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DEBTOR EXEMPTIONS IN NEW MEXICO

If a person's assets are subjected to execution and foreclosure, or if a person is forced to declare bankruptcy, either voluntarily or involuntarily, some of his belongings may be declared exempt from the judicial proceedings.¹ Among items exempted in New Mexico are a stove and pipe used for warming;² six sheep and the wool shorn from them;³ a horse, saddle and bridle for a doctor;⁴ and two horses or one yoke of cattle and a wagon for a farmer.⁵ These "current" New Mexico exemptions reveal the need for a revision of the New Mexico statutes which set out the exempt items in execution or foreclosure proceedings.

Historically, exemption statutes in judicial proceedings have been justified in terms of three fundamental policies. Legislators have sought to encourage debtor rehabilitation,⁶ to provide minimum security for the debtor's family,⁷ and to relieve the community of some of the burdens of social welfare.⁸ These fundamental policies, however, are but one aspect of the exemption laws. Legislators must also consider the exemption statutes in terms of certainty versus flexibility. The creditor wants to know exactly what items are exempt and the value of the exempt items. The debtor and those interested in his well-being desire a reasonable minimum protection at all times no matter what changes take place. Exemptions that are too generous may discourage creditors from extending credit; any freedom of assets from legal seizure reduces the moral and legal duty to repay, thereby adding to the creditor's risk of loss and retarding lending. Conversely, in a community which is concerned with the well-being of its individual members, the social cost of de-

1. *E.g.*, N.M. Stat. Ann. §§ 24-5-1 to -13, §§ 24-6-1 to -9 (1953, Supp. 1965).

2. N.M. Stat. Ann. § 24-5-1 (1953).

3. *Ibid.*

4. N.M. Stat. Ann. § 24-5-6 (1953).

5. *Ibid.*

6. *E.g.*, *Perfection Paint Products v. Johnson*, 164 Cal. App. 2d 665, 330 P.2d 829 (Cal. Dist. Ct. App. 1958); *Slatcoff v. Dezen*, 76 So. 2d 792, 794 (Fla. 1954) (where the court said that the state has an interest in its exemption laws "to the end that owners of exempt property and their families shall not be reduced to absolute destitution, thus becoming a charge upon the public.")

7. Haskins, *Homestead Exemptions*, 63 Harv. L. Rev. 1289 (1950) (homestead and household necessities).

8. *Hollywood Credit Clothing Co. v. Jones*, 117 A.2d 226 (D.C. Munic. Ct. App. 1955) (wages and personal property).

prising a debtor and his family of all resources may outweigh the economic disadvantages of immunizing certain property from the claims of creditors.

A good exemption law, therefore, is one that is reasonably flexible and has some degree of certainty regarding the identity of exempted items or the determination of value. Such an exemption must have an adjustable base which adapts itself to changing circumstances. In this way the exemption law will provide the amount of exemption desirable now and under changing economic conditions, whether during an inflation or a recession. Most of the New Mexico exemption laws⁹ lack at least one of the above characteristics necessary for a good exemption law. Consequently, many of the New Mexico exemption laws either fail to provide the necessary flexibility or fail to provide the creditor with some means of identifying the particular exempt item or determining a definite value for the exempt article.

The exempted property is designated by the laws of each state.¹⁰ The purpose of this Note is to focus attention on the outdated exemption laws of New Mexico, laws which exempt such antiquated items as:

one [1] stove and pipe used for warming the dwelling, and fuel sufficient for the period of sixty [60] days One [1] cow . . . two [2] swine, or the pork therefrom . . . six sheep, the wool shorn from them, and the cloth or other articles manufactured therefrom . . . and sufficient food for such animals for the period of [60] days.¹¹

The major contention of this Note is not that the exemptions laws are ill-advised, but that economic and social factors have so radically changed that a reevaluation of the debtor exemptions in New Mexico must be undertaken. The New Mexico exemptions laws should be amended to reflect present and probable future requirements of individuals, families, and society with consideration to the inter-relationship between the debtor and his creditors.

9. *E.g.*, N.M. Stat. Ann. §§ 24-5-1 to -13, §§ 24-6-1 to -9 (1953, Supp. 1965).

10. Section 6 of the current Bankruptcy Act—Bankruptcy Act of 1898, 30 Stat. 544 as amended, 11 U.S.C. §§ 1-112 (1952), as amended, 11 U.S.C. §§ 32-107 (Supp. V, 1958) [hereinafter cited as Bankruptcy Act], allows exemptions "which are prescribed by the laws of the United States." Under federal statutes, pensions, soldiers' bonuses, homesteads on federal land, railroad retirement benefits, and soldiers' savings are exempt from levy or seizure. 1 Collier, Bankruptcy ¶6.17 (14th ed. Moore 1956).

