

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
JOHN FREDRICK HUNZIKER	)	CASE NO. 08-30510
MELINDA JANE HUNZIKER	)	CHAPTER 7
	)	
RYAN KEITH McLAUGHLIN	)	CASE NO. 08-30519
REBECCA SUE McLAUGHLIN	)	CHAPTER 7
	)	
JEREMY WAYNE GARNER	)	CASE NO. 08-30659
CHANTE MICHELLE GARNER	)	CHAPTER 7
	)	
NATHANIEL LLOYD COY	)	CASE NO. 08-30660
MELISSA SUEANN COY	)	CHAPTER 7
	)	
LONNIE DAVID TURNER, JR.	)	CASE NO. 08-30913
BOBBI JO TURNER	)	CHAPTER 7
	)	
DEBTORS	)	

Appearances:

Steven J. Glaser, Esq., and Anita K. Gloyeski, Esq., counsel for debtors, 116 East Berry Street, Suite 1900, Fort Wayne, Indiana 46802; and

Rebecca H. Fischer, Trustee, 112 West Jefferson Blvd., Suite 310, South Bend, Indiana 46601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 11, 2009.

Before the court are five chapter 7 bankruptcy cases in which the Trustee has filed Motions to Compel, asking the court to order the turnover of the economic stimulus checks (“stimulus checks”) sent to the above-captioned debtors by the Internal Revenue Service (“IRS”). The debtors, represented in each case by the same attorneys, have responded with the same objections to the Trustee’s Motion. The cases listed in the caption therefore have been consolidated for the purpose of determining the issues raised by the Trustee’s Motions seeking turnover of the stimulus checks and the debtors’ objections to the Motions.

### Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(E) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

### Background

The Economic Stimulus Act of 2008 (“the Act”), which became effective on February 13, 2008, authorized stimulus checks for “eligible individuals.” The debtors herein, having filed their bankruptcy petitions after the enactment of the Act, conceded that they were eligible for the stimulus checks and had received them. However, they insist now that their bankruptcy estates are not entitled to the stimulus checks because, under the Act, the term “‘eligible individual’ means any individual other than – . . . (C) an estate or trust.” 26 U.S.C. § 6428(c). The court notes that the stimulus payments were “available to virtually all taxpayers, but also to those others who do not pay taxes.” *In re Wooldridge*, 393 B.R. 721, 733 (Bankr. D. Idaho 2008). There is no commentary, in the legislative history of this Act or in the cases discussing it, concerning the eligibility restriction for estates and trusts. It matters not, however, because the stimulus checks at issue actually were sent to the above-named individuals, as “eligible individuals,” and not to their bankruptcy estates. Now that the checks are in the eligible individuals’ hands, the Trustee claims them as property of the bankruptcy estates that were created when they voluntarily commenced their chapter 7 cases.

The property of a debtor’s bankruptcy estate is comprised of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). “A debtor’s contingent interest

in future income has consistently been found to be property of the bankruptcy estate.” *In re Yonikus*, 996 F.2d 866, 869 (7th Cir. 1993). These debtors, who filed their bankruptcy petitions after the Act was in effect, were “eligible individuals” who were entitled to receive a stimulus payment on the date they filed the petitions.<sup>1</sup> *See In re Wooldridge*, 393 B.R. at 725. The interest that each of the debtors held in the payments they received under the Act thus constitutes property of the estate. *See In re Thompson*, 396 B.R. 5, 10 (Bankr. N.D. Ind. 2008); *In re Smith*, 393 B.R. 205, 209 (Bankr. S.D. Ind. 2008).

The debtors characterize the stimulus checks in different ways in order to demonstrate that the payments should not be part of the bankruptcy estate. They contend that the stimulus money is either a credit against 2008 federal taxes or an advance on the 2008 tax refund. Courts considering these interpretations generally have disagreed with the debtors’ position. In their view, a stimulus payment constitutes a tax refund for the debtors’ 2007, not 2008, taxes. *See In re Smith*, 393 B.R. at 208-09; *In re Alguire*, 391 B.R. 252, 254-55 (Bankr. W.D.N.Y. 2008). As the *Wooldridge* court explained, “it would be nonsensical for the Court to consider payments made under the Act to be advance payments on 2008 tax refunds, when individuals who are not required to even file an income tax return – and are thus not eligible for tax refunds – may receive a stimulus payment under the Act.” *In re Wooldridge*, 393 B.R. at 733 (noting that the IRS does not consider stimulus payments to be refunds paid in advance); *see also In re Schwenke*, \_\_B.R.\_\_, 2008 WL 4381822 at \*5 (Bankr. D. Mont. 2008) (adopting analysis in *Wooldridge*, finding that stimulus payment is not advance on tax refund). Courts also have found that the stimulus payment is not subject to proration. *See In re Wooldridge*, 393 B.R. at 732-33; *In re Smith*, 393 B.R. at 207 n. 6. The debtors’ contingent interest in the stimulus payment, fixed on the date of filing their petitions, “was the right to receive the entire stimulus amount.” *In re Schwinn*, \_\_B.R.\_\_, 2009 WL 161622 at \*5 (Bankr. D. Kan. 2009). This court agrees that, because each debtor was qualified to

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<sup>1</sup> The court notes, however, that debtors who filed their bankruptcy petitions before the Act was passed had no entitlement to the stimulus checks when their cases commenced, and therefore the checks were not included in the property of their estates. *See In re Bennett*, 395 B.R. 781 (Bankr. M.D. Fla. 2008); *In re Andrews*, 386 B.R. 871 (Bankr. D. Utah 2008).

