

In the United States Bankruptcy Court

for the Northern District of Iowa

TAMMY LYNNE CROUCH
Debtor.

Bankruptcy No. 96-23085-D
Chapter 7

ORDER RE TRUSTEE'S MOTION FOR TURNOVER

The above-captioned matter came on for hearing on March 24, 1997 on Trustee's Motion for Turnover. Appearing were Trustee Paul Fitzsimmons, and Attorney Mark Lawson representing Debtor. The parties have filed briefs based upon stipulated facts. This matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(E).

STATEMENT OF THE CASE

Trustee seeks turnover of Debtor's Federal and State income tax refunds, Federal earned income credit and State child care credit to the extent they exceed \$1,000 exempt under Iowa Code sec. 627.6(9)(c). Debtor amended Schedule C to claim exemptions for the tax refunds under sec. 627.6(9)(c) in the amount of \$1,000. She also claims her Federal earned income tax credit and State child care credit are exempt under sec. 627.6(8)(a) and (d).

FINDINGS OF FACT

The parties agree the Court may resolve this issue on stipulated facts. Debtor filed her Chapter 7 petition on December 2, 1996. She will receive a Federal refund from 1996 taxes withheld of \$1,935 and a State refund from 1996 taxes withheld of \$573, totaling \$2,508. Trustee asserts that 11/12ths of the total, or \$2,299, is property of the estate. The parties agree that Debtor is entitled to claim \$1,000 of that amount exempt under 627.6(9)(c). Debtor asserts that she did not have an interest in these funds at the time she filed her petition which would make them property of the bankruptcy estate.

Debtor will also receive \$2,721 as Federal Earned Income Credit ("EIC") and \$429 as Iowa child care credit, or a total of \$3,150. Trustee asserts that 11/12ths of this amount, or \$2,887.50, is property of the estate. Debtor argues she had no interest in these credits when she filed her petition which would qualify these funds as property of the estate. She argues that, if these funds are property of the estate, she is entitled to claim them exempt under three alternative theories:

- A. as a "social security benefit" under Iowa Code sec. 627.8(a);
- B. as a "local public assistance benefit" under Iowa Code sec 627.8(a); or
- C. as "alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and dependents of the debtor" under Iowa Code sec. 627.8(d).

CONCLUSIONS OF LAW

Property of the estate is a broad concept which includes all legal and equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. 541(a)(1). It is now generally conceded that the portion of a debtor's income tax refund attributable to the prepetition portion of the taxable year is property of the estate. In re Barowsky, 946 F.2d 1516, 1519 (10th Cir. 1991); In re Oliver, 172 B.R. 924, 926 (Bankr. E.D. Mo. 1994) (holding that tax refunds based on prepetition earnings are property of the estate).

Essentially all recent cases which discuss a debtor's earned income credit have held that 541(a)(1) applies to make such funds property of the estate. In re Davis, 136 B.R. 203, 206 (Bankr. S.D. Iowa 1991) (distinguishing pre-Code cases holding to the contrary); In re Fraire, 1997 WL 45465, at *2 (D. Kan. Jan. 2, 1997) (same). The Court concludes, based on the foregoing authorities, that 11/12ths of Debtor's Federal and Iowa tax refunds and credits constitute property of the estate.

Debtors throughout the country have claimed EICs exempt under a variety of theories. This Court has considered exemptibility of EICs as tax refunds under sec. 627.6(9)(c) in In re Couron, No. X90-00442S, slip op. at 1 (Bankr. N.D. Iowa June 16, 1990). It held that as between joint debtors, only the debtor with earned income may claim an exemptible interest in an EIC under the Iowa exemption for tax refunds. Id. at 6.

EIC as "local public assistance benefit"

The Court in Davis held that the debtor's interest in an EIC was exempt under sec. 627.6(8)(a) as a "local public assistance benefit." 136 B.R. at 207. However, the Court specifically noted that the trustee had not contested whether the benefit was "local" under that statute. Id. The court found the EIC exempt, applying previous Court rulings that exemption statutes must be given a liberal interpretation. Id. In In re Goertz, 202 B.R. 614, 618 (Bankr. W.D. Mo. 1996), the Court, faced with identical language in the Missouri exemption statute, held that an EIC does not fall within the express language of the statute. It found that it was illogical to allow a Federal tax credit to be defined as a "local" benefit. Id. at 617. In Goertz, the trustee did challenge exempting the Federal tax credit as a "local" benefit. Id. at 618.