11. N.M. Stat. Ann. § 24-5-1 (1953).

I

PROPERTY EXEMPTIONS

Most of the New Mexico exemption laws satisfy one requirement of a good exemption law—the requirement of certainty. The value or identity of exempted items in New Mexico is readily ascertainable. All exempted items, however, fail to satisfy the requirement of flexibility which is vital to the debtor. Exemption of antiquated items such as a “stove and pipe,” “one cow,” or “horse, harness and dray or wagon” for one engaged in draying,¹² indicates a failure by the New Mexico Legislature to make the exemptions of a debtor correspond with the debtor’s present needs and living conditions. California exemption statutes were similarly outdated. A California statute exempted two mules, a harness, two wagons, food for the mules, seed, and other farm items.¹³ California, however, has recently added one refrigerator and one television receiver,¹⁴ one truck,¹⁵ and one car¹⁶ to the list of exempted items in order to give the farmer the protection which reflects his current economic needs.

The New Mexico exemption laws, referred to as “specific item exemptions,” can be kept current by revising the list whenever it becomes outdated, as California has done. The necessity for periodic revision of the specific item exemptions raises an underlying problem: many items may become outdated before the legislature can amend the statute. Thus, a more serviceable form of exemption, in lieu of the specific item exemption, is the selective property exemption. The debtor may exempt, to a certain value, a particular category of personal property essential to him. Instead of a specific item exemption, like the New Mexico exemption of “Bibles, hymn books, psalm books, testaments, school and miscellaneous books used in the family,”¹⁷ an exemption of family books up to a

12. N.M. Stat. Ann. § 24-5-6 (1953).

13. Cal. Civ. Proc. Code § 690.3.

14. Cal. Civ. Proc. Code § 690.2.

15. Cal. Civ. Proc. Code § 690.7.

16. Cal. Civ. Proc. Code § 690.24. The listing of personal property items, exclusive of exceptions and procedures for claiming exemptions in California, covers twenty-six sections in the Code, and includes items such as washing machines, beehives, waiters’ uniforms, entertainers’ wardrobes, homestead association shares, and well drilling machinery as well as all the standard items. Cal. Civ. Proc. Code §§ 690-.25.

17. N.M. Stat. Ann. § 24-5-1 (1953).

certain value might be used. Additionally, a number of different exemptions covering cows, pigs and sheep¹⁸ might be replaced with one exemption for livestock up to a stated value.

The major problem with the selective property exemption is that the maximum stated value cannot be changed to meet the variable economic conditions. If there were no limitation, however, the items which the debtor may choose to declare exempt within the particular category may far exceed in value any justifiable exemption.¹⁹ Yet, even though a problem of flexibility in the maximum stated value exists, which in turn necessitates frequent legislative enactment or amendment, as long as the general category exempted remains vital to the debtor he will at least have flexibility of choice of the belongings included within the particular category. Although the selective property exemption with a maximum value is not the most ideal, its flexibility is certainly a better alternative than some of the rigid New Mexico exemptions.²⁰

New Mexico does employ the selective property exemption with respect to "tools and implements of the debtor necessary for carrying on his trade or business, whether mechanical or agricultural. . . ." ²¹ The maximum value, however, was set at 150 dollars in 1941 and has remained unchanged since that time. Minnesota provides for an exemption of 300 dollars in farm utensils,²² and California allows farm tools to a value of 1,000 dollars to be exempted by a bankrupt farmer.²³ In light of the California and Minnesota statutes it is evident that in New Mexico the maximum value of the exemption for tools and implements necessary to a mechanical or agricultural trade should be increased to reflect current economic conditions.

Beyond the general exemptions for "tools and implements," the New Mexico farmer should be given some additional specific item exemptions based upon his current economic situation. The specific item exemptions now given to the farmer in New Mexico include such outmoded articles as "two [2] horses or one [1] yoke of cattle with the necessary gearing . . . and one wagon. . . ." ²⁴ As one author has aptly stated,

18. *Ibid.*

19. *E.g.*, Okla. Stat. Ann. tit. 31, § 1(4) (Supp. 1965), provides an open-end implement exemption extending to all farm implements of husbandry used on the homestead.

