

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ROBERT E. MARVEL, III,) CASE NO. 05-62887 JPK
) Chapter 7
Debtor.)

ORDER CONCERNING FURTHER PROCEEDINGS IN
CONTESTED MATTER WITH RESPECT TO TURNOVER
OF PRO-RATED INCOME TAX REFUNDS TO THE TRUSTEE

On May 3, 2006, David R. DuBois, as Trustee of the Chapter 7 bankruptcy estate of Robert E. Marvel, III, filed a Motion for Turnover Order, requesting turnover from the debtor of \$3,334.82, computed to be the pro-rata amount of federal and state income tax refunds received by the debtor for the tax period ended 12/31/2005 deemed by the Trustee to constitute property of the debtor's Chapter 7 estate. On May 17, 2006, the debtor, by counsel, filed an objection to the Trustee's motion. A hearing in the resulting contested matter was initially held on July 21, 2006, which was adjourned for subsequent hearing to September 15, 2006. The Chapter 7 Trustee David R. DuBois and the debtor's counsel George Galanos appeared at both hearings.

The debtor contends that no part of federal or state income tax refunds to be received by the debtor subsequent to the filing of a bankruptcy case with respect to the tax year in which the debtor initiated the bankruptcy case constitutes property of the debtor's Chapter 7 bankruptcy estate. The Trustee contends to the contrary, and asserts that the portion of the tax refunds proportionately attributable to the pre-petition period during that tax year constitutes property of the Chapter 7 estate.¹

¹ The traditional formula utilized by Chapter 7 Trustees in the Hammond Division of the United States Bankruptcy Court for the Northern District of Indiana is to determine the number of days elapsed in the year of the debtor's filing of his/her/their bankruptcy case from January 1 of that year (assuming a calendar year tax period) to the date of the filing of the petition; to divide that number by 365; and to then multiply that resulting percentage by the total amount of tax refunds received by the taxpayer for the tax period closing at the end of the year in which the petition was filed.

The debtor has thus challenged a long-standing practice in this Court which has resulted in recovery of property for distribution to creditors in the Chapter 7 cases administered by the six panel Chapter 7 Trustees in this Division. The determination of this issue is of major significance to debtors, creditors, and the panel Trustees in Chapter 7 cases. As a result of that significance, the Court deems it appropriate to allow each of the panel Chapter 7 Trustees who is not involved as a Trustee in a contested matter in which this issue has been raised by a debtor, to have an opportunity to submit a legal memorandum on the issue: any Trustee other than the Trustee involved in a specific contested matter is not of course a party to that contested matter, and any legal memorandum which may be submitted by a non-party Trustee is deemed by the Court to be in the nature of an *amicus curiae* submission to the Court.²

At this time, Attorney Galanos has raised this issue in cases administered by both Trustee David R. Dubois and Trustee Calvin D. Hawkins. While it is certainly foreseeable that the issue may be raised with the other four panel Trustees, the Court does not at this time formulate a procedure applicable in contested matters other than those now before the Court.

In order to present this issue to the Court, IT IS ORDERED as follows:

1. By **November 17, 2006**, the debtor and the Trustee shall have prepared a stipulation of facts which fully presents to the Court the evidentiary/factual record necessary to the determination of the issue/issues presented in the contested matter. This record will be the entire record before the Court, and no other evidentiary material apart from the stipulation will be considered by the Court in addressing the issue/issues presented.

THIS CONTESTED MATTER INVOLVES ONLY INCOME TAX REFUNDS; NO ISSUE CONCERNING ANY OTHER CATEGORY OF TAX LIABILITY IS IMPLICATED.

² The interests of Trustees not administering a case subject to a contested matter are fully represented by the Trustee in the case, and thus intervention by another Trustee is not appropriate under Fed.R.Bankr.P. 7024.

2. By **November 17, 2006**, the debtor shall file the stipulation of facts, together with a memorandum of law in support of his position. The Trustee shall submit a memorandum in response by **January 16, 2007**, and the debtor shall submit a reply memorandum by **February 16, 2007**.

3. The initial memorandum submitted by both the debtor and the Trustee shall not exceed 50 pages; the debtor's reply memorandum shall not exceed 15 pages.³

4. Chapter 7 Trustees Daniel L. Freeland, Gordon E. Gouveia, Stacia L. Yoon, and Kenneth A. Manning may submit a memorandum in response to the debtor's initial memorandum. The due date of that memorandum and the page limitation thereof shall be identical to that established for the Trustee in this case. Each of the four Trustees may separately submit his/her own response memorandum, or in the alternative, all four of those Trustees may submit one joint memorandum signed by all four of said Trustees – any other combination of submissions will not be allowed.

5. If the debtor has not yet received his 2005 federal and/or state tax refunds by the date of entry of this order, pursuant to 11 U.S.C. § 105(a), the Court orders the debtor to turn over to Trustee David R. DuBois, upon his receipt of those refunds, that portion of the pro-rated refund as computed by the Trustee's Motion for Turnover Order. The property will be held by the Chapter 7 Trustee pending final resolution of this contested matter, and no distribution of said amount will be made to any creditor or party-in-interest in this Chapter 7 case pending such final resolution. If the debtor received the 2005 federal and/or state tax refunds subsequent to the filing of his Chapter 7 petition but before the entry of this order, the Trustee may by separate

³ The initial memorandum to be submitted by the debtor in both this contested matter and in the parallel contested matter in the Chapter 7 case of Edward W Polisson, Sr. and Lora Polisson, case number 05-64311, shall be identical in legal argument, with the sole variation between those memoranda being the specific facts applicable in each contested matter.

motion presented to the Court seek the determination of a mechanism for provision by the debtor of security, bond or other arrangement by which the pro-rated amount of the refunds sought by the Trustee will be available for turnover to the Trustee in the event the Trustee is successful with respect to final determination of the issues raised in this contested matter.

6. The Court deems the issue in this contested matter to potentially affect the interests of the United States of America, Internal Revenue Service, and of the Indiana Department of Revenue to the extent that the Court would allow intervention by both taxing authorities pursuant to Fed.R.Bankr.P. 7024 upon motion made by those authorities. The Court will provide separate notice to those tax authorities of the pendency of the contested matter.

IT IS FURTHER ORDERED that in the event that the issue to be addressed in this contested matter is raised in other Chapter 7 cases, the Court will address the procedures to be employed in those cases at the initial pre-hearing conference arising from a debtor's objection to a Trustee's motion for turnover.

IT IS FURTHER ORDERED that the contested matter subject to this order constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(1)(A) and (E), and that thus the Court has jurisdiction to enter a final judgment in this contested matter.

Dated at Hammond, Indiana on October 5, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor
US Trustee
David R. DuBois
Calvin D. Hawkins
Daniel L. Freeland
Gordon E. Gouveia
Stacia L. Yoon
Kenneth A. Manning
Robin W. Morlock, AUSA
Julie Kent, DAG