No. 13-3682

United States Court of Appeals for the Eighth Circuit

TERRI A. RUNNING,

Appellant,

v.

JOSEPH MATTHIAS MILLER,

Appellee.

Appeal From the United States Bankruptcy Appellate Panel
for the Eighth Circuit
Case No. 13-6026.

BRIEF OF NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AS AMICUS CURIAE IN SUPPORT OF APPELLEE, ADVOCATING AFFIRMANCE OF THE BANKRUPTCY COURT

JOANNE MULDER NAGJEE
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel for Amicus Curiae

March 10, 2014

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I. INTRODUCTION

A. Identity and Interest of Amicus Curiae

As set forth in its Motion for Leave to file this brief, the National Association of Consumer Bankruptcy Attorneys (NACBA) is a non-profit organization of more than 3,500 consumer bankruptcy attorneys practicing throughout the United States. Incorporated in 1992, NACBA is the only nationwide association of attorneys organized specifically to protect the rights of consumer bankruptcy debtors. NACBA has filed amicus curiae briefs in various courts seeking to protect the rights of consumer bankruptcy debtors. *See*, *e.g.*, *United Student Aid Funds v. Espinosa*, 559 U.S. 260 (2010); *In re Pyatt*, 486 F.3d 423 (8th Cir. 2007); *In re Scarborough*, 461 F.3d 406 (3d Cir. 2006).

The resolution of the question presented in this case is of substantial importance to NACBA. Many thousands of debtors represented by NACBA and its members depend on the Bankruptcy Code's exemption for tax-favored retirement accounts to achieve a "fresh start" after declaring bankruptcy. NACBA believes the Bankruptcy Court reached the correct result in holding that single premium annuities, funded through a rollover of tax-qualified retirement funds, are exempt from the reach of bankruptcy creditors.

In so ruling, the Bankruptcy Court appropriately rejected the Trustee's overly restrictive, unsupported interpretation of the Internal Revenue Code provisions governing individual retirement annuities. NACBA files this brief to show why the Bankruptcy Court's decision was correct and to address the various unpersuasive arguments the Trustee has advanced to the contrary.

B. Summary of Argument

The Trustee takes the position that the Debtor's "IRA-Securian" Annuity (the "Annuity") is not an individual retirement annuity under Internal Revenue Code section 408(b), and therefore is not exempt from the Debtor's bankruptcy estate. The Trustee argues that because the Annuity is a single premium annuity, purchased with a rollover of tax-qualified funds that exceeded the annual premium limitation, the Annuity does not comply with the technical requirements of the Internal Revenue Code.

The Trustee's argument is grounded in a reading of the applicable rules that does not withstand logical scrutiny. According to the Trustee, because (a) Internal Revenue Code section 408(b)(2)(A) *prohibits* an individual retirement annuity from having fixed premiums

and (b) Internal Revenue Code section 408(b)(2)(B) separately *prohibits* an individual retirement annuity from having annual premiums that exceed a specified dollar limitation, it necessarily follows that (c) an individual retirement annuity is *required* to have flexible, annual premiums that do not exceed the specified dollar limitation. As a simple matter of logic, conclusion "(c)" does not follow from premises "(a)" and "(b)." That is, just because fixed payments and payments in excess of a certain annual limitation are *forbidden*, it does not necessarily follow that non-fixed annual payments below that limitation are *required*. In light of this logical misstep, the Trustee's suggestion that this reading is compelled by the statute's "plain language" strains credulity.

