

Legislative Construction of the Personal Bankruptcy Exemption System

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Abstract: With the further development of the economy and society, the call to build a personal bankruptcy exemption system is increasingly high. The personal bankruptcy exemption system is an important system for the economic development of modern countries and is of great significance for promoting national economic development. The concept of exemption legislation originates from the theory of debtor cooperation, the modern personal bankruptcy exemption theory is formed after the integration of debt forgiveness theory, humanitarian theory and social utility theory, China's personal bankruptcy exemption theory should be based on modern personal bankruptcy theory, on the basis of modern personal bankruptcy theory combined with China's special cultural customs and economic characteristics to make appropriate adjustments, in order to promote the legislation of China's personal bankruptcy exemption system.

Keywords: Personal bankruptcy exemption system construction exemption legislation.

1. The Theoretical Basis for Personal Bankruptcy Exemption

Personal bankruptcy exemption first appeared in the United Kingdom and the United States developed countries, initially in order to maximize the protection of creditors, promote economic development, but the development of personal bankruptcy system in ah for a long time is extremely tortuous, the public for the establishment of personal bankruptcy system is full of worries, at present, China for the establishment of personal bankruptcy system is also full of uncertainty, the public's concern about personal bankruptcy exemption system is mainly focused on the debtor borrowing personal bankruptcy system to evade debt, thereby harming the interests of creditors, therefore, How to design a personal bankruptcy system and dispel the public's concerns about the personal bankruptcy system is of great significance to the establishment of China's personal bankruptcy exemption system.

The beginning of the personal bankruptcy system into the pilot stage of local legislation is undoubtedly a milestone event. The debtor's cooperation theory argues that for the temptation of exemption from liability for the debtor, the debtor actively cooperates with the creditor in the liquidation of the bankruptcy estate, can discharge the debtor's inability to pay off the debts, the debtor cooperates with the creditor to relieve its unpaid debts, and conversely, if the debtor does not actively cooperate with the creditor in the liquidation of the bankruptcy estate, it will not be relieved of its unpaid debts, and the debtor and the creditor will sign a compliance agreement. In the compliance agreement, the debtor and the creditor agree to actively perform the debt to the creditor, at which time the interests of the creditor will undoubtedly be safeguarded and their interests will be realized to the greatest extent. For the debtor, in the process of cooperating with the creditor in the process of debt liquidation, the debtor's debts that cannot be repaid have also been forgiven, which is also extremely beneficial to the debtor. The debtor cooperation theory requires creditors to agree to exemption, but at the beginning of the theory, creditors do not fully agree to the debtor's exemption, at which time it is difficult for personal

bankruptcy theory to play its role, in view of this, the British and American developed countries have resorted to legislation, forcing creditors to agree, only stipulating that in special circumstances, creditors have the right not to be discharged from the debtor's responsibilities, such as the debtor's transfer of property, passive confrontation with creditors. Direct exemption from liability in liquidation proceedings, the debtor may apply for bankruptcy liquidation regardless of the amount of debt owed.

1.1. Debt Forgiveness Theory

The theory of debt forgiveness originated from religious doctrine. In Western culture, bankruptcy is an opportunity given by God to be reborn, after bankruptcy everything will start again, the debts after bankruptcy should be destroyed on their own, for the debt problem after filing for bankruptcy, the creditor cannot charge interest on the debtor after bankruptcy, the creditor should give the necessary care to the bankrupt debtor, in the case of the debtor's non-malicious bankruptcy, give it maximum forgiveness, the premise of the creditor to forgive the debtor is that the debtor actively cooperates with the creditor to liquidate the bankruptcy, for the debts owed, Do your best to pay it off. The purpose of debt forgiveness theory is to rescue debtors from debt, so that they can return to society, find their value again, play a new role in the economy and society, and promote economic and social development. As a legal system that fully respects the basic rights and values of debtors, the personal bankruptcy exemption system is a watershed dividing between modern bankruptcy law and traditional bankruptcy law, and is regarded as the soul of modern bankruptcy law.

