

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)		
)		
LARRY AND LORI FIRESTONE	)	CASE NO.	08-10603
EFRAIN AND DANIELLE ANGULO	)	CASE NO.	08-10595
JARED AND DIYON FISHER	)	CASE NO.	08-10609
JASON AND DEBRA MEIER	)	CASE NO.	08-10614
CLEATUS AND SHARON ROLLER	)	CASE NO.	08-10615
ROBERT AND RACHEL GLASER	)	CASE NO.	08-10685
ROBERT AND KAYE HUSS	)	CASE NO.	08-10716
ROBERT AND PATTY HATHAWAY	)	CASE NO.	08-10717
CHARLES AND TERRY WILLIAMS	)	CASE NO.	08-10782
JAMES AND TINA VON HOLDT	)	CASE NO.	08-10785
GERALD AND SHERRY DUTKIEWICZ	)	CASE NO.	08-10806
SHAUN AND CANDACE SCHWEIZER	)	CASE NO.	08-10851
PATRICIA ANN LYKINS	)	CASE NO.	08-11186
DERIOUS AND TAMMY CLARK	)	CASE NO.	08-11280
BRUCE AND CAMMY CARROLL	)	CASE NO.	08-11283
KEVIN AND MALA CLAYMILLER	)	CASE NO.	08-11286
JESSE AND GWENDOLYN KING	)	CASE NO.	08-11832
JERRY AND CONNIE HONEY	)	CASE NO.	08-10791
)		
Debtors)		

DECISION

At Fort Wayne, Indiana, on November 26, 2008.

The chapter 7 bankruptcy cases listed in the caption have been consolidated for the purpose of determining the issues raised by the trustees' motions for turnover of economic stimulus rebate checks¹ and the debtors' objections thereto. All of them present the question of whether the trustees of each of the chapter 7 bankruptcy estates may compel the debtors to turnover their economic stimulus rebate checks. The matter has been submitted to the court on the stipulations made in open court and the briefs of counsel.

¹The Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613, became law on February 13, 2008, and, among other things, authorized "2008 recovery rebates for individuals."

Nearly all of the published decisions addressing the issue before the court conclude that the economic stimulus rebate checks are property of the bankruptcy estate and may be administered by the trustee.² In re Thompson, ___ B.R. ___, 2008 WL 4810086 (Bankr. N.D. Ind. 2008); In re Smith, 393 B.R. 205 (Bankr. S.D. Ind. 2008); In re Wooldridge, 393 B.R. 721 (Bankr. D. Idaho 2008); In re Alguire, 391 B.R. 252 (Bankr. W.D. N.Y. 2008); In re Schwenke, 2008 WL 4381822 (Bankr. D. Mont. 2008); In re Lacy, 2008 WL 4000176 (Bankr. S.D. Ind. 2008); In re Campillo, 2008 WL 2338316 (Bankr. D. Ariz. 2008). The court agrees with those decisions.

Each of the cases before the court was filed after the enactment of the Economic Stimulus Act and the debtors have not claimed an exemption in the payments they are entitled to receive under that act. The economic stimulus rebate checks fall within the very broad definition of property of the bankruptcy estate, 11 U.S.C. § 541(a)(1) (“all legal or equitable interests of the debtor in property as of the commencement of the case” “wherever located and by whomever held”), see also, Rousey v. Jacoway, 544 U.S. 320, 325-26, 125 S.Ct. 1561, 1565-66 (2005), and have not been claimed as exempt. Had Congress wanted to exclude the stimulus checks from the bankruptcy estate, it knew how to do so. See, 11 U.S.C 541(b) (listing exclusions from the estate). Cf., Lamie v. U.S. Trustee, 540 U.S. 526, 542, 124 S.Ct. 1023 (2004) (“If Congress enacted into law something different from what it intended, then it should amend the statute to conform to its intent.”). It did not. Arguments based upon policy concerns and what Congress may have wanted to accomplish with the act cannot override the clear language of the act itself or of the Bankruptcy Code.

²The only decision which reaches a different conclusion in the chapter 7 context, In re Andrews, 386 B.R. 871 (Bankr. D. Utah 2008), differs factually in that those debtors filed bankruptcy prior to the date the Economic Stimulus Act, which creates any entitlement to the check, was passed. That was the reason the stimulus check never became property of the estate.

To the extent the debtors argue that the economic stimulus checks are not property of the estate, but something else, or that they should somehow be prorated, those arguments fail. See, In re Woolridge, 313 B.R. 721 (Bankr. D. Idaho 2008). The same is true of the debtors' argument that the trustee (the court and creditors) should wait until the after the deadline for filing debtors' 2008 tax returns has passed so that we can see how, if at all, their post-petition taxes might be affected by the stimulus payment. That argument fails to explain why the debtors' post petition obligations to the IRS should affect the bankruptcy estate which is determined as of the date of the petition. It also ignores the fact that the debtors had the option of terminating their tax year as of that date, 26 U.S.C. § 1398(d), and chose, for whatever reason, not to do so. Since the debtors have already chosen not to end their tax year as of the date of the petition, they cannot contend that the estate's rights should be determined as though they had. Finally, there is the trustees' duty to administer the estate expeditiously. See, 11 U.S.C. § 704(a)(1).

The economic stimulus rebate checks are part of the bankruptcy estate, have not been claimed as exempt by the debtors, and may be administered by the trustee. The trustees' motions for turnover of those funds should be granted. An order doing so will be entered in each case.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court