

Kansas Bankruptcy News

A monthly publication for the non-bankruptcy attorney prepared by the Law Office of Donald C. Astle, Donald C. Astle, Attorney at Law.

345 Riverview Suite 730, Wichita, KS
316.262.7696

Spousal Maintenance is Exempt, Right?

It's commonly known that a bankruptcy debtor's monthly spousal maintenance is exempt. Well **most of the time**. The pertinent statute is 11USC522(d)(10)(D) which basically says "*the right to receive*" spousal maintenance is exempt "*to the extent reasonably necessary.*" The corresponding state statute is KSA 60-2308(e) which basically says spousal maintenance held by a collection unit (Kansas Payment Center for example) is exempt. See "Statutes of the Month." Note the qualifiers: "*right to receive*" and "*to the extent reasonably necessary.*" (And the state exemption is of no help as spousal maintenance is only exempt when at a payment center.)

The most common problem is the "*right to receive.*" This means in the **future**. Maintenance held in a bank account has been **received. Past tense**. Next month's maintenance falls under the category of "*right to receive.*" The **future**.

Generally maintenance is spent immediately and does not stay in a bank account too long. You do not want to have any of the money in the bank the day that the bankruptcy is filed. But occasionally, we may have the situation where maintenance is just put in a bank account and not

STATUTE OF THE MONTH

11USC 522(d)(10)(D)

The debtor's right to receive alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

KSA 60.2308

(e) Money held by the central unit for collection and disbursement of support payments designated pursuant to KSA 39-7,135 and amendments thereto, the state department of social and rehabilitation services, any clerk of a district court or any district court trustee in connection with a court order for the support of any person, whether the money is identified as child support, spousal support, alimony or maintenance, shall be exempt from execution, attachment or garnishment process.

JP...The Legal Cartoon



Copyright David Carter used with permission.

spent. "It's my vacation money." "It's Christmas money." "I use it to pay my house taxes every year." That's fine unless you file bankruptcy and have this money in the bank. Some courts have ruled that the money retains its exemption in the bank account. The law is somewhat unsettled.

The other less common problem is the part that the maintenance must be "reasonably necessary for the support of the debtor and any dependent of the debtor." Well the wife worked her way up from the "do you want that supersized" fast food job and now has her engineering degree and a really good job. The kids are grown and gone. Does she really need the \$1,500.00 per month maintenance for the remaining four years? A bankruptcy trustee may think not.

These are generally problems that we do not run into but must be considered for the debtor that really has plans for these spousal maintenance payments.

ABOUT US...

Serving Kansas since 1984, The Law Offices of Donald C. Astle practices exclusively in consumer bankruptcy and collection law.

No other cases are accepted.

Visit our website at
www.astlelaw.com



Donald C. Astle
Washburn University,
1984



AMERICAN
BANKRUPTCY
INSTITUTE



National
Association
of Consumer
Bankruptcy
Attorneys