How Safe Is Your Pension? Creditor Protection For Retirement Plans And IRAs

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THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

("BAPCPA" or the "Act") brought much-needed clarity to debtor and creditor rights relative to retirement assets in a federal bankruptcy proceeding. Before the BAPCPA, debtor and creditor rights with regard to such assets were in a state of great confusion both within and outside of federal bankruptcy. For debtors in financial distress under the federal bankruptcy laws, the Act not only provides clarification but actually extends bankruptcy protection for the debtor's retirement funds. For debtors in financial distress who are subject to state attachment and garnishment proceedings outside of bankruptcy, the confusion continues. We will first review the new provisions in federal proceedings and will conclude with an analysis of the law relative to creditors' rights in retirement funds outside of bankruptcy.

RETIREMENT FUNDS WITHIN BANKRUPTCY

• Effective for bankruptcies filed after October 17, 2005, the following rules give protection to a debtor's retirement funds in bankruptcy by way of exempting them from the bankruptcy estate. The general exemption found in section 522 of the Bankruptcy Code, 11 U.S.C. §522, provides an unlimited exemption for retirement assets exempt from taxation under the following Internal Revenue Code ("Code") sections:

- Section 401(a) (tax qualified retirement plans—pensions, profit-sharing and section 401(k) plans);
- Section 403 (tax-sheltered annuity plans generally available to employees of section 501(c)(3) employers);

- Section 457(b) (deferred compensation plans for employees of tax-exempt and state and local governmental employers). (All section references will be to the Code unless otherwise indicated.)

Bankruptcy Code section 522 also includes an exemption for traditional IRAs under section 408 and Roth IRAs under section 408A. IRAs created under an employer-sponsored section 408(k) simplified employee pension (a "SEP IRA") or a section 408(p) simple retirement account (a "SIMPLE IRA"), as well as pension, profit-sharing, or section 401(k) wealth transferred to a rollover IRA, enjoy an unlimited exemption from the bankruptcy estate. Traditional and Roth IRAs that are created and funded by the debtor are subject to an exemption limitation of $1 million in the aggregate for all such IRAs (adjusted for inflation and subject to increase if the bankruptcy judge determines that the "interests of justice so require"). It appears that a rollover from a SEP or SIMPLE IRA into a rollover IRA receives only $1 million of protection since such a section 408(d)(3) rollover is not one of the rollovers sanctioned under Bankruptcy Code section 522(n).

Because of the unlimited exemption for qualified retirement plan assets transferred into a rollover IRA, advisers should assure that rolled-over retirement wealth is segregated in a rollover IRA that is contractually distinct from other traditional or Roth IRAs that the debtor may own. Because of the historically low annual contributions that may be made to a traditional or Roth IRA ($2,000 or $3,000 for pre-2005 years, increasing to $4,000 in 2005-2007 and $5,000 in 2008), for the foreseeable future the $1 million exemption should provide sufficient protection for the vast majority of traditional and Roth IRAs.

As noted above, the bankruptcy-exempted funds or accounts must be exempt from taxation under the Code. Section 224 of the Act provides a very lenient rule in determining whether funds or accounts are exempt from taxation under the Code. For bankruptcy law purposes, there is a presumption of exemption from tax if the fund or account has received a favorable ruling from the IRS (*i.e.*, an IRS favorable determination letter issued to an employer-sponsored tax-qualified retirement plan). Additionally, a fund or account in substantial compliance with the Code is considered exempt from tax even if it has not received a favorable IRS ruling. Lastly, even if the fund or account has neither a favorable ruling nor is in substantial compliance with the Code, it is still considered exempt for bankruptcy law purposes if the debtor is not materially responsible for its noncompliance.

It is not clear to what extent a prototype or volume submitter letter from the IRS will be considered to be a favorable ruling from the IRS for bankruptcy purposes. Therefore, it is a good idea for such plans to file for individual determination letters from the IRS in order to assure maximum creditor protection.