Not only does the Trustee's argument fail as a matter of logic, but it also is directly contradicted by the plain language of the relevant Internal Revenue Code provisions, section 408(b)'s legislative history, and the Internal Revenue Service's and Treasury's own interpretative guidance. Those sources are abundantly clear that Internal Revenue Code sections 408(b)(2)(A) and (B) mean exactly what they say and nothing more -- *i.e.*, that an individual retirement annuity cannot have

fixed premiums or premiums that exceed the specified dollar limit in a given year.[1]

In addition to being demonstrably wrong, the Trustee's position represents bad policy. The Trustee seeks here to circumvent Congress' broad bankruptcy exemption for tax-favored retirement accounts by advancing an overly restrictive interpretation of relevant Internal Revenue Code provisions. If accepted, the Trustee's position would not only jeopardize the "fresh start" of retirement-aged debtors who file chapter 7 cases, but also would place all owners of single premium retirement annuities at risk of significant income tax liabilities and penalties.

Accordingly, the Bankruptcy Court correctly ruled that the Annuity is an Internal Revenue Code section 408(b) individual retirement annuity and as such is exempt from the Debtor's bankruptcy estate.

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[1] *See Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.")

II. ARGUMENT

A. The Bankruptcy Court Properly Concluded that the Annuity is an Individual Retirement Annuity

Internal Revenue Code section 408(b) defines an "individual retirement annuity" as an annuity contract issued by an insurance company that meets the following requirements:

> (1) The contract is not transferable by the owner.
>
> (2) Under the contract—
>
> > (A) the premiums are not fixed,
> >
> > (B) the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b)(1)(A), and
> >
> > (C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.
>
> (3) 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 the owner.
>
> (4) The entire interest of the owner is nonforfeitable.

The Trustee does not dispute that the Annuity satisfies the requirements set forth in subsections (1), (3), and (4). (App. Br. at 12) The Trustee also does not dispute that if the Annuity is an individual retirement annuity, the rollover contribution would not cause the

Annuity to lose its tax-exempt status even though it exceeded the annual contribution limit. I.R.C. § 408(d)(3); (App. Br. at 11). Rather, the Trustee argues that the Annuity is not an individual retirement annuity because it does not satisfy subsections (2)(A) and (B), either because it does not have multiple, annual premiums or because the initial premium (*i.e.*, the rollover contribution) exceeded the dollar limitation set forth in subsection (2)(B).

As discussed below, there is nothing in section 408(b)'s legislative history, Internal Revenue Service and Treasury guidance, or applicable case law to support this illogical reading of subsections 408(b)(2)(A) and (B). To the contrary, those sources could not be clearer that an individual retirement annuity is not required to have flexible, annual premiums, and a rollover of tax-qualified funds is not counted toward the annual premium limitation. Accordingly, the Bankruptcy Court correctly ruled that the Annuity satisfies all of the requirements of Internal Revenue Code section 408(b) and is an individual retirement annuity.

1. Internal Revenue Code Section 408(b)(2) Does Not Mandate Annual Premiums

The Trustee urges the Court to read Internal Revenue Code section 408(b)(2)(A)'s *prohibition* on fixed premiums and Internal Revenue Code section 408(b)(2)(B)'s *separate prohibition* on premiums exceeding certain prescribed limitations in a given taxable year as together creating an *affirmative requirement* that an individual retirement annuity have flexible, annual premiums.[2] (App. Br. at 11) This interpretation not only relies on the baseless inference that when Congress expressly prohibits one thing, it is implicitly requiring another, but it also is demonstrably wrong.

Sections 408(b)(2)(A) and (B) state that an individual retirement annuity *cannot* have either fixed premiums or annual premiums in excess of a specified limit. There is no basis for inferring from this clearly restrictive language that what these provisions actually mean is that an individual retirement annuity *must have* flexible, annual premiums. To the contrary, any such inference runs counter to

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[2] Code sections 408(b)(2)(A) and (B) read as follows: "(2) Under the contract -- (A) the premiums *are not* fixed, [and] (B) the annual premium on behalf of any individual *will not* exceed the dollar amount in effect under section 219(b)(1)(A) …" (emphasis added).

Congress' clearly expressed intent in prohibiting fixed premiums and is contradicted by published Internal Revenue Service and Treasury guidance.

