

**In the United States Bankruptcy Court**  
**for the Northern District of Iowa**  
**Western Division**

---

IN RE:

CHRISTINA M. GIBBS  
*Debtor(s).*

Bankruptcy No. 99-02769S  
Chapter 7

---

TERESA R. BROESDER  
*Debtor(s).*

Bankruptcy No. 00-00029S  
Chapter 7

---

SHIRLEY J. ROWE  
*Debtor(s).*

Bankruptcy No. 99-03301S  
Chapter 7

---

**ORDER RE: TRUSTEE'S OBJECTION TO EXEMPTIONS**

---

Debtors in three cases have each scheduled an interest in an earned income credit (EIC), and claimed the interest exempt under Iowa Code § 627.6(8)(a). The Chapter 7 trustee in the three cases, Wil L. Forker, objects. Attorney Alvin J. Ford represents each debtor. The trustee's objections were heard April 11, 2000 in Sioux City. Each debtor submitted her 1999 federal and state income tax returns as exhibits. The parties have agreed that the court need decide only the legal issue whether an EIC is exempt under § 627.6(8)(a), and that they will then calculate the amounts of the exemptions. In two of the cases, In re Gibbs, No. 99-02769-S, and In re Broesder, No. 00-00029-S, the parties have filed cross motions for summary judgment on the same legal issue, which will be resolved by this decision. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

Debtors Christina M. Gibbs, Shirley J. Rowe, and Teresa R. Broesder filed their petitions on October 19, 1999, December 20, 1999, and January 5, 2000, respectively.

**Discussion**

Prior to a 1999 amendment, Iowa Code § 627.6(8)(a) provided that a debtor could exempt her rights in "[a] social security benefit, unemployment compensation, or a local public assistance benefit." The amended statute removed the word "local," so that the section now exempts rights in "[a] social security benefit, unemployment compensation or any public assistance benefit." The amendment became effective for all claims of exemption made on or after the date of enactment, May 17, 1999. 1999 Iowa Acts, Ch. 131 §§1, 3.

The issue is whether an EIC is exempt under § 627.6(8)(a) as "any public assistance benefit." Judge Jackwig answered the question affirmatively in Matter of Longstreet, 246 B.R. 611 (Bankr. S.D. Iowa Feb. 28, 2000). Debtors urge this court to follow that ruling. The trustee argues that an EIC is not a public assistance benefit and may be claimed exempt only to the extent of \$1,000 as a tax refund under Iowa Code § 627.6(9)(c).

An EIC is a refundable federal tax credit available to eligible persons. In re Murray, No. 97-03060S, slip op. at 3 (Bankr. N.D. Iowa May 8, 1998). Courts have long recognized the distinction between the refund of excess withholding taxes and the payment of an EIC, which is not contingent upon the previous payment of income tax. In re Couron, No. X90-00442S, slip op. at 3-4 (Bankr. N.D. Iowa July 16, 1990) (quoting Rucker v. Secretary of the Treasury, 751 F.2d 351 (10th Cir. 1984), and In re Searles, 445 F.Supp. 749 (D. Conn. 1978)). Courts applying Iowa law have held both types of payments, payable through the tax refund process, exempt as "tax refunds" to the extent allowed under § 627.6(9)(c). Id. at 6. In Sorenson v. Secretary of the Treasury, 475 U.S. 851, 106 S.Ct. 1600 (1986), the Court held that an obligation to pay overdue child support could be offset against an EIC as an "overpayment" within the meaning of 26 U.S.C. § 6402(c). The statutes providing the mechanism for payment of the EIC to the taxpayer compelled this conclusion, because they similarly termed the credit an "overpayment." Id., 475 U.S. at 859, 106 S.Ct. at 1606. Nevertheless, the Court recognized that eligibility for the credit does not depend upon the taxpayer's actually having paid any tax. Id., 475 U.S. at 863, 106 S.Ct. at 1608.

Section 627.6(9)(c) provides an exemption for accrued wages and state and federal tax refunds not to exceed \$1,000 in the aggregate. An EIC often exceeds that amount. In the cases before the court, Ms. Rowe claims an exemption in an EIC for \$2,581, Ms. Broesder claims \$3,816, and Ms. Gibbs claims \$2,360. Prior to the 1999 amendment, attempts to exempt the full amount of an EIC under § 627.6(8)(a) were unsuccessful, because payments under the federal EIC program could not be construed as "local" public assistance. Courts were willing, however, to find or assume that an EIC was a "public assistance benefit." Matter of Longstreet, 246 B.R. 611, 615 (discussing Matter of Davis, 136 B.R. 203, 207 (Bankr. S.D. Iowa 1991)); see also In re Crouch, No. 96-23085-D, slip op. at 4 (Bankr. N.D. Iowa May 13, 1997) (EIC and Iowa child care credit may constitute public assistance benefits).

