

KENT ANDERSON LAW OFFICE
MEMORANDUM

DATE: APRIL 2, 2013
TO: KENT ANDERSON
FROM: ALEX OLENICK
RE: Applicability of 11 USC 522 to Debt Collection Outside of Bankruptcy

Question Presented

Do the exemptions allowed under 11 USC 522(d) apply outside bankruptcy?

Discussion

The exemption allowances in 11 USC 522(d) apply only to cases filed under the Bankruptcy Code (hereafter “the Code”) and are available only to debtors in bankruptcy. Section 103 of the Code explicitly states that the federal exemptions apply to bankruptcy cases filed under Chapters 7, 11, 12, or 13 of the Code. 11 USC 103(a).

The Code also indicates that individual states may “opt out” of the federal exemptions for bankruptcy cases filed within their districts. 11 USC 522(b). In lieu of federal exemptions, a state may at its own election make its own exemptions available in bankruptcy that are otherwise generally available to non-bankruptcy debtors located in that state. *Id.* \

No state law, including any law providing for exemptions outside of bankruptcy, is affected if that state adopts federal bankruptcy exemptions. The Code does not extend applicability of its exemptions to non-bankruptcy cases. State exemptions, such as those allowed under ORS 18, exist within their own sphere of operation independent of any federal exemptions that are available in bankruptcy.

Research of case law throughout the country has not yielded a single case in which a non-bankruptcy debtor has ever attempted to invoke federal bankruptcy exemptions in a non-bankruptcy case. Consequently, the research also yielded no cases in which any state court judge has ever allowed a debtor to invoke federal bankruptcy exemptions.

Conclusion

Federal bankruptcy exemptions, available under 11 USC 522(d) apply only to cases filed under the bankruptcy code. There is no support in any statute or case law for the proposition that 11 USC 522(d) applies to cases outside of bankruptcy. Were the State of Oregon to adopt federal bankruptcy exemptions, state law exemptions under ORS 18 would remain untouched.