

SO ORDERED.

SIGNED this 22nd day of March, 2013.



Catherine R Aron

UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:)	
)	
Camille A. Brooks,)	12-80922
)	
Debtor.)	
_____)	

**ORDER OVERRULING TRUSTEE’S OBJECTION
TO DEBTOR’S CLAIM FOR PROPERTY EXEMPTIONS**

THIS MATTER came before the Court on January 22, 2013, after due and proper notice, upon the Objection by Trustee to Debtor’s Claim for Property Exemptions. Cheryl Capron appeared on behalf of the Debtor and Sara A. Conti appeared as the Chapter 7 Trustee (the “Trustee”). After considering the objection, arguments of counsel, and evidence on record, the Court makes the following findings of fact and conclusions of law pursuant to Rules 7052 of the Federal Rules of Bankruptcy Procedure:

JURISDICTION

The Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and Local Rule 83.11 of the United States District Court for the Middle District of North Carolina. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I) which this Court may hear and determine.

FACTUAL FINDINGS

Debtor filed a Chapter 7 petition on June 19, 2012. Sara A. Conti was appointed the Chapter 7 Trustee. The Debtor is domiciled in North Carolina. On August 17, 2012, at the meeting of creditors, the Debtor disclosed that her mother, Celestine M. Brooks, had recently passed and left the Debtor an inheritance in the form of an IRA. This inherited IRA (the “Inherited IRA”) was created by a trustee-to-trustee transfer on June 19, 2012 with a value of approximately \$50,000.00. It was set up as an Individual Retirement Account—Beneficiary Designation Account. On October 15, 2012, the Debtor amended her exemptions to add the Inherited IRA with Fidelity Investments. The Trustee timely filed an objection to the exemption contending that an IRA, inherited from someone other than a spouse, is not exempt.¹

The issue before the Court is whether the Inherited IRA is a non-exempt asset. The Trustee asserts that under the applicable exemption provisions of the Bankruptcy Code and N.C.G.S. §1C-1601(a)(9) (the “N.C. Exemption Statute”), a Debtor’s interest in an IRA inherited from a non-spouse should not be treated as exempt. The Trustee asserts that in the hands of the Debtor, the Inherited IRA is not comprised of “retirement funds” as referenced by 11 U.S.C. §522(b)(3)(C), nor is the Inherited IRA exempt from taxation since the Internal Revenue Code of 1986 (“IRC”) treats an inherited IRA different from its treatment of a traditional IRA. The Debtor argues that the Inherited IRA qualifies for exemption under both 11 U.S.C. §522(b)(3)(C) and the N.C. Exemption Statute.

DISCUSSION

The right to claim property as exempt in a bankruptcy case is granted in 11 U.S.C. § 522(b). Pursuant to N.C. Gen. Stat. § 1C-1601(f) and 11 U.S.C. § 522(b)(2), North Carolina has opted-out of the federal exemptions, however, the exemptions in 11 U.S.C. §522(b)(3)(c) are

¹ The Trustee notes that an IRA inherited from a spouse is exempt because provisions of the tax code allow an individual who inherits an IRA from a spouse to treat that IRA as though it was the individual’s own retirement account. The Trustee states that the Internal Revenue Code’s different treatment of an IRA inherited from a non-spouse triggered the Trustee’s objection to the Debtor’s exemption.

applicable to the opt-out states. See 4 COLLIER ON BANKRUPTCY ¶ 522.10[9] at 522–91 (16th ed. 2012). In enacting 11 U.S.C. § 522(b)(3)(C), Congress intended “to expand the protection for tax-favored retirement plans or arrangements that may not already be protected under [§] 541(c)(2) pursuant to *Patterson v. Shumate*, or other applicable state or Federal Law.” HR Rep. No. 31, 109th Cong., 1st Sess. 224 (2005). 11 U.S.C. § 522(b)(3)(C) exempts “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 of 1986.”²

(1) Whether the Funds in the Inherited IRA are “Retirement Funds”

Generally, bankruptcy exemptions are construed liberally in favor of the debtor. *In re Mathusa*, 446 B.R. 601, 602 (Bankr. M.D. Fla. 2011); *In re Tabor*, 433 B.R. 469, 472 (Bankr. M.D. Pa. 2010). Pursuant to Rule 4003(c) of the Federal Rules of Bankruptcy Procedure, the burden falls on the Trustee to prove that the Debtor improperly claimed an exemption for the Inherited IRA.