Internal Revenue Code section 408(B)(2)(A)'s legislative history states that the bar on fixed premiums was enacted in order to protect an investor from being forced to "continue to make the premium payments (or face substantial forfeitures under the contract) even though his circumstances changed so that all or a portion of the fixed premium payments became non-deductible." Staff of Joint Comm. on Tax'n, 95th Cong., 1st Sess., General Explanation of the Revenue Act of 1978 (Comm. Print 1979) 108, *available at* https://www.jct.gov/publications.html?func=startdown&id=2399. It is thus clear that Congress did not intend that individual retirement annuities *require* the payment of premiums on an annual basis, as any such requirement would be antithetical to the clearly expressed purpose of protecting investors from being forced to continue making premium payments following a change in circumstances.

The proposed Treasury regulations under Internal Revenue Code section 408(b) are similarly clear that there is no requirement that

individual retirement annuities have annual premiums.[3] Prop. Treas. Reg. § 1.408-3(f)(1)(*i*), (*ii*), 46 Fed. Reg. 36,198 (July 14, 1981). Defining a "flexible premium annuity contract," the proposed regulations state that a contract will be considered a contract under which the premiums are not fixed if it provides, *inter alia*, (i) that "[a]t no time after the initial premium for the contract has been paid is there a specified renewal premium required" and (ii) "for the continuance of the contract (as a paidup annuity) under its nonforfeiture provision if premium payments cease altogether."[4] *Accord* 8B West's Legal Forms,

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[3] According to the Internal Revenue Manual, which is a compilation of the Internal Revenue Service's internal procedures and guidelines, "Proposed regulations provide guidance concerning Treasury's interpretation of a Code section ... Taxpayers may rely on a proposed regulation, although they are not required to do so. [Internal Revenue Service] Examiners, however, should follow proposed regulations, unless the proposed regulation is in conflict with an existing final or temporary regulation." I.R.M. § 4.10.7.2.3.3 (Jan. 1, 2006).

[4] Although the Bankruptcy Court correctly rejected the Trustee's suggestion that the Annuity's initial purchase premium was a fixed amount, we note that the proposed regulations suggest that *even if* the initial purchase premium were fixed, the Annuity still would not fail to qualify as an individual retirement annuity. Specifically, the proposed regulations state that an annuity will be considered to have flexible premiums if "at no time *after* the initial premium for the contract has been paid is there a specified renewal premium required." Prop. Treas. Reg. § 1.408-3(f)(1)(*i*) (emphasis added).

Retirement Plans § 18:4 (15th ed. updated Sept. 2012) (discussing individual retirement annuities and stating, "The premiums must not be fixed. After the initial premium is paid, the IRA owner is not obligated to continue to make premium payments and he or she will then own a paid-up annuity"). The proposed regulations go on to state that an insurer may (i) require that "*if* a premium is remitted, it will be accepted only if the amount remitted is some stated amount, not in excess of $50" and (ii) place a "maximum limit" on the amount of premium an insurer will accept in a given year. Prop. Treas. Reg. §§ 1.408-3(f)(2)(*i*), (*ii*) (emphasis added). Notably absent from the proposed regulations is any explicit or even implicit reference to an annuity sponsor's option (let alone obligation) to require payment of any premiums after the initial premium.

The legislative history accompanying Internal Revenue Code section 408 is also devoid of any indication that an individual retirement annuity is required to have multiple, annual premiums. Congress added section 408 to the Internal Revenue Code in 1974 in order to encourage (but not mandate) individual retirement savings and equalize the tax treatment between those taxpayers covered by

employer-sponsored retirement plans and those saving for their own retirement. H.R. Rep. No. 93-779, *reprinted in* 1974-3 C.B. 244, 245. To that end, Congress established limits on the retirement savings deduction available with respect to section 408 individual retirement accounts and annuities, section 401(a) pension, profit-sharing, and stock bonus plans, section 403(b) annuity contracts, and section 404(a)(2) employee annuities. *Id.* There is absolutely no basis on which to infer that Congress also intended to establish, solely with respect to individual retirement annuities, that taxpayers be *required* to make contributions on an annual basis.

