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Study on the Legal Problems of the Exemption System of Personal Bankruptcy

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Abstract

The core of personal bankruptcy is the exemption system, which gives honest and unfortunate debtors a chance to start over and guarantees their basic rights of survival and development, is an important system for maintaining sound socio-economic functioning and for resolving difficult issues of court enforcement, not only in helping natural debtors in debt deadlocks in individual cases, but also in helping markets to recover as quickly as possible, thereby improving the overall well-being of society. However, throughout the world, whether it is a country that has established the personal bankruptcy system for a long time, or a country that is in the initial stage of exploring the personal bankruptcy system, personal bankruptcy exemption, a well-meaning legal system, has inevitably caused some negative effects and hindered the operation of the system as a whole. In order to guarantee the good operation of the personal bankruptcy exemption system in our country, we should establish such systems as the incentive system of the bankruptcy person with good faith and the property registration system to support the operation of the procedure, improve the link between personal bankruptcy exemption and civil law, Civil Procedure Law, company law, etc., in order to guarantee the validity and feasibility of personal bankruptcy exemption system, the procedures of debtor's application, administrator's opinion, Creditor's objection, relief and rescission are detailed.

Keywords

Personal Bankruptcy; Bankruptcy Exemption; Balance of Interests.

1. The connotation of personal bankruptcy exemption system

1.1. The nature of bankruptcy immunity

The system of individual bankruptcy exemption refers to the legal system that the bankruptcy debtor should continue to discharge the remaining debts after the bankruptcy procedure has ended. In ancient Rome, the creditor could not only impose monetary penalty on the debtor, but also impose personal penalty on the debtor for failing to repay the debt as agreed, that is, when the debt can not be repaid, the creditors need to compensate with property, labor, or their “Detention” “Slavery” “Sell” or even “Death.[1] This fully reflects the social protection of private property at that time, this concept continued until the 17th century. With the development of social economy, the capitalist society has a new understanding of the risk of debt. After the debtor goes bankrupt and is severely punished, he gets into the mire of debt, debt and financial penalties make it almost impossible for debtors to pay, and imprisonment or even the death penalty for debtors can lead to a vicious cycle in which they can not create new wealth to pay off their debts, this is not only for the realization of creditors' claims without practical significance, but also not conducive to the stable development of society. Since then, relief from debtor bankruptcy has gradually begun to emerge, allowing forgiveness of debts that are truly unpayable.[2] The modern bankruptcy law has changed in the legislative idea, from the original “Punish the debtor” to “Concern the debtor's survival rights and interests” and began to

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consider the healthy development of the society as a whole, one of the most important signs is the emergence of the exemption system. From the initial assessment of guilt to the assessment of Innocence in modern society, bankruptcy has experienced the development and progress of human civilization. The original intention of the system is to provide relief to the debtor and return the debtor to a normal life. Therefore, the essence of the exemption system is that after the liquidation procedure, in order to protect the basic survival rights and interests of the debtor, the debtor is unable to pay the remaining debts for partial or total relief. The exemption system is the core content of the personal bankruptcy law, which guarantees the debtor's dignity as an ordinary citizen, abandons the idea of debt guilt, and balances the interests of creditors and debtors, it considers the social and economic reasons for the formation of the debt of natural persons.

1.2. The characteristics of bankruptcy exemption

The legality of bankruptcy exemption should be clear legal stipulations on what kind of debtor and what kind of debt can be excused and the debtor of natural person must meet the conditions of exemption from liability stipulated by law in order to obtain the qualification of exemption from liability. First, the bankruptcy exemption system is aimed at honest and unfortunate natural person debtors who have no assets to enforce. This is a clear provision of the main exemption, that is, if the debtor has a fraud or related illegal acts can not apply for exemption, exclusion of dishonesty is also the overall idea of building exemption system. Before the discharge, the debtor should fully prove their good faith, while the court and the administrator will also examine whether the debtor has fraud and other dishonest behavior, such debtors should not be exempted. As an abstract principle, good faith usually excludes dishonest behavior by prohibitive clauses in legislation. For example, section 727(a) of the United States federal bankruptcy code provides for, among other things, the transfer of hidden assets by the debtor, incomplete disclosure of information, vague and general information on the causes of financial deterioration, refusal to comply with the cooperative obligations required by the court, transfer of property to relatives, etc. within one year, or assumption of debt. A debtor will not be exempt from liability if he or she has done so.[3]

