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Bankruptcy - A Comparison of State and Federal Exemptions

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COMMENTS

BANKRUPTCY—A COMPARISON OF STATE AND FEDERAL EXEMPTIONS: 11 U.S.C. § 101-1330 (Supp. II 1978).

The new Federal Bankruptcy Code¹ became effective on October 1, 1979, replacing the Bankruptcy Act of 1898.² The Bankruptcy Act did not provide an exemption system for a bankrupt; rather it allowed a person to claim whatever exemptions were provided by state law.³ The Code does provide a set of federal exemptions,⁴ and gives a debtor⁵ a choice between the Code or state exemption systems. The new federal system attempts to establish a uniform national set of exemptions which will allow the debtor a fresh start in life upon the termination of the bankruptcy proceeding.⁶

The Code permits a debtor to choose either the new federal exemption system or the state exemption system, unless the choice is specifically disallowed by state statute.⁷ This choice of systems is available to a debtor in New Mexico.⁸ The debtor must, however, choose one system in its entirety, and may not select portions of either to create the most advantageous combination.

Both systems have advantages and disadvantages.⁹ Which system

1. 11 U.S.C.A. §§ 101-1330 (1979) [hereinafter referred to as the Code]. [Since this article was typeset, the Bankruptcy Code has appeared in 11 U.S.C. §§ 101-1330 (Supp. II 1978).]

2. 11 U.S.C.A. §§ 1-1103 (1976) [hereinafter referred to as the old Act]. The last major revision of this Act was in 1938.

3. Exemptions are legal provisions which allow a person to retain different types and amounts of property free from the claims of creditors. *Pickens v. Pickens*, 125 Tex. 410, 414, 83 S.W.2d 951, 954 (1935).

4. 11 U.S.C.A. § 522 (1979).

5. The Code has eliminated the term "bankrupt" in referring to a person that is involved in a straight bankruptcy liquidation proceeding, using instead the word "debtor." *Id.* § 101(12); H.R. Rep. No. 595, 95th Cong., 1st Sess. 310, reprinted in [1978] U.S. Code Cong. & Ad. News 5963, 6267.

6. H.R. Rep. No. 595, 95th Cong., 1st Sess. 126, reprinted in [1978] U.S. Code Cong. & Ad. News 5963, 6087.

7. The establishment of a nationwide uniform exemption system has been limited by section 522(b)(1) of the Code which allows a state affirmatively to deny its residents the option of choosing the federal exemptions. This provision represents a compromise between those persons favoring a uniform system and those supporting the continuation of the state exemption system. See 3 Collier on Bankruptcy ¶ 522.09 (15th ed. 1979). For the view that a state should enact legislation restricting a debtor to the state exemptions see Lacy, *South Carolina's Statutory Exemptions and Consumer Bankruptcy*, 30 S.C.L. Rev. 643 (1979). But see Donnelly, *The New (Proposed?) Bankruptcy Act: The Development of its Structural Provisions and Their Impact on the Interests of Consumer-Debtors*, 18 Santa Clara L. Rev. 291 (1978).

8. The New Mexico State Legislature has not specifically denied this option.

9. For an opinion of New Mexico's old exemptions see Note, *Debtor Exemptions in New Mexico*, 6 Nat. Resources J. 467 (1966).

a debtor should select depends primarily upon the types of property he owns and the amount of his equity in that property. Another consideration may be the debtor's personal status.¹⁰ Several New Mexico exemptions, unlike the Code's, are limited to debtors with a specific status.

This article will compare the New Mexico exemptions with those offered by the Code. Both systems provide similar exemptions for similar types of property, although each differs as to the amounts which may be exempted. Each system also allows additional exemptions not found in the other. Both the similarities and the differences in the two systems will be examined.