11 U.S.C. § 522(b)(3)(C) refers to “retirement funds.” The plain meaning of the statutory language does not specify that the retirement funds must be funds that were set aside by the debtor. See *In re Chilton*, 674 F.3d 486, 489 (5th Cir. 2012); *In re Hamlin*, 465 B.R. 863, 871 (9th Cir. B.A.P. 2012) (stating that “[s]ection 522(b)(3)(C) requires that the account be comprised of retirement funds; it does not specify that they must be the debtor’s retirement funds.”); *In re Nessa*, 426 B.R. 312, 314 (B.A.P. 8th Cir. 2010) (stating that though the contents of debtor’s inherited retirement account were the debtor’s father’s retirement funds, the funds “remain in form and substance, ‘retirement funds’”); *In re Kuchta*, 434 B.R. 837, 843-44 (Bankr. N. D. Ohio 2010); *Tabor*, 433 B.R. at 476. Also, the plain meaning of the statutory language

² Although the exemption listed in 11 U.S.C. §522(b)(3)(C) is available to opt-out states and the exemption listed in 11 U.S.C. § 522(d)(12) is applicable to opt-in states, the sections have identical language regarding the exemption of retirement funds. Although the Debtor must rely on 11 U.S.C. § 522(b)(3)(C) because North Carolina is an opt-out state, decisions interpreting either section are helpful in the analysis of the issue before the Court.

does not include qualifications regarding how and when the funds are ultimately used. *See Chilton*, 674 F. 3d at 489; *Hamlin*, 465 B.R. at 871; *In re Thiem*, 443 B.R. 832, 843–44 (Bankr. D. Ariz. 2011). As such, the Court will follow the majority viewpoint and not limit the plain meaning of the statute by incorporating additional restrictions into the meaning of “retirement funds.” *See In re Clark*, 466 B.R. 135,140 (W.D. Wis. 2012). In the present matter, it is uncontested that funds were initially set apart by the Debtor’s mother for retirement. Thus, the Court finds that that the funds of the Inherited IRA are retirement funds.

(2) *Tax Treatment of the Inherited IRA*

Section 522(b)(3)(C) references the IRC, thus the IRC must be examined to determine the extent to which an inherited IRA is tax exempt. It is not in dispute that the IRC lays out many differences in its treatment of traditional IRAs and inherited IRAs regarding rollover, withdrawal penalty, and distribution treatment. *See* Internal Revenue Service, U.S. Dep’t of the Treasury, Publication 590: Individual Retirement Arrangements (IRAs) 18 (2012) (“Publication 590”). The IRC, however, expressly provides that “any individual retirement account is exempt from taxation under [IRC § 408].” *See* IRC § 408(e). The qualifier “any” extends the exemption beyond traditional IRAs to include inherited IRAs. *See Chilton*, 674 F.3d at 490; *Nessa*, 426 B.R. at 315; *Hamlin*, 465 B.R. at 874; *In re Johnson*, 452 B.R. 804, 808 (Bankr. W.D. Wash. 2011); *Thiem*, 443 B.R. at 845; *Tabor*, 433 B.R. at 476. The beneficiary of an inherited IRA is not taxed on the funds in the IRA until those funds are withdrawn. *Chilton*, 674 F.3d at 490. This is the same tax-exemption given to the original owner of the IRA. *Hamlin*, 465 B.R. at 874. As such, both forms of an IRA are tax exempt under IRC § 408. *See Hamlin*, 465 B.R. at 874; *Nessa*, 426 B.R. at 315 (finding irrelevant the difference in distribution scheme between a traditional and inherited IRA in the analysis of whether IRC Sec. 408(e) exempts inherited IRAs from taxation); *In re Clark*, 466 B.R. at 140 (noting that the majority opinion holds that retirements funds do not lose their tax exemption upon the death of the original account owner

before funds pass to a non-spouse beneficiary); *Thiem*, 443 B.R. at 843; *Tabor*, 433 B.R. at 476. *But see In re Klipsch*, 435 B.R. 586, 588 (Bankr. S.D. Ind. 2010) (finding that the withdrawal scheme and consequences of roll-over of inherited IRAs under the IRC preclude finding that such IRAs are tax-exempt retirement plans). The Court finds that under the IRC, the Inherited IRA is exempt from taxation.

CONCLUSION

The Court finds that the Trustee has not met her burden to show that the Inherited IRA is a non-exempt asset. Therefore, the Court concludes that the Inherited IRA is exempt under 11 U.S.C. § 522(b)(3)(C).³

Based upon the foregoing, the Trustee's Objection is **OVERRULED**.

END OF DOCUMENT

³ Since the Court finds the Inherited IRA exempt under 11 U.S.C. § 522(b)(3)(C), the Court does not consider exemption of the Inherited IRA under the N.C. Exemption Statute.

SERVICE LIST

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Debtor

Cheryl Capron
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Sara A. Conti
Trustee

Michael D. West
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