The limitation of the exempt subject As for the system of individual bankruptcy exemption, we study it from the perspective of the natural person as the subject of bankruptcy, but the legal definition of the natural person is still needed. First of all, from the definition of “Individual”, one view is that “Individual” refers to the economic main body, civil main body, the bankruptcy of an individual shall include the bankruptcy of a general partnership, bankruptcy of a natural person, bankruptcy of an individual business owner, etc., for personal bankruptcy is essentially the bankruptcy of all subjects with unlimited liability, de jure or de facto. Another view is that the “Individual” in personal bankruptcy should refer to the “Natural person” in the sense of general civil law.

I agree with the first point of view, natural person in the natural attributes, including the ordinary natural person, natural person partnership in the individual, individual businesses and other participants, because of its economic attribute in bankruptcy procedure, partner investors should understand “Individual” more than “Natural person”. Natural per capita should be included in the personal bankruptcy system, which is the understanding of the applicable subject of personal bankruptcy, but also the understanding of the exempt subject. Secondly from the point of view of individual behavior, there are some viewpoints that the scope of the exemption system is limited to the natural person of commercial behavior, it means that only those business entities that engage in commercial activities and lead to insolvency are exempt from personal bankruptcy.[4] Scholars who hold this view believe that the main reason for carrying out the bankruptcy of business natural persons, the system of personal property registration of natural person is not perfect, and the too broad scope of exemption of natural person may cause debtors to evade debts through dishonest behavior, and bring fraud, money laundering and other illegal acts; When the social security system is not perfect, the personal bankruptcy system will be overrun, which will bring risks to the society.

The author thinks that the commercial natural person should not be treated differently from other natural persons under the bankruptcy exemption system. First, it is difficult to determine whether the natural person's behavior has the commercial nature, and there is no separate legal norm of commercial subject in our country's legal system, the current legal system of our country is not suitable to distinguish the natural person of business from the ordinary natural person, secondly, the starting point of the exemption system is to protect the rights and interests of the debtor, limiting the applicable subject to the natural person of business actor does not meet the original intention of the exemption system design. The exclusion of non-commercial natural persons from liability for debt distress would deprive them of the opportunity for rebirth. Thirdly, with the development of market economy, it is more and more difficult to distinguish the boundary between the natural person's participation in commercial behavior and other behaviors, and the natural person's participation in commercial behavior has become a universal phenomenon, the ordinary natural person faces the debt crisis situation to be frequent, in the bankruptcy exemption limits the main body to the commercial natural person obviously has lost the maneuverability and the legislation premise.

The exemption does not start at the same time as the insolvency proceedings, but after the termination of the insolvency proceedings, so the exemption system has a lag compared with other insolvency proceedings. If the debtor or the debtor applies for bankruptcy and enters into the bankruptcy proceedings with the permission of the court, the creditor shall first be discharged in accordance with the principle of fairness, and if after going through the corresponding procedures of bankruptcy application, property declaration, liquidation, etc., it is true that the debtor is unable to pay off the remaining debt and if the debtor continues to be required to assume the entire debt and the individual bankruptcy system only achieves the goal of centralized liquidation of the debt, then the bankruptcy exoneration procedure should be initiated. Prior to that, because the debtor's property status and the amount of the creditor's redeemable claims are not clear, it is impossible to determine the scope of the exemption, so natural persons, bankruptcy exemption must be initiated after the conclusion of the bankruptcy proceedings, only after the conclusion of the distribution of the debtor's property can the remaining debts be discharged according to the exemption procedure.[5] At the same time, in order to prevent the exemption system from being used by the debtor as a tool to avoid performing debts, there should be some follow-up measures in the exemption system. After exempting the debtor from liability, we need to take corresponding management measures, such as checking the information of the debtor, creditors and administrators have the right to express opinions on the debtor's exempting liability, etc. Bankruptcy in the United States and Germany provide that the debtor shall be subject to the supervision of creditors and administrators after exemption from liability, creditors can apply to the court to set aside the debtor's exemption award.

