

Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
DAVID THOMIS WHITE) CASE NO. 09-12737
SUZETTE APRIL WHITE)
)
Debtors)

DECISION

At Fort Wayne, Indiana, on January 4, 2010.

The matter before the court involves the trustee's objection to the debtors' claimed exemption for a portion of their 2008 federal tax refund; in particular \$3,000 attributable to the child tax credit created by section 24 of the Internal Revenue Code, 26 U.S.C. § 24. The issue has been submitted for a decision following a hearing and the filing of legal briefs from both the trustee and the debtors.¹ The trustee bears the burden of proving that the exemption is not proper. Fed. R. Bankr. P. Rule 4003(c).

When a debtor files bankruptcy, the Bankruptcy Code creates an "estate." This estate is very broad and consists of all legal or equitable interests of the debtor in property as of the commencement of the case, wherever located and by whomever held. 11 U.S.C. §541(a)(1). See also, U.S. v. Whiting Pools, Inc., 462 U.S. 198, 204, 103 S.Ct. 2309, 2312 (1983). Tax refunds and refundable tax credits a debtor is entitled to as of the date of the petition are part of the bankruptcy estate, even though they may not be received until after the case commences, because they are based

¹The debtors are proceeding pro se. As pro se litigants, they are entitled to have their filings construed more liberally than papers which are drafted by attorneys. Kincaid v. Vail, 969 F.2d 594, 598 (7th Cir. 1992). This liberal attitude toward pro se filings does not change the substantive law governing the rights of the parties, merely the court's expectations concerning the pro se litigant's ability to comply with the court's procedural requirements.

upon the debtor's pre-petition income and/or circumstances. See In re Barowsky, 946 F.2d 1516, 1518 (10th Cir. 1991); In re Guerrero, 30 B.R. 463, 465 (D. N.D. Ind. 1983); In re Buchanan, 139 B.R. 721, 722-23 (Bankr. D. Idaho 1992).

Debtors are permitted to claim exemptions from property of the estate. 11 U.S.C. § 522(b)(1). To the extent of the claimed exemption, exempted property is not liable for the claims of most creditors, and is therefore available only to the debtors. 11 U.S.C. § 522(c). See also, In re Garran, 338 F.3d 1, 4 (1st Cir. 2003); In re Thompson, 867 F.2d 416 (7th Cir. 1989). The Bankruptcy Code allows debtors to choose between federal bankruptcy exemptions and the exemptions created by state law, unless their state has elected to limit its residents the non-bankruptcy exemptions. 11 U.S.C. §522(b)(2). Indiana has done so. Accordingly, its residents may only claim exemptions in the property specified by Indiana law. I.C. 34-55-10-1. Those exemptions are found primarily at I.C. 34-55-10-2.

Indiana provides an exemption for the “debtor’s interest in a refund or credit received or to be received under section 32 of the Internal Revenue Code of 1986.” I.C. 34-55-10-2(c)(11). The debtors have claimed this exemption, using it to shield \$2,058 of their 2008 federal income tax refund from administration by the trustee. That part of their claimed exemptions is not in issue. What is in issue is an additional \$3,000 of the refund which the debtor’s have claimed as exempt pursuant to both I.C. 34-55-10-2(c)(11) and I.C. 34-55-10-2(c)(2).² This \$3,000 is attributable to a child tax credit.

²I.C. 34-55-10-2(c)(2) allows an \$8,000 per debtor exemption for “other [non-residential] real estate or tangible personal property.” An income tax refund is intangible property. See, In re Neuenschwander, 73 B.R. 327 (Bankr. S.D. Fla. 1987). Cf., In re Oakley, 344 F.3d 709 (7th Cir. 2003). It cannot be exempted under paragraph 2(c)(2) and, so, this part of the trustee’s objection is clearly well taken.

Section 32 of the Internal Revenue Code creates the Earned Income Credit³ and allows eligible individuals a refundable credit against their federal income tax for a percentage of their “earned income.” 26 U.S.C. § 32(a)(1). The precise amount of this credit is determined by the taxpayer’s income and the number of qualifying children. 26 U.S.C. § 32(b). Section 24 of the Internal Revenue Code also creates a refundable tax credit, this one provides a credit for each qualifying child of the taxpayer. 26 U.S.C. § 24. The essence of the debtors’ argument appears to be that since both § 24 and § 32 of the Internal Revenue Code refer to “qualifying children,” § 32 somehow includes or incorporates all child based tax credits. As a result, Indiana’s exemption for the § 32 refund also exempts any refund granted by § 24.

“A statute which is clear and unambiguous must be given its apparent or obvious meaning.” In re Grissom, 587 N.E.2d 114, 116 (Ind. 1992). See also, Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253-54, 112 S.Ct. 1146, 1149 (1992); Matter of Voelker, 42 F.3d 1050, 1051 (7th Cir. 1994). Words have meaning and, when confronted with that meaning, one should not engage in creative interpretative techniques to try and make them say something other than what they plainly do. Hartford Underwriters Ins. Co. v. Union Planters, 530 U.S. 1, 7, 120 S.Ct. 1942, 1947 (2000). Here there is no ambiguity. Indiana’s exemption statute provides an exemption for the “debtor’s interest in a refund or credit received or to be received under section 32 of the Internal Revenue Code of 1986.” I.C. 34-55-10-2(c)(11). (emphasis added). Although the court recognizes that exemptions are to be liberally construed in favor of debtors, Levin v Dare, 203 B.R. 137, 140 (D. S.D. Ind.

³“The earned-income credit was enacted to reduce the disincentive to work caused by the imposition of Social Security taxes on earned income, 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.” Sorenson v. Secretary of the Treasury of the United States, 475 U.S. 851, 865, 106 S.Ct. 1600, 1609 (1986).

1996), In re Wandery, 334 B.R. 427, 431 (Bankr. N.D. Ind. 2005), § 32 and § 24 of the Internal Revenue Code create separate tax credits and there is no possible way to read I.C. 34-55-10-2(c)(11) and its specific reference to “section 32 of the Internal Revenue Code” as referring to or encompassing both section 32 and section 24.

The trustee’s objection is SUSTAINED and the debtors’ claimed exemption for \$3,000 of their 2008 tax refund should be DENIED. An order doing so will be entered.

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