

MEMO# 2838

June 12, 1991

CALIFORNIA APPLIES COMMUNITY PROPERTY LAWS TO IRA ASSETS

June 12, 1991 TO: PENSION COMMITTEE NO. 14-91 RE: CALIFORNIA APPLIES COMMUNITY
PROPERTY LAWS TO IRA ASSETS

Section 408(g) of the Internal Revenue Code provides that individual retirement arrangement provisions shall be applied without regard to any community property laws. Nevertheless, the California Supreme Court recently determined that the community property laws of that state applied to IRA assets. The case involved a claim by a deceased spouse's estate for its community property share of the surviving spouse's IRA assets. Prior to her death, the deceased spouse had signed a "spousal consent" statement under the IRA application agreeing to the designation of a beneficiary other than herself. The Court did not explain the purpose of the spousal consent provision. However, it determined that IRA assets can only be "transmuted" from community property to separate property by an express written declaration which was not satisfied by the beneficiary designation consent statement. The Court rejected the notion that the consent of the deceased spouse constituted a "waiver" which could transmute the community property to separate property. The Court suggested that an additional sentence, such as "I give to the account holder any interest I have in the funds deposited in this account" could have satisfied the state's requirement for express community property transmutation. The Court's decision does not address the responsibility, if any, of the IRA trustee with regard to community property matters. Also absent from the decision is any reference to section 408(g) of the Internal Revenue Code. A copy of *Estate of MacDonald v. MacDonald*, 794 P.2d 911 (Cal. 1990) is attached. We will keep you informed of related developments. W. Richard Mason Assistant Counsel - Pension Attachment

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