

Cite as Det. No. 01-144, 20 WTD 490 (2001)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 01-144
...)	Registration No. . . .
)	Warrant No. . . .
)	Docket No. . . .
)	

- [1] COMMUNITY PROPERTY - JOINT DEBT - LIABILITY. A debt incurred by either spouse during marriage is presumed to be a community debt. The acid test to determine whether an obligation incurred by a spouse is a community debt is whether or not the transaction was intended for the benefit of the community or expectation of benefit for the community.
- [2] TAX LIABILITY - DISSOLUTION DECREE - RELEASE FROM LIABILITY TO PAY. The court in a divorce action cannot adjudicate the rights of creditors who are not parties to the action. A Decree of Dissolution that required the husband to pay the liability owed to the Department of Revenue does not preclude the Department from seeking payment from the wife.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

NATURE OF ACTION:

Taxpayer requests release from tax warrants associated with the operation of a now closed restaurant.¹

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

FACTS:

Lewis, A.L.J. -- In 1995, [Taxpayer] began the operation of a . . . restaurant. The restaurant was registered as the sole proprietorship of [Taxpayer] and his then wife, Soon after its opening the restaurant experienced difficulty in paying its taxes. In February 1999 [Taxpayer's wife] died. Shortly thereafter, in March 1999 [Taxpayer] married [second wife]. The restaurant's financial difficulties continued to worsen. On June 7, 1999, the Department filed Warrant No. . . . representing the unpaid tax for November and December 1998 and January 1999.² As time passed the restaurant fell farther and farther behind in paying its taxes. In April 2000, the business closed. On May 18, 2000, the Compliance Division of the Department of Revenue ("Revenue") filed a \$. . . tax warrant for the unpaid taxes of July through November 1999 and February through April 2000.³

On June 16, 2000, the Department revoked Taxpayers' Certificate of Registration. On December 26, 2000, [Taxpayer] and [second wife]'s divorce became final. On April 20, 2001, [second wife], wrote the Department of Revenue's Compliance Division requesting that she be released from liability on the May 2000 tax warrant. [Second wife] maintained that the Compliance Division erred in seeking payment from her because she and [Taxpayer] had no joint debts and that by the terms of the divorce decree [Taxpayer] was required to pay the May 2000 issued warrant.

ISSUES:

1. Whether the May 2000 warrant represents a community debt owed and payable by either spouse?
2. Whether a party is liable for unpaid taxes of a proprietorship when a dissolution decree requires payment be made solely by the ex-spouse?

DISCUSSION:

[1] The statutory description of Washington's marital community property system (RCW 26.16.010-26.16.210) is by no means complete and it is necessary to look to court decisions for amplifying detail. Generally, except for the separate property of each spouse acquired prior to marriage and the separate property acquired by either spouse after marriage, all other property acquired after marriage by either husband or wife or both is community property. Similarly, a debt incurred by either spouse during marriage is presumed to be a community debt. E.g. Fies v. Storey, 37 Wn.2d 105, 221 P.2d 1031 (1950); Oregon Improvement Co. v. Sagmeister, 4 Wash. 710, 30 P. 1058 (1892); National Bank of Commerce v. Green, 1 Wn.App. 713, 463 P.2d 187 (1969).

² [Second wife] was not named on this warrant.

³ Tax warrant No. . . . in the amount of \$. . . consisted of \$. . . tax, \$. . . delinquency penalty, \$. . . warrant penalty, \$. . . audit interest, \$. . . additional interest, and \$. . . additional penalty.

Either spouse, as manager of the community personal property, is empowered to subject the community property to community debts by his/her sole act or signature. Such acts after marriage are presumed for the benefit of the marital community and presumptively a community obligation. Fies v. Storey, *supra*. The burden is upon one who claims that property acquired after marriage is separate property to establish such claim (Rustad v. Rustad, 61 Wn.2d 176, 377 P.2d 414 (1963)), by clear and convincing evidence. Dizard & Getty v. Damson, 63 Wn.2d 526, 387 P.2d 964 (1964); Beyers v. Moore, 45 Wn.2d 68, 272 P.2d 626 (1954); Meng v. Security State Bank, 16 Wn.2d 215, 133 P.2d 293 (1943).

