

LOU JONES BREAKFAST CLUB
OUTLINE FOR JULY 9, 2013

TIMING FOR EXEMPTIONS; WHICH SCHEME TO USE

RELEVANT STATUTES:

11 U.S.C. §522(b)(1) – allows debtor(s) to take exemptions under (b)(2) or (b)(3); if there is a dispute between the joint debtors as to which exemptions shall be taken, directs that exemption will be taken under (b)(2), unless state law opts out of the federal exemptions; prohibits mixing of exemptions from both (b)(2) and (b)(3)

11 U.S.C. §522(b)(2) – states that debtors may take federal exemptions as defined in §522(d); allows for States to opt out of federal exemption scheme

11 U.S.C. §522(b)(3)(A), (B), & (C) – allows for choice of State exemption scheme, plus applicable non-bankruptcy federal exemptions; sets acknowledges joint tenancy and tenancy in the entirety which is exempt under non-bankruptcy law; exempts retirement accounts even if they may not normally be exempt under state law exemption scheme; sets out time periods for which exemption scheme the debtor(s) is allowed to choose

Wisconsin allows for the choice of either Federal or State exemption scheme. If a debtor has lived in Wisconsin for the two years prior to the filing of the case, you have a choice of either the federal exemptions under 11 U.S.C §522(d) or Wisconsin exemptions which are found primarily under Chapter 815 of the Wisconsin State Code.

In order to know what exemption scheme a debtor is eligible to choose, you must look to the time prior to filing:

- A debtor must use the exemption scheme from the state where he/she was domiciled for the 730 days immediately prior to the filing of the bankruptcy case. If the debtor wasn't domiciled in one state for the 730 days preceding the filing, then he/she must use the exemption scheme for the state in which he/she lived for the 180 days immediately preceding that 730 day period. If the debtor wasn't domiciled in one state continuously for that 180 day period, then he/she must use the exemption scheme of the state of domicile for the majority of those 180 days. 11 U.S.C. §522(b)(3)(A).
- The hanging paragraph after §522(b)(3)(C) states that if the effect of choosing the state exemption scheme under §522(b)(3)(A) would mean that the debtor is not eligible for any exemptions, then he/she may use the federal exemptions, regardless of whether that state has opted out.

IN RE GEORGE, 10-34145-SVK, 440 B.R. 164

- Debtor filed for bankruptcy in Wisconsin, but had not lived here for the 730 days prior to filing. Debtor had lived in Illinois for the 180 days, and Illinois has opted out of the federal exemption scheme.
- Debtor chose to use federal exemptions, Trustee objected to the exemptions on the grounds that the Debtor should have used Illinois state exemptions. If the Debtor used Illinois state exemptions, then one of her vehicles would not have been exempt.
- Must look at the wording of the state exemption scheme in question. Illinois' exemption scheme only applied to residents of Illinois.
- As the Debtor was not a resident of Illinois at the time of filing, she was not eligible to use Illinois' state exemptions. Looking to the hanging paragraph after §522(b)(3)(C), this would have meant that the Debtor would not have been eligible for any exemptions. Therefore, she was able to use the federal exemptions in her case.
- IMPORTANT – Bankruptcy Code does not state that a debtor must use a certain State's exemptions, but rather their exemption laws.

TIMING AND EXEMPTIONS CONCEPTS

- IN WISCONSIN, YOU MAY CHOOSE TO EITHER USE STATE OR FEDERAL EXEMPTIONS; YOU SHOULD EXAMINE WHAT SORTS OF ASSETS THE DEBTOR HAS, AND WHICH EXEMPTIONS WILL DO MORE TO PROTECT THOSE ASSETS
- IF THE DEBTOR LIVED IN THE STATE WHERE THE BANKRUPTCY IS FILED FOR 730 DAYS PRIOR TO FILING, USE THAT STATES EXEMPTION SCHEME
- IF THE DEBTOR DID NOT LIVE IN THE STATE OF FILING FOR THE 730 DAYS IMMEDIATELY PRIOR TO FILING, USE THE EXEMPTION SCHEME FROM THE STATE WHERE THE DEBTOR RESIDED FOR AT LEAST THE MAJORITY OF THE 180 DAYS PRIOR TO THOSE 730 DAYS PRIOR TO FILING
- IT IS A STATE'S EXEMPTION LAWS THAT MATTER, NOT THE EXEMPTIONS THEMSELVES; IF THE EFFECT OF HAVING TO USE A STATES EXEMPTION LAWS WOULD RENDER THE DEBTOR INELIGIBLE FOR EXEMPTIONS, HE/SHE MAY USE THE FEDERAL EXEMPTIONS