MAJOR DEVELOPMENTS CONCERNING INDIVIDUAL RETIREMENT ARRANGEMENTS (IRAs)

By Matthew W. Gibson

If an individual has $1,250,000 in an IRA that the individual created, those IRA assets are protected from creditors, even if the individual has to file for bankruptcy. But what if that individual passes away and leaves the IRA to one or more beneficiaries? Do the beneficiaries receive any creditor protection?

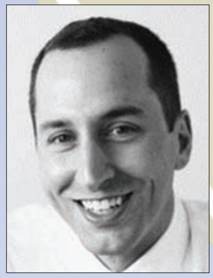
The US Supreme Court's decision in Clark v. Rameker, which was issued in June of 2014, held that inherited IRAs are not protected from creditors by federal law. The good news for Ohio residents is that Ohio enacted a new law last year that specifically exempts inherited IRAs from creditor claims. As a result, if Ohio residents enter bankruptcy, their inherited IRAs should receive the same protection as an IRA they created (up to $1.25 million).

The problem for Ohio residents, however, is that relying on current Ohio law may not be an adequate solution. The major risk, aside from the possibility that the law changes, is that a beneficiary of the IRA might move out of Ohio, and may have to file for bankruptcy as a resident of another state. While a client may know where he or she is going to be for the next few years, the client may not have such a great idea of where beneficiaries might be in 10, 20, 30, or 40 years. Though 8 other states (Florida, Indiana, North Carolina, South Carolina, Alaska, Arizona, Missouri, and Texas) have joined Ohio in protecting inherited IRAs, 41 states have not.

For those who want to assure inherited IRAs are protected from creditors, the best option is to name a trust as the beneficiary of the IRA. Care must be taken when drafting a trust that is to be named as the beneficiary of an IRA, and when actually naming a trust as the beneficiary of an IRA, to assure that the beneficiaries of the trust have the option of stretching the distributions.

In other IRA-related developments, non-spouse beneficiaries of qualified retirement plans are now able to rollover a lump sum distribution into an inherited IRA. Previously, a lump sum would be taxed in a single year.

Beginning in 2015, only once in any 12 month rolling period can an individual rollover money received from an IRA into another IRA within 60 days of the distribution from the prior IRA. Any subsequent distribution within the 12 month period is taxable. Previously, there was no limit on the number of accounts from which an individual could return the money to an IRA and avoid tax, as long as the money was returned each time to an IRA within 60 days. There are no limits on transfers made directly from one IRA trustee or custodian to another IRA trustee or custodian. To be safe, make all transfers directly from one trustee or custodian to another. Be particularly careful with bank certificates of deposit in an IRA, which often get paid to you (not a trustee or custodian) at maturity, as more than one of these in a 12 month period will now be taxable.



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