THE EXEMPTIONS

The federal exemptions found in section 522 of the Bankruptcy Code were largely derived from the Uniform Exemptions Act.¹¹ In the Code, the phrase "debtor's interest" refers to a person's equity in an item of property. The amount of a debtor's interest which may be exempted is determined by the value limitation stated in each particular Code provision.¹² For example, if a debtor owns a car worth \$4,000, unencumbered by liens, he may exempt \$1,200 of his \$4,000 equity, the maximum amount allowed under the Code's motor vehicle exemption.¹³ In certain provisions, the Code also uses the phrase "debtor's aggregate interest." Aggregate interest refers to a debtor's total equity in a number of items which are all included in one exemption category.¹⁴ For example, when the code allows a debtor to exempt his aggregate interest in jewelry up to \$500, he may exempt his equity up to \$500 in the combined value of all the jewelry he owns.

If the debtor exempts property which is subject to a valid lien, the Federal Code provides that only that portion which is unencumbered by the lien will be counted in determining the value of the property exempted.¹⁵ Therefore, if a debtor owns a car worth \$4,000, subject to a valid lien of \$3,000, his interest in the car is \$1,000 and he may exempt all of his equity since this is less than the \$1,200 allowed.

10. In this article a debtor's personal status refers to whether he is married, divorced, single, widowed, has dependents whom he supports, or whether he supports just himself.

11. This Act was drafted by the Commissioners on Uniform State Laws in 1976.

12. See Uniform Exemptions Act, § 8, Comment 3, at 16. See also Comment, *Personal Property Exemptions and the Uniform Exemptions Act*, 1978 B.Y.U.L. Rev. 462.

13. 11 U.S.C.A. § 522(d)(2) (1979).

14. *Id.* § 522(d)(4).

15. H.R. Rep. No. 595, 95th Cong., 1st Sess. 360-61, reprinted in [1978] U.S. Code Cong. & Ad. News 5963,6316.

Although the Code does not specifically authorize a debtor to convert nonexempt property into exempt property, the legislative history of the Code indicates that this is permissible.¹⁶ Under the prior Act, this practice, termed "bankruptcy planning," has been held fraudulent by some courts,¹⁷ although other cases decided under the old Act sanctioned this type of prepetition planning.¹⁸ The Code, however, implies that this practice is not fraudulent to creditors, as it allows a debtor to make full use of his exemptions.¹⁹ This provision is an important tool which can be used to maximize the amount of property a debtor may retain after the bankruptcy proceeding.²⁰ This practice is primarily intended to protect those debtors who own very few assets many of which are not exempt. If these debtors are not allowed to convert those assets into exempt property, it is possible that they may be left with nothing after the bankruptcy proceeding.

The Code permits each individual debtor to choose which set of exemptions he will use. The Code allows for a joint case,²¹ which means that a husband and wife may both declare bankruptcy by filing a single petition.²² In a joint case, each spouse is entitled to a choice of exemption systems.²³ This apparently requires either a doubling of the exempt amounts of one system or a single application of both systems. It is unclear whether the state legislature envisioned a doubling of the state provisions when drafting the New Mexico exemption system. While some states limit the state exemptions to a onetime use by a family unit as a whole,²⁴ or by the head of a family,²⁵ New Mexico's relevant sections refer to a married per-

16. Proposed Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 94th Cong., 2d Sess. 1355-58 (1976); H.R. Rep. No. 595, 95th Cong., 1st Sess. 360-61, reprinted in [1978] U.S. Code Cong. & Ad. News 5963,6316. See also 3 Collier on Bankruptcy ¶ 522.08[4] (15th ed. 1979).

17. *Levinson v. Greene*, 296 F. 589 (9th Cir. 1924); *In re Martin*, 217 F. Supp. 937 (D. Or. 1963).

18. *In re Dudley*, 72 F. Supp. 943 (S.D. Cal. 1947), *aff'd*, 166 F.2d 1023 (9th Cir. 1948); *accord*, *Rutledge v. Johansen*, 270 F.2d 881 (10th Cir. 1959); *In re Smith*, 366 F. Supp. 1213 (D. Idaho 1973).

19. See legislative history cited in note 16 *supra*.

20. For an excellent discussion on the use of pre-petition planning, see Neustadter, *Consumer Insolvency Counseling for Californians in the 1980's*, 19 Santa Clara L. Rev. 817, 856-81 (1979).