The Trustee places great significance on Internal Revenue Code section 408(b)(2)(B)'s reference to "the annual premium," isolating this language to support the argument that "eligible annuities will have multiple, annual premiums." (App. Br. at 17) Section 408(b)(2)(B) reads, in its entirety: "the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b)(1)(A)." As discussed above, the legislative history indicates that this provision is intended to establish a limit on the annual tax benefit allowed to taxpayers with respect to their individual retirement annuities. *See*

H.R. Rep. No. 93-779, *reprinted in* 1974-3 C.B. at 368 (describing the section 408(b)(2)(B) contribution limitation as establishing a "maximum annual deduction" for contributions to individual retirement annuities). Viewed in this context, it is clear that section 408(b)(2)(B) does not, as the Trustee contends, set forth a requirement for an "annual premium," but rather limits the amount of premium, if any, that may be paid on behalf of an individual *in a given year*. That is, "annual" refers not to the interval at which premiums are required to be paid, but instead refers to the measuring period for the contribution limitation. *See* Traditional Individual Retirement Arrangements (Traditional IRAs) -- List of Required Modifications and Information Package (LRMs) (June 6, 2010), Part B(14) (referring to the "[m]aximum permissible annual contribution" and providing that "*no* contributions will be accepted *unless* … the total of such contributions shall not exceed [the Code section 219(b)(5)(D) limitation] *for any taxable year*" (emphasis added)).[5]

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[5] The Internal Revenue Service's List of Required Modifications and Information Package contains samples of provisions that have been found to satisfy certain applicable Internal Revenue Code requirements and is provided to assist sponsors in drafting individual retirement arrangements. Rev. Proc. 2010-48, 2010-50 I.R.B. 828, § 3.04.

The cases cited by the Trustee in support of the argument that single premium annuities do not qualify under Internal Revenue Code section 408(b) are similarly unavailing. *In re Simpson*, 366 B.R. 64 (B.A.P. 9th Cir. 2007); *In re Ludwig*, 345 B.R. 310 (Bankr. D. Colo. 2006); *In re Michael*, 339 B.R. 798 (Bankr. N.D. Ga. 2005); *In re Bogue*, 240 B.R. 742 (Bankr. E.D. Wis. 1999). As the Bankruptcy Court correctly noted, each of these cases is wholly inapposite. Although several of the cases did rule that the single premium annuity at issue did not satisfy section 408(b) because the purchase premium exceeded the annual contribution limit, none of those cases involved a section 408(d)(3) rollover of tax-qualified funds. In addition, the Trustee neglects to mention that the annuities at issue in those cases lacked necessary restrictions on funding, distributions, and assignability. Despite what the Trustee's selectively edited quotes and case descriptions might suggest, in not one of those cases did the court decide that the annuity at issue was not an individual retirement annuity because it lacked annual premiums. *In re Simpson*, 366 B.R. 64 (annuity disqualified because it was assignable, was purchased with non-qualified funds in excess of the contribution limit, and had a fixed

premium); *In re Ludwig*, 345 B.R. 310 (annuity disqualified because it was funded with an excess contribution of assets from a non-qualified brokerage account); *In re Michael*, 339 B.R. 798 (annuity disqualified due to a lack of restrictions on funding and on distributions and transfers of funds); *In re Bogue*, 240 B.R. 742 (issue before the court was whether a single premium annuity qualified as a retirement account under Internal Revenue Code section 72; the issue of compliance with section 408(b) was not before the court). Equally telling is the Trustee's failure to cite to *any* case law or guidance in which the Internal Revenue Service has itself advanced the position that an individual retirement annuity is required to have multiple, annual premiums.