2. The application predicament of personal bankruptcy exemption system

2.1. The rules for exemption from abuse are designed too loosely

In the United States, for example, the former exemption system is designed too loosely, debtors are more easy to obtain the effect of exemption, so it is easy to misinterpret the original legislative intent of the exemption system, and the implementation of bankruptcy abuse. It can be seen that the main reason for the abuse of bankruptcy is the design of the exemption system which is too loose or insufficiently regulated, such as the automatic exemption starting mode, the lack of information disclosure and publicity system, the choice of general bankruptcy, set a

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short period of exemption study system design, the author believes that the most likely legal problems are the automatic exemption mode and the lack of information disclosure and public system.The start-up mode of automatic exemption is adopted.[6]

At present, the main models of exemption legislation in the world are the license exemption model based on the idea of regulating credit market and the automatic exemption model based on the idea of open credit market, the latter is strict and pays more attention to the exoneration review. Comparatively speaking, the demand for social foundation and supporting mechanism is relatively low, while the automatic exemption relies more on good social credit level and good business environment. Although there is no distinction between the two models, but there is a problem with the national conditions of a country, and in the absence of good credit environment, reasonable, and a strong legal regulatory system, in the absence of a good credit environment and a strong legal system, the abuse of bankruptcy can easily result from the automatic exemption model based on the concept of tolerance. For our country, it should be classified as the legal problem of individual bankruptcy exemption system, because the automatic exemption mode does not fit with the reality of our country at present, under the automatic exemption mode, the inspection period is short, and the duration of inspection period is the most intuitionistic standard to measure whether the exemption system achieves the balance of interests, the more lenient the exemption system, the more the accuracy of the exemption review will be sacrificed.[7] In the United States, for example, an automatic waiver period occurs automatically after 60 days from the date of the first debt meeting unless the creditor or administrator objects, the debtor does not have to submit an application or participate in the hearing, and can automatically obtain the exemption effect on the expiration date. Too Short inspection period of exemption will give the intuitive feeling of too lenient social exemption system, which has the disadvantage of not being able to effectively screen the honest and unfortunate debtors. On the other hand, the lack of restriction on continuous exemption leads to the debtor's misinterpretation of the original legislative intention of the exemption system, and the exemption system is regarded as a “Tool of debt evasion” or “The foundation of management”, this was the case in the United States before 2005. In the past, there was no strict restriction on the continuous exoneration, which made it easy for the debtor to get rid of the responsibility of paying off the debt, which made the system of exoneration unable to remind the debtor to be rational properly, as a result, American consumers and managers are becoming less and less cautious in their economic activities, and gradually misinterpret the exemption system as a shrewd business strategy, a primary exit mechanism and even a legal means of debt evasion, this in turn led to credit consumption that was beyond the reach of the US market and ultimately became the trigger for the 2008 financial crisis. In 2005, the BAPCPA Act of the United States adopted a number of “Make up for lost time” measures to offset the drawbacks caused by the automatic exemption mode. For example, the United States provided for more than 20 types of non-exemption debts, and except for the non-market background, which is not justifiable in nature, there are usually no more than 10 types of non-exempt debt in general, it can be seen that this move is in essence a helpless move to be forced to narrow the scope of the debt that can be exempted under the problem of widespread bankruptcy abuse.[8] It will not only increase the burden of legislation, it will also lead to the bad effect of personal bankruptcy on debtor's rebirth, adjustment and promotion of economy, but fail to realize the original intention of reducing the debtor's input to realize efficiency value.

2.2. Information Disclosure and disclosure system is absent

If a country's insolvency law lacks legal provisions on information disclosure and publicity, or can not effectively solve the problem of information asymmetry in insolvency proceedings, it is difficult to effectively curb the abuse of insolvency from the root. In our country, there is a lack of legal provisions on information disclosure, the existing legislative documents include the provisional measures of Shenzhen Municipality on the registration and disclosure of personal bankruptcy information and the implementation opinions on the establishment of a mechanism for the sharing and disclosure of bankruptcy information, but the implementation process is relatively slow, it is difficult to guard against the abuse of bankruptcy, which leads to higher and higher risks, and it is also not conducive to the negotiation of reorganization plan.