Court Authority To Examine Plan

Another issue of concern is the extent to which a court can examine a plan to determine if its tax qualified status should be revoked. The United States Fifth Circuit Court of Appeals recently held in *Matter of Plunk*, 481 F.3d 302 (5th Cir. 2007), that a bankruptcy court can determine whether a retirement plan has lost its tax-qualified status, and therefore its protection in bankruptcy, because the debtor misused the plan assets. In *Plunk* the Fifth Circuit limited its prior ruling in *Matter of Youngblood*, 29 F.3d 225 (5th Cir. 1994) (holding that it is the IRS and not the courts that determines a plan's tax-qualified status) to cases where the IRS has reviewed the alleged disqualifying defect and ruled that the plan is still qualified. Since the debtor's petition in bankruptcy was filed before October 17, 2005, *Plunk* was presumably based on pre-BAPCPA law and its impact on a post-BAPCPA bankruptcy filing is unclear.

BAPCPA provides limited post-bankruptcy protection for distributions of retirement plan assets to plan participants. "Eligible rollover distributions" retain their exempt status after they are distributed. 11 U.S.C. §522(b)(4)(D). It is unclear whether such distributions are protected for more than 60 days if they are not rolled over to an IRA or to another qualified plan. Minimum required distributions and hardship distributions are not protected since they are not eligible rollover distributions.

Anti-Stacking

BAPCPA added Bankruptcy Code section 522(b)(3)(C), which creates an exception to the "anti-stacking" clause of Bankruptcy Code section 522(b)(1). The anti-stacking clause generally requires that a debtor choose between federal and state law exemptions. Under section 522(b)(3)(C), even if the debtor chooses the state law exemptions, he can still exempt from his bankruptcy estate any of his "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under Section 401, 403, 408, 408A, 414, 457 or 501(a) of the Internal Revenue Code." 11 U.S.C. §522(b)(3)(C).

Notwithstanding the exemption to the anti-stacking rules noted above, a bankruptcy court in Texas held in *In re Jarboe* that an inherited IRA does not qualify as an IRA for purposes of the Texas bankruptcy exemptions if the IRA was inherited by a non-spouse. *In re Jarboe*, 365 B.R. 717 (Bankr. S.D. Tex. 2007). The court decided that an inherited IRA, by its nature not being a retirement asset of the debtor, "does not qualify under the applicable provisions of the Internal Revenue Code." Since the debtor in *Jarboe* filed his Chapter 7 bankruptcy petition after the BAPCPA effective date of October 17, 2005, the new federal bankruptcy exemptions should have applied. Neither the federal bankruptcy exemptions nor the Internal Revenue Code draw the distinctions between inherited and non-inherited IRAs found by the court in *Jarboe*.

As will be detailed below, there is case law and Department of Labor ("DOL") Regulations holding that a qualified retirement plan that benefited only the business owner (and/or the owner's spouse) was not an Employee Retirement Income Security Act ("ERISA") Plan and, therefore, could not invoke ERISA anti-alienation protections either inside or outside of bankruptcy. Within a federal bankruptcy proceeding, this concern has been eliminated to the extent that the debtor has a favorable ruling from the IRS or is otherwise deemed to have a tax-exempt plan as noted above.

RETIREMENT FUNDS OUTSIDE OF BANKRUPTCY • What if the debtor is not under the jurisdiction of the federal bankruptcy court but rather has become embroiled in a state law insolvency, enforcement, or garnishment proceeding? To what extent are his or her retirement funds protected?

ERISA And Internal Revenue Code Anti-Alienation Provisions

At this point, BAPCPA is inapplicable and we default to a confusing compilation of ERISA, case and state law.

ERISA

Title I of ERISA requires that a pension plan provide that benefits under the plan may not be assigned or alienated; *i.e.*, the plan must provide a contractual "anti-alienation" clause. *See* ERISA §206(d)(1). For the anti-alienation clause to be effective, the underlying plan must constitute a "pension plan" under ERISA. Such a plan is any "plan, fund or program which...provides retirement income to employees." ERISA §3(2)(A). (An ERISA "pension" plan, therefore, generally encompasses pension, profit-sharing, and §401(k) plans.) Therefore, a plan that does not benefit any common-law employee is not an ERISA pension plan. This may be the case with Keogh as well as corporate plans in which only the owners participate.