21. 11 U.S.C.A. § 302 (1979).

22. The purpose behind section 302 is to facilitate administrative ease and not to avoid other Code provisions to the detriment of either the debtors or their creditors. H.R. Rep. No. 595, 95th Cong., 1st Sess. 321, reprinted in [1978] U.S. Code Cong. & Ad. News 5963,6277-78.

23. 11 U.S.C.A. § 522(m) (1979).

24. Tex. Rev. Civ. Stat. Ann. art. 3833 (Vernon Supp. 1980).

25. Mo. Ann. Stat. § 513.435 (Vernon Supp. 1980).

son²⁶ or persons.²⁷ In the context of the Code's language, this suggests that in a joint case each spouse could claim the state's exemption system.²⁸

HOMESTEAD EXEMPTION

The New Mexico homestead exemption is restricted to those persons who are married, widowed, or who support another person.²⁹ The amount of the exemption limitation is \$20,000. Exempt property includes both the house occupied by the debtor and the land under the house. Should the land beneath the debtor's house be owned by another person, the debtor may exempt the house alone. The person claiming the exemption must own, lease, or be purchasing the property in order to exempt it. Because the statutory language in this section refers to a "dwelling-house" without limiting the exemption to real property, it appears that a house trailer would qualify under this provision.

In contrast to the New Mexico provision, the Code's homestead exemption³⁰ is available to all debtors regardless of their personal status.³¹ The Code allows a debtor to exempt his aggregate interest, up to \$7,500 in value, in any real or personal property which he or one of his dependents uses as a residence. Personal property used as a residence might include trailers, motorhomes, or houseboats which may be classified as personal property under state law.³² This exemption also includes property owned by a cooperative³³ which is used as a residence by the debtor or one of his dependents. Alternatively, a debtor may apply this provision toward a burial plot.

26. N.M. Stat. Ann. § 42-10-9 (Supp. 1979).

27. *Id.* § 42-10-1.

28. A plain reading of the New Mexico statutes suggests such an interpretation. There is no language in the relevant sections that can reasonably be interpreted as defining or restricting the exemptions to one family unit in a joint case, and a review of New Mexico's prior statutes and the subsequent modifications in the revised statutes support this interpretation. For example, the homestead exemption in the 1953 New Mexico statutes states that "[h]usband and wife, . . . living with an unmarried daughter . . . may hold exempt from sale . . ." This construction implies that a husband and wife are a single unit.

In contrast, the 1979 version of this section states that "[a] married person . . . shall have exempt a homestead . . ." This deliberate language change in the statute implies that *each* married person is entitled to claim the exemption.

29. N.M. Stat. Ann. § 42-10-9 (Supp. 1979).

30. 11 U.S.C.A. § 522(d)(1) (1979).

31. See note 10 *supra*.

32. See N.M. Stat. Ann. § 60-14-2(J) (Supp. 1979).

33. "Cooperative" refers to an organization wherein a corporation owns the building and land in which the debtor lives. The debtor, as a "cooperator," owns shares in the corporation as a prerequisite to living in its building, and in addition, rents or leases his apartment from the corporation. See A. Casner and W. Leach, *Cases and Text on Property* 985 (2d ed. 1969).

GENERAL EXEMPTION

The Code also provides an additional general exemption, available whether the debtor owns a home or not, which allows a debtor to apply any unused amount of the homestead exemption, plus an additional \$400, toward *any* property he might own.³⁴ A debtor could use this exemption to increase the value limitation of another exemption, or he could use it to exempt property not otherwise exempted by the Code provisions. For example, if a debtor owns a car worth \$4,000 unencumbered by any liens and does not claim a homestead exemption, he may exempt not only \$1,200 in the motor vehicle, but also may apply part of the unused \$7,500 homestead exemption and the additional \$400 to fully exempt his remaining \$2,800 equity in the car.³⁵ Assuming he did so, the debtor could apply the remaining \$5,100 exemption toward other nonexempt property, such as a second car or a savings account.

This general exemption is also available to the debtor who uses the homestead exemption for his residence. Thus, if a debtor owns a home worth \$40,000, subject to a \$35,000 mortgage, the debtor could use \$5,000 of the homestead provision to exempt his equity in the house. He could then apply the remaining \$2,500 of the homestead exemption, plus the additional \$400 general exemption, to exempt that amount of any other property he might own.

New Mexico offers a provision comparable to the Code's general exemption, which allows a \$2,000 exemption *in lieu of* a homestead exemption.³⁶ Unlike the Code, the New Mexico statute limits this provision to those debtors who do not own a home. This provision may be used to exempt both real and personal property. Because this exemption is available only to *nonhomeowners*, those New Mexico *homeowners* who are single or divorced and who support only themselves apparently have neither the benefit of the New Mexico homestead exemption nor the exemption in lieu of homestead. Other things being equal, such persons may thus prefer to claim the federal exemptions. In addition, neither the New Mexico homestead exemption nor the exemption in lieu of homestead will defeat valid liens arising from taxes, garnishment, lessors, recorded liens of mortgages, or recorded liens of laborers or materialmen for the construction or repair of a dwelling house.³⁷

34. 11 U.S.C.A. § 522(d)(5) (1979). See also 3 Collier on Bankruptcy ¶ 522.14 (15th ed. 1979).

35. *In re Bagley*, [1979] 1 Collier Bankruptcy Cases 1 (E.D. Pa. October 18, 1979).

36. N.M. Stat. Ann. § 42-10-10 (Supp. 1979).

37. *Id.* § 42-10-11 (1978).

PERSONAL PROPERTY

New Mexico's personal property exemption³⁸ allows each debtor to exempt one motor vehicle, clothing, furniture, tools of the trade, books, and any medical health equipment used for a person's health and not in his profession. These may all be exempted without any value limitation. New Mexico further allows each debtor to exempt an additional \$500 worth of personal property.³⁹ In this exemption, however, New Mexico makes a slight distinction between those persons who support only themselves and those who are married or heads of households. Debtors in the latter category are allowed to include money in this exemption⁴⁰ while those in the former category may only exempt property other than money.⁴¹ A debtor may not exempt personal property which he has given as security to a secured creditor unless the value of the property exceeds the amount of the debt, in which case he may exempt the surplus.⁴²

The Code, on the other hand, generally places value limitations upon each exemption of personal property. A debtor may thus exempt his interest, up to \$1,200 in value, in one motor vehicle.⁴³ He is allowed an aggregate interest, up to \$500 in value, in jewelry held primarily for personal, family, or household use.⁴⁴ The Code also exempts the debtor's aggregate interest, up to \$750 in value, in any implements, professional books, or tools of the trade.⁴⁵ The tools may be for the trade of the debtor or one of his dependents. A debtor may also exempt any professionally prescribed health aids without any value limitation.⁴⁶

The Federal Code also exempts household furnishings, household goods, wearing apparel, appliances, books, animals, crops, and musical instruments.⁴⁷ There is no limit to the number of items which may be exempted, but each item in the above categories must be held primarily for personal, family, or household use. A debtor may exempt his interest, up to \$200 in value, in any one particular item in each of the above categories. There is some confusion as to what this value limitation actually means. One interpretation is that, regardless of the total value of an item, the debtor may exempt only

38. *Id.* §§ 42-10-1, -2 (Supp. 1979).

39. *Id.*

40. *Id.* § 42-10-1 (Supp. 1979).

41. *Id.* § 42-10-2 (Supp. 1979).

42. *Id.* § 42-10-6 (1978).

43. 11 U.S.C.A. § 522(d)(2).

44. *Id.* § 522(d)(4).

45. *Id.* § 522(d)(6).

46. *Id.* § 522(d)(9).