The Trustee's wholly unsupported argument that section 408(b) requires individual retirement annuities to have flexible, annual premiums fails as a matter of logic and is directly contradicted by section 408(b)'s legislative history and the Internal Revenue Service's and Treasury's interpretive guidance. These sources provide ample support for the Bankruptcy Court's ruling that a single premium annuity can qualify as a section 408(b) individual retirement annuity.

2. The Internal Revenue Code Section 408(b)(2)(B) Annual Premium Limits Do Not Apply to Rollover Contributions

The Trustee correctly notes that notwithstanding the fact that the Annuity's initial purchase premium exceeded the annual premium limit for an individual retirement annuity, because the premium was funded by a rollover of funds from Debtor's individual retirement account, such premium would constitute a tax-exempt rollover contribution under Internal Revenue Code section 408(d)(3) if the Annuity is an individual retirement annuity. (App. Br. at 11) However, the Trustee then proceeds to argue that because Debtor's rollover amount exceeded the section 408(b)(2)(B) annual premium limit, the Annuity cannot be an individual retirement annuity (and, by extension, the rollover cannot be a section 408(d)(3) tax-exempt rollover). (App. Br. at 18) The Trustee's position, which would render the section 408(d)(3) rollover exception virtually meaningless, is simply wrong.

Internal Revenue Code section 4973 imposes an excise tax equal to six percent of the amount of any "excess contribution" to an individual retirement account or annuity. I.R.C. § 408(r)(1) (cross-referencing to I.R.C. § 4973). In the case of an individual retirement

annuity, section 4973 defines an "excess contribution" as the excess of (i) the amount contributed to the annuity for a taxable year (expressly excluding, *inter alia*, a "rollover contribution" described in section 408(d)(3)) over (ii) the amount allowable as a deduction under section 219 (*i.e.*, the section 408(b)(2)(B) annual premium limit).[6] I.R.C. § 4973(b). This provision thus makes clear that rollover contributions are not taken into account for purposes of applying the section 408(b)(2)(B) annual premium limitation.

Guidance provided by the Internal Revenue Service to individual retirement arrangement sponsors further confirms this point. With respect to individual retirement annuities, the Internal Revenue Service states that the following language will be considered to satisfy section 408(b)(2)(B)'s "maximum permissible annual contribution" requirement:

> *Except in the case of a rollover contribution* … no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed $5,000 for any taxable year beginning in 2008 and years thereafter

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[6] The "excess contribution" amount for a given taxable year also includes this same amount as calculated for the preceding taxable year (less the amounts of certain distributions and contributions). I.R.C. § 4973(b)(2).

> [adjusted for cost of living increases under section 219(b)(5)(D)].

Traditional Individual Retirement Arrangements (Traditional IRAs) -- List of Required Modifications and Information Package (LRMs) (June 6, 2010), Part B(14) (emphasis added).[7]

Similarly, guidance provided by the Internal Revenue Service to taxpayers confirms that an individual retirement account or annuity will qualify for tax-exempt status under section 408 notwithstanding the fact that it receives a rollover contribution in excess of the maximum permissible annual contribution. In *Publication 590 (Individual Retirement Arrangements (IRAs))* (2014), *available at* http://www.irs.gov/pub/irs-pdf/p590.pdf, the Internal Revenue Service provides several illustrative examples of permissible tax-exempt rollover contributions to individual retirement arrangements. Two of those examples involve rollover contributions in the amount of $10,000 and $110,000, respectively, both well in excess of the applicable $6,500 annual contribution limitation.

As discussed above, the Internal Revenue Code's plain language and the Internal Revenue Service's own guidance compel the conclusion

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[7] For a description of this publication, see *supra* at n.5.

that because the funds used to purchase the Annuity were rolled over from Debtor's individual retirement account, they do not count toward the section 408(b)(2)(B) annual premium limitation and cannot cause the Annuity to fail to qualify as an individual retirement annuity.