The court agrees with Judge Jackwig's conclusion in Matter of Longstreet that an EIC is a "public assistance benefit" within the meaning of § 627.6(8)(a). The phrase does not have a technical meaning. Matter of Longstreet, 246 B.R. at 614. An ordinary dictionary definition of "public assistance" is "government aid to needy, blind, aged, or disabled persons and to dependent children." Id. at 615. The amount of an EIC is determined by reference to limited levels of earned income and the presence of "qualifying children" in the home. 26 U.S.C.

§ 32(a), (b) and (c)(3). The Supreme Court stated in the Sorenson case that

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, 106 S.Ct. at 1608-09. "The class of persons that Congress intended to benefit by creating the 'Earned Income Credit' Program in 1975 is composed entirely of low-income families." Sorenson, 475 U.S. at 866, 106 S.Ct. at 1609 (Stevens, J., dissenting).

The decision of the Court of Appeals in the Sorenson case noted that the EIC program was not intended as a "welfare grant." Sorenson v. Secretary of the Treasury, 752 F.2d 1433, 1443 n.1 (9th Cir. 1985), aff'd, 475 U.S. 851 (1986). The exemption provided by § 627.6(8)(a) is not so limited. There are a number of ways of providing assistance to needy families. The EIC program uses the mechanism of a tax credit. The Iowa legislature, by providing an exemption for "any" public assistance benefit, broadened the reach of the statute. This indicates an intent to exempt payments under all types of programs having the same underlying purpose, regardless of the vehicle chosen to implement the program.

The Longstreet decision includes an extended comparison of EIC decisions from other states. In states where the legislature has qualified the exemption for types of "assistance," an EIC may not be exempt. Matter of Longstreet, 246 B.R. at 616-17 (discussing cases from Louisiana, Oregon and Ohio); see also Trudeau v. Royal (In re Trudeau), 237 B.R. 803, 807 (B.A.P. 10th Cir. 1999) (EIC not exempt under Wyoming law which defined "public assistance" as "financial assistance in the form of a performance payment, vendor payment, food stamps or a payment under the minimum medical program"). However, where the state's statutory language is similar to the broad language of Iowa Code § 627.6(8)(a), cases have held an EIC exempt. See, e.g., In re Fish, 224 B.R. 82, 83 (Bankr. S.D. Ill. 1998) (EIC exempt as "debtor's right to receive a ... public assistance benefit"); In re Brown, 186 B.R. 224, 225 (Bankr. W.D. Ky. 1995) (same result under statute providing "public assistance benefits ... shall be exempt"); In re Jones, 107 B.R. 751 n. 1 (Bankr. D. Id. 1989) (same where statute exempts "benefits the individual is entitled to receive under federal, state, or local public assistance legislation").

The trustee argues the EIC cannot be claimed exempt under § 627.6(8)(a), because an exemption for "tax refunds" is specifically provided in § 627.6(9)(c). Debtors in a number of cases have been denied exemption of property under a broader category when the court has determined the class of property is limited to a more specific category. For example, a non-farmer may not exempt a second motor vehicle as a tool of the trade under § 627.6(10); the debtor's exemption is limited to "one motor vehicle" under § 627.6(9)(b). In re Gorden, No. 92-52192XS (Bankr. N.D. Iowa April 16, 1993). This court has held that the "Iowa legislature intended the Iowa firearms exemption to be contained solely in Iowa Code § 627.6(2)," and that a debtor could not exempt a handgun under § 627.6(5) as "household goods." In re Clark, No. 95-51996XS (Bankr. N.D. Iowa March 14, 1996). See also Farmers' Elevator & Livestock Co., 196 Iowa 1076, 195 N.W. 1011, 1013 (1923) (farmer's vehicle exemption was limited to "the wagon or other vehicle ... by the use of which he habitually earns his living;" farmer could not exempt additional vehicles as "tools" of a farmer).

In the foregoing cases, allowing the exemption under the broader category would have improperly expanded the allowance for property in the specific category beyond what the legislature intended. See Clark, slip op. at 10-12. In contrast, creating an exemption for an EIC as a "public assistance benefit" may have been the very object of the 1999 amendment. See Matter of Longstreet, 246 B.R. at 615 (Iowa legislature seemingly acted in response to rulings denying exemption for EIC because of the word "local"). An EIC has a character distinct from a refund of excess withholding taxes. As a payment that is included as part of the tax refund process, it has been held exempt as a tax refund. However, as a payment that is directed toward low income families, it is also in the nature of a public assistance benefit. It is reasonable to believe that the Iowa legislature would intend to broaden the exemption statute so that low income families could benefit from the full credit, rather than be limited to \$1,000 as a tax refund.

IT IS ORDERED that the trustee's objection to exemptions is overruled.

SO ORDERED THIS 10<sup>th</sup> DAY OF MAY 2000.

William L. Edmonds  
U.S. Bankruptcy Judge