As mentioned above, the pursuit of utility maximization problem is the root cause of bankruptcy abuse, which is also an important factor of moral hazard in personal bankruptcy exemption system. The principles are interlinked with the field of insurance law, for example, “Insurance Law” has such provisions as “The insured must enjoy insurance benefits to the insured”, “Life insurance contract with death as a condition for payment of insurance benefits, without the consent of the insured and approved amount of insurance invalid” and so on, it is to prevent the policy holder or the beneficiary from raising the risk, making the insurance accident or even committing the crime of personal injury in order to obtain the indemnity unjustly. As an “Insurance mechanism”, the individual bankruptcy exemption system also often causes the decision-maker to pursue the utility maximization problem, and often takes the bankruptcy abuse behavior as the concrete manifestation, the specific reasons can be further analyzed from the subjective and objective levels.

On the subjective level, the current level of our society's awareness of personal bankruptcy law as well as the overall level of credit awareness is relatively weak, that is, the general public of the individual bankruptcy and exemption system of the legislative intent, expected function and the legal value represented by a comprehensive understanding of the value, compliance with the legal principles of good faith tends to be passive rather than active. Under such a situation, the exemption system will easily lead to the pursuit of utility maximization problem, and this kind of motive will often cause the debtor to misinterpret the legislative intention of the exemption system, regarding the system of exemption as a right that should be enjoyed rather than a privileged interest based on certain conditions, and taking the effect of remaining debt exemption as the ultimate goal of applying for personal bankruptcy, ultimately, utilitarianism leads to the moral hazard of abuse of the exemption process.[9-10]

On the objective level, it is true that the exemption system, through the intervention of the state public power, sacrifices some rights and interests of the creditors in exchange for the economic regeneration of the debtors, and this will inevitably result in a situation where one side gains and the other suffers, and it is difficult to have both sides, therefore, the exoneration system will inevitably lead to a situation of confrontation between the creditor and the debtor, and the creditor naturally hopes to find out the various types of assets of the debtor by all means, and the debtor naturally wants to preserve the asset by hiding it as much as possible. On the basis of the utilitarianism of the decision-making subject in the legal relationship of bankruptcy, it is possible to make use of the advantage of the degree of information to obtain the effect of exemption to drive the action of harming the legitimate rights and interests of creditors. To sum up, the utility maximization problem is the root cause of bankruptcy abuse, and the asymmetry of information is the main culprit that condones bankruptcy abuse, if the personal bankruptcy procedure can not make the creditor's rights and debts, and both parties are in a relatively balanced information position, it is very likely to cause one party to violate the principle of good faith under the domination of human weakness, the moral hazard of using the advantage information to carry out the abuse of bankruptcy, thus destroying the objective of fair compensation in personal bankruptcy procedure.

2.3. The restrictive conditions of the exemption procedure and the criterion of liability are too strict

At present, there are many opinions in our theoretical circle that strict legislation should be adopted to curb the abuse of bankruptcy. In the light of the above, Germany has long adopted

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strict legislation, and the United States has also been leaning towards strict legislation under the pressure of bankruptcy abuse, but the long-term experience and lessons of these two countries show that, the pursuit of strict legislation does not necessarily lead to good results, the specific system such as the excessive restriction of rights during the inspection of exemption, the excessively long inspection period of exemption, the establishment of multiple review procedures, the reform of the advocacy procedure to the compulsory procedure, the excessive severity of the corresponding legal liability, etc., one of the most likely legal problems in our country is the excessive restriction of the debtor's rights.

Unreasonable personal bankruptcy system is not conducive to the realization of the exemption system to promote the realization of economic regeneration function, and easy to reduce the enthusiasm of the debtor to apply for personal bankruptcy exemption.[11] The system of insolvent right, also known as the system of insolvent disqualification, is a system that restricts the debtor's behavior and prevents the abuse of bankruptcy by imposing various restrictions on the debtor during the period of inspection for exemption from liability, namely, “Restrictions on practice” and “Behavioral restrictions.”. Employment restrictions generally apply to occupations with high moral hazard, such as senior management, executive directors, etc., the current provisions of Article 86 of the regulations on personal bankruptcy of the Shenzhen Special Economic Zone belong to a sub-type of the employment restriction of the system of loss of rights in personal bankruptcy, the main restriction of exemption applicants as directors, supervisors and other senior management qualifications, in order to prevent them from taking advantage of the information advantages of the above-mentioned specific occupation and personal bankruptcy system gap to avoid debt. Behavior restrictions are generally based on the implementation of deterrence mechanisms, such as restrictions on high consumption behavior, including the list of dishonest people sanctions measures, which are not limited to the field of personal bankruptcy, the application of a wider range of, in the past, our country has achieved good results in cracking down on the “Old Lai” problem, so this paper mainly discusses the limitations of employment during the exemption study period. By placing a burden on the debtor during the exemption period, the system urges the debtor to actively prove that he or she is in a position to be honest and unfortunate, despite returning to a normal social role. However, the system of bankruptcy loss of rights is not without its drawbacks, and it can also be regarded as a way of “Stigmatizing the debtor”.[12]