20. N.M. Stat. Ann. § 24-5-1 (1953).

21. *Ibid.*

22. Minn. Stat. Ann. § 550.37 (Supp. 1965).

23. Cal. Civ. Proc. Code § 690.3.

24. N.M. Stat. Ann. § 24-5-6 (1953).

The horse is a versatile beast: he can be hitched to a buggy to take the family to town for its Saturday night outing or to church on Sunday. He can be hitched to various farm implements to perform necessary farm labor, and he can be hitched to a wagon or rack to haul the produce of the farm to the market. But, alas, the horse has been largely replaced by developments of modern science: the typical farmer . . . uses his tractor to pull his farm implements, and his truck to haul the produce of his farm to the market.²⁵

The underlying policy for exempting a beast of burden for the bankrupt farmer, in addition to his other exemptions, was the recognition that these animals were necessary if he were to begin farming again. Although farm animals have now been replaced by trucks and tractors of increased value, the needs of the bankrupt farmer should continue to prevail, and the exemption of property necessary for agricultural enterprise should be continued. The exempt New Mexico farm items, therefore, should include a truck and tractor, each to a certain maximum value.²⁶

Like the farmer, the additional specific exemptions for the lawyer and doctor in New Mexico are also in need of modernization. One New Mexico statute specifically exempts the following items for "every head of a family who is engaged in the practice of medicine:" "one [1] horse, one [1] saddle and bridle, and also books, medicines and instruments pertaining to his profession, not exceeding one hundred dollars [\$100] in value" ²⁷ At one time the horse was vital to the doctor to make house calls, but a doctor now uses an automobile for this purpose. The New Mexico exemption laws should be amended to meet this change in the doctor's mode of transportation.²⁸ Furthermore, the value of medical tools and medicines which are vital to the doctor has increased far beyond New Mexico's one hundred dollar limit. Ohio, for example, has recognized the change in value of medicine and a doctor's instruments; Ohio now exempts twice the amount currently allowed in New Mex-

25. Note, 36 Iowa L. Rev. 76, 83 (1950).

26. *E.g.*, Va. Code Ann. § 34-27 (Supp. 1964) (a tractor up to a value of 500 dollars).

27. N.M. Stat. Ann. § 24-5-6 (1953). Most courts have declared that exemptions should be liberally construed to accomplish their humanitarian and remedial purposes. *E.g.*, Laughlin v. Lambert, 68 N.M. 351, 353, 362 P.2d 507, 508 (1962). With this justification, some statutes include automobiles under laws exempting wagons. *Printz v. Shepard*, 128 Kan. 210, 276 Pac. 811 (1929).

28. *E.g.*, Utah Code Ann. § 78-23-1(6) (1953), exempts one vehicle used by a physician, surgeon, or minister in making professional visits.

ico.²⁹ Minnesota³⁰ and California³¹ both exempt all of the doctor's implements, and the professional libraries of both the attorney and the doctor. Using these statutes as an example, the New Mexico exemption statutes should be amended with respect to the professional man as well as the farmer.

Some states have gone to the opposite extreme in the area of specific item exemptions, exempting all tools and implements *necessary* in carrying on a trade or used for a livelihood.³² Such "open-end" exemptions, however, can be limited only by a judicial determination of a dollar value which is reasonably necessary. This limitation, therefore, may be opposed as too vague and for not giving the creditor a sufficiently clear picture of available assets. Courts would have to survey each debtor's particular situation and grant protection sufficient to enable the debtor to salvage the essentials of his trade or profession as they were found to be "necessary." Judicial determination in each instance makes it extremely difficult for the creditor to determine exactly what belongings of the debtor he will be able to attach, a problem that could discourage all lending.

On the other hand, a fixed dollar amount is advantageous to the creditor because he is able to ascertain, with relative certainty, the extent of the debtor's assets available to satisfy the debt. The danger of a reduction in lending as the result of an open-end debtor exemption appears more serious than the absolute dollar value limitation that may become outdated before it is again considered for revision. Therefore, absolute dollar limitation is preferable for property exemptions.

II

WAGE EXEMPTIONS

Wage exemption statutes have developed from the realization that an increasing number of people are entirely dependent on the compensation derived from their labor for others, because they own no tools or implements. In many cases, the accrued wage is not

29. Ohio Rev. Code Ann. § 2329.66(E) (Page Supp. 1965) (200 dollars).

30. Minn. Stat. Ann. § 550.3 (Supp. 1965).

31. Cal. Civ. Proc. Code § 690.4, exempts "the instruments and chest of a surgeon, physician, surveyor or dentist, necessary to the exercise of their profession, with their professional libraries and necessary office furniture; and the professional libraries of attorneys . . .").

32. Mo. Ann. Stat. §§ 513.430, 513.435(7) (1952, Supp. 1965).

just *another* asset of the debtor whose wages are attached or garnished or who is forced to declare bankruptcy, but it is the *only* significant asset of the debtor.³³ For this reason, the accrued wage of the debtor must be treated like any other asset he might possess; some portion of it must be exempted from judicial proceedings.

