

3. On Schedule B-4, Debtor valued the Annuity at \$17,975.00 and claimed the interest of Debtor in the Annuity exempt as life insurance under Iowa Code §627.6(6), as amended by House File 649.

4. The trustee filed an objection to the above described claim of exemption by Debtor on June 27, 1989, questioning whether Debtor's Annuity is in fact a life insurance policy or an Individual Retirement Account (hereinafter "IRA").

5. The basic benefits of the Annuity are as follows:

1. Jackson National Life Insurance Company pays to the annuitant, if living on the maturity date, a series of monthly income annuity installments with 120 months certain of an amount based on the cash surrender value of the Annuity (accumulated value of the Annuity, minus a surrender charge paid to Jackson National Life Insurance Company) at maturity date.

2. Upon receipt of due proof of the death of the annuitant before the maturity date, Jackson National Life Insurance Company pays to the beneficiary, not later than two months after receipt of such proof of death, an amount equal to: (1) the total amount of premiums paid on the Annuity without interest, and reduced by the sum of all partial withdrawal amounts or (2) the cash surrender value of the Annuity, whichever is greater.

6. Debtor was age 62 on the date of issuance of the Annuity.

7. The Annuity policy listed the anticipated maturity date as April 3, 1985 and the anticipated annual premium as \$2,000.00 per year.

8. Debtor listed the following on the Annuity application:
a. Doris Grimes is beneficiary under the Annuity.

b. The Annuity contract is an IRA purchased to fund a qualified plan under §408 of the Internal Revenue Code.

c. Debtor's anticipated retirement age is 70-1/2.

d. The initial payment on the Annuity contract is \$2,000.00.

9. On March 22, 1982, Debtor signed a disclosure statement provided by Jackson National Life Insurance Company. The disclosure statement is an explanatory statement in compliance with §408 of the Internal Revenue Code and provides information concerning qualification of the Annuity as an IRA.

10. Debtor did not acquire an interest in the Annuity on or after January 1, 1988.

11. A financial statement dated October 3, 1988, and signed by Debtor, lists a \$12,000.00 cash balance for an "IRA w/Insurance Co".

Debtor did not list the Annuity in the life insurance portion of said financial statement.

DISCUSSION

In determining whether the Annuity is exempt, the Court recognizes that it is well settled that Iowa's exemption statute must be liberally construed. Matter of Knight, 75 B.R. 838, 839 (Bankr. S.D. Iowa 1987). However, the Court also recognizes it must not "depart substantially from the express language of the exemption statute or extend the legislative grant." Id. (Citations omitted.)

Debtor asserts that the Annuity is exempt under Iowa Code §627.6(6) or Iowa Code §627.6(7)(e). The Court discusses each of these statutes infra.

A. Iowa Code §627.6(6)

Section 9 of House File 649 provides that the provisions of the Act relating to exemptions for interests in life insurance policies, other than interests in the proceeds of a policy payable on the death of the insured, apply to interests acquired on or after January 1, 1988. The Act took effect upon enactment, and was signed by Governor Terry E. Branstad May 15, 1988. Debtor's Annuity was issued on April 3, 1982, and Debtor has not acquired an interest on or after January 1, 1988. Therefore, House File 649, amending Iowa Code §627.6, does not apply to Debtor's Annuity.

The applicable statute is Iowa Code §627.6(6), prior to amendment by House File 649. Iowa Code §627.6(6) in relevant part provides:

A debtor who is a resident of this state may hold exempt from execution the following property:

...

6. Any unmaturred life insurance policy owned by the debtor, other than a credit life insurance contract.

The United States Bankruptcy Court, Northern District of Iowa discussed the definition of life insurance for purposes of Iowa Code §627.6(6) exemption:

There is no specific definition under the Iowa Code as to what constitutes insurance for

purposes of using Iowa Code §627.6(6). In Huff v. St. Josephs Mercy Hospital of Dubuque Corp., 261 N.W.2d 695 Iowa 1978, the court stated:

Whether the contract is one of insurance must be determined from its purpose, effect, content, terminology, and conduct of the parties, and not from its designation therein, since a contract which is fundamentally one of insurance cannot be altered by the use or absence of words in the contract itself. The court must look also to the intention of the parties in making this determination. Huff, 261 N.W.2d at 700 (citing 12 Appleman, Insurance Law and Practice, §7001, p. 2).

