Title

Conflating tax law and trust law: The strange case of *Ciampa v. Bank of America*.

Summary

Under the Internal Revenue Code, an Individual Retirement Account (IRA) may be a trust. See 26 U.S. Code § 408(a). Or it may be a custodianship. See sub-section (h) to §408. Here is sub-section (h) verbatim:

FOR PURPOSES OF THIS SECTION, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

I have always taken sub-section (h) to mean that a custodial IRA shall be deemed a trust merely for tax purposes. Otherwise, the common law of agency generally applies, with one critical exception: By state statute *postmortem* beneficiary designations are now generally enforceable. Now comes *Ciampa v. Bank of America* (Mass. App. Court-Aug. 13, 2015), which seems to suggest that whether an IRA is an agency or a trust for state law purposes is governed by the Internal Revenue Code, and, thus, all IRAs are trusts. The Court then then proceeds to impose a resulting trust on the assets of what I assume, perhaps mistakenly, to be a custodial IRA. Very strange. Here is a link to the case: http://scholar.google.com/scholar_case?case=2257923728575014031&q=Ciampa+v.+Bank+of+America&hl=en&as_sdt=40000006&as_vis=1.

For an extensive discussion of general resulting trust doctrine, see §4.1.1.1 of *Loring and Rounds: A Trustee's Handbook* [pages 252-270 of the 2015 Edition]. (The Resulting Trust and the Equitable Reversionary Interest: A General Discussion). The custodial IRA is taken up in §9.8.4 of the *Handbook* [page 1491 of the 2015 Edition]. This section of the *Handbook* is reproduced in its entirety below.

Charles E. Rounds, Jr.

Text

§9.8.4 *Custodial IRAs* [This is one of the sections of Charles E. Rounds, Jr. & Charles E. Rounds, III, *Loring and Rounds: A Trustee's Handbook* (2015 Edition)].

In form a custodial IRA administered by a bank or mutual fund is an investment management agency relationship between the custodian and the person establishing the IRA.[120] If the arrangement were in substance a common law agency, it would terminate upon the death of the customer. The result then

[120] *See* I.R.C. §408(h).

would be that all funds subject to the arrangement would pass to the customer's estate, notwithstanding any provisions of a beneficiary form to the contrary.

Most states, however, now have statutes on their books anticipating this problem.[121] The statutes provide that the terms of custodial IRA beneficiary designation forms shall be honored notwithstanding the failure of such forms to comply with the statute of wills.[122] Thus, by virtue of these statutes an IRA custodian begins to look very much like a common law trustee, particularly during the period between when the taxpayer dies and when the balance in the account is distributed.

[121]*See* Bogert, Trusts and Trustees §255 n.11 (second n.11 of section) and accompanying text.
[122]*See* Bogert, Trusts and Trustees §255 n.11.