

✓ORS 23.160(1)(k)
Tax refunds-exemption
claimed by Husband
& Wife

In re FOote, 686-07116-W7
9/4/1986 PSW

Court sustained the trustee's objection to exemption in tax refund claimed by wife. Both husband and wife were in ch.7, and had filed joint federal and state tax returns for 1985. The Husband earned 100% of the family income in 1985. The wife was unemployed outside the home. The court acknowledged In re White, No. 683-07110 (Bankr. D.Or. NOV. 28, 1983) (Luckey, J. unpublished opinion) but added that in the instant case, unlike White, the debtors testified that they had agreed several years previously to file joint returns and share the refunds.

The issue was whether the wife had a property interest in the refund and was therefore entitled to an exemption of the refund. Holding was absent some rights of the non-wage earning spouse arising under state law, refunds represent excess income applied to a tax obligation and are property of the party generating the income. Court did not believe debtors oral testimony as to their "agreement" to share funds.

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U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

SEP - 4 1986

TERENCE H. DUNN, CLERK.
BY alg DEPUTY.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)
)
ROBERT JOSEPH FOOTE and) Case No. 686-07116-W7
TERESA ANN FOOTE,)
) MEMORANDUM OPINION
)
Debtors.)

This matter came on for an evidentiary hearing on May 21, 1986. The debtors had requested a hearing on the trustee's objection to a claimed exemption. The facts are largely undisputed. The debtors, husband and wife, filed a joint bankruptcy petition in chapter 7 on January 23, 1986. On their B-4 exemption schedules each spouse claimed a tax refund of \$400 pursuant to the terms of ORS 23.160(1)(k). The couple had filed a joint federal and state income tax return for the calendar year 1985 but had received no refunds, as anticipated, by January 23, 1986. The husband earned 100% of the family income during 1985 with the wife unemployed outside the home. The tax refund checks eventually arrived. They were made out to husband and wife jointly. Both payees endorsed the check. Mr. Foote took the checks to the bank and cashed them. He gave Ms. Foote one-half of the proceeds.

1 The trustee objected to Ms. Foote's claimed exemption. At
2 the hearing he maintained that the Oregon bankruptcy court
3 through In re White, No. 683-07110 (Bank. D.Or. Nov. 28, 1983)
4 (Luckey, J., unpublished opinion), had already determined the
5 matter before the court in favor of the trustee on identical
6 facts.

7 This court is unaware of all the facts in the White case as
8 they are sketchily discussed in the White opinion. There is one
9 fact which arose in this matter which might not have arisen in
10 White. At the hearing both Mr. and Mrs. Foote testified that
11 they had agreed several years previously they would file joint
12 tax returns and that any tax refunds paid to them they would
13 share equally.

14 It is now well settled, that under the Bankruptcy Code tax
15 refunds due as of the date the bankruptcy petition is filed are
16 property of the estate under § 541(a)(1). Kokoszka v. Belford,
17 417 U.S. 642, 648 (1972); In re Taylor, 22 Bankr. 888, 889
18 (Bankr. N.D. Ohio, 1982); In re Crum, 6 Bankr. 138, 139 (Bankr.
19 M.D. Fla. 1980). Under the Bankruptcy Code, unlike the Act, all
20 property of the debtor is part of the estate including property
21 upon which the debtor may then claim an exemption. Collier on
22 Bankruptcy, ¶ 541.06 (15th ed. 1986). In re Smith, 5 Bankr. 227,
23 229 (Bankr. W.D. Ohio, 1980). Axiomatically, if property is not
24 the debtor's he may not claim an exemption in it. Thus the
25 question before the court is whether, under these facts, Ms.
26 Foote has a property interest in, and therefore is entitled to an
27 exemption in, the proceeds of the tax refunds.

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1 All courts which have addressed the issue of ownership of
2 tax refund proceeds have unanimously determined that by the mere
3 act of signing and filing a joint income tax return couples do
4 not change the ownership of any property.

5 [T]he mere signing of a joint husband and wife tax
6 return by the spouse with no income . . . for the
7 purpose of taking advantage of perceived tax
8 advantages, [does not thereby effect a] metamorphosis .
9 . . converting the nature of the funds into the
10 property of the other party. Smith, supra, 5 Bankr. at
11 228.

12 Taylor, supra, 22 Bankr. at 890; Ballou v. Lentz (In re Ballou),
13 12 Bankr. 611, 612 (Bankr. D.Kan. 1981); Crum, supra, 6 Bankr. at
14 141; In re Illingsworth, 51 Am. Fed. Tax R. 1512 (D.Or. 1956).
15 State law governs the question of the couple's property rights in
16 these refunds. Absent some rights of the non-wage earning spouse
17 arising under state law if the proceeds are refunds of excess
18 income applied to a tax obligation the proceeds are the property
19 of the party generating the income. Taylor, supra, 22 Bankr. at
20 890, 891; Ballou, supra, 12 Bankr. at 612; Crum, supra, 6 Bankr.
21 at 141, 142.

22 This court must determine whether Ms. Foote has a property
23 right in the refunds under Oregon law. "A conveyance, transfer
24 or lien executed by either husband or wife to or in favor of the
25 other is valid to the same extent as between other persons." ORS
26 108.090(1). The court notes Bankruptcy Rule 4003(c) requires the
27 trustee to carry the burden of proving the exemption is not
28 properly claimed. The court believes the trustee, in presenting
the facts now before it to the court and citing the relevant law,
has met his burden of going forward with the evidence. The
burden of going forward to rebut the legal inference under the

1 facts then shifted to the debtors. The debtors' only evidence of
2 a pre-bankruptcy agreement to share all future tax refunds
3 equally was their oral testimony. The court simply did not
4 believe the debtors' testimony. They are young, both lacking any
5 in-depth knowledge of the legal effects of property ownership and
6 joint income tax returns. They did not prepare their own
7 returns, they simply signed them. The debtors were vague as to
8 dates. Their use of the proceeds did not indicate they looked
9 upon these funds in any special way. If the debtors had any
10 understanding about these funds I believe it consisted of nothing
11 more than a general agreement to share them as they share most
12 property in the marriage, for the better good of the family unit
13 and benefit to all. Such an understanding is not a sufficient
14 basis for a finding by the court that title to the proceeds was
15 thereby affected. Ms. Foote had no interest in the anticipated
16 tax refunds at the time the Footes filed their joint petition.

17 The trustee's objection to her exemption should be
18 sustained.

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

22 An order consistent herewith will be entered.
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25 POLLY S. WILHARDT
26 Bankruptcy Judge
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)
))
ROBERT JOSEPH FOOTE and) Case No. 686-07116-W7
TERESA ANN FOOTE,))
))
) ORDER
 Debtors.)

This matter, having come on for hearing before the court,
and based thereon,

IT IS HEREBY ORDERED that the trustee's objection to the
exemption is sustained; and

IT IS FURTHER ORDERED the trustee provide the court,
within 15 days, sufficient information regarding dollar amounts
for the court to enter an order directing payment of funds by the
debtors to the trustee.


POLLY S. WILHARDT
Bankruptcy Judge