UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:	)	
	)	
MELANIE K BRYANT,	)	CASE NO. 11-23994 JPK
	)	Chapter 7
Debtor.	)	

MEMORANDUM OF DECISION IN CONTESTED MATTER

The matter to which this Memorandum of Decision relates is a contested matter under Fed.R.Bankr.P. 9014, arising from a Motion for Turnover filed by Daniel L. Freeland, Trustee of the Chapter 7 bankruptcy estate of Melanie Bryant ("Trustee") as record No. 23 on April 27, 2012, and the Objection to Request For Turnover filed by Melanie Bryant ["Bryant"] by counsel as record No. 26 on May 8, 2012. The matter has been submitted to the court pursuant to the court's record No. 35 order. The stipulated record provided for by that order was filed as record No. 37 on October 31, 2012. The parties have filed their respective legal memoranda, and the record is now closed.

The court has jurisdiction with respect to this contested matter pursuant to 28 U.S.C. § 1334(a), 28 U.S.C. § 157(a) and (b), and Rule 200.1 of the Rules of the United States District Court for the Northern District of Indiana. This matter is a core proceeding under 28 U.S.C. § 157(b)(E). The court has full adjudicatory authority and final judgment authority with respect to this contested matter.

The Trustee's Motion for Turnover, directed to Bryant, seeks turnover of the "2010 Federal Tax Refund in the amount of $5,969.28." The Trustee contends that this amount – stipulated by the parties to constitute a portion of Bryant's federal income tax refund arising from her calendar year 2010 income tax return -- constitutes property of her Chapter 7

bankruptcy estate to which no allowable exemption applies.[1] Bryant asserts that the amount of the refund sought by the Trustee derives exclusively from her claiming of the qualified adoption expenses federal income tax credit provided by the Internal Revenue Code, and that as a result the amount sought by the Trustee is either not property of the Chapter 7 bankruptcy estate but rather property of the child with respect to whom the credit was claimed, or is subject to exemption under Indiana Law.

First, a slight bit of discussion with respect to the federal law by which the amount in question was generated will be referenced, but not extensively discussed, in this opinion. An excellent discussion of the qualified adoption expenses credit provided by 26 U.S.C. § 36(C)/26 U.S.C. § 23 is stated in *In re* Johnson, 480 BR 305, 312 - 315 (Bankr. N.D. ILL., 2012). Although not relevant to the issues addressed in this decision, beginning with the 2010 tax year, the credit became a "refundable" credit rather than a mere credit against income taxes owed up to the amount of the taxes owed. The distinction between a refundable tax credit and a non-refundable tax credit was stated by the Honorable Janet S. Baer as follows:

> A refundable tax credit, like a payment, can be refunded to the taxpayer by the Internal Revenue Service. *See, e.g.*, Lily Batchelder, Fred Goldberg & Peter Orszag, Efficiency and Tax Incentives: The Case for Refundable Tax Credits, 59 Stan. L.Rev. 23, 33 (2006) (defining a refundable credit as one "paid in cash when a tax unit has no federal income tax liability to offset"). In contrast, a nonrefundable tax credit is a credit that can reduce income tax liability to zero, but any remaining credits are not refunded to the taxpayer. *See, e.g.*, Walsh, 298 B.R. at 896 n. 2 (noting that the "only function of a non-refundable credit ... is to reduce the taxpayer's tax liability"). (480 BR 305, 315)

While the characterization of the credit as either "refundable" or "non-refundable" was of extreme relevance to Judge Baer's determination, that relevance was based upon *In re*

[1] The parties stipulated that the "refund amount was solely based upon the amended return [for tax year 2010] and amended Form 8839." This stipulation also states that Bryant received the $5669.28 amount after the filing of case number 11-23994.

Johnson's focus on exemption of the credit under an Illinois state exemption statute. Parenthetically, *Johnson* holds that the credit is clearly property of the debtor's Chapter 7 bankruptcy estate, whatever its nature might be.