In re Buffinton, 100 B.R. 448, 450.

To determine whether Debtor's Annuity is life insurance in the case *sub judice*, the Court finds language in In re Howerton, 21 B.R. 621 (N.D. Tex. 1982) instructive. In Howerton, the bankruptcy court found that the debtor's individual retirement annuity was an annuity rather than life insurance and stated:

Both life insurance and annuity contracts may take various forms but the heart of the distinction between them is this: Life insurance is a promise to pay a sum certain on the death of the insured and an annuity is essentially a form of investment which pays periodically during the life of the annuitant or a term fixed by contract rather than on the occurrence of a future contingency. Howerton, 21 B.R. at 623.

Applying this to Debtor's Annuity, the Court finds that no special death benefits are paid to Debtor's beneficiary by reason of Debtor's death. The only death benefits paid are: (1) the total amount of premiums paid into the Annuity without interest and reduced by the

sum of all partial withdrawal amounts or (2) the cash surrender value, whichever is greater. These benefits merely represent a payment of the unpaid portion of Debtor's investment, and are not traditional death benefits paid beneficiaries under a life insurance policy. See In re Howerton, 21 B.R. at 623, n. 2. Debtor's Annuity therefore is not life insurance.

B. Iowa Code §627.6(8)(e)

The Court further concludes that the Annuity is an IRA under §408 of the Internal Revenue Code.¹ Debtor's description of the Annuity as an IRA under §408 of the Internal Revenue Code on the application for the Annuity, Debtor's description of the Annuity as an "IRA w/Insurance Co" on his financial statement dated October 3, 1988, the annual premium amount of \$2,000.00, the disclosure statement in compliance with §408 of the Internal Revenue Code signed by Debtor on March 3, 1982 and attached to his Annuity application, and other factors clearly support this conclusion.

The Court therefore must determine whether Debtor's Annuity is exempt as an IRA under Iowa Code §627.6(8)(e). Iowa Code 627.6(8)(e) provides in relevant part:

A debtor who is the resident of this state may hold exempt from execution the following property:

...

¹Technically, the Annuity is an individual retirement annuity under §408 of the Internal Revenue Code. However, this distinction between an IRA and an individual retirement annuity is not important for purposes of exemption under Iowa Code §627.6(8)(e).

8. The debtor's rights in:

...

e. A payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

In In re Matthews, 65 B.R. 24 (Bankr. N.D. Iowa 1986), the bankruptcy court held that a debtor's IRA was not exempt under the exemption provision described above. The court stated the rationale for this conclusion as follows:

In contrast to the pension, control over an IRA lies almost exclusively in the recipient. The recipient is virtually free to determine the size and timing of deposits (subject to a \$2,000.00 per year limit), the type of investment vehicle, and the size and timing of withdrawals. Further, although he must pay a penalty equal to 10 percent of the amount withdrawn before reaching age 59-1/2, the recipient is free to withdraw funds from his account and use the funds for any purpose; not necessarily incident to the recipient's illness, disability, death, age or length of service. The key distinction between an IRA and a pension, then, is the recipient's virtually free access to his IRA funds and the lack of restrictions in the use of the funds.
Matthews, 65 B.R. at 25.

The Court finds the above reasoning persuasive and follows the U.S. Bankruptcy Court, Northern District of Iowa in holding that an IRA is not exempt under Iowa Code §627.6(8)(e). See also In re Zimmerman, slip op. at p. 4 (Bankr. S.D. Iowa, April 16, 1984). Debtor's Annuity is therefore not exempt as an IRA under Iowa Code

§627.6(8)(e).

The fact that Debtor is over age 59-1/2 does not alter this conclusion. See Matthews, 65 B.R. at 26, n. 1. The Court finds that an IRA is not a pension, annuity or similar plan or contract on account of illness, disability, death, age or length of service under Iowa Code §627.6(8)(e). The fact that an IRA recipient is over age 59-1/2 does not alter this conclusion.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that Debtor's Annuity is not exempt under Iowa Code §627.6(6) or Iowa Code §627.6(8)(e).

IT IS ACCORDINGLY ORDERED that trustee's objection to exemption is granted.

Dated this 5th day of January, 1990.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE