IN RE: BRAMLETTE
04-81321-PWB

"Excluded from property of the estate" – property that is not property of the estate – normally, federal law determines what is excluded [For example: 11 U.S.C. Section 541(c)(2) exempts from property of the estate a debtor's beneficial interest in a trust if there is a restriction on its transfer that is enforceable under applicable nonbankruptcy law. See *Rousey v. Jacoway*, 125 S. Ct. 1561 (2006)]

vs.

"Exempt Property" – property that is property of the estate but which the debtor can claim exempt – since Georgia opted-out, Georgia law usually applies (

Traditional IRA's are excluded from property of the estate – restricted based on age (early withdrawal penalty is based on age) – and are exempt

Roth IRA is not excluded but is exempt under Georgia law to the extent reasonably necessary for the support of the debtor or a dependent of the debtor.

Annuity is not excluded but might be exempt if it is a contract to provide benefits in lieu of earnings after retirement, whether funded by the employer or purchased by the employer or the self-employed

Factors to consider on an annuity, pension, or other similar plan or contract:

a) are payments designed to be a wage substitute?
b) Were the contributions made over time? The longer the period, the more likely it falls into ambit of long-term retirement strategy
c) Were there multiple contributions? An isolated investment outside of a workplace contribution is less likely to qualify as exempt.
d) What is the return on the investment? If returns only initial investment with earned interest or income, likely to be exempt. Investments which compute payments based upon estimated life span but terminates on death, or are based on actual life span, are more like retirement investment plans where the debtor may receive a windfall if debtor outlives life expectancy.
e) What control does debtor have over the asset? If can withdraw from the corpus, less likely that is it exempt and more probably nonexempt investment..
f) Was the investment a pre-bankruptcy planning measure? Look at the timing of purchase in relation to filing of case. Is it plainly an effort to convert nonexempt to exempt assets? This is disfavored in some jurisdictions but good legal practice in others.