Generally speaking, the countries that are relatively conservative in the concept of exemption legislation in the world usually have a wide range of application of the system of loss of rights, while the countries with relatively tolerant concept generally control the strength of the system of loss of rights. For example, the organic law of the German court forbids a bankrupt to serve as an assessor, an honorary judge, etc. during the period of loss of power, and the Indian bankruptcy law is more vigorous, it even prohibits the eligibility of a bankrupt to hold public office and the political right to vote and to be elected during the period of incapacity. Bankruptcy in the United States, on the other hand, has an explicit provision that “An employer can not discriminate in the employment of an employee simply because the employee is bankrupt,” so as to avoid social discrimination in employment due to a system of incompetence. To sum up, although the system of bankruptcy loss of rights is a sharp weapon to combat the abuse of bankruptcy, it can indeed urge the bankrupt to actively pay off, and engage in economic activities prudently during the period of good character, as much as possible, it discourages passive debt repayment or debt avoidance. However, if the scale is not properly controlled, it will reflect the neglect of the interests of the debtor, and break the benefit balance of the exemption system. Therefore, this article will be out of power system summed up as the exemption system of legal issues, its application should be held a cautious attitude.

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3. Suggestions on the legal issues of personal bankruptcy exemption system

3.1. Establish and improve mechanisms to regulate abuse of immunity

The main way to prevent the negative influence of the complexity of the types of abuse in bankruptcy is to solve the legal problem that the corresponding rules to regulate the exempt abuse are designed too loosely, therefore, it is necessary to establish a sound system to regulate the abuse of liability, which can be discussed from two aspects.It is necessary to establish a model of exemption from liability by permission, which takes into account both order and efficiency.

Residual debt exemption can not be unlimited, must be subject to certain constraints, such constraints first from the start of the exemption system model, and for our country, the framework model should be a license exemption model. According to the provisions of Article 101(2) of the ordinance on personal bankruptcy of the Shenzhen Special Economic Zone, it can be seen that currently, the pilot scheme in Shenzhen has also chosen the mode of exemption from liability under licensing, i think this measure should be continued in the future of our country's official personal bankruptcy law or bankruptcy law, but also on this basis to make some improvements and balance. The automatic exemption mode can not form an effective binding force on bankruptcy fraud, and in the long run, it will further lead to the bankruptcy abuse phenomenon of consumers' bankruptcy dependence and businessmen's excessive risk-taking, it complicates the types of bankruptcy abuse.[13] Therefore, in the countries that adopt the automatic exemption mode, legislation often makes a series of “Make up for lost sheep” measures, for example, there are many types of non-exemption, which aggravate the abuse of bankruptcy and regulate the legal liability of those who fail to do their duty, resulting in a large consumption of legislative and judicial resources. In addition, under the framework of the automatic exemption model, when the debtor engages in the abuse of bankruptcy, the creditor or the interested party may seek relief by way of objection or withdrawal, however, there is no reverse onus of proof in both procedures, so it is very difficult for the injured party to prove successfully and realize the reversal. By contrast, the model of exoneration by license embodies the value of order, with the court firmly guarding the last stage of the residual debt exemption, and emphasizing the examination of the conditions of exoneration, thus, the debtor can be urged to cooperate with the fair liquidation and distribution, and the avoidance of the legal problems of individual bankruptcy liability can be realized, but the disadvantages can also be brought about, which will lead to the lengthy process of the insolvency proceedings as a whole, it is disadvantageous for the debtor who is burdened with heavy debt to return to the regular trading activities as soon as possible in order to regenerate the value, in many cases it will even reject the debtor directly, and make the court need to bear heavier work pressure.

3.2. Establish a system of disclosure in personal bankruptcy proceedings

The establishment of information disclosure or disclosure system in personal bankruptcy proceedings can effectively restrain the abuse of bankruptcy. On the one hand, the establishment of information disclosure system is to restrain the speculative behavior of debtors to the greatest extent. On the other hand, on the other hand, it can bring the power of public supervision into full play. As noted earlier, the debtor's motivation for the utility maximization problem of obtaining an exemption quickly is at the root of the insolvency abuse, and the asymmetry of information provides the basis for its implementation. The establishment of information disclosure system is not only helpful to resolve the information gap among the subjects in the bankruptcy procedure, but also can restrain the debtor's impulse to harm the creditors' legitimate rights and interests through periodic information disclosure. In addition, the establishment of information disclosure system is also conducive to improve the efficiency of the parties in the reorganization proceedings, and achieve effective consultation in the reorganization proceedings. Therefore, if we can establish a complete system of information disclosure system, we can solve the problem of information asymmetry and thus curb the abuse of insolvency.

Since the information disclosure system is mainly applied during the period of exemption study, once the scope of information disclosed exceeds the reasonable expectation of the debtor, it will have the same negative consequences as the procedural system of loss of rights, that is to label the debtor as a “Disgrace”. Therefore, one of the difficulties of information disclosure mechanism is to clarify the boundary between personal privacy and public information, which is easy to cause the invasion of citizens' right of privacy. Therefore, the future will need to be clear through the disclosure of bankruptcy information, that is, clear “Transparency” standards, such as the debtor's conduct during the period of inspection of liability, the debtor's various types of assets, whether the debtor's past breach of trust and other legitimate public information, at the same time, we should avoid setting up vague or general disclosure items, so as not to rely on discretion in information disclosure review, which can be further combined with the personal bankruptcy “Gatekeeper” system. According to the “Gatekeeper” theory of personal bankruptcy, the benign operation of the whole personal bankruptcy law needs to be placed under certain administrative management, therefore, the effective implementation of the information disclosure system can not be separated from the administrative system.[14] The goal of the personal bankruptcy gatekeeper system and the information disclosure mechanism is to solve the information asymmetry or the information status difference in the personal bankruptcy procedure. This can take the form of the Official Receiver's office in the United Kingdom, the Official Receiver's office in the United States and professional bodies such as the pilot insolvency office in Shenzhen, information asymmetry in personal bankruptcy can be effectively mitigated through the coordination of bankruptcy information, the investigation of improper bankruptcy practices, and the screening of qualified debtors, the ultimate goal is to curb abuse in bankruptcy. In addition, the professional competence of the insolvency administrator or the gatekeeper can also assist the court in defining the information disclosure boundary, so as to avoid the infringement caused by the over-application of the information disclosure system.

3.3. The establishment of appropriate procedures for exemption from the limitation of conditions and legal liability norms

In the future personal bankruptcy law of our country, the limitation of the right in the personal bankruptcy system should be reduced appropriately. It is true that the system of loss of rights can urge the debtor to actively implement the repayment plan and prevent the debtor from using the gap of the system to evade or nullify the debt by putting forward the requirement of the behavior obligation to the debtor in the period of the exemption investigation, however, the system of loss of rights with excessive restriction of rights is easy to reduce the enthusiasm of the debtor in applying for personal bankruptcy and exemption from liability, and is not conducive to the realization of the function of exemption system in promoting economic regeneration and development.

The system of loss of rights in personal bankruptcy must be limited, and the most effective way to avoid the system of loss of rights being too strict is to avoid a one-size-fits-all approach. First, there is the possibility of varying the intensity of the system depending on the stage of the proceedings. If, in the process of liquidation, the priority is to ensure the order of liquidation and to give the debtor a relatively strict restriction on his rights, and when he enters the stage of an exemption period, the priority is to protect the debtor's ability to generate additional income, a more relaxed restriction on rights, that is, to achieve a dynamic balance of interests. Secondly, the principle of non-exemption of liability can also be used as a reference, depending on the different reasons for bankruptcy, for example, if the debtor's bankruptcy is due to its own fault and assume unlimited joint and several liability for the debts of the enterprise, on the contrary, if the debtor has excessive control, personality confusion and so on, he will bear unlimited liability because of the application of the system of denial of legal personality, then it is not appropriate to be too broad in the restriction of his rights. In short, it is essential to avoid a one-size-fits-all approach, can not be applied to the professional identity of the subject as the only element of the system of loss of rights.[15]

