No. 11-1083

IN THE
UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE NINTH CIRCUIT COURT OF APPEALS

In re TRAVIS M. HAMLIN AND BRITTANY B. HAMLIN,
Debtors.

BRIAN MULLEN,
Appellant
— v. —

TRAVIS M. HAMLIN AND BRITTANY B. HAMLIN,
Appellees

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF DEBTORS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1(a), *amicus curiae*, The National Association of Consumer Bankruptcy Attorneys states that it is a nongovernmental corporate entity that has no parent corporations and does not issue stock.

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys (NACBA) is a non–profit organization consisting of more than 4,800 consumer bankruptcy attorneys nationwide.

NACBA's corporate purposes include education of the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. Additionally, NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors. NACBA has filed amicus *curiae briefs* in various cases seeking to protect the rights of consumer bankruptcy debtors. *See, e.g., Schwab v. Reilly*, 560 U.S. —, 130 S.Ct. 2652 (2010); *Kawaauhau v. Geiger*, 523 U.S. 57 (1998).

The NACBA membership has a vital interest in the outcome of this case. Whether an Individual Retirement Account inherited from someone other than the spouse of the debtor is exempt from property of the debtor's estate is an issue that continues to arise frequently in consumer bankruptcy proceedings throughout the United States, including within the geographic limits of the Ninth Circuit. NACBA believes that the bankruptcy court in this case reached the correct result in recognizing an exemption for the inherited IRA at issue here. NACBA files this

brief to show why the bankruptcy court's ruling was correct and in particular to address the unpersuasive policy arguments advanced by the trustee.

SUMMARY OF ARGUMENT

As the vast majority of courts that have considered the question presented in this case over the past several years have concluded, an Individual Retirement Account inherited from someone other than the spouse of the debtor is exempt from property of the debtor's estate pursuant to the plain language of the Bankruptcy Code and the Internal Revenue Code. *See* 11 U.S.C. § 522(b)(3)(C), as elaborated in § 522(b)(4)(C)(referring to the Internal Revenue Code); *see also* 11 U.S.C. § 522(d)(12) (listing such accounts among property made exempt by section 522(b)(2) when state–law exemptions are chosen).

Confronted with that persuasive authority and statutory language, the appellant-trustee relies heavily on a since overturned ruling of the U.S. Bankruptcy Court for the Eastern District of Texas in *In re Chilton*, 426 B.R. 612 (Bankr. E.D. Tex. 2010), *rev'd sub nom. Chilton v. Moser*, 444 B.R. 548 (E.D. Tex. 2011), to advance a variety of policy–based arguments for why the plain language of the Bankruptcy Code and the Internal Revenue Code should be disregarded to obtain a result that the trustee characterizes as more reasonable and more fair to creditors.

The result that the bankruptcy court in this case reached, holding an inherited IRA is exempt from the debtor's estate, accords with the vast majority of

courts to recently address the issue, and for good reason. Application of the plain language of the Bankruptcy Code is mandatory, because it does not produce an utterly absurd result demonstrably at odds with legislative intent. *See United States v. Ron Pair Enterprises*, 489 U.S. 235, 242 (1989) (construing Bankruptcy Code). In the absence of such a result, a court is not empowered to depart from the outcome that the language of the applicable statutes dictates.

The trustee's attempt to portray the outcome below as failing to reflect Congress's likely intent is not based on the express language of the statutes in question—which provide the clearest guide to Congress's intent—nor on any legislative history accompanying those statutes. Rather, the trustee's logic amounts to the following unpersuasive syllogism: (a) because Congress intended to exempt from the estate money that the debtor himself or herself saved for retirement in an IRA, it necessarily follows that (b) Congress did not intend to exempt from the estate money contained in an inherited IRA that does not represent funds saved for the debtor's own retirement. As a simple matter of logic, proposition "(b)" does not follow from premise "(a)."