[Second wife] maintained that she had no joint debt with her ex spouse [Taxpayer]. We disagree. [Second wife] married [Taxpayer] in March 1999. During their marriage they lived together and operated the restaurant together in Washington. [Second wife] benefited from the operation of the restaurant. In fact, her petition stated that she had an interest in the business's profitability to support the family. The heart of the concept of community property is just that: the labors of either or both spouses for the benefit of the community. As the court stated in Dizard & Getty v. Damson, 63 Wn.2d 526, 387 P.2d 964 (1964):

it is inconceivable that respondent may authorize the husband to carry on the community business, create a potential source of assets, ultimately share in these assets, and yet be immune from the claims of creditors who contribute to the accumulations, if any.

The acid test to be applied in determining whether an obligation incurred by the husband is a community debt is whether or not the transaction was intended for the benefit of the community or expectation of benefit to the community. Fies v. Storey, *supra*. The presumption that the husband is presumed to be acting for the benefit of the community is rebuttable, and may only be overcome by evidence showing otherwise. Household Finance Corp. v. Corby, 61 Wash. 2d 184, 377 P.2d 441 (1963). The only evidence offered by petitioner is her own conclusionary statement that she had no joint debt with her ex-spouse.

There is no doubt that the state and business tax obligation [second wife] protests was incurred as a necessary part of running a business that provided income to the community. [Second wife] has not made a case that the debt she protests is not community debt.

It should also be noted that [second wife] did take an active role in the business. However, even if she hadn't, the law is clear [that the obligation would still be a community debt]. "Whether a wife knows of a community indebtedness incurred by the husband is immaterial if the indebtedness was actually incurred in connection with the business of the community." Fies v. Storey, *supra*. Accordingly, we find that the disputed debt is a community obligation.^[4]

^[4] Even if the restaurant were the husband's separate property at the beginning of the marriage, after the marriage both the income and debts arising from the acquisition of such income would presumptively be the communities. Rowe v. Smith, 73 Wn.2d 629, 440 P.2d 179 (1968). The wife's participation in the operation of the restaurant after the marriage by doing the bookkeeping was more than a nominal participation. As a result the community debt can be collected against her separate assets after the divorce. Had she not participated significantly in the operation of

[2] Our second inquiry is whether the dissolution decree, which required [Taxpayer] to pay the tax warrant, releases [second wife] from the liability. The law on this issue is equally well settled.

In Hanson v. Hanson, 55 Wn.2d 884, 350 P.2d 859 (1960), the appellant appealed the trial court's order directing a former wife to pay community income tax liabilities and also the balance of the sums provided for in a divorce decree. The appellant argued that she was entitled to a set off against the property settlement payments one half of the amount of the joint income tax she had paid. The Court reversed the trial court's order stating in pertinent part:

. . . in a divorce action the court cannot adjudicate the rights of creditors who are not parties to the action. After a divorce, creditors can, of course, collect community debts from either party as joint obligors. Payment of a joint debt by a joint obligor will sustain an action for contribution. Proff v. Maley, 14 Wn.2d 287, 128 P.2d 330; 18 C.J.S. 12, Contribution, 9; 13 Am.Jur. 32 Contribution, 35.

Consistent with the Courts' findings in Hanson we find that the Decree of Dissolution that required the husband to pay the liability owed to the Department of Revenue, does not preclude the Department from seeking payment from [second wife] or from [second wife] seeking contribution from her former spouse.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 27th day of September 2001.

the restaurant, the debt would still have been a community debt, even if it may not have been collectable against her separate assets. See Smith v. Dalton, 58 Wn. App. 876, 881, 795 P.2d 706 (1990).]