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Community Debt in New Mexico and the IRS

With few exceptions, the New Mexico Courts treat all debts incurred during a marriage, by either or both spouses, as community debt, which means that each spouse is equally responsible for the debt.

An important part of a divorce proceeding is a determination of which spouse will pay what debt after the spouses are divorced. After the spouses agree on, or the Court decides, who will pay each community debt, the Court enters a final order adopting that agreement or determination, which becomes binding on the spouses. However, that order is not binding on creditors that may be trying to collect payment of a community debt.

This limitation to the power of a divorce order is especially true when it comes to the Internal Revenue Service because a state court order is not binding on the federal government. During a marriage, when one or both spouses fail to pay federal taxes, the IRS has the power to collect those taxes for either or both spouses. The IRS may file a federal tax lien against any community property owned by the spouses, and is entitled to file a lien against any separate property owned by the debtor spouse. The IRS may choose to levy the wages or tax returns of either spouse.

Further, in New Mexico, the IRS can levy a spouse's 50% interest in community property for debts that were incurred before the marriage. The issue of federal taxes can severely complicate the property and debt division in a divorce proceeding. Spouses that are considering divorce and have outstanding tax issues should contact an attorney in order to avoid serious penalties.