

# **In the United States Bankruptcy Court**

## **for the Northern District of Iowa**

### **Western Division**

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JAMES MERRILL GRAN and BRENDA RENA  
GRAN

Bankruptcy No. X89-00291S

Debtors.

Chapter 7

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### **MEMORANDUM AND ORDER RE: OBJECTION TO EXEMPTION**

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The matter before the court is the trustee's objection to the debtors' claim of exemption in an income tax refund.

A hearing was held on June 27, 1989 in Sioux City, Iowa. The court now issues its findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

#### **FINDINGS OF FACT**

The debtors, James and Brenda Gran, filed their joint voluntary chapter 7 petition on March 2, 1989. On schedule B-4 to the petition, the debtors claimed as exempt their 1988 federal and state tax refunds.

On April 27, 1989, the trustee, Wil Forker, filed an objection to the debtors' exemption in the federal and state income tax refunds arguing that the debtor James Gran is limited to an exemption of \$1,000.00 and since debtor Brenda Gran had no income in 1988, she may not claim an exemption in the 1988 tax refunds.

During 1988, James Gran was employed by Berne Coop Association and Westendorf Manufacturing Co. His total gross income from these two jobs was \$13,993.52. Gran testified that his wife Brenda was not employed outside of the home in 1988 and had no income.

The debtors had no taxable income in 1988 and therefore had no federal income tax liability. A total of \$1,554.00 had been withheld from Gran's 1988 wages for income tax purposes. As there was no tax liability, this amount was to be refunded. Debtors' return also claimed an earned income credit of \$687.00. The debtors, therefore, received a tax refund for 1988 in the amount of \$2,241.00.

The debtors' state tax liability for 1988 was \$155.00. A total of \$524.00 was withheld from James Gran's wages for Iowa income taxes. Therefore, the debtors claimed and were due a state tax refund of \$369.00 for 1988.

#### **DISCUSSION**

Trustee argues that the debtors are limited to a tax refund in the amount of \$1,000.00. Since the debtor Brenda Gran had no income and therefore had no interest in the tax refund, trustee requests that the difference between the total tax refunds and the allowable exemption of \$1,000.00 be returned to the bankruptcy estate. The debtors argue that Brenda, as well as James, should be allowed to claim a \$1,000.00 exemption against the tax refund of \$2,241.00 since the debtors' joint filing of a tax return resulted in a tax withholding refund of \$1,554.00. The debtors' argument is basically that the joint filing of a return by the debtors resulted in an additional exemption and deduction credit for debtor Brenda Gran which resulted in no income tax being due. The debtors also argue that the joint return resulted in an earned income credit of \$687.00.

Section 627.6(9)(c) of the Iowa Code allows the following exemption: "In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed \$1,000.00 in the aggregate. . . ." Iowa Code § 627.6(9)(c).

The court recognizes that exemption statutes are to be liberally construed in Iowa. See Shepard v. Findley, 204 Iowa 107, 214 N.W. 676, 678 (1927). However, the court must not depart from the express language of the exemption statute. In re Hahn, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980). The applicable Code provision specifically provides that "the debtor's interest . . . in state and federal tax refunds . . ." may be claimed exempt. Iowa Code § 627.6(9)(c) (emphasis added).

The tax withholdings and refunds were derived solely from James' wages. Brenda has no interest in James' wages. "A wife has no inchoate right to her husband's personal property." In re Honomichl, 82 B.R. 92, 94 (Bankr. S.D. Iowa 1987); citing Gunsaulis v. Tinger, 218 N.W.2d 575, 578 (Iowa 1974).

The debtors' claim is that Brenda is entitled to a tax refund since debtor James Gran would not have been entitled to such a large tax refund if he had not filed a joint tax return with his wife. The fact that the debtors filed a joint return does not create a right of Brenda Gran in the income tax refund. A joint filing does not change the ownership of property rights between taxpayers. In re Wetteroff, 453 F.2d 544, 547 (8th Cir. 1972), cert. denied 409 U.S. 934, 93 S.Ct. 242, 34 L.Ed.2d 188, rehearing denied 409 U.S. 1050, 93 S.Ct. 532, 34 L.Ed.2d 503 (1972). "Where spouses claim a refund under a joint return, the refund is divided between the spouses, with each receiving a percentage of the refund equivalent to his or her proportion of the withheld tax payments." Gordon v. United States, 757 F.2d 1157, 1160 (11th Cir. 1985) (citations omitted). Brenda had no income tax withheld in 1988. Therefore, she was not entitled to receive any portion of the tax refund.

The court also believes that Brenda had no rights in the earned income credit" since she earned no income in 1988. Therefore, Brenda is not entitled to claim an exemption for the earned income credit.

The earned income credit is codified at 26 U.S.C. § 32. -In order to qualify for the credit, the taxpayer must be married, a surviving spouse, or head of household. 26 U.S.C. § 32(c)(1)(A). Additionally, a child must reside with the taxpayer. 26 U.S.C. § 32(c)(1)(C). If a taxpayer is married, the earned income credit is applicable only if a joint return is filed. 26 U.S.C. § 32(d).

The Supreme Court noted the purpose of the earned income credit in Sorenson v. Secretary of Treasury, 475 U.S. 851, 106 S.Ct. 1600, 89 L.Ed.2d 855 (1986). The court stated:

The earned-income credit was enacted to reduce the disincentive to work caused by the imposition of Social Security taxes on earned income (welfare payments are not similarly taxed), to stimulate the economy by funneling funds to persons likely to spend the money

immediately, and to provide relief for low-income families hurt by rising food and energy prices.

475 U.S. at 864.

The Internal Revenue Code provides that if an amount allowable as a tax credit exceeds the tax imposed, the amount of such excess is considered an overpayment. 26 U.S.C. § 6401(b)(1). The court held in Sorenson v. Secretary of Treasury, 475 U.S. at 859, 863 that an excess earned income credit is classified as an overpayment of tax payable as if it were a refund of tax paid. In the case of an overpayment of tax, the amount of overpayment is credited against any liability of an Internal Revenue tax and the balance is refunded to the taxpayer. 26 U.S.C. § 6402(a).

The taxpayer was entitled to an earned income credit of \$687.00 in 1988. This amount was considered an overpayment of taxes and was refunded. Since the earned income credit must be classified as a tax refund, it too must be divided in accordance with the proportion of withheld taxes.

The tax refund was derived solely from James' withholding. Brenda had no earned income in 1988. Because Brenda does not have an interest in any portion of the tax refund, including the refund resulting from the earned income credit, Brenda is not entitled to claim an exemption in the 1988 state and federal tax refunds. See In re Anhalt, slip op. no. 86-00877W (Bankr. N.D. Iowa, Aug. 20, 1986); In re Delperdang, slip op. no. 86-00060S (Bankr. N.D. Iowa, Aug. 20, 1986).

### CONCLUSIONS OF LAW

Debtor Brenda Gran does not have an interest in the 1988 federal and state income tax refunds and is therefore not entitled to claim an exemption in them under Iowa Code § 627.6(9)(c).

### ORDER

IT IS ORDERED that trustee Wil Forker's objection to exemption is sustained.

SO ORDERED THIS 14TH DAY OF JULY, 1989.

William L. Edmonds  
Bankruptcy Judge

Filed Stamped July 14, 1989