Courts have reached differing conclusions regarding exemptibility of EICs. Most focus on the language of the relevant exemption statutes. The Oregon exemption for "public assistance" benefits encompasses only state human resources and does not include EICs. In re Rutter, 204 B.R. 57, 60 (Bankr. D. Or. 1997). In Ohio, "disability assistance payments" do not include EICs. In re Beagle, 200 B.R. 595, 597 (Bankr. N.D. Ohio 1996); In re Kurilich, 199 B.R. 161, 163 (Bankr. N.D. Ohio 1996). EICs are exempt as "public assistance" under Kentucky law. In re Brown, 186 B.R. 224, 228 (Bankr. W.D. Ky. 1995); In re Goldsberry, 142 B.R. 158, 159 (Bankr. E.D. Ky. 1992). Due to its nature as social welfare relief, an EIC is exempt as a benefit under "federal, state or local public assistance legislation" under Idaho law. In re Jones, 107 B.R. 751, 752 (Bankr. D. Idaho 1989).

EIC as support

Debtors have tried to claim their EIC funds exempt as support in several jurisdictions. The courts in Fraire and Rutter held that an EIC is not exempt as support under Kansas and Oregon statutes. Fraire, 1997 WL 45465, at *2; Rutter, 204 B.R. at 61. The debtors in In re George, 199 B.R. 60, 62 (Bankr. N.D. Okla. 1996), were successful in claiming their EIC exempt as support. The court concluded that although exempt alimony and support ordinarily arise from divorce, the statute does not limit it to such proceedings. Id. Construing the exemption broadly, the purpose of an EIC to provide support qualifies it as exempt as support under Oklahoma law. Id.

EIC as social security

Debtor also describes her EIC as a "social security benefit" exempt under 627.6(8)(a). She urges that such benefits are not necessarily limited to those administered by the Social Security Administration. Debtor cites no authority for this proposition and the Court is aware of none.

Conclusions

It is well-settled that Iowa's exemption statutes must be liberally construed in light of their purposes. A court must be careful, however, not to depart substantially from the express language of the exemption statute or extend the legislative grant. Davis, 136 B.R. at 207; In re Hahn, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980).

The issue is whether Debtor's EIC and Iowa child care credit constitute "local public assistance benefits", "social security benefits" or "alimony, support or separate maintenance." Obvious tension exists in this case between liberally construing sec. 627.6(8) and abiding by the express language of the statute. The programs at issue are specifically designed to benefit individuals with limited income. There exists a strong, natural inclination to provide the most liberal construction possible in order to benefit debtors of limited financial means. However, a liberal construction is not an invitation to extend the language of the exemption statute or the legislative grant beyond that intended. For the reasons set out hereafter, the Court concludes that Debtor's claim of fitting within any of the three categories is inappropriate.

The EIC and Iowa child care credit may constitute a public assistance benefit. As stated in Goertz, however, it is illogical to call a tax credit granted by the Federal government or the State government a "local" public assistance benefit. The court in Fraire noted that "only by wrenching the term 'support' wholly out of its statutory context is it possible to include federal earned income tax credits within its scope." 1997 WL 45465, at *3. Likewise, "social security benefits" are commonly understood to be synonymous with benefits provided through the Social Security Administration. The term "social security" has little meaning outside of that context.

The Court concludes that Debtor's EIC is not exempt under Iowa Code sec. 627.6(8)(a) or (d). This Federal earned income tax credit does not come within the express language of the statute. It is not a local benefit, it is not a social security benefit and it does not constitute support. Debtor's Iowa child care credit granted under sec. 422.12C is likewise nonexempt for identical reasons.

WHEREFORE, Trustee's Motion for Turnover is GRANTED.

FURTHER, Debtor's tax refunds and tax credits are property of the bankruptcy estate.

FURTHER, Debtor is not entitled to claim her Federal earned income credit and her Iowa child care credit exempt under Iowa Code sec. 627.6(8).

FURTHER, Debtor is required to turn over to the Trustee 11/12ths of these amounts, or the total amount of \$2,887.50.

FURTHER, Debtor is required to turn over to the Trustee 11/12ths of her Federal and Iowa tax refunds less the exempt amount of \$1,000, or \$1,299.

SO ORDERED this 13th day of May, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge