This appendix includes a series of questions and answers for each state designed to help determine the applicable exemption law for purposes of 11 U.S.C. § 522(b)(3)(A) in a debtor’s bankruptcy proceeding. Which state’s exemption law applies is determined by the debtor’s domicile. According to the Bankruptcy Code, the debtor’s domicile for exemption purposes is the state in which the debtor’s domicile has been located for the 730 days immediately preceding the petition filing date or, if the debtor’s domicile has not been located in a single state for the 730-day period, the state in which the debtor was domiciled for the longer portion of the 180 days immediately preceding the 730-day period.¹

If the domiciliary state, as determined by section 522(b)(3)(A), has not opted out of the federal exemption scheme, or if the statutory opt-out applies only to residents or domiciliaries of that state, the debtor may claim the federal bankruptcy exemptions found in section 522(d). The first question for each state therefore asks whether the state has opted out of the federal bankruptcy exemption scheme. The next question asks whether the state’s opt-out is limited to residents or domiciliaries of that state.

If the effect of section 522(b)(3)(A) is to render the debtor ineligible for any exemption, the debtor may use the federal bankruptcy exemptions found in section 522(d). Such a situation could arise if the exemption law of the debtor’s domicile requires the debtor to reside within the state in order to claim an exemption or if the law does not permit an exemption to be taken on property located outside the state. Thus the next question addresses whether the state exemption provisions covering homesteads and personal property may be given extraterritorial effect, thereby permitting an exemption to be used on property not located within the state.

If the language of the state exemption statute indicates that it applies only to property located in that state, or to a debtor domiciled in that state, the response is listed as “no.” If the language of the state exemption statute indicates that it applies only to a resident of that state, the response is listed as “probably not,” recognizing the possibility that a debtor may maintain a residence in the state even though the bankruptcy case has been filed in the state of the debtor’s domicile for venue purposes. If the state exemption statute indicates that it applies to property located outside the state, or if the statute is silent but case law has construed the statute as having extraterritorial effect, the response is listed as “yes.” If the statute does not clearly specify its extraterritorial effect and the issue has not been resolved by case law, the response is listed as “uncertain.” In some cases, in which the statutory language or case law is inconclusive but suggests a leaning in one direction, the response is listed as “possibly yes,” “possibly not,” “probably yes,” or “probably not.”

Footnotes


For a discussion of the domiciliary requirements, see National Consumer Law Center, Consumer Bankruptcy Law and Practice Ch. 10 [1] (12th ed. 2020), updated at www.nclc.org/library.


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Links

[1] https://library.nclc.org/nclc/link/Bankr.10