

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of :  
MAX L. FAULKNER and : Case No. 89-0721-C H  
MARJORIE W. FAULKNER,  
Debtor. : Chapter 7  
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**ORDER--TRUSTEE'S OBJECTION TO EXEMPTION**

On September 6, 1989, a hearing was held on the Trustee's Objection to Exemption. The following attorneys appeared on behalf of their respective clients: Paul M. Goldsmith for Debtors and David A. Erickson as Trustee. At the conclusion of said hearing, the Court took the matter under advisement upon a briefing deadline. Briefs were timely filed and the Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B). The Court, upon review of the pleadings, arguments of counsel, and briefs submitted, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

**FINDINGS OF FACT**

1. On April 4, 1989, Debtors filed a voluntary Chapter 7 petition.
2. On Schedule B-4 Debtors claimed as exempt \$2,000.00 of "wages and tax refund to extent available."
3. On May 25, 1989, Trustee filed an objection to the claimed tax refund exemption. Trustee asserted that there was no withholding for Max L. Faulkner during 1988 and therefore Debtors are only entitled to exempt \$1,000.00 of their 1988 income tax refund under the provisions of the Iowa Code.

4. Max Faulkner did not earn wages during 1988, and there was no state or federal income tax withholding for Max Faulkner during 1988.

5. Debtors' 1988 federal income tax return shows a Schedule C Business Income Loss for Max L. Faulkner's sole proprietorship, Osceola Plumbing and Construction, of \$2,567.00. This Schedule C loss amount was offset by \$529.00 of Schedule C income from Marjorie Faulkner's real estate sole proprietorship. Debtors' 1988 federal income tax return thus lists a Schedule C loss of \$2,038.00.

6. Debtors' 1988 federal income tax return lists a net operating loss carry-over of \$72,267.00, which Debtor asserts was produced from 1984, 1985, 1986, and 1987 Osceola Plumbing and Construction losses.

7. Debtors' 1988 federal income tax refund was \$1,457.00 and Debtors' 1988 state income tax refund was \$845.00, for a total income tax refund of \$2,302.00.

8. \$1,526.00 was withheld from Marjorie Faulkner's wages for payment of 1988 federal income taxes and \$845.00 was withheld from Marjorie Faulkner's wages for payment of 1988 state income taxes.

#### DISCUSSION

Iowa Code §627.6(9)(c) states in part:

In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed \$1,000.00 in the aggregate (may be claimed exempt).

Trustee contends that Max Faulkner is not entitled to claim a tax refund exemption because he did not contribute to tax withholdings. Whether Max Faulkner, as a non-wage earner, is entitled to a tax refund exemption turns on state law. Matter of Honomichl, 82 B.R. 92, 94 (Bankr. S.D. Ia. 1987); In re Taylor, 22 B.R. 888, 890 (Bankr. N.D. Ohio 1982). The Court must determine what interests, if any, Max Faulkner has in the wages of Marjorie Faulkner under Iowa law. See Honomichl, 82 B.R. at 94.

A husband has no inchoate right to his wife's personal property. Honomichl, 82 B.R. at 94; Gunsaulis v. Tingler, 218 N.W.2d 575, 578 (Iowa 1974). According to Iowa Code §597.1(6), "a married person may receive the wages for the person's personal labor...as if unmarried." Honomichl, 82 B.R. at 94. It is well-settled that a joint filing does not change the ownership of property rights between taxpayers. Honomichl, 82 B.R. at 94; In re Wetteroff, 453 F.2d 544 (8th Cir. 1972), cert. den. 409 U.S. 934, 93 S.Ct. 242, 34 L.Ed.2d 188, rehearing den. 409 U.S. 1050, 93 S.Ct. 532, 34, L.Ed.2d 503 (1972); In re Taylor, 22 B.R. 888, 890 (Bankr. N.D. Ohio 1982); Butz v. Wheeler, 17 B.R. 85, 88 (Bankr. S.D. Ohio 1981); In re Colbert, 5 B.R. 646, 649 (Bankr. S.D. Ohio 1980).

In the case *sub judice*, the tax withholdings were derived solely from Marjorie Faulkner's wages. Max Faulkner has no interest in Marjorie Faulkner's wages. Because Max Faulkner did not contribute to tax withholdings, the income tax refund proceeds in question only qualify for exemption to the extent of \$1,000.00.

Debtors assert that the 1988 Schedule C loss from Osceola Plumbing and Construction, and net operating loss produced by Osceola Plumbing and Construction, contributed to the amount of 1988 income tax refund due the Debtors. Debtors therefore argue that Max Faulkner should be entitled to a \$1,000.00 exemption for 1988 tax refunds. The Court finds that even if losses incurred by Osceola Plumbing and Construction contributed to the amount of refund due the Debtors, the tax withholdings were derived solely from Marjorie Faulkner's wages. Because Max Faulkner has no interest in Marjorie Faulkner's wages under Iowa law, Max Faulkner is not entitled to claim a tax refund exemption under Iowa Code §627.6(9)(c).

**CONCLUSION AND ORDER**

WHEREFORE, based on the foregoing analysis, the Court concludes Max Faulkner is not entitled to a \$1,000.00 exemption under Iowa Code §627.6(9)(c).

IT IS ACCORDINGLY ORDERED that Trustee's objection to exemption is sustained, and Debtors are entitled to a total exemption of \$1,000.00 for 1988 income tax refunds under Iowa Code §627.6(9)(c).

Dated this 24th day of January, 1990.

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Russell J. Hill  
U.S. Bankruptcy Judge