Internal Revenue Code

Buttressing ERISA, the Code provides that "[a] trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated." §401(a)(13)(A).

The Treasury Regulations provide that "under [Code] §401(a)(13), a trust will not be qualified unless the plan of which the trust is a part provides that benefits provided under the plan may not be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, levy, execution or other legal or equitable process." Treas. Reg. §1.401(a)-13(b)(1). Thus, a retirement plan will not attain qualified status unless it precludes both voluntary and involuntary assignments.

Neither ERISA nor Code protections apply to assets held under individual retirement arrangements, simplified employee pension plans, government plans, or most church plans. ERISA §§4(b) and 201; Code §401(a); DOL Treas. Reg. §2510.3-2(d).

ERISA Preemption

The above-described anti-alienation provisions of ERISA are given force by the preemption provisions also contained in ERISA. ERISA section 514(a) provides that ERISA supersedes state laws insofar as such laws relate to employee benefit plans. The ERISA anti-alienation and preemption provisions combine to make state attachment and garnishment laws inapplicable to an individual's benefits under an ERISA-covered employee benefit plan.

Exceptions

There are a number of exceptions to ERISA's and the Code's anti-alienation provisions:

1. Qualified domestic relations orders ("QDROs"), as defined in section 414(p), may be exempted. Code §401(a)(13)(B); ERISA §206(d)(3). This means that retirement plan assets are a marital asset subject to division in divorce and attachment for child support.
2. Up to 10 percent of any benefit *in pay status* may be voluntarily and revocably assigned or alienated. Code §401(a)(13)(A); Treas. Reg. §1.401(a)-13(d)(1); ERISA §206(d)(2).
3. A participant may direct the plan to pay a benefit to a third party if the direction is revocable and the third party files acknowledgment of lack of enforceability. Treas. Reg. §1.401(a)-13(e).
4. Federal tax levies and judgments are exempted. The Treasury Regulations under Code section 401(a)(13) provide that plan benefits are subject to attachment by the IRS in common law and community property states. Treas. Reg. §1.401(a)-13(b). *See In re Martin M. Carlson*, 180 B.R. 593 (Jan. 9, 1995); *In re Vermande*, 94 TNT 190-9 (Bankr. N.D. Ind. 1994); *Gregory Jr. v. United States*, 78 AFTR2d 1996-5947 (D.C. Mich. 1996); *McIntyre v. United States*, 222 F. 3d 655 (9th Cir. 2000).
5. Criminal or civil judgments, consent decrees, and settlement agreements may permit the offset of a participant's benefits under a plan and order the participant to pay the plan due to a fiduciary violation or crime committed by the participant against the plan. Code §401(a)(13)(C); ERISA §206(d)(4). If the participant is married at such time as his or her plan benefits are offset and if the survivor annuity provisions of ERISA section 205 or Code section 401(a)(11) apply to distributions under the plan, the participant's spouse must consent in writing to the offset. An exception to such spousal consent would apply if the spouse is also involved in the fiduciary violation or crime or if the spouse retains the right to receive his or her survivor annuity.

In addition to the statutory exceptions noted above, several court decisions have held that an individual's retirement plan benefits may be subject to attachment for federal criminal penalties or restitution arising from a crime. In *United States v. Novak*, 476 F.3d 1041 (9th Cir. 2007), the Ninth Circuit Court of Appeals held that the retirement

plan assets of a convicted felon could be attached under the Mandatory Victims Restitution Act of 1996 ("MVRA"). The Ninth Circuit noted that restitution orders are enforceable in the same manner as criminal fines. It also gives the United States the power to enforce such orders against all of the property of the person subject to the order, notwithstanding any other federal or state law, except for certain specified laws. ERISA is not included in the list of exceptions, despite the broad anti-alienation provisions.