[T]he intended beneficiaries of exemption statutes have left farms and small towns in large numbers . . . [and] have become employees who do not own the tools they use or the places where they live. . . . [T]hey are not self-sufficient and most would not be saved from the privation or materially aided toward rehabilitation in the event of financial stringency *by the exemption of specific items of property*.³⁴

New Mexico,³⁵ like most other states,³⁶ exempts a portion of the accrued wages earned in the thirty days preceeding garnishment or the filing of a petition in bankruptcy. The New Mexico wage exemption statute, section 26-2-27,³⁷ employs a percentage standard to determine the amount of wages that are exempt. If a wage earner in New Mexico has earned more than one hundred dollars for his services during the thirty days immediately preceeding garnishment or execution, his creditors cannot garnish more than twenty-five per cent of his wages for that thirty-day period. If the debtor earns less than one hundred dollars for this thirty-day period, only twenty per cent of his wages, or a maximum of twenty dollars, can be garnished.

Section 26-2-27 meets one of the basic requirements of a modernized wage exemption because it employs a percentage basis to calculate the amount of exemption. A percentage wage exemption is more realistic than a stated dollar exemption. The percentage ex-

33. Note, 68 Yale L.J. 1459, 1509 (1959).

34. Kennedy, *Limitation of Exemptions in Bankruptcy*, 45 Iowa L. Rev. 445, 448-49 (1960). (Emphasis added.)

35. N.M. Stat. Ann. § 26-2-27 (Supp. 1965).

36. *E.g.*, Cal. Civ. Proc. Code § 690.11; Ill. Ann. Stat. ch. 62, § 14 (Smith-Hurd 1951); Ohio Rev. Code Ann. § 2329.72 (Page 1954).

37. N.M. Stat. Ann. § 26-2-27 (Supp. 1965):

No person shall be charged as garnishee, in any court in this state, on account of current wages, or salary due, from him to a defendant, in his employ, for more than twenty-five per cent [25%] of any wages or salary due the defendant for the last thirty [30] days' service, provided, that if the wages or salary due said defendant for the last thirty [30] days' service are one hundred dollars (\$100) or less, garnishment may be had for no more than twenty per cent [20%] of such wages or salary. No exemption whatever shall be claimed, under the provisions of this section in case the debtor is not the head of a family, or in case the debtor is the head of a family, where the family does not reside in this state.

emption (*e.g.*, one-third) adjusts automatically with changing economic conditions. Use of a percentage exemption, therefore, gives flexibility of exemption coverage, providing an adequate amount for the debtor, although used over a period of time, and giving the creditor a degree of certainty for his guidance in credit extension and the exercise of his remedies.

In addition to the percentage standard in a wage exemption, however, it is also necessary to include minimum and maximum limitations on the exempt amount.

A percentage exemption without minimum exempt amounts may not sufficiently alleviate the financial hardships of the low wage earner. . . . On the other hand, a lack of maximum limitations is disadvantageous to creditors when large wage earners are involved. . . . It would appear that the percentage exemption with minimum and maximum limitations is the most desirable. . . . Not only is the exempt amount proportionate to earnings, but the minimum limitation assures the low wage earner some means to support his family; the maximum exempt amount, on the other hand, permits garnishment of earnings not reasonably needed for this purpose.³⁸

Section 26-2-27 contains a minimum limitation and thereby protects the low wage earner. But the statute fails to place a maximum limitation on the amount of wages that may be declared exempt. The large wage earner may therefore declare a disproportionate amount of his earnings exempt, even though the entire amount exempted may not be needed for support of the family. Such a wage earner, then, is afforded the opportunity to evade his indebtedness. The New Mexico Supreme Court has observed that if a large wage earner declares exempt, under section 26-2-27, a greater portion of his wages than is possibly necessary for the support of his family, he contravenes the very policy underlying the statute:

The legislature, in conformity with public policy now generally prevalent, enacted the exempting statute to encourage the formation of the family relation by conferring upon the heads of household privileges to protect their families against want in the event of misfortune, but it was never intended that these generous provisions should be prostituted to the encouragement of extravagance, and the evasion of just indebtedness by indulgence in luxurious living.³⁹

