

ORS 23.160 (1) (k)

DEC 21 1983

In re White 683-07110
11/28/83 CEL

Husband and wife filed joint chapter 7 petitions and joint tax returns. Only the husband had earnings subject to tax withholding, yet both claimed a \$400. exemption.

Of the \$899. tax refund, only the \$400. claimed by the husband is exempt under ORS 23.160 (1) (k). The wife is not entitled to an exemption under that section.

11/28/83

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)	
)	
THOMAS RANDALL WHITE and)	Case No. 683-07110
CAROLYN JUNE WHITE, FKA)	
Carolyn June Daniels,)	MEMORANDUM OPINION
)	AND ORDER
<u>Debtors.</u>)	

The debtors filed their joint petitions in bankruptcy on February 9, 1983, and are entitled to claim Oregon statutory exemptions because Oregon has opted out of the federal exemption scheme.

The debtors had also filed joint tax returns but only the husband had earnings subject to tax withholdings which reduced the refund. The debtors seek to apply \$400.00 of the tax refund to the wife's claim of exemptions to which the trustee has objected.

Although joint cases may be filed by a husband and wife under Section 302 of the Bankruptcy Code, Section 302(b) provides after commencement of a joint case the Court shall determine the extent of any to which the debtors' case should be consolidated. The mere filing of a joint petition does not create new exemption rights for the parties. The exemptability of tax refunds payable

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1 based upon joint tax returns of husband and wife has been
2 frequently considered under the provisions of the Bankruptcy
3 Code, and the Court must conclude that the objections of the
4 trustee are well taken. See In re Taylor, 22 B.R. 888 (N.D. Ohio
5 W.D. 1982); In re Ballou, 12 B.R. 611 (D. Kansas 1981); and
6 Matter of Crum, 6 B.R. 138 (M.D. Florida, Tampa Div. 1980).

7 It is acknowledged that in this case Mrs. White had no wages
8 from which withholdings were made.

9 Therefore, of the represented \$899.00 tax refunds, only the
10 \$400.00 exempt and claimed by Mr. White is allowable under
11 Section 23.160(1)(k) of the Oregon Revised Statutes and Mrs.
12 White is entitled to no exemption under that provision relating
13 to tax refunds. Therefore, the trustee is entitled insofar as
14 the tax refund is concerned to allowance of his motion for an
15 order requiring the debtors to turn over to the estate the sum of
16 \$584.00, consisting of \$85.00 non-exempt wages and \$499.00 tax
17 refund as non-exempt.

18 The trustee has raised an additional issue, that \$22.00 has
19 already been claimed exempt by Mr. White for cash on hand and, if
20 so, the \$400.00 reduction could be correspondingly reduced. The
21 schedules, however, do not reflect such claim of exemption.

22 It is so Ordered.

23 DATED at Eugene, Oregon this 28 day of November, 1983.

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26 C. E. LUCKEY
27 Bankruptcy Judge
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