47. *Id.* § 522(d)(3).

his equity in it to the stated limit of \$200. This view is consistent with the Uniform Exemptions Act from which the federal exemptions were drawn.⁴⁸ Under this view, a debtor who owns a \$300 chair would be able to exempt \$200 of its total value. The other interpretation is that while "[a]n unlimited number of items that qualify may be exempted, . . . the value of each item may not exceed \$200."⁴⁹ The debtor in the previous example would not be able to exempt his chair under this interpretation of the household furnishings exemption because the chair has a value greater than \$200.⁵⁰ Unfortunately, no answer can be gleaned from the brief and unclear legislative history explaining this exemption.⁵¹ Finally, while the Code allows most security interest in personal property to survive a bankruptcy discharge, it does permit a debtor to avoid judicial liens or non-possessory, nonpurchase-money security interests in certain types of personal property.⁵²

FUTURE EARNINGS, BENEFITS AND THE LIKE

The New Mexico statute allows a debtor to exempt any interest in or proceeds from a pension or retirement fund.⁵³ There is no value limitation on the amount which may be exempted, nor is there any restriction on the personal status⁵⁴ of the debtor. In addition, the New Mexico statute exempts without a value limitation all annuities, indemnities, or other types of payment from any life, accident, or health insurance policy or contract.⁵⁵ This exemption is allowed even though the insured retains the right to change the beneficiary therein.⁵⁶ The debtor must be the insured, or be protected under or have the rights to receive the benefits of the policy or contract. The

48. Uniform Exemptions Act, § 8, Comment (3), at 16.

49. 3 Collier on Bankruptcy ¶ 522.12 (15th ed. 1979).

50. *Id.* ¶ 522.14.

51. H.R. Rep. No. 595, 95th Cong., 1st Sess. 361-62, *reprinted in* [1978] U.S. Code Cong. & Ad. News 5963, 6317. For an interesting article comparing the federal exemptions with Utah's exemptions, questioning which interpretation was intended, see Aaron, *The Bankruptcy Reform Act of 1978: The Full-Employment-for-Lawyers Bill, Part II: Consumer Bankruptcy*, 1979 Utah L. Rev. 175, 188-201.

52. 11 U.S.C.A. § 522(f) (1979).

53. N.M. Stat. Ann. §§ 42-10-1, -2 (Supp. 1979).

54. See note 10 *supra*.

55. N.M. Stat. Ann. § 42-10-3 (1978).

56. This exemption feature was important in cases arising under the old Bankruptcy Act, because the payments would otherwise pass to the trustee in bankruptcy. *Legg v. St. John*, 296 U.S. 489 (1936). See also 17 Couch on Insurance 2d § 63:266 (1967). This exemption may still be a viable feature under the new Federal Code if the debtor claims the state exemptions; however, the Federal Code authorizes the trustee to collect the entire amounts due, except for that portion specifically exempted. H.R. Rep. No. 595, 95th Cong., 1st Sess. 361-62, *reprinted in* [1978] U.S. Code Cong. & Ad. News 5963, 6317.

exemption does not cover contracts or policies that have been assigned in writing by the debtor for the benefit of a creditor.⁵⁷

The New Mexico act provides an additional exemption for a beneficiary fund, not exceeding \$5,000, which was paid by any benevolent organization to the family of a deceased person. Such payment is exempt from any proceeding to pay the deceased person's debts.⁵⁸

The Federal Bankruptcy Code's comparable provision exempts payments under a stock bonus, pension, profit sharing, or similar plan which are made because of illness, disability, death, age, or length of service.⁵⁹ Payments made under an annuity or similar contract, if based on the same conditions, are also exempt. Payments under any of these plans or contracts are exempt, however, only to the extent reasonably necessary for the support of the debtor and any dependents he may have.⁶⁰ The Code lists certain conditions which will disqualify a plan or contract from exemption. Disqualification arises when the plan or contract: (1) was created by or in conjunction with an insider⁶¹ who employed the debtor at the time the debtor's rights to such payments arose; (2) provides for payment on account of age or length of service; and (3) does not qualify under certain sections of the Internal Revenue Code.⁶²

In addition, a debtor may exempt social security, unemployment compensation, local public assistance benefits, veteran's benefits, and disability, illness, or unemployment benefits.⁶³ These items may all be exempted without any value limitation. A debtor may also exempt alimony, support, or separate maintenance payments to the extent reasonably necessary to support himself and any dependents.⁶⁴

LIFE INSURANCE

A debtor claiming the New Mexico exemption system may include the cash surrender value of any life insurance policy or the withdrawal value⁶⁵ of any optional settlement, annuity, or similar con-

57. N.M. Stat. Ann. § 42-10-3 (1978).

58. *Id.* § 42-10-4.

59. 11 U.S.C.A. § 522(d)(10)(E) (1979).

60. *Id.*

61. "Insider" refers to a person whose relationship to the debtor is sufficiently close as to require a more careful examination of his conduct than would be required of those dealing at arm's length with the debtor. *Id.* § 101(25).

62. 11 U.S.C.A. § 522(d)(10)(E)(i), (ii), (iii) (1979).

63. *Id.* § 522(d)(10)(A), (B), (C).

64. *Id.* § 522(d)(10)(D).

65. In insurance terminology, the term "withdrawal value" is the rough equivalent of cash surrender value. The difference is that one is dealing with a contract consisting of different terms and options than those usually found in a life insurance policy. Interview with Prudential Life Insurance Co. (Feb. 19, 1980).

tract purchased from any life insurance company.⁶⁶ This is allowed whether or not the insured has the right to change the beneficiary.⁶⁷ Policies or contracts previously assigned in writing for the benefit of a creditor are not exempt.⁶⁸ In addition, the proceeds of all life insurance policies are not subject to the debts of a deceased debtor unless prior written arrangements have been made.⁶⁹

The Federal Code provides that any unmaturing life insurance contract owned by the debtor may be exempted.⁷⁰ This exemption does not include a credit life insurance contract, the kind often provided with a loan when purchasing a new car. The exemption does, however, include any rights of the debtor in a group insurance certificate. Although there is no limit to the policy amount or the number of policies which may be exempted, this provision refers only to the contract itself. This exemption does not include any other rights under such a contract which may be available to the debtor, such as the right to draw on its loan value.⁷¹ The Code does, however, exempt the debtor's right to the loan value of, or accrued interest or dividend in, any unmaturing contract to the aggregate extent of \$4,000 in value.⁷² Except for this \$4,000 exemption, the Code authorizes the trustee to collect the entire loan value on every life insurance policy owned by the debtor.⁷³

Finally, the debtor may exempt either his right to receive, or property that is traceable to, the proceeds of a life insurance contract.⁷⁴ The sole requirement for this exemption is that the debtor must have been a dependent of the insured on the date of the insured's death. The exemption is limited to that portion of the proceeds which is reasonably necessary for the support of the debtor and any dependents he may have.

AWARDS AND DAMAGES

This category of exemptions is contained only in the Federal Bankruptcy Code. While the application of these exemptions is

66. N.M. Stat. Ann. § 42-10-3 (1978).

67. As stated in note 56 *supra*, this feature is important because such a right in the debtor would otherwise act to pass the surrender value to the trustee in bankruptcy. See 17 Couch on Insurance 2d §§ 63:270 to 63:287 (1967).

68. N.M. Stat. Ann. § 42-10-3 (1978).

69. *Id.* § 42-10-5 (1978).

70. 11 U.S.C.A. § 522(d)(7) (1979).

71. H.R. Rep. No. 595, 95th Cong., 1st Sess. 361-62, reprinted in [1978] U.S. Code Cong. & Ad. News 5963, 6317.

72. 11 U.S.C.A. § 522(d)(8) (1979).

73. H.R. Rep. No. 595, 95th Cong., 1st Sess. 361, reprinted in [1978] U.S. Code Cong. & Ad. News 5963, 6317.

74. 11 U.S.C.A. § 522(d)(11)(C) (1979).

somewhat limited, they do offer additional relief to certain debtors. In each of the following instances, a debtor may exempt either his right to receive, or property that is traceable to, any of the described payments.