The Ninth Circuit decision in *Novak* expands prior federal district court rulings and IRS rulings regarding the attachment of retirement plan assets for federal criminal penalties. In Private Letter Rulings 200426027 and 200342007, the IRS ruled that the general anti-alienation rule of Code section 401(a)(13) does not preclude a court's garnishing the account balance of a fined participant in a qualified pension plan to collect a fine imposed in a federal criminal action.

The IRS cited favorably three federal district court cases which concluded that ERISA plans are subject to garnishment to satisfy criminal fines pursuant to the Federal Debt Collection Procedures Act of 1990 ("FDCPA"), 28 U.S.C. §3205. *See*: *United States v. Tyson*, 265 F. Supp.2d 788 (E.D. Mich. 2003); *United States v. Clark*, 93 AFTR2d 2004-1393 (E.D. Mich. 2003); *United States v. Rice*, 196 F.Supp.2d 1196 (N.D. Okla. 2002). The IRS accepted the reasoning of the federal courts, which held that section 3713(c) of the FDCPA, 18 U.S.C. §3613(c) ("an order of restitution…is a lien in favor of the United States on all property...of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code") was to be treated as if it were a tax lien so that it fell within the exception to the anti-alienation provision listed in Treas. Reg. §1.401(a)-13(b)(2)(ii) for "collection by the United States on a judgment resulting from an unpaid tax assessment."

Owner-Only Plans

A debtor's plan benefits under a pension, profit-sharing, or section 401(k) plan are generally safe from creditor claims both inside and outside of bankruptcy due to ERISA and the Code's broad anti-alienation protections. However, case law and Department of Labor Regulations have held that such a plan that benefits only an owner (and/or an owner's spouse) are not ERISA plans, thus voiding the anti-alienation protections generally afforded to ERISA plans. This still appears to be a concern outside of a federal bankruptcy scenario. 29 C.F.R. §2510.3-3(b); DOL Advisory Opinion 1999-04A; *In re Witwer,* 148 B.R. 930 (Bankr. C.D. Cal. 1992), *aff'd without opinion*, 163 B.R. 614 (B.A.P. 9th Cir. 1994); *In re Lane,* 149 B.R. 760 (Bankr. E.D.N.Y. 1993); *In re Hall,* 151 B.R. 412 (Bankr. W.D. Mich. 1993); *In re Watson,* 192 B.R. 238 (Bankr. D. Nev. 1996), *affd*, 214 B.R. 597 (B.A.P. 9th Cir. 1997), *aff'd,* 161 F.3d 593 (9th Cir. 1998); *Yates v. Hendon*, 541 U.S. 1 (2004), dicta stating that the DOL view "merits the judiciary's respectful consideration."

IRAs

Here we find a fascinating dichotomy between IRAs constituted as parts of SEP and SIMPLE IRAs and individually created and funded traditional and Roth IRAs. To follow this analysis, we need to explore some of the intricacies of ERISA as well as state law protections for IRAs.

ERISA defines a "pension" plan under its jurisdiction as any "plan, fund or program which is established or maintained by an employer…that provides retirement income to employees. ERISA Section 3(2)(A). Thus, the typical pension, profit-sharing, or section 401(k) plan constitutes an ERISA pension plan. Although contributions under both SEP and SIMPLE IRAs are immediately allocated among the individually owned IRAs of the participating employees, the DOL (in the preamble to DOL Regulation Section 2520.104-48) and the U.S. Tenth Circuit Court of Appeals (in *Garratt v.*

Walker, 164 F. 3d 1249 (10th Cir. 1998)), have held that SEP and SIMPLE IRAs are ERISA pension plans due to the employer involvement in such arrangements. Conversely, traditional and Roth IRAs that are created and funded without employer involvement are not ERISA pension plans.

As noted above, generally ERISA pension plans are afforded extensive anti-alienation creditor protection both inside and outside of bankruptcy. ERISA section 206(d). However, these extensive anti-alienation protections do not extend to an IRA arrangement under Code section 408, even if the IRA constitutes an ERISA pension plan due to being established as a SEP or SIMPLE IRA. ERISA §§4(b) and 201. As also noted above, ERISA contains specific preemption provisions (ERISA section 514(a)) that supersede and make inoperative any state law relating to ERISA pension plans. State law protections specifically afforded to ERISA pension plans are preempted and inoperative.