Even if this Court could focus solely on policy arguments to the exclusion of the statutory language that compels affirmance, which of course this Court cannot and should not do, the trustee's arguments overlook two central policies favoring the debtor's side of this argument. First, when Congress enacted the Bankruptcy

Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Congress intended to expand the protection for tax–favored retirement plans by enacting standard federal exemptions to take the place of the patchwork of state law exemptions that sometimes did not suffice to exempt inherited IRAs from the debtor's estate. And second, exempting the funds contained in inherited IRAs from a debtor's estate is entirely logical when one considers that the money contained in an inherited IRA becomes available to the debtor over time, according to a distribution formula specified in tax law. Thus, money contained in an inherited IRA is appropriately exempted from the debtor's estate in accordance with the plain language of the Bankruptcy Code and Internal Revenue Code and the policy of BAPCPA to coordinate those bodies of law.

ARGUMENT

I. The Plain Language of the Relevant Statutes, Pertinent Bankruptcy Court and District Court Rulings, and the Recent Decision of the Eighth Circuit Bankruptcy Appellate Panel All Support the Affirmance of the Bankruptcy Court's Order.

The Bankruptcy Court for the District of Arizona correctly recognized as exempt from the debtor's estate the funds contained in an Individual Retirement Account that debtor Brittany Hamlin inherited from her grandmother, Maxine Upshaw, because those funds qualified as exempt pursuant to the plain language of 11 U.S.C. § 522(b)(3)(C). That subsection of the Bankruptcy Code exempts from

the debtor's estate "retirement funds to the extent that those fund 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."

There is no dispute that the funds in question were in one of the specified accounts while Brittany Hamlin's grandmother was alive, nor is there any dispute that the funds were transferred, by means of a trustee–to–trustee transaction, into one of those specified accounts when the IRA was inherited by Brittany Hamlin as the result of her grandmother's death. *See In re Johnson*, 2011 WL 1674928, at *3 (Bankr. W.D. Wash. May 4, 2011) ("Under the [Internal Revenue Code], an inherited IRA may be transferred via a direct trustee–to–trustee transfer without any tax consequences. 26 U.S.C. § 408(d)(3)."). The transfer did not affect their exempt status under the Code. 11 U.S.C. § 522(b)(4)(C). Moreover, the funds remained in that tax exempt transferee account, as of the date of filing of the petition, to the extent that Hamlin had not elected to receive a distribution of them sooner or in a greater sum than is required under the formula specified in tax regulations. (The critical date for determining exemptions is the petition date. *See Goswami* v. *MTC Distributing* (*In re Goswami*), 304 B.R. 386, 391–92 (9th Cir. BAP 2003).)

Furthermore, there is no dispute that the money contained in the inherited IRA constituted "retirement funds" when that money was originally deposited into

the IRA. Rather, it is the trustee's argument that because the money contained in the inherited IRA does not constitute retirement funds of Brittany Hamlin, that money does not qualify for the specified exemption. This argument, however, has been rejected by the Eighth Circuit's Bankruptcy Appellate Panel and nearly every other federal district court and bankruptcy court to have recently considered it.

All of those courts have reasoned that so long as the money in an inherited IRA was originally contributed as "retirement funds" (which, by definition, is necessarily the case), and so long as the money is now contained in one of the specified tax exempt accounts (which is indisputably the fact here and was also true in the other referenced rulings), an inherited IRA is exempt from the debtor's bankruptcy estate under the plain language of the Bankruptcy Code. *See* 26 U.S.C. ("Internal Revenue Code" or "IRC") § 408(e)(1) (recognizing that "*Any* individual retirement account is exempt from taxation under this subsection ...."); 11 U.S.C. §§ 522(b)(3)(C) (exempting from the debtor's bankruptcy estate "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section . . . 408 . . . of the Internal Revenue Code of 1986"), 522(b)(4)(C) (funds do not cease to qualify for exemption under subsection (b)(3)(C) if directly transferred from one account that is tax-exempt under IRC § 408 to another); *cf.* 11 U.S.C. § 522(d)(12) (retirement funds in § 408-qualified account also qualify under § 522(b)(2) when state–law exemptions are claimed). Nothing in subsection

(b)(4)(C) requires that the fund into which the funds are transferred be a "retirement account," only that it be "exempt from taxation under" certain Internal Revenue Code provisions. There is no dispute that Hamlin's account, into which her late grandmother's retirement funds were transferred, was in fact tax exempt under these provisions of tax law.