The Code exempts a crime victim's reparation award.⁷⁵ While these awards are not yet offered by the State of New Mexico, the Code would exempt the entire amount. Additionally, a payment in compensation for loss of future earnings is exempt if paid to the debtor or to an individual of whom the debtor is or was a dependent.⁷⁶ The Code also exempts a payment for the wrongful death of a person of whom the debtor was a dependent.⁷⁷ Both these payments, however, are exempt only to the extent reasonably necessary for the support of the debtor and any dependents of the debtor.⁷⁸

The final item a debtor may claim under this Code provision is a payment for personal bodily injury to the debtor or to one of whom the debtor is a dependent.⁷⁹ The amount exempted may not exceed \$7,500. This provision does not include payments for pain or suffering nor compensation for actual pecuniary loss. It refers only to payments for actual bodily injury, such as the loss of a limb or an eye.⁸⁰

OTHER CONSIDERATIONS

The debtor who chooses the federal exemptions is limited to those offered under section 522(d) of the Bankruptcy Code.⁸¹ If the debtor chooses the state exemptions, however, he is also entitled to claim certain items under federal laws.⁸² These include:

Foreign service retirement and disability payments, 22 U.S.C. § 1104 (1976);

Social Security payments, 42 U.S.C. § 407 (1976);

Injury or death compensation payments from war risk hazards, 42 U.S.C. § 1717 (1976);

Wages of fishermen, seamen, and apprentices, 46 U.S.C. § 601 (1976);

75. *Id.* § 522(d)(11)(A).

76. *Id.* § 522(d)(11)(E).

77. *Id.* § 522(d)(11)(B).

78. *Id.*

79. *Id.* § 522(d)(11)(D).

80. H.R. Rep. No. 595, 95th Cong., 1st Sess. 361, *reprinted in* [1978] U.S. Code Cong. & Ad. News 5963, 6318.

81. 11 U.S.C.A. § 522(b)(1) (1979).

82. H.R. Rep. No. 595, 95th Cong., 1st Sess. 360-61 (1977), *reprinted in* [1978] U.S. Code Cong. & Ad. News 5963, 6318.

Civil Service retirement benefits, 5 U.S.C. §§ 8345, 8346(a) (1976);

Longshoremen's and Harbor Worker's Compensation Act death and disability benefits, 33 U.S.C. § 916 (1976);

Railroad Retirement Act annuities and pensions, 45 U.S.C. § 228(L), *as amended* 45 U.S.C. § 231(m) (1976);

Veteran's benefits, 38 U.S.C. § 3101 (1976);

Special pensions paid to the winners of the Congressional Medal of Honor, 38 U.S.C. §§ 560, 562(c) (1976);

Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. § 175 (1976).

A debtor choosing the state exemptions may also exempt a property interest held in a joint tenancy or tenancy by the entireties to the extent it is exempt from process under other applicable state law.⁸³

CONCLUSION

In determining which exemption system better benefits a debtor, one must compare carefully the property owned with each provision available. While New Mexico's exemptions are for the most part more generous than the Code's, they are not as flexible. For example, the Code's homestead provision may be applied toward a house or any other property if the debtor does not claim a house. There is no similar right under the New Mexico statutes. Moreover, the Code's exemptions are available to all individuals, while several of the New Mexico provisions are foreclosed to those persons who support only themselves. Thus, a debtor who is single and owns a home may well prefer the Code's system to New Mexico's. However, the debtor who chooses the Code's system is restricted to the value limitation included in each exemption, limitations which, for the most part, do not exist in the New Mexico system. Each system thus has its own advantages and disadvantages, which will affect individual debtors differently.

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83. 11 U.S.C.A. § 522(b)(2)(B) (1979); N.M. Stat. Ann. §§ 40-3-10, -11 (1978). For an article dealing with the Bankruptcy Code's effect on community property, see Pedlar, *Community Property and the Bankruptcy Reform Act*, 11 St. Mary's L.J. 349 (1979).