

ORS. 23.160(1)(k) ✓  
Exemptions: Tax Refunds

In re Dayton, 685-07165  
PSW 12/9/1985

Court agreed with In re Smith, 5 Bankr. 227,228 (S.D.Ohio 1980) and In re Taylor, 22 Bankr. 888 (Bankr. N.D. Ohio 1982) that the mere signing of a tax return is not enough to give a non-wage earning spouse a property interest in the tax refund. But the trustee by failing to appear did not meet his burden of proof, so the court allowed the non-wage earning spouse to claim a portion of the refund.

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U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
FILED

DEC - 9 1985

TERENCE H. DUNN, CLERK  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

IN RE )  
 )  
JEFF S. DAYTON and ) Case No. 685-07165  
DELLA R. DAYTON, fka )  
Della R. Richter, )  
 ) MEMORANDUM OPINION  
Debtors. )

This matter came on for hearing on November 21, 1985 on the debtors' request for hearing on the trustee's objection to the wife's claimed exemption in tax refunds.

The facts are as follows:

1. The debtors filed their joint chapter 7 proceeding on February 8, 1985.
2. On their schedule B-4 each spouse claimed tax refunds of \$400 exempt pursuant to ORS 23.160(1)(k).
3. The debtors received the refunds in early 1985 for the tax year 1984. Such refunds were income tax refunds.
4. The debtors had filed joint federal and state income tax returns for 1984.
5. The husband was the sole wage earner in 1984 with the wife unemployed outside the home.

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1           6. The tax refund checks were made jointly payable to the  
2 debtors.

3           The trustee maintains that In re White, No. 683-07110  
4 (Bankr. D. Or. Nov. 28, 1983) (unpublished opinion) requires the  
5 court to find as a matter of law that the non-wage earning  
6 spouse cannot claim an exemption in the refunds. However, the  
7 trustee failed to appear at the hearing.

8           As the issue was not raised, this court will treat the tax  
9 refunds as property of the estate pursuant to 11 USC 541(a)(1).

10          At the hearing each spouse testified that from the time they  
11 were first married the husband and wife had an oral agreement  
12 that, although he was the sole wage earner, she would have a  
13 right to one-half of any income tax refunds. Further, they had  
14 always filed a joint returns; when the 1984 tax refund check  
15 arrived they both went to the bank and endorsed it; each received  
16 one-half of the refunds; the wife spent her one-half on Christmas  
17 presents and things for the house.

18          As indicated in In re Taylor, 22 Bankr. 888 (Bankr. N.D.  
19 Ohio 1982) the issue is what property interest, if any, the  
20 non-wage earning spouse can claim in the refunds. Id. at 889.  
21 State law governs the question of spouses' rights in property. I  
22 agree with that court that:

23           the mere signing of a joint husband and wife tax return  
24 by the spouse with no income for the purpose of taking  
25 advantage of perceived tax advantages [does not thereby  
26 effect a] metamorphosis . . . converting the nature of  
the funds into the property of the other party. In re  
Smith, 5 Bankr. 227, 228 (Bankr. S.D. Ohio 1980) quoted  
in Taylor, supra, 22 Bankr. at 890.

27          In In re White the court did not have before it a couple  
28 alleging an agreement to share any tax refunds fifty-fifty. Nor

1 did the court in In re Taylor. I believe those opinions were  
2 correctly decided on their facts.

3 Bankruptcy Rule 4003(c) provides that "the objecting party  
4 has the burden of proving that the exemptions are not properly  
5 claimed." This court did not believe the debtors' oral  
6 testimony regarding the alleged agreement on tax refunds. The  
7 debtors had no proof to support their allegations besides their  
8 oral testimony. However, the trustee failed to meet his burden  
9 of proof by not appearing at the hearing. Therefore, the  
10 trustee's objection shall be denied.

11 This Memorandum Opinion contains the court's findings of  
12 fact and conclusions of law and pursuant to Bankruptcy Rule 9014,  
13 which incorporates Rule 7052, they will not be separately stated.

14 An order consistent herewith will be entered.

15 DATED at Eugene, Oregon this 9<sup>th</sup> day of December, 1985.

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18 POLLY S. WILHARDT  
19 Bankruptcy Judge  
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IN RE )  
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JEFF S. DAYTON and ) Case No. 685-07165  
DELLA R. DAYTON, fka )  
Della R. Richter, )  
  ) ORDER  
   Debtors. )

This matter having come on for hearing before the court,  
IT IS HEREBY ORDERED that the trustee's objection is  
denied.

DATED at Eugene, Oregon this 9<sup>th</sup> day of December, 1985.

  
POLLY S. WILHARDT  
Bankruptcy Judge