Those two statutory provisions – subsection 408(e)(1) of the Internal Revenue Code and subsection 522(b)(3)(C) of the Bankruptcy Code (as elaborated in subsection (b)(4)(C)) – speak directly to the question presented in this case. Applying the plain language of those two statutes, the bankruptcy court in this case correctly ruled that the IRA that Brittany Hamlin inherited from her grandmother is exempt from Ms. Hamlin's bankruptcy estate. *See* E.R. 74-83.

This Court must construe the scope of the statutory exemption provision liberally in favor of the debtor. *See Arrol v. Broach* (*In re Arrol*), 170 F.3d 934, 937 (9th Cir. 1999), citing *In re Glass*, 164 B.R. 759, 764 (9th Cir. BAP 1994), *aff'd*, 60 F.3d 565 (9th Cir. 1995). Nothing in the 2005 Amendments to the Bankruptcy Code changes that rule of construction.

As the Eighth Circuit's Bankruptcy Appellate Panel correctly recognized when construing the requirements of the indistinguishable statutory provision contained in 11 U.S.C. § 522(d)(12), the statute in question:

> imposes two requirements before a debtor may claim an exemption under that section: (1) the amount the debtor seeks to exempt must be

> retirement funds; and (2) the retirement funds must be in an account that is exempt from taxation under one of the provisions of the Internal Revenue Code set forth therein.

Doeling v. Nessa (*In re Nessa*), 426 B.R. 312, 314 (8th Cir. BAP 2010). Both statutory conditions are met, as the Court recognized. The funds remain tax-exempt and thus protected upon transfer following their inheritance, the Eighth Circuit BAP further ruled. 426 B.R. at 315. That ends the matter.

In *Nessa*, the court proceeded to reject the precise policy argument on which the trustee so heavily relies in seeking reversal in this case:

> The bankruptcy court correctly determined that the amounts in the inherited account were "retirement funds". The Trustee does not dispute the bankruptcy court's determination that, the amounts in the Debtor's father's IRA were his retirement funds prior to his death. He suggests, however, that to retain their status as retirement funds under section 522(d)(12) in the Debtor's inherited account, the contents of the inherited account would have to have been contributed by the Debtor or be part of the Debtor's retirement plan. Bankruptcy Code section 522(d)(12) makes no such distinction. Section 522(d)(12) requires that the account be comprised of retirement funds, but it does not specify that they must be the debtor's retirement funds. The Trustee's definition of retirement funds would impermissibly limit the statute beyond its plain language. *U.S. v. Ron Pair Enterprises*, 489 U.S. 235, 241 (1989) ("where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms'") (citation omitted). In accordance with the terms of Bankruptcy Code section 522(d)(12), even though the contents of the Debtor's inherited account were the Debtor's father's retirement funds, not the Debtor's own retirement funds, they remain in form and substance, "retirement funds."

Id. at 314–15 (footnote omitted). See also *Ransom v. FIA Card Services, Inc.*, 562 U.S. —, 131 S.Ct. 716, 723-24 (2011) (language of Bankruptcy Code is starting

point; "ordinary meaning" determines significance of undefined words and phrases); *Rousey v. Jacoway*, 544 U.S. 320, 329-30 (2005) (same; discussing pre-BAPCPA exemption for IRAs).