B. The Bankruptcy Court Properly Concluded that the Annuity is Exempt from the Debtor's Bankruptcy Estate

In 2005, Congress enacted an exemption from individual bankruptcy estates for retirement funds to the extent those funds are in a fund or account that is exempt from taxation under certain enumerated sections of the Internal Revenue Code, including section 408. 11 U.S.C. §§ 522(b)(3)(C), 522(d)(12). The Trustee does not dispute that the funds in the Annuity are retirement funds. And, as demonstrated in the preceding sections, the Trustee's arguments that the Annuity fails to satisfy the requirements for an individual retirement annuity are both unfounded and illogical. Because the Annuity consists of retirement funds that are in fact exempt from taxation under Internal Revenue Code section 408(b), the Bankruptcy Court properly determined that the Annuity is exempt from the

Debtor's bankruptcy estate and is beyond the reach of the Trustee and creditors.

C. The Trustee's Position Would Have Far-Reaching, Potentially Devastating Consequences

Single premium annuities, funded by a rollover of tax-qualified funds, are a commonplace means of handling distributions of plan benefits from former employers. Moreover, in light of the financial collapse of 2008, this strategy has become an important component of many workers' financial plans, used to manage against the risk of market decline -- whereas a traditional retirement account is subject to the ups and downs of the capital markets, a rollover into a single premium annuity can provide a fixed, dependable stream of income during a worker's retirement years. A ruling that such funds do not retain their tax-exempt status -- and thus forfeit their bankruptcy protection -- not only would severely jeopardize the ability of debtors to achieve a fresh start following bankruptcy, but also would have potentially devastating tax implications for the countless taxpayers who own rollover annuities.

As the Supreme Court has repeatedly emphasized, "[t]he principal purpose of the Bankruptcy Code is to grant a fresh start to the honest

but unfortunate debtor." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 365 (2007) (internal quotations omitted). Bankruptcy Code section 522(b)(3)(C)'s broad, uniform exemption for all types of tax-favored retirement plans is consistent with this purpose. The Trustee attempts to circumvent this protection by asserting an overly restrictive, unsupported interpretation of Internal Revenue Code section 408(b). Adopting the Trustee's approach would severely jeopardize the ability of aging debtors who lose their retirement savings in bankruptcy to support themselves in their retirement years. With limited job opportunities, stagnant incomes, and often high medical costs, retirement-aged "honest but unfortunate" debtors may find a "fresh start" virtually impossible if their retirement savings are wiped out by a bankruptcy filing.[8]

Accepting the Trustee's logically flawed and demonstrably incorrect interpretation of Internal Revenue Code section 408(b) would

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[8] Bankruptcy filings among people age 55-64 rose 150.8% between 1991 and 2007, while bankruptcy filings among people aged 75 and older rose 566.7% during the same period. Deborah Thorne, Elizabeth Warren, & Teresa A. Sullivan, Generations of Struggle (2008), *available at* http://assets.aarp.org/rgcenter/consume/2008_11_debt.pdf.

also have potentially devastating tax consequences that are in no way connected to bankruptcy cases. Single premium annuities, funded by a rollover of tax-qualified funds, are a crucial component of many workers' retirement planning and risk-management strategies. A holding that these accounts do not qualify for tax-favored status under Internal Revenue Code section 408(b) would place countless taxpayers at risk of significant income tax liability and penalties. If a rollover from a tax-favored retirement plan fails to qualify for tax-free treatment under Internal Revenue Code section 408(d)(3) (because the funds are not invested in a section 408 individual retirement account or annuity), the rolled over amount is subject to immediate income tax *plus* an additional 10% early withdrawal penalty if the taxpayer is under the age of 59½. I.R.C. §§ 408(d)(1), 72(t)(1). The following illustrative example demonstrates the devastating tax consequences that would result from the Trustee's illogical interpretation of section 408(b).

