
论夫妻共同债务的认定标准

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摘要

随着社会主义市场经济的蓬勃发展,夫妻一方或双方为各自的或共同的目的投资于生产经营等经济活动。举债和举债现象越来越普遍。相应地,在司法实践中,特别是涉及离婚诉讼的案件中,夫妻债务越来越复杂和多样化。在今天的司法实践中。对于类似案件,法官在适用法律和审判方式上存在很大的差异,导致了許多“同一案件的不同判决”,特别是涉及夫妻离婚案件,往往涉及如何处理债务的问题。如何平衡保护非借款人和债权人的利益,已成为审理案件的一大难题。此外,由于现行婚姻法和司法解释对共同债务认定标准不统一,举证责任的分配不合理,也导致实践中当事人的合法权益不能得到有效保障。究其原因,在于现行立法理念的精神尚未得到澄清。在婚姻家庭中,以“家庭生活在一起”为目的向第三人借钱的目的是满足家庭生活在一起的需要,这也是夫妻共同债务的本质特征。我国夫妻共同债务的确定,在认定标准上应采用唯物主义;在价值观上,应以婚姻、家庭、社会利益的和谐统一为目的和依附;在具体内容上,应明确界定“家庭生活在一起”债务的具体界限。同时,为平衡配偶和债权人的利益,应当公平分配举证责任。

关键词: 夫妻共同债务; 认定标准; 举证责任; 家事代理权

ABSTRACT

With the vigorous development of socialist market economy, one or both spouses invest in economic activities such as production and operation for their own or common purposes. Debt-raising and debt-raising are becoming more and more common. Accordingly, in judicial practice, especially in cases involving divorce proceedings, marital debt is becoming more and more complex and diversified. In today's judicial practice. For similar cases, there are great differences in the application of law and trial methods among judges, resulting in many "different judgments in the same case", especially in cases involving divorce between husband and wife, often involving how to deal with debt. How to balance the interests of non-borrowers and creditors has become a major problem in the trial of cases. In addition, due to the current marriage law and judicial interpretation of the common debt recognition standards are not uniform, the burden of proof distribution is unreasonable, which also leads to the practice of parties' legitimate rights and interests can not be effectively guaranteed. The reason is that the spirit of the current legislative concept has not been clarified. In marriage and family, the purpose of borrowing money from a third person for the purpose of "family living together" is to meet the needs of family living together, which is also the essential feature of the joint debt of husband and wife. Materialism should be adopted in determining the common debt of husband and wife in China; harmony and unity of marriage, family and social interests should be the purpose and dependence of values; and the specific boundaries of "family living together" debt should be clearly defined in terms of concrete content. At the same time, in order to balance the interests of spouses and creditors, the burden of proof should be fairly distributed.

Key words: marital joint debt; Identification criteria; Burden of proof; Family agency

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