38. Note, 43 Iowa L. Rev. 555, 557 (1957).

39. New Mexico Nat'l Bank v. Brooks, 9 N.M. 113, 128-29, 49 Pac. 947, 952 (1897).

Beyond its failure to set a minimum wage exemption, thereby giving disproportionate protection to the higher wage earner, section 26-2-27 does not equally apply to the debtor who supports only one or two dependents and to the debtor who support several dependents. Section 26-2-27 could provide a more equal wage exemption by employing a percentage standard, *as well as* flexibility based upon the number of dependents supported by the debtor. A good example of a statute achieving this result is that of Virginia,⁴⁰ which employs an escalator-type adjustable wage exemption keyed to changing circumstances of the individual debtor. The Virginia statute provides that wages are exempt to seventy-five per cent, but never less than one hundred dollars nor more than 150 dollars, *provided that such minimum and maximum shall increase by fifteen dollars per month for each dependent child*. Thus, an absolute exemption of one hundred dollars per month for a wage earner with no children would progress to 175 dollars per month with the increase of his family to five. Later, as the children became independent, the sliding scale exemption is reduced as the wage earner's responsibilities decrease. Recognition of the debtor's family obligations is achieved with only a slight impairment of the creditor's ability to predict the amount of the debtor's pay that is not within the coverage of the exemption statute. Moreover, the statute meets the needs of a changing family situation and a vacillating economy. Section 26-2-27 of the New Mexico statutes should incorporate a similar provision; the use of Virginia's statute is unlimited because it adjusts to future economic fluctuations without need for constant revision.

Section 26-2-27 also fails to properly protect *all* wage earners, without regard to the number of their dependents, because it sets no limitation on the number of actions that a creditor may use to recover the debt. It is possible for the creditor to repeatedly garnish the entire paycheck of the single debtor (who has no protection under section 26-2-27, an inequality discussed *infra*) for as long as the debt remains outstanding, and to repeatedly garnish the wages of the family man once he has received the exempt wages protected by the statute.

Repeated garnishment or attachment actions by the creditor are almost certain to result in discharge of the employee, because few employers will tolerate the confusion in accounting and payroll management that accompanies garnishment. Garnishment proceed-

40. Va. Code Ann. § 34-29 (Supp. 1964).

ings subject the employer to a barrage of notices and unnecessary expense. Faced with the threat of repeated garnishments, the debtor-employee may "voluntarily" apply more than the statutory limit of his wages toward payment of his debt rather than risk losing his job.⁴¹ The creditor, through repeated garnishments, may completely neutralize the relief the exemption statute was intended to provide.

A solution to this misuse of the garnishment procedure is a continuing lien on the debtor's wages, similar to the lien provided under the New York wage exemption statute.⁴² Under the New York statute, only ten per cent of wages in excess of a statutory minimum are subject to garnishment, and only after judgment. An execution on judgment becomes a lien on the non-exempt portion until paid in full. A New Mexico exemption of this type could adopt a different percentage of exemption, possibly equal to the twenty-five per cent presently exempted, yet still provide the benefits of the continuing lien. A continuing lien statute adequately protects the debtor because it exempts a certain percentage of his wages and enables the debtor to systematically liquidate his debts over a period of time with no crippling drain on his current source of support. The statutory minimum delays the percentage provision from functioning until the debtor has accumulated an amount sufficient for support.

Most importantly, the continuing lien establishes a permanent lien on the debtor's current and future wages. This feature eliminates the necessity for repeated garnishments and removes the expense and annoyance of repeated actions. The ability of the creditor to force the debtor to "waive" his exempt earnings with a threat of repeated garnishment and debtor's resulting fear that he may lose his job is therefore greatly weakened with the use of the continuing lien.

Recognizing the danger of the creditor's constant harassment of the debtor through continual challenge of the amount being held, a California court⁴³ stated that the successive testing of the debtor's right to exemption by levy on exempt property could leave the plaintiff-creditor vulnerable to an action for abuse of process. Such a penalty may be considered as an alternative to the permanent lien.

Another solution to the danger posed by the creditor's harass-

41. See Comment, 6 *Ariz. L. Rev.* 256, 265 (1965).

42. N.Y. Civ. Prac. § 5231(a)-(e). See also, Conn. Gen. Stat. Ann. § 52-361 (1958, Supp. 1965), which provides that a judgment may become a continuing lien on wages in excess of twenty-five dollars, but the debtor may apply for modification.

43. *Arc Investment v. Tiffith*, 164 Cal. App. 2d 853, 330 P.2d 305 (App. Dep't. Super. Ct., Los Angeles County, 1958).

ment of the debtor is the use of the Bankruptcy's Act's wage earner plan.⁴⁴ Under chapter XIII, the debtor can elect not to declare bankruptcy, retain his property, and enter into a court-supervised plan for repayment of his debts from his single significant asset—his future wages.⁴⁵ The wage earner plan, therefore, achieves the goal of rehabilitation without the necessity of a liquidation, as in bankruptcy, and often insures greater creditor recovery without undue damage to the debtor.⁴⁶

A statutory permanent lien, statutory recognition of an action by the debtor for abuse of process, or encouragement of the use of the wage earner plan will further the policy underlying the exemption statutes. But this protection should not be granted in a manner that permits an inconsistent (or irrational) application of the laws. As noted earlier, New Mexico permits an inconsistent application of its wage exemption statute, section 26-2-27, with respect to the amount allowed as an exemption based on the number of dependents a debtor may have.⁴⁷ Section 26-2-27 also applies unequally in two additional areas.