In the future personal bankruptcy law of our country, we should avoid urging the agent to participate in the supervision of bankruptcy by setting up the responsibility of information disclosure of the agent in the personal bankruptcy case. As mentioned earlier, the United States BAPCPA Act has adopted such an approach to urge the agent to participate in bankruptcy supervision, but in essence it has created a kind of coercion on the agent, and the corresponding price is ultimately imposed on the debtor, therefore, our country should avoid imitating such measures in the future to realize the goal of mobilizing personal bankruptcy agents to participate in bankruptcy supervision. In the case of personal bankruptcy, if the agent is in a position of information superiority, if he can actively participate in the supervision of bankruptcy, or can effectively restrain the abuse of bankruptcy, but by increasing the disclosure responsibility of the agent's information, forcing agents is not an option. Increasing the liability of the agent means increasing the professional risk of the agent, which will lead to increasing the cost of the agent and the burden of the debtor. Combined with the general theory and the existing legal provisions, we can know that the tax payable and the administrative penalty are not exempt from liability in our country, then, in addition to the bankruptcy expenses, the debtor must also bear the entire tax payment penalty, which, combined with the higher actual bankruptcy expenses, will undoubtedly greatly reduce the enthusiasm of the debtor to apply for bankruptcy proceedings, it may even lead to informal bankruptcy, forcing debtors into informal bankruptcy channels to resolve debt disputes, causing debtors to bear the pressure of creditors alone, and aggravating social contradictions. Therefore, the author thinks that we should not follow the American action of aggravating the disclosure responsibility of agent's information in our future official personal bankruptcy law, in order to realize the goal of agent's active cooperation with bankruptcy supervision, perhaps we should start from the legal ethics education and the establishment of a sound information disclosure system, rather than forcing agents through mandatory legislation.

4. Conclusion

This paper mainly takes the hidden dangers of the exemption system itself as the starting point of the research, and through the investigation of some domestic and foreign practices, it identifies several typical system designs, clarifies which systems are worthy of reference or imitation in China, and which systems must be abandoned or innovated, and tries to prevent the hidden dangers of the exemption system itself from the level of system design, so as to maximize the positive effect of the exemption system as much as possible. Negative utility is minimized. According to the above research thinking, the specific conclusions drawn in this paper are as follows: First, if there is a legal problem that the rules for regulating the abuse of exemption from liability are too loose in China's exemption system, it may lead to the complication of the types of bankruptcy abuse, such as causing negative phenomena such as debtor bankruptcy abuse, consumer bankruptcy dependence, and excessive risk-taking by businessmen, and may further lead to the unfavorable consequences of the overall social credit decline and excessive growth of credit consumption. Secondly, if the restrictions and liability norms of China's exemption procedure are too strict, it may not necessarily achieve the effect of curbing the abuse of bankruptcy in the first place, and may also cause a decline in the application rate of personal bankruptcy, which may lead to the difficulty of realizing the expected function and legislative intent of personal bankruptcy exemption, that is, the personal bankruptcy system will be difficult to ensure fair debt repayment, prevent property robbery, curb malicious debt collection, and may hinder the rapid regeneration of debtors, achieve personal bankruptcy and promote honest transactions and improvements credit climate and the legislative purpose of regulating and promoting economic development. Finally, if China's exemption system lacks the norm of balancing the applicable proportion of bankruptcy proceedings, it may cause a serious imbalance in the applicable ratio between bankruptcy liquidation and reorganization proceedings, and may further lead to the adverse consequences of the unsatisfactory overall repayment ratio of personal bankruptcy proceedings and the long-term failure of the exemption system to be fully accepted by society. In general, the rights and obligations structure of the personal bankruptcy exemption system must be relatively balanced, that is, it should neither be overly strict nor excessively lenient, and the interests should not be excessively tilted towards either the creditor and the debtor. In addition, in view of the serious imbalance in the proportion of applications for personal bankruptcy liquidation and reorganization procedures in Shenzhen, it is necessary to strengthen the guiding role of the personal bankruptcy exemption system in the public's legal awareness of bankruptcy, and accelerate the integration of the concept of personal bankruptcy exemption from liability with China's traditional debt concept while reasonably guiding the debtor's choice of procedures. Such a two-pronged approach may be able to effectively resolve the legal problems of the personal bankruptcy exemption system, thereby ensuring the benign operation and development of China's personal bankruptcy law or bankruptcy law in the future.

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