When a Chapter 7 bankruptcy petition is filed, 11 U.S.C. 541(a)(1) primarily defines the extent of property of the debtor's bankruptcy estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." This statute casts a broad net, including in property of a Chapter 7 bankruptcy estate any and all legal interests of the debtor not otherwise excluded by provisions of § 541, as those property interests are determined primarily under state law. In order to seek to avoid inclusion of the requested turnover amount as property of her estate, Bryant argues that the credit is akin to the type of property addressed by the Indiana Supreme Court in *In re* Hambright, Ind., 762 NE 2nd 98 (2002). Bryant contends that the credit is essentially paid to the taxpayer who claimed it for the benefit of the child whose expenses generated it, and thus results in the credit being held in a form of trust for the child, i.e., the credit is the child's property. *Hambright* dealt exclusively with the issue of whether child support arrearages owed by a non-custodial parent to a custodial parent constituted property of the custodial parent, or whether those arrearages constituted property of the child to be held in trust by the custodial parent for the benefit of the child. The case answered the question with the latter, rather than the former, determination. *Hambright* has nothing whatever to do with any form of payment other than child support arrearages. Its determination cannot be extended to any other form of benefit, payment, or tax credit which relates to a dependent child but is paid to another person in relation to that child. In addition, *Hambright* dealt with child support <u>arrearages,</u> a concept which connotes amounts owed by the non-custodial parent to the custodial adult which have yet to be paid. In contrast, the qualified adoption expenses credit derives from expenses actually paid prior to the claiming of the credit, and as such the credit is

essentially a form of reimbursement to the person paying the expenses, not some form of supplemental payment for the *in futuro* benefit of the child.

Neither *In re Hambright* nor any other legal concept can be applied in this case to remove the turnover amount requested by the Trustee from property of Bryant's Chapter 7 bankruptcy estate.

Bryant's remaining argument is in part premised on *In re* Johnson, supra. *Johnson* involved the interpretation of an Illinois state exemption statute which allowed exemption for "public assistance benefits". Indiana has no such exemption. Indiana's sole exemptions which may be applied to any form of tax refund are those stated by I.C. 34-55-10-2(c)(11) [specifically and exclusively referring to federal and state earned income credits], and the general intangibles exemption provided by I.C. 34-55-10-2(c)(3). The Indiana exemption statutes are clear and precise: they restrict the universe in which exemptions may be applied. Indiana exemptions cannot in any manner be interpreted to be extended beyond that very limited, specifically designated, universe. In this regard, the case of *In re* Walsh, 298 B.R. 894 (Bankr. Col. 2003) is of relevance [determining that the credit for qualified adoption expenses does not fall within the provisions of Colorado's exemption statute in relation to the earned income credit], as contrasted to the irrelevancy of *In re Johnson*.

One final note. Although not addressed by the parties, Bryant did not assert any exemption with respect to the qualified adoption expenses credit. Her original Schedule B filed on October 12, 2011 designated the bankruptcy estate property to include "debtor's earned income credit for 2011" [subparagraph 18] and "potential recovery of unpaid adoption credits" [subparagraph 35]. Schedule C, also filed on October 12, 2011, stated only an exemption for "debtor's 2011 tax refund EIC", designating the law providing for that exemption as I.C. 34-55-

10-2(c)(11), and stated the amount of the claimed exemptions as “0.00". [2] Thus, no exemption was claimed by Bryant with respect to the qualified adoption expenses credit.

Based upon the foregoing, the court determines that Bryant’s Objection to Request For Turnover is denied, and that the Trustee’s Motion For Turnover is granted.

IT IS ORDERED that the Objection to Request For Turnover filed by Melanie Bryant is denied.

IT IS FURTHER ORDERED that the Motion For Turnover filed by Daniel L. Freeland, as Trustee of the Chapter 7 bankruptcy estate of Melanie Bryant, is granted.

IT IS FURTHER ORDERED that Melanie Bryant shall turn over to Daniel L. Freeland, as Trustee of the Chapter 7 bankruptcy estate of Melanie Bryant, the amount of $5,969.28 within 60 days of the date of entry of this order.

Dated at Hammond, Indiana on March 20, 2013.

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

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee

[2] Failing to state an amount for the claimed exemption results in no exemption.