One of these areas is the position of the single debtor in New Mexico. Section 26-2-27 provides a wage exemption for a debtor with a family to support, but the statute offers no relief to the single debtor. Yet, a single debtor without dependents can become a charge on society as easily as the head of a family. The single debtor, like the family man, incurs the same basic living expenses, such as board and room, but the single debtor in New Mexico is entitled to no wage exemption relief to defray these costs. Although the security of the family may be of primary public concern, certainly the encouragement of debtor rehabilitation is a controlling consideration underlying the purpose of the exemption laws. If a debtor having

44. Bankruptcy Act §§ 601-86.

45. The court is vested with exclusive jurisdiction over the debtor's earnings and wages during the period of the plan since the principal concept is that the debtor satisfy the debt out of his future earnings. Bankruptcy Act § 611. There is also exclusive jurisdiction over the debtor's property. *Ibid.* To enable the debtor to consummate the plan, proceedings against his property may be enjoined or stayed. Bankruptcy Act §§ 614, 625. The debtor can retain his property as long as he continues the plan. If the plan is not successful, the court may order that bankruptcy be proceeded with pursuant to the act. Bankruptcy Act § 666. The debtor may then seek the protection of the exemption statutes.

46. To encourage the use of the wage earner plan, the New Mexico Legislature should lower the amounts exempted, especially wages. By lowering these amounts, the wage earner is more likely to take advantage of the wage earner plan because he could not achieve much more relief by declaring bankruptcy.

47. See note 40 *supra* and accompanying text.

no source of support other than his wages, is to be denied even an exemption for *minimum necessities* simply because he has no family, not only is he being subjected to an unequal application of the laws, but the chances of his beginning anew are very doubtful; the likelihood of his becoming a ward of the state is greatly increased. Some states make specific exemption provisions for the single wage earner without dependents;⁴⁸ to avoid an unreasonable and unequal application of its laws, New Mexico should do the same.⁴⁹

The exemption of a portion of recent earnings should apply to both the single male debtor as well as the single female debtor. Although the single female in New Mexico, unlike the single male, is allowed a few specific property exemptions, today's "white collar" woman can take little solace from the present New Mexico exemptions of wearing apparel with a value up to 150 dollars, a sewing and knitting machine, a piano or organ if she teaches music, and Bible, hymn, psalm and other books up fifty dollars in value.⁵⁰ These additional exemptions for the female, then, should not prevent her from receiving a wage exemption.

Probably the most significant advantage of wage exemptions for single debtors is the greater prospect of rehabilitation and eventual payment of the debt. Failure to exempt any earnings may discourage incentive to once again become productive. Perhaps the lack of an exemption for the single debtor would only encourage moving to another area where he can possibly avoid harassment by creditors and start anew. The most serious consideration, though, must be that the denial of this exemption to the single debtor is to continue an incongruous policy, because the purpose of exemption laws should be to provide the debtor a means of supporting himself, as well as his family.

The second area of inconsistency in section 26-2-27 is the require-

48. *E.g.*, Cal. Civ. Proc. Code § 690.11, exempts fifty per cent of the wages of all persons and one hundred per cent of the wages of the head of a family on proof of necessity. By an affidavit one can establish that he needs one-half of the subject wages for family support; the exemption will be increased to cover all earnings unless the debt was incurred for common necessities, unless it runs to an employee or former employee of the debtor for personal services, or unless the creditor files a counter-affidavit which complies with the procedural requirements of the Code of Civ. Proc. section 690.26.

Ill. Ann. Stat. ch. 62, § 14 (Smith-Hurd 1951), provides an exemption for all persons in an amount equal to fifty per cent of the exemption allowed the debtor who is the head of a family.

49. The exemption should be granted in all areas and not just for wages so that it may apply to the aged or infirmed single debtor who is unable to support himself.