In a footnote at the conclusion of the quotation set forth immediately above, the Eighth Circuit's Bankruptcy Appellate Panel acknowledged that a bankruptcy court in Texas had accepted the improperly narrow understanding of the term "retirement funds" that the trustee is now urging this Court to adopt. *See In re Chilton*, 426 B.R. 612 (Bankr. E.D. Tex. 2010). Indeed, the trustee's brief on appeal relies heavily on the bankruptcy court's ruling in the *Chilton* case. What the trustee's appellate brief fails to address in any substantive way, however, is that the bankruptcy court's ruling in *Chilton* has since been reversed by the U.S. District Court for the Eastern District of Texas in *Chilton v. Moser*, 444 B.R. 548 (E.D. Tex. 2011). The "Discussion" section of the district court's ruling in *Chilton* begins by noting that "[t]he court has found five cases, all issued since the Bankruptcy Court's March 5, 2010 opinion in this case, in which an inherited IRA was found to be exempt under either Section 522(d)(12) or Section 522(b)(3)(C)." *Id.* at 551.

Relying on the ruling in *Nessa*, *supra*, as well as the similar holdings reached in *In re Tabor*, 433 B.R. 469 (Bankr. M.D. Pa. 2010), *aff'd sub nom. Bierbach v. Tabor*, No. 10–cv–1580 (M.D. Pa. Dec. 2, 2010) (unreported) (*appeal*

pending, No. 10-4660 (3d Cir.)); *In re Thiem*, 2011 WL 182884 (Bankr. D. Ariz. Jan. 19, 2011); *In re Weilhammer*, 2010 WL 3431465 (Bankr. S.D. Cal. Aug. 30, 2010); and *In re Kuchta*, 434 B.R. 837, 843 (Bankr. N.D. Ohio 2010), the district court in *Chilton* recognized that funds held in an inherited IRA do not lose their status as "retirement funds" under federal law due to the transfer from one tax exempt account to another and that an inherited IRA remains tax exempt under 26 U.S.C. § 408(e)(1), which expressly provides that "[a]ny individual retirement account is exempt from taxation . . . ." *Chilton*, 444 B.R. at 552. A very recent ruling of the Bankruptcy Court for the Western District of Washington also reached the same result as the bankruptcy court in this case and the U.S. District Court in *Chilton*. *See In re Johnson*, 2011 WL 1674928 (Bankr. W.D. Wash. May 4, 2011).

The legal analysis contained in the decisions listed in the preceding paragraph provides strong support for affirmance of the bankruptcy court's ruling in this case based on the plain language of the Bankruptcy Code and the Internal Revenue Code. It is perhaps for that reason that the trustee has advanced an argument for reversal based on little more than policy arguments in derogation of the governing statutory provisions.

II. The Trustee's Policy–Based Arguments for Reversal Cannot Overcome the Plain Language of the Governing Statutory Provisions.

The trustee's main argument on appeal is that the policy reasons for exempting inherited IRAs from a debtor's bankruptcy estate are not as compelling as the policy reasons for exempting IRAs into which the debtor himself or herself has contributed the debtor's own money earmarked for retirement. But this Court's role, of course, is not to reconsider or reject the policy choices that Congress has made as reflected in legislation that has been enacted. *See Schwab v. Reilly*, 560 U.S. —, 130 S.Ct. 2652, 2667 (2010) (construing § 522(*l*); "none of Reilly's policy arguments can overcome the Code provisions"); *Florida Dept. of Revenue v. Piccadilly*, 554 U.S. 33, 52 (2008) (Chapter 11 case; "It is not for us to substitute our view of … policy for the legislation which has been passed by Congress.") (quoting earlier cases). Moreover, the trustee's policy–based argument falls far short of establishing that the result the plain language of the relevant statutes dictates is so absurd or illogical that the language must be disregarded in favor of some other result that Congress somehow had in mind but nevertheless failed to legislate. *See State Ins. Compensation Fund v. Zamora (In re Silverman)*, 616 F.3d 1001, 1006 (9th Cir. 2010); *Blausey v. U.S. Trustee*, 552 F.3d 1124, 1132 (9th Cir. 2009) ("when the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms," quoting earlier authority).