Thus, the SEP and SIMPLE IRA is in a quandary outside of bankruptcy—this IRA is deemed an ERISA pension plan but has no ERISA anti-alienation protection, and being an ERISA pension plan, any state law protecting assets in such plans appears to be preempted by ERISA, thereby leaving the assets open to attachment under state actions.

Non-SEP And SIMPLE IRAs

As mentioned earlier, an individually established and funded traditional or Roth IRA is not an ERISA pension plan. That being the case, state law that relates to such IRAs is not preempted under ERISA. Note that a similar argument might be applicable to invoke non-preempted state law protecting retirement plans to protect a deemed non-ERISA owner-only plan outside of bankruptcy.

Many states provide protection to IRAs based on the IRA owner's state of residency. Ohio law, for example, specifically exempts traditional and Roth IRAs from execution, garnishment, attachment, or sale to satisfy a judgment or order. Ohio Rev. Code Ann. 329.66(A)(10)(c). There is no cap under the Ohio exemption. A list of different state laws protecting IRAs is attached as an appendix.

A simple solution is available. Assets rolled from a SEP or SIMPLE IRA into a rollover IRA should lose their characterization as parts of an ERISA pension plan, would not thereafter be subject to ERISA preemption, and could then take advantage of state law protections for non-SEP and SIMPLE IRAs. Such IRAs would then be afforded unlimited protections under non-bankruptcy proceedings in states like Ohio and be allowed $1 million dollars worth of protection in a bankruptcy proceeding.

CONCLUSION—NEW PLANNING OPPORTUNITIES • The Act has created a new planning paradigm. Assets in qualified retirement plans (pension, profit-sharing, and section 401(k) plans) continue to possess the most extensive debtor protections both within and outside of a bankruptcy proceeding. An IRA into which qualified retirement plan assets are rolled—an asset frequently attacked under pre-BAPCPA bankruptcy law—now constitutes a debtor protected reservoir of wealth in states providing strong IRA protection (such as Ohio) and under the new post-BAPCPA unlimited exemption for such IRAs in a bankruptcy proceeding.

Appendix

State Laws Protecting IRAs

State-By-State Analysis Of Individual Retirement Accounts As Exempt Property*

*Kentucky, Michigan, Ohio, and Tennessee: The U.S. Court of Appeals for the Sixth Circuit ruled in *Lampkins v. Golden*, 2002 U.S. App. LEXIS 900, 2002-1 U.S.T.C. par. 50,216 (6th Cir. 2002), that a Michigan statute exempting SEPs and IRAs from creditor claims was preempted by ERISA. The decision appears, however, to be limited to SEPs and SIMPLE IRAs.

State	State Statute	IRA Exempt	Roth IRA Exempt	Special Statutory Provisions
Alabama	Ala. Code §19-3B-508	Yes	No	
Alaska	Alaska Stat. §09.38.017	Yes	Yes	The exemption does not apply to amounts contributed within 120 days before the debtor files for bankruptcy.
Arizona	Ariz. Rev. Stat. Ann. §33-1126(B)	Yes	Yes	The exemption does not apply to a claim by an alternate payee under a QDRO. The interest of an alternate payee is exempt from claims by creditors of the alternate payee. The exemption does not apply to amounts contributed within 120 days before a debtor files for bankruptcy.
Arkansas	Ark. Code Ann. §16-66-220	Yes	Yes	A bankruptcy court held that the creditor exemption for IRAs violates the Arkansas Constitution—at least with respect to contract claims.
California	Cal. Civ. Proc.Code §704.115	No	No	IRAs are exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely

				to be available for the support of the judgment debtor when the judgment debtor retires.
Colorado	Colo. Rev. Stat. §13-54-102	Yes	Yes	Any retirement benefit or payment is subject to attachment or levy in satisfaction of a judgment taken for arrears in child support; any pension or retirement benefit is also subject to attachment or levy in satisfaction of a judgment awarded for a felonious killing.
Connecticut	Conn. Gen. Stat. §52-321a	Yes	Yes	
Delaware	Del. Code Ann. tit. 10, §4915	Yes	Yes	An IRA is not exempt from a claim made pursuant to Title 13 of the Delaware Code, which Title pertains to domestic relations order.
Florida	Fla. Stat. Ann. §222.21	Yes	Yes	IRA is not exempt from claim of an alternate payee under a QDRO or claims of a surviving spouse pursuant to an order determining the amount of elective share and contribution.
Georgia	Ga. Code Ann. §44-13-100	No	No	IRAs are exempt only to the extent necessary for the support of the debtor and any dependent.
Hawaii	Haw. Rev. Stat. §651-124	Yes	Yes	The exemption does not apply to contributions made to a plan or arrangement within three years before the date a civil action is initiated against the debtor.
Idaho	Idaho Code Ann. §55-1011	Yes	Yes	The exemption only applies for claims of judgment creditors of the beneficiary or participant arising out of a negligent or otherwise wrongful act or omission of the beneficiary or partici-

				pant resulting in money damages to the judgment creditor.
Illinois	735 Ill. Comp. Stat.5/12-1006	Yes	Yes	
Indiana	Ind. Code §34-55-10-2	Yes	Yes	
Iowa	Iowa Code §627.6	Yes	Yes	
Kansas	Kan. Stat. Ann. §60-2308	Yes	Yes	
Kentucky (see note at beginning of table)	Ky. Rev. Stat. Ann. §427.150(2)(f)	Yes	Yes	The exemption does not apply to any amounts contributed to an individual retirement account if the contribution occurred within 120 days before the debtor filed for bankruptcy. The exemption also does not apply to the right or interest of a person in individual retirement account to the extent that right or interest is subject to a court order for payment of maintenance or child support.
Louisiana	La. Rev. Stat. Ann. §§ 20:33(1) and 13:3881(D)	Yes	Yes	No contribution to an IRA is exempt if made less than one calendar year from the date of filing bankruptcy, whether voluntary or involuntary, or the date writs of seizure are filed against the account. The exemption also does not apply to liabilities for alimony and child support.
Maine	Me. Rev. Stat. Ann. tit.14, §4422(13)(E)	No	No	IRAs are exempt only to the extent reasonably necessary for the support of the debtor and any dependent.
Maryland	Md. Code Ann.Cts. & Jud. Proc.§11-504(h)	Yes	Yes	IRAs are exempt from any and all claims of creditors of the beneficiary or participant other than claims by the Dept. of Health or Mental Hygiene.

Massachusetts	Mass. Gen. L.Ch. 235, §34A	Yes	Yes	The exemption does not apply to an order of court concerning divorce, separate maintenance, or child support, or an order of court requiring an individual convicted of a crime to satisfy a monetary penalty or to make restitution, or sums deposited in a plan in excess of 7% of the total income of the individual within 5 years of the individual's declaration of bankruptcy or entry of judgment.
Michigan (see note at beginning of table)	Mich. Comp. Laws §600.6023	Yes	Yes	The exemption does not apply to amounts contributed to an individual retirement account or individua retirement annuity if the contribution occurs within 120 days before the debtor files for bankruptcy. The exemption also does not apply to an order of the domestic relations court.
Minnesota	Minn. Stat. §550.37	Yes	Yes	Exempt to a present value of $30,000 and additional amounts reasonably necessary to support the debtor, spouse, or dependents.
Mississippi	Miss. Code Ann. §85-3-1	Yes	No	
Missouri	Mo. Rev. Stat. §513.430	Yes	Yes	If proceedings under Title 11 of United States Code are commenced by or against the debtor, no amount of funds shall be exempt in such proceedings under any plan or trust which is fraudulent as defined in Section 456.630 of the Missouri Code (since repealed), and for the period such person participated within 3 years before the commencement of such proceedings.
Montana	Mont. Code Ann. §31-2-106(3)	Yes	No	The exemption excludes that portion of contributions made by the individ-

