

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
WESLEY DEAN CREEK,) CASE NO. BK02-40050
)
Debtor(s).) CH. 7

MEMORANDUM

Hearing was held in Lincoln, Nebraska, on April 17, 2002, on Trustee's Objection to Debtor's Claim of Exemptions (Fil. #10) and Debtor's Resistance (Fil. #11). Judy Stone appeared for the debtor, and Joseph Badami appeared for the Chapter 7 Trustee. This memorandum contains findings of fact and conclusions of law required by Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

The objection to claim of exemptions is granted.

The objection centers on the status of debtor's federal income tax refund of approximately \$5,000, and the claimed exemption of \$3,137 of that refund. The exempted amount represents the cash form of the federal "earned income credit" available to working parents.

Courts around the country come down on both sides of exempting the earned income credit. All of the rulings are based on state law definitions of "public assistance" or similar terminology. The disparate outcomes are the result of broader or narrower definitional language in the state statutes. Compare Brasher v. McGregor (In re Brasher), 253 B.R. 484 (M.D. Ala. 2000) (earned income credit "well within any sensible construction" of "public assistance" under Alabama statute); In re Longstreet, 246 B.R. 611 (Bankr. S.D. Iowa 2000) (earned income credit exempt under Iowa statute exempting "any public assistance benefit"; court noted that statute's amendment from "local" benefit to "any" benefit indicated legislature's intent to broaden exemption); In re Fish, 224 B.R. 82 (Bankr. S.D. Ill. 1998) (Illinois law exempts "public assistance benefit"; "public assistance" not defined in statute, so court liberally construed the exemption to include earned income credit); and In re Brown, 186 B.R. 224 (Bankr. W.D. Ky. 1995) (earned income tax credit

clearly intended as public assistance; public assistance benefits are exempt under Kentucky law) with Luster v. Collins (In re Collins), 170 F.3d 512 (5th Cir. 1999) ("all assistance" exempt under Louisiana law, but statute defines "assistance" as "money payments under this Title", so federal earned income credit excluded); Trudeau v. Royal (In re Trudeau), 237 B.R. 803 (B.A.P. 10th Cir. 1999) (earned income credit does not fall under Wyoming definition of "public assistance", which covers payments in nature of welfare grants, not tax overpayments); In re Garrett, 225 B.R. 301 (Bankr. W.D.N.Y. 1998) ("local public assistance benefits" exempted; earned income credit not exempt); In re Rutter, 204 B.R. 57 (Bankr. D. Ore. 1997) (Oregon statute exempts only assistance from State; earned income credit not exempt); and In re Goertz, 202 B.R. 614 (Bankr. W.D. Mo. 1996) (Missouri exempts "local public assistance benefits"; federal earned income credit not local).

The debtor relies on Neb. Rev. Stat. § 68-148 for his exemption. That section provides that "[n]o general assistance shall be alienable by assignment or transfer, or be subject to attachment, garnishment, or any other legal process"

However, § 68-148, as part of the statutory chapter on Paupers and Public Assistance, is included in the sections dealing specifically with support from the county. Section 68-131 provides that the poor "shall receive such relief, referred to as general assistance for purposes of sections 68-131 to 68-148, out of the treasury of the county in which he or she has legal settlement" In other words, this set of statutory sections refers only to the counties' duty to provide "general assistance" to residents. Reading § 68-148 to exempt other types of assistance, such as what is arguably a federal form of public assistance, would require that section to be interpreted out of context.

Nebraska Revised Statute § 68-148 does not provide a valid basis for exempting a federal earned income credit refund. The Chapter 7 Trustee's Objection to Debtor's Claim of Exemptions (Fil. #10) is granted.

Separate order to be entered.

DATED: May 13, 2002

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
*Joseph Badami, Ch. 7 Trustee
Judy Stone, Atty. for Debtor
U.S. Trustee

Movant (*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.

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IN THE MATTER OF:)
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ORDER

Hearing was held in Lincoln, Nebraska, on April 17, 2002, on Trustee's Objection to Debtor's Claim of Exemptions (Fil. #10) and Debtor's Resistance (Fil. #11). Judy Stone appeared for the debtor, and Joseph Badami appeared for the Chapter 7 Trustee.

IT IS ORDERED Nebraska Revised Statute § 68-148 does not provide a valid basis for exempting a federal earned income credit refund. The Chapter 7 Trustee's Objection to Debtor's Claim of Exemptions (Fil. #10) is granted.

See Memorandum entered this date.

DATED: May 13, 2002

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
*Joseph Badami, Ch. 7 Trustee
Judy Stone, Atty. for Debtor
U.S. Trustee

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