

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document was signed electronically on March 04, 2008, which may be different from its entry on the record.

IT IS SO ORDERED.

Dated: March 04, 2008



A handwritten signature in blue ink, appearing to read "Arthur I. Harris".

Arthur I. Harris
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 06-14882
)
GARY CUNNINGHAM,) Chapter 7
Debtor.)
) Judge Arthur I. Harris

ORDER¹

Before the Court is the trustee's objection to the debtor's \$41,000 claim of exemption in a SIMPLE IRA. The debtor has claimed an exemption pursuant to Ohio Rev. Code § 2329.66(A)(10)(b), and the trustee has objected pursuant to Ohio Rev. Code § 2329.66(A)(10)(c). The parties agreed to submit this issue upon stipulations. Upon further review, both parties appear to have overlooked a related exemption created under Section 224 of the Bankruptcy Abuse Prevention Consumer Protection Act of 2005. *See* 11 U.S.C. § 522(b)(3)(C). This new

¹ This order is not intended for official publication.

exemption, if claimed, would make it unnecessary to address the availability of the arguably narrow state law exemption briefed by the parties. Unlike Ohio Rev. Code § 2329.66(A)(10)(c), 11 U.S.C. § 522(b)(3)(C) appears to exempt without further limitation the debtor's interest in his SIMPLE IRA, provided such fund or account is exempt from taxation under Section 408 of the Internal Revenue Code. See *In re Braulick*, 360 B.R. 327, 333 (Bankr. D. Mont. 2006); *In re Orr*, 2008 WL 244168, at *3 (Bankr. C.D. Ill. Jan. 28, 2008) (“It is clear that the exemption for such retirement funds is available independent of and in addition to the state law exemptions”); *In re Gill*, 2007 WL 2990564 (Bankr. D.D.C. Oct. 11, 2007) (paragraph 522(b)(3)(C) is available to debtor even if account could not be exempted under D.C. law). The availability of the new exemption in paragraph 522(b)(3)(C) would also makes it unnecessary for the Court to determine another unsettled matter, namely whether some or all of the debtor's SIMPLE IRA is excluded from property of the debtor's estate under new 11 U.S.C. § 541(b)(7).

In light of the new paragraph 522(b)(3)(C), which would preempt any state exemption that was more stringent or in conflict with the federal exemption, the Court will hold in abeyance its ruling on the availability of the exemption under Ohio Rev. Code § 2329.66(A)(10)(b) or (c) until **March 31, 2008**, so that the

debtor may amend Schedule C pursuant to Bankruptcy Rule 1009. Under Bankruptcy Rule 4003(b), the trustee would have thirty days after the filing of the amendment to object if the trustee believes that a claim of exemption under paragraph 522(b)(3)(C) is in any way improper.

IT IS SO ORDERED.