee Larry S. Eide in the form and manner required by the Bankruptcy Code and Rules.
7. The IRA was established pursuant to and remains qualified under Internal Revenue Code Section 408(a).
8. The IRA was established by the Debtor prior to the commencement of this case.
9. All contributions made to the IRA were made by the Debtor prior to the commencement of this case and were fully deductible by him on his U.S. individual income tax return.
10. Contributions were made to the IRA by the Debtor with the intention of investing for his retirement.
11. At the commencement of this case the Debtor had not attained the age of 59½.

Debtor and Trustee have submitted with their written stipulation copies of the "IRA Application and Agreement to Participate" and the IRA Trust Plan. After reviewing these documents, the court finds these additional facts.

12. On March 11, 1991, Debtor established the IRA as a "regular" IRA with an initial contribution of \$1,000.00.
13. Section 9.15 of Internal Revenue Service form 5305, made part of the IRA trust plan and referred to in the

agreement to participate, provides that

no interest, right or claim in or to any part of -the Trust Fund or any payment therefrom shall be assignable, transferable, or subject to sale, mortgage, pledge, hypothecation, commutation, anticipation, garnishment, attachment, execution, or levy of any kind, and the Trustee shall not recognize any attempt to assign, transfer, sell, mortgage, pledge, hypothecate, commute, or anticipate the same, except to the extent required by law.

14. The disclosure statement of the IRA trust plan provides that distributions are subject to federal income tax as ordinary income. Distributions prior to attaining age 59½ are subject to a 10 per cent penalty tax.

15. Borrowing money from the IRA would subject Debtor to taxation on the entire account balance and a 10 per cent premature distribution penalty. Pledging the IRA as security would subject Debtor to taxation and a 10 per cent penalty on the amount pledged.

16. Financial disclosure statements are attached to the IRA trust plan illustrating additional penalties for withdrawal within five years of establishing the IRA. However, the forms are not completed to indicate whether the three-month or six-month penalty, if either, applies to such early withdrawal.

## DISCUSSION

Debtor claims the IRA exempt under Iowa Code § 627.6(8)(e),

which was recently amended to read:

A payment or a portion of a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or language of service, unless the payment or a portion of the payment results from contributions to the plan or contract by the debtor within one year prior to the filing of a bankruptcy petition, which contributions are above the normal and customary contributions under the plan or contract, in which case the portion of the payment attributable to the contributions above the normal and customary rate is not exempt.

S.F. 2275, § 1 (April 13, 1992).

There are conflicting decisions among courts whether an IRA is a "pension . . . or similar plan or contract." See In re Matthews, 65 B.R. 24 (Bankr. N.D. Iowa 1986) (discussing contrasts between IRAs and pensions); In re Damast, 136 B.R. 11, 20 (Bankr. D. N.H. 1991) (IRAs not exempt under federal bankruptcy exemption for pensions or similar plans). Contra, In re Cilek, 115 B.R. 974 (Bankr. W.D. Wis. 1990) (IRA exempt under federal exemption); In re Chiz, 142 B.R. 592 (Bankr. D. Mass. 1991) (same). The court in In re Matthews held that an individual retirement account is not exempt under Iowa Code § 627.6(8)(e) because the account owner has relatively unrestricted control and use of the IRA funds, and because access to the IRA is unrelated to illness, disability, death, age or length of service.

Further, the District Court for the Northern District of Iowa has determined that the phrase "on account of" in the Iowa exemption statute means "triggered by." In re Huebner, 141 B.R. 405, 409 (D. N.D. Iowa 1992). Debtor in our case has access to the IRA funds without regard to his age or status as disabled or otherwise. This access is subject to certain penalties, of course, but the right to receive the funds is not tied to or restricted by Debtor's age. Huebner, 141 B.R. at 407-08. Huebner involved an individual retirement annuity, which is subject to similar restrictions under 26 U.S.C. 408(b) as those applicable to Debtor's IRA. Distributions must begin before age 70½ and those taken before age 59½ are subject to tax and penalty. These restrictions do not make the right to receive payments "on account of" age. Id. Moreover, this analysis is not altered by the fact that Debtor subjectively intended to invest in the IRA for his retirement. In Huebner, the debtor had expressly elected for annuity payments to begin after he reached age 65. The district court found that the exemption analysis requires looking at the options available to the debtor rather than the debtor's subjective intentions. Huebner, 141 B.R. at 408. In our case, Debtor has had access to all the funds in his IRA at any time, to be used for any purpose, subject only to tax and penalty. Debtor's right to the IRA funds is not "on account

of" any particular event. Therefore, the IRA may not be claimed as exempt.(fn.1)

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(fn.1) Debtor has not argued that Patterson v. Shumate, 112 S.Ct.2242 (1992) excludes his IRA from property of the estate. The court notes, however, that Patterson does not change the analysis of our case. Patterson held that the ERISA antialienation language in the plan at issue was an enforceable transfer on restriction under 11 U.S.C. § 541(c)(2). IRAs are not covered by ERISA's anti-alienation requirement. Patterson, 112 S.Ct. at 2249; 29 U.S.C. § 1051(6).

## ORDER

IT IS ORDERED that the trustee's objection to Exemptions

is sustained.

Judgment shall enter accordingly.

SO ORDERED ON THIS 27th DAY OF OCTOBER, 1992.

William L. Edmonds  
Chief Bankruptcy Judge