50. N.M. Stat. Ann. § 24-5-2 (1953).

ment that the debtor's family reside in New Mexico; unless the debtor's family does reside in New Mexico, he cannot claim a wage exemption under section 26-2-27. The purpose of the exemption statutes, however, is to protect the debtor, and especially his family, from destitution; this policy, therefore, should not discriminate because of residence. In *Wright v. Chicago, B. & Q.R.R.*⁵¹ the Nebraska Supreme Court had to determine if a nonresident could seek the protection of the Nebraska wage exemption law, which required only that the debtor be the head of a family. Noting that the Nebraska statute, like the New Mexico statute, was directed primarily toward the welfare of the family, the court concluded:

The statute is based upon the presumption that the family of the person in the employ of another is usually dependent on such person for support. It can make no difference, therefore, where the family or the head of the family resides, as such wages must be applied to the purposes for which they were intended—the support of the family,—or suffering would be the result. *It certainly would be a very narrow view of the law to limit its beneficent provisions to residents of this state.*⁵²

The court in *Wright* did go on to recognize, as should the New Mexico Legislature, that though the exemption should not discriminate against nonresidents, the exemption should definitely not apply to the wages of a person who had absconded or left the state, or who was about to do so.

The New Mexico Legislature should also recognize the debt for necessities as an exception to the exemption laws.⁵³ The exemption of wages from garnishment is not intended to create a haven from just claims, but it is to keep the debtor and his family from becoming charges on society. If the indebtedness is for those very things which keep the family in existence, such as food, clothing, and shelter, the debtor should pay for them. The amount exempted in the first place is presumably left to him for this very purpose. Several states noted for their modern exemption laws not only except debts for necessities, but debts for personal services or manual labor as well.⁵⁴ Unlike these other laws, New Mexico should

51. 19 Neb. 175, 27 N.W. 90 (1886).

52. *Wright v. Chicago B. & Q.R.R.*, 19 Neb. 175, 27 N.W. 90, 93 (1886). (Emphasis added.)

53. N.M. Laws 1957, ch. 125, specifically excepted the debt for necessities, unlike the present New Mexico statute, N.M. Stat. Ann. § 26-2-27 (Supp. 1965).

54. *E.g.*, Cal. Civ. Proc. Code § 690.11; Ill. Ann. Stat. ch. 52, §§ 16, 18 (Smith-Hurd 1961); Ohio Rev. Code Ann. § 2329.72 (Page 1954).

provide that some minimal necessities are exempt from these highly meritorious claims; but in any event, New Mexico should recognize debts for necessities and for personal services as exceptions not covered by the New Mexico exemption statutes.

Perhaps the most ideal wage exemption statute would use regularly published indices, such as the cost of living and wage data to determine the amount of wages that are to be exempt.⁵⁵ Based on economic changes each year, the minimum exemption would be adjusted accordingly. Such an exemption would provide current, fair, and adequate protection to the wage earner. However, it is doubtful that such a standard would provide the creditor with any degree of certainty or foreseeability, both of which are desirable for the creditor. Also, such a standard would appear administratively unworkable.

The most practical wage exemption, therefore, though possibly not the most ideal, would apply to all debtors, single or married. It would employ a percentage standard for determining the amount to be exempt, with a provision for minimum and maximum limits, and a continuing lien or abuse-of-process provision to insure its systematic enforcement. All debtors supporting dependents should receive a specified additional amount for each dependent. Finally, the exemption should not apply to debts for necessities, personal service, or labor.

III

HOMESTEAD EXEMPTIONS

The New Mexico homestead exemptions for the debtor,⁵⁶ because of some recent amendments,⁵⁷ are not as antiquated as the other New Mexico exemption statutes. In many states, where the value of the property exceeds the exemption, the property may be sold and proceeds beyond the maximum exemption may be used to satisfy creditors' claims.⁵⁸ The New Mexico statute,⁵⁹ however, more fully protects the family home from forced sale. When the value of the house and lot exceeds the exemption and cannot be

55. This assumes that a price index more accurately reflects the cost of living as compared with wages which do not always fluctuate immediately or accurately with respect to a change in the cost of living.

56. N.M. Stat. Ann. §§ 24-6-1 to -9 (1953, Supp. 1965).

57. *E.g.*, N.M. Stat. Ann. § 24-6-1 (Supp. 1965).

58. *E.g.*, Ill. Ann. Stat. ch. 52, §§ 10-12 (Smith-Hurd Supp. 1965).

59. N.M. Stat. Ann. § 24-6-5 (1953).

divided without manifest injury or inconvenience, the creditor is required, in lieu of sale, to accept the annual fair rental value in excess of one hundred dollars, as determined by appraisers, until the debt, costs, and interest are paid. Sale will be consummated only upon a failure by the debtor to meet the rental payments.

