**3644. Are inherited IRA funds exempt from the claims of a taxpayer’s creditors in bankruptcy?**

Whether or not the funds in an inherited IRA are exempt from the claims of a taxpayer’s creditors in bankruptcy has been an issue that many have disagreed upon in past years, but that the Supreme Court resolved in 2014.[[1]](http://pro.nuco.com/taxfacts2015/tfempb/p8-irp/rmds/Pages/3644-00-TF1.aspx?k=IRA+bankruptcy" \l "_ftn1) Under current law, therefore, the funds in an inherited IRA are subject to the claims of a debtor’s creditor in bankruptcy *if* the account is inherited by abeneficiary *who is not the original account owner’s surviving spouse.*

Traditional and Roth IRAs that are not inherited accounts are typically exempt from bankruptcy claims up to an inflation-adjusted $1 million limit (in 2014, the amount is $1,245,475).[[2]](http://pro.nuco.com/taxfacts2015/tfempb/p8-irp/rmds/Pages/3644-00-TF1.aspx?k=IRA+bankruptcy" \l "_ftn2)

Prior to the Supreme Court’s review of the issue, in some jurisdictions (the Eighth Circuit, for example), inherited IRAs were exempt from bankruptcy claims based on the premise that the funds are retirement funds contained in otherwise tax-exempt vehicles. However, other courts had held that inherited IRAs lack the requisite retirement purpose. The rationale behind this line of decisions (most prominently found in the Seventh Circuit) was that inherited IRAs are subject to an entirely different set of rules than IRAs held by their original owners.

Importantly, while a penalty is imposed on any non-inherited IRA funds that are withdrawn by the owner prior to a certain age, inherited IRA assets are liquid assets that can be accessed by the beneficiary at any time and without penalty. Further, the rules actually require that the inherited IRA funds be withdrawn within a relatively short time frame (either within five years or over the beneficiary’s life expectancy, see Q 3641 and Q 3642) set without regard to the typical retirement age.

This split among the circuits prompted the Supreme Court’s recent review of the issue. Though the rule is not settled with respect to *non-spouse* beneficiaries, taxpayers should note that the Supreme Court decision did not address the issue of IRAs that are inherited by a surviving spouse (see Q 3641).

[[1]](http://pro.nuco.com/taxfacts2015/tfempb/p8-irp/rmds/Pages/3644-00-TF1.aspx?k=IRA+bankruptcy" \l "_ftnref1)

.*Clark v. Rameker,* 134 S. Ct. 2242 (2014).

[[2]](http://pro.nuco.com/taxfacts2015/tfempb/p8-irp/rmds/Pages/3644-00-TF1.aspx?k=IRA+bankruptcy" \l "_ftnref2)

.11 U.S.C. §522.