To begin with, the validity of the trustee's policy–based argument is far from clear. When Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Congress elected to expand the protection for tax–favored retirement plans by enacting standard federal exemptions to supplement the patchwork of state law exemptions that sometimes did not suffice to exempt IRAs from a debtor's estate. Thus, Congress's decision to enact BAPCPA can reasonably be understood as intending to provide an exemption for all inherited IRAs regardless of the availability of any exemption under applicable state law. This legislative judgment was consistent with a several other BAPCPA provisions designed to protect various sorts of federal-tax-protected plans. *See*, *e.g.*, 11 U.S.C. §§ 362(b)(19), 523(a)(18), 541(b)(7), 1322(f). Congress could hardly have been more clear that it did not want accounts of this sort to be affected by bankruptcy.

Moreover, numerous recent court rulings have recognized an exemption for inherited IRAs under BAPCPA, and yet there has been no resulting outcry from Congress to overrule or clarify existing statutory law to eliminate the exemption now widely recognized as available for inherited IRAs. In other words, Congress has the power to overrule judicial decisions if those decisions are incorrectly applying a statute to reach results that Congress in fact did not intend. Congress's failure to attempt to overrule those decisions should therefore be viewed as a sign

that the case law reached the correct result or that Congress is, at a minimum, willing to accept the outcome of those rulings.

Finally, the trustee's efforts to suggest that an exclusion for inherited IRAs gives rise to the risk of abuse or would improperly allow Bernard Madoff to exclude from his bankruptcy estate assets that should be available to pay the claims of creditors are unpersuasive, to say the least. *See* Aplt. Br. 12. To begin with, the funds contained in an inherited IRA are funds that belonged to a relative of the debtor before that relative's death. Thus, the funds in question do not consist of money that otherwise belonged to the debtor – much less stolen money – that the debtor is somehow trying to place outside of the reach of creditors. The trustee's example of a $5 million exemption for an imaginary inherited Madoff IRA also disregards subsection 522(n), which places a cap of about $1.17 million on such exemptions – simultaneously negating the trustee's example and showing that Congress considered and approved the possibility of relatively large individual exemptions for funds in protected IRAs.

The money at issue in this case was outside the reach of Hamlin's creditors before the inheritance occurred, and it remains outside the reach of her creditors to the extent that the debtor chose to adhere to the time schedule for minimum withdrawals as prescribed by the tax laws. *See* IRC § 408(a)(6); 26 C.F.R. § 1.408-8, adopting *id.* § 1.401(a)(9)-1 *et seq.* (schedule of required distributions);

IRS Pub. 590 ("Individual Retirement Arrangements (IRAs)"), at 33-44 (Feb. 2011 rev.). (Insufficient withdrawals incur a 50% penalty tax; *see* IRC § 4974(a); Pub. 590, at 44, 55. Hamlin demonstrated below that she has maintained the authorized schedule, however.) It is preposterous to think that any creditor would ever extend credit based on the possibility that a debtor might inherit an IRA, and if credit is extended on the basis that the debtor has already inherited an IRA, that creditor has not received very good counsel from its advisers concerning the availability of funds in an inherited IRA to pay debts.

The trustee's Madoff hypothetical lacks any basis in reality. Nowhere is it suggested that Bernard Madoff has secreted his own funds in the individual retirement accounts of relatives from whom he is hoping to inherit those IRAs. Remedies exist to deal with abuses that may occur under the bankruptcy and tax laws. There is no suggestion of any such abuses in this case, and the far–fetched example invoked by the trustee affords no reason not to affirm the bankruptcy court's proper application of the statutes in question.