Taxpayer T is a 55-year-old grocer who has $100,000 set aside for retirement in an individual retirement account. In view of his upcoming retirement and as part of his risk management strategy, T rolls over his individual retirement account into a retirement annuity

with a single $100,000 premium. T's marginal income tax rate is 28%. T has not filed and does not anticipate filing for bankruptcy. If, as the Trustee advocates, T's annuity does not qualify as an individual retirement annuity because it does not have multiple, annual premiums, T will suffer an immediate loss of $38,000 of his retirement savings, consisting of (1) income tax liability of $28,000 ($100,000 x 28%) and (2) a $10,000 early withdrawal penalty ($100,000 x 10%).

The tax consequences presented above (*i.e.*, the elimination, through the imposition of tax liabilities and penalties, of a substantial portion of rolled-over retirement savings) clearly would present a significant and unanticipated financial hardship for owners of rolled-over individual retirement arrangements. It is difficult to imagine that Congress intended such a draconian outcome under section 408, yet this is precisely the result for which the Trustee advocates.

III. CONCLUSION

The legal arguments presented by the Trustee fail to withstand logical scrutiny and are demonstrably wrong. Moreover, the legal position advanced by the Trustee in this case would have far-reaching, potentially devastating financial consequences for countless taxpayers

that are in no way connected to the filing of chapter 7 bankruptcy cases. For these reasons, and the reasons stated above, amicus curiae asks this court to affirm the judgment of the Bankruptcy Court below.

Respectfully submitted,

Dated: March 10, 2014

/s/ JoAnne Mulder Nagjee

JoAnne Mulder Nagjee
(IL Bar No. 6298588)
joanne.nagjee@kirkland.com
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Counsel for Amicus Curiae

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Running v. Miller, No. 13-6026.

Pursuant to FRAP 26.1 and Eighth Circuit Local Rule 26.1A, *Amicus Curiae,* the National Association of Consumer Bankruptcy Attorneys, makes the following disclosure:

1) Is party/amicus a publicly held corporation or other publicly held entity? **NO**

2) Does party/amicus have any parent corporations? **NO**

3) Is 10% or more of the stock of party/amicus owned by a publicly held corporation or other publicly held entity? **NO**

4) Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? **NO**

5) Is the party a trade association? **NOT APPLICABLE**

6) Does this case arise out of a bankruptcy proceeding? **YES**

If yes, identify any trustee and the members of any creditors' committee.

CHAPTER 7 TRUSTEE, Terri A. Running

THERE IS NO CREDITORS' COMMITTEE

Dated: March 10, 2014

/s/ JoAnne Mulder Nagjee

JoAnne Mulder Nagjee
(IL Bar No. 6298588)

KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel for Amicus Curiae

CERTIFICATION OF AUTHORSHIP

The undersigned counsel of record certifies that no counsel for a party authored this brief in whole or in part, and no person or entity other than NACBA, its members, and its counsel made any monetary contribution toward the preparation or submission of this brief.

Dated: March 10, 2014

/s/ JoAnne Mulder Nagjee

JoAnne Mulder Nagjee
(IL Bar No. 6298588)

KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

The undersigned certifies that the foregoing brief has been prepared in a proportionately spaced 14-point typeface, using Microsoft Word, and contains 4,171 words (excluding the portions of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(*iii*)).

Dated: March 10, 2014

/s/ JoAnne Mulder Nagjee

JoAnne Mulder Nagjee
(IL Bar No. 6298588)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Counsel for Amicus Curiae

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Dated: March 10, 2014

/s/ JoAnne Mulder Nagjee

JoAnne Mulder Nagjee
(IL Bar No. 6298588)

KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I, JoAnne Mulder Nagjee, counsel for amicus curiae, National Association of Consumer Bankruptcy Attorneys, hereby certify that on this date I served all of the parties in this matter with the foregoing Motion for Leave to File Amicus Curiae Brief and Brief of Amicus Curiae In Support of Appellee via ECF electronic mail.

Dated: March 10, 2014

/s/ JoAnne Mulder Nagjee

JoAnne Mulder Nagjee
(IL Bar No. 6298588)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Counsel for Amicus Curiae