1.2. Theory of Social Utility

With the rapid development of the real economy and society, the legislative purpose and legislative objectives of the bankruptcy law have changed, the initial establishment of the bankruptcy law is mainly to consider the protection of the interests of creditors, and later focused on protecting the interests of the bankrupt debtor, the development is now to emphasize the coordination of creditors in the interests of the debtor, in the interests of creditors and the protection of the

interests of the debtor to find a balance point, social utility theory considers the overall benefits of society, the pursuit of the maximization of the overall benefits of society, the original intention of the personal bankruptcy system is not to crush the debtor, On the contrary, the purpose of the personal bankruptcy system is to help bankrupt people return to society, so that they can regain their value, and encourage bankrupts to become economic and social builders again, rather than bearers of social development.

2. The Dispute Over the Road to Personal Bankruptcy Exemption

No matter what theory is based on, personal bankruptcy exemption is ultimately a choice between automatic exemption or licensing exemption. Automatic exemption means that after bankruptcy, the bankrupt does not need to apply to the court to allow bankruptcy, nor does it need to obtain the consent of the creditor, the automatic exemption is mainly to facilitate the debtor, after the debtor is bankrupt, it can obtain the debt exemption without the consent of the creditor, so as to avoid the situation where the creditor refuses the debtor's exemption. The exemption procedure refers to the procedure in which the debtor, after entering the bankruptcy procedure, performs certain acts or satisfies certain conditions and is ruled to be exempt from liability such as debt repayment. Although the automatic exemption from liability provides great convenience, but it is also easy to lead to the debtor malicious use of the automatic exemption system, the debtor in the case of automatic exemption, whether the debtor will actively cooperate with the creditor to liquidate the debt is a question worth thinking about, from the reality, the debtor under the automatic bankruptcy theory, a large number of debtors will choose to hide property, or transfer property. At this time, the debtor has no property to liquidate, and the interests of creditors cannot be effectively protected. Looking at the developed countries in the world, represented by the United Kingdom, the United Kingdom implements an automatic bankruptcy exemption system, and the reason why the automatic bankruptcy exemption system can develop smoothly in the United Kingdom is mainly due to the legal and cultural foundation behind the United Kingdom and the perfect social management system.

The licensing exemption system is another alternative path of the personal bankruptcy exemption system, which refers to an exemption system in which the debtor applies to the court for bankruptcy exemption after the debtor is bankrupt in poor management, and after the court allows it to go bankrupt, it can be exempted from liability with the consent of the creditor. The licensing exemption system requires the debtor to obtain the consent of the court and creditors, and on the basis of consent, the bankruptcy exemption can be achieved. Licensing exemption is more in line with the national conditions for many countries, licensing exemption can avoid debtors hiding property to evade debts, harming the interests of creditors, China's personal bankruptcy system developed late, bankruptcy culture is relatively small, and the current society generally has a skeptical attitude towards the personal bankruptcy exemption system, and the debtor also lacks

sufficient trust, so in this case, the licensing exemption system should be selected first. Optimizing the business environment requires market entities to receive equal legal protection, including equal rights, equal opportunities, and equal rules.

3. Exceptions to Personal Bankruptcy Exemption

Personal bankruptcy exemption gives the debtor an opportunity to start over, while ensuring that the interests of creditors are protected to the greatest extent, but for the application of personal bankruptcy issues, there are still many factors that need to be considered in reality, whether personal bankruptcy is exempt from liability without distinction, or according to the reasons for bankruptcy, the debts incurred after bankruptcy also have different natures, and there is still a dispute over whether this part of the debt should be exempted, such as tax debts and government fines. Tax debt in most countries in the world is excluded from the scope of exemption, tax is an important source of finance for a country, the level of tax is of great significance to the development and construction of a country. Taxation is the necessary fiscal revenue for national construction, taxation is not produced in the bilateral relationship of the market, taxation is the debtor's basic obligation to the state, the theoretical view of advocating exemption from liability through the comparison of exemption or not, so as to conclude that the debtor's exemption is conducive to promoting the overall interests of society, and will not cause social moral hazard. Scholars who advocate unavoidable responsibility believe that taxation belongs to the common interests of all citizens of the country, and that taxation is used to build the country and improve the construction of national infrastructure, which is extremely important to all citizens of a country, and should not harm the interests of all citizens in order to alleviate some debtors.

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