Congress acted logically in deciding to exempt funds contained in an inherited IRA from the bankruptcy estate of a debtor to the same extent that those funds remain tax–exempt in the inherited or transferee account at the time bankruptcy protection is sought. Although Congress certainly could have enacted a more limited exemption covering only IRAs inherited from a spouse, which the

trustee believes would be a reasonable limitation on the availability of the exemption at issue, that is not what Congress in fact did. Because the plain language of the statutory provisions that Congress enacted properly controlled the bankruptcy court's ruling, and because the plain language of those statutes does not produce a result that is either absurd or illogical, this Court should affirm the bankruptcy court's ruling in this case.

CONCLUSION

For the reasons set forth above, and for the reasons advanced in the debtor's Brief for Appellees, amicus curiae, the National Association of Consumer Bankruptcy Attorneys, respectfully requests – unless this Court concludes that it lacks jurisdiction of the trustee's appeal, as appellees suggest – that the bankruptcy court's order be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2011, I electronically filed the foregoing document with the Clerk of the Court for the Bankruptcy Appellate Panel for the Ninth Circuit by using the CM/ECF system.

I further certify that parties of record to this appeal who either are registered CM/ECF users, or who have registered for electronic notice, or who have consented in writing to electronic service, will be served through the CM/ECF system.

I further certify that some of the parties of record to this appeal have not consented to electronic service. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days, to the following parties: NONE

_/s/ Tara Twomey_____________

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Addendum

Sections from the Internal Revenue Code, 26 U.S.C.

§ 408. Individual retirement accounts

(a) Individual retirement account
For purposes of this section, the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:
(1) Except in the case of a rollover contribution described in subsection (d)(3) in [1] section 402 (c), 403 (a)(4), 403 (b)(8), or 457 (e)(16), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219 (b)(1)(A).
(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.
(3) No part of the trust funds will be invested in life insurance contracts.
(4) The interest of an individual in the balance in his account is nonforfeitable.
(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.
(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401 (a)(9) and the incidental death benefit requirements of section 401 (a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

§ 408(d)

(d) Tax treatment of distributions
(1) In general
Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.
(2) Special rules for applying section 72
For purposes of applying section 72 to any amount described in paragraph (1)—
(A) all individual retirement plans shall be treated as 1 contract,
(B) all distributions during any taxable year shall be treated as 1 distribution, and
(C) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.
For purposes of subparagraph (C), the value of the contract shall be increased by the amount of any distributions during the calendar year.
(3) Rollover contribution
An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).
(A) In general

Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—
(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or
(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).
For purposes of clause (ii), the term "eligible retirement plan" means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402 (c)(8)(B).
(B) Limitation
This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph.
(C) Denial of rollover treatment for inherited accounts, etc.
(i) In general In the case of an inherited individual retirement account or individual retirement annuity—
(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and
(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.
(ii) Inherited individual retirement account or annuity An individual retirement account or individual retirement annuity shall be treated as inherited if—
(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and
(II) such individual was not the surviving spouse of such other individual.
(D) Partial rollovers permitted
(i) In general If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i) or (ii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.
(ii) Eligible plan For purposes of clause (i), the term "eligible plan" means any account, annuity, contract, or plan referred to in subparagraph (A).
(E) Denial of rollover treatment for required distributions

This paragraph shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).
(F) Frozen deposits
For purposes of this paragraph, rules similar to the rules of section402 (c)(7) (relating to frozen deposits) shall apply.
(G) Simple retirement accounts
In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72 (t)(6)applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.
(H) Application of section 72
(i) In general If—
(I) a distribution is made from an individual retirement plan, and
(II) a rollover contribution is made to an eligible retirement plan described in section 402 (c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,
then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.
(ii) Applicable rules In the case of a distribution described in clause (i)—
(I) section 72 shall be applied separately to such distribution,
(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and
(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.
(I) Waiver of 60-day requirement
The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

§ 408

(e) Tax treatment of accounts and annuities
(1) Exemption from tax
Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

§ 4974(a)

(a) General rule
If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) is less than the minimum required distribution for such taxable year, there is thereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.