				ual within one year before the filing of the petition of bankruptcy which exceeds 15% of the gross income of the individual for that one-year period.
Nebraska	Neb. Rev. Stat. §25-1563.01	Yes	Yes	The exemption only applies to the extent reasonably necessary for the support of the Debtor and any dependent of the Debtor.
Nevada	Nev. Rev. Stat. §21.090(1)(q)	Yes	No	The exemption is limited to $500,000 in present value held in an individual retirement account, which conforms with Section 408.
New Hampshire	N.H. Rev. Stat. Ann. §511:2	Yes	Yes	Exemption only applies to extensions of credit and debts arising after January 1, 1999.
New Jersey	N.J. Stat. Ann. §25:2-1(b)	Yes	Yes	
New Mexico	N.M. Stat. Ann. §42-10-1, §42-10-2	Yes	Yes	A retirement fund of a person supporting another person is exempt from receivers or trustees in bankruptcy or other insolvency proceedings, fines, attachment, execution, or foreclosure by a judgement creditor.
New York	N.Y. C.P.L.R. §5205(c)	Yes	Yes	Additions to individual retirement accounts are not exempt from judgments if contributions were made after a date that is 90 days before the interposition of the claim on which the judgment was entered.
N. Carolina	N.C. Gen. Stat. §1C-1601(a)(9)	Yes	Yes	
N.Dakota	N.D. Cent. Code §28-22-03.1(3)	Yes	Yes	The account must have been in effect for a period of at least one year. Each individual account is exempt to a limit of up to $100,000 per account, with an aggregate limitation of $200,000

				for all accounts. The dollar limit does not apply to the extent the debtor can prove the property is reasonably necessary for the support of the debtor, spouse, or dependents.
Ohio (see note at beginning of table)	Ohio Rev. Code Ann. §2329.66(A)(10)	Yes	Yes	SEPs and SIMPLE IRAs are not exempt.
Oklahoma	Okla. Stat. tit. 31, §1(A)(20)	Yes	Yes	
Oregon	OR. Rev. Stat. 18.358	Yes	Yes	
Pennsylvania	42 PA. Cons. Stat. §8124	Yes	Yes	The exemption does not apply to amounts contributed to the retirement fund within one year before the debtor filed for bankruptcy.
R. Island	R.I. Gen. Laws §9-26-4	Yes	Yes	The exemption does not apply to an order of court pursuant to a judgment of divorce or separate maintenance, or an order of court concerning child support.
S. Carolina	S.C. Code Ann. §15-41-30	No	No	The debtor's right to receive individual retirement accounts and Roth accounts is exempt to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
South Dakota	S.D. Cod. Laws 43-45-16; 43-45-17	Yes	Yes	Exempts "certain retirement benefits" up to $1,000,000. Cites §401(a)(13) of Internal Revenue Code (Tax-Qualified Plan Non-Alienation Provision).
Tennessee (see note at beginning of table)	Tenn. Code Ann. §26-2-105	Yes	Yes	

Texas	Tex. Prop. Code Ann. §42.0021	Yes	Yes	
Utah	Utah Code Ann. §78-23-5(1)	Yes	Yes	The exemption does not apply to amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy.
Vermont	Vt. Stat. Ann. tit. 12, §2740(16)	Yes	Yes	
Virginia	Va. Code Ann. §34-34	Yes	Yes	Exempt from creditor process to the same extent permitted under federal bankruptcy law. An IRA is not exempt from a claim of child or spousal support obligations.
Washington	Wash. Rev. Code §6.15.020	Yes	Yes	
West Virginia	W.Va. Code §38-10-4	Yes	No	
Wisconsin	Wis. Stat. §815.18(3)(j)	Yes	Yes	The exemption does not apply to an order of court concerning child support, family support, or maintenance, or any judgments of annulment, divorce, or legal separation.
Wyoming	Wyo. Stat. Ann §1-20-110	No	No	