The New Mexico homestead exemption of 3,000 dollars is a reasonable amount in light of the variation of homestead exemptions throughout the country; these exemptions range from 1,000 dollars in Maine,⁶⁰ to 2,500 dollars in Illinois,⁶¹ and 15,000 dollars in California.⁶² New Mexico could modernize its homestead exemption by granting an additional exemption according to the number of dependents occupying the dwelling.⁶³ As pointed out earlier,⁶⁴ such a statute makes possible a flexible standard which varies not according to the economic situation, but instead varies in amount for the individual debtor by focusing on the number of persons to be aided and protected by the exemption.

Because there are so many farmers in New Mexico, the New Mexico Legislature might also consider a rural acreage exemption. Rural acreage limits in the United States range from an Iowa exemption of forty acres, coupled with a maximum value,⁶⁵ to an exemption in Texas of a 200-acre homestead of unlimited worth.⁶⁶ Montana allows 320 acres of agricultural land to be held as a homestead,⁶⁷ but the maximum value is 2,500 dollars.

IV

WELFARE LEGISLATION AS A SUBSTITUTE

The recent growth of welfare legislation suggests that insolvents can be rehabilitated at the expense of the entire community, rather than by the insolvents' creditors alone.⁶⁸ "New attitudes toward

60. Me. Rev. Stat. Ann. tit. 112, § 69 (1954).

61. Ill. Ann. Stat. ch. 52, § 1 (Smith-Hurd Supp. 1965).

62. Cal. Civ. Code Ann. § 1260. A person, other than the head of a family, is entitled to a 7,500 dollar homestead exemption.

63. *E.g.*, Utah Code Ann. § 28-1-1 (Supp. 1965), provides a homestead exemption not exceeding 4,000 dollars for the head of the family; a further exemption of 1,500 dollars for a spouse and 600 dollars for each member of the family is also provided.

64. See note 40 *supra* and accompanying text.

65. Iowa Code Ann. § 561.2 (1950) (forty acres, maximum value 500 dollars).

66. Tex. Rev. Civ. Stat. Ann. art. 3833 (1945).

67. Mont. Rev. Codes Ann. § 33-124 (Repl. 1954, Supp. 1965).

68. Note, 68 Yale L.J. 1459 (1959).

governmental responsibility for financial disaster have developed. But state exemptions have inadequately responded to these phenomena."⁶⁹ Several authorities suggest that state governments must consider all methods of reaching the underlying goal of debtor relief and rehabilitation; because of the recent development of welfare legislation, *the community*, rather than creditors, should bear the burden of ameliorating the effects of bankruptcy.⁷⁰ The rationale of this argument is that the extension of credit is a necessary economic function, and except insofar as they knowingly allow a borrower to overextend himself, lenders are no more responsible for the debtor's financial embarrassment than other members of the community. One authority adds that although unemployment insurance might appear to offer sustenance to many bankrupts, recent statistics indicate that an overwhelming majority of bankrupts are employed wage earners at the time proceedings are initiated.⁷¹ Thus, the average bankrupt who desires state aid is relegated to reliance on general assistance.

Creditors as a class, however, do not bear the ultimate burden of debtor relief because they are able to shift the costs to society, by control of the interest rate and use of tax deductions for business bad debts.⁷² Moreover, the abolition of exemptions would be uneconomical because the debtor's personal property is seldom likely to bring a large return for creditors when sold on the second hand market.⁷³

It must be recognized that some bankrupts will require assistance. This may be because they have no exempt assets, a situation which the legislature cannot remedy; or because the statutory allowance was too small with respect to their particular assets to provide effective maintenance and rehabilitation. Although welfare assistance may be inevitable for some bankrupts, careful drafting of the exemption statutes may prevent an increase in welfare assistance for other bankrupts.

69. *Id.* at 1497.

70. Clark, *Social Legislation* 443 (2d ed. 1957); Samuelson, *Economics* 112-15, 118-20 (4th ed. 1958).

71. Note, 68 *Yale L.J.* 1459 (1959). In a survey taken for purposes of the above Note, of 1,327 bankruptcy petitions surveyed for March 1959, 1,061 bankrupts were reported to be employed. See Appendix col. 2, p. 1515.

72. Internal Revenue Code of 1954, § 166.

73. *In re Richards*, 64 F. Supp. 923, 925 (S.D. Tex. 1946).

CONCLUSION

In drafting the New Mexico exemption statutes, the legislature must first attempt to achieve a uniform exemption level for all debtors. It is administratively impossible to provide a different exemption for each of the three classes of debtors: the wage earner, the self-employed, and the debtor who has no assets. The legislature must then balance the desire to safeguard debtors from the effect of inflation against the desire to protect creditors' expectations. This Note has only suggested some guidelines for revision of the New Mexico exemption laws, laws which presently contain archaic provisions and outdated values. There is a need for a general review and modernization: first, to remove the statutory anachronisms, and second, to provide for flexibility of application in the future.

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