

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
JASON VANCE,) CASE NO. BK03-40124
)
Debtor(s).) CH. 7

MEMORANDUM

Hearing was held in Lincoln, Nebraska, on April 30, 2003, on the Trustee's Objection to Exemption in Tax Refund (Fil. #4), and Debtor's Resistance (Fil. #8). Bert Blackwell appeared for the debtor, and Philip Kelly appeared as the Chapter 7 Trustee. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

The trustee's objection is sustained.

The Chapter 7 Trustee takes issue with the debtor's claim of exemption in \$2,800 of his estimated income tax refund pursuant to Neb. Rev. Stat. § 68-1013. The trustee argues that In re Wesley Creek, Neb. Bkr. 02:106, does not permit an exemption to be claimed in earned income tax credits.

The debtor asserts that he receives an income tax refund because he has a low income and two dependent children. The refund results from an earned income credit, child care credit, and having two dependent children. Debtor suggests that such credits are analogous to "aid to dependent children" as exempted from legal process in § 68-1013, and should therefore be allowed as an exemption in bankruptcy. The debtor also suggests that such a refund may not even be property of the bankruptcy estate.

To the extent the debtor relies on In re Hurles, 31 B.R. 179 (Bankr. S.D. Ohio 1983), for the proposition that earned income tax credits are not property of the bankruptcy estate, that holding is not dispositive in this circuit. See, e.g. In re Demars, 279 B.R. 548 (Bankr. W.D. Mo. 2002) (citing Sorenson v. Secretary of the U.S. Treasury, 475 U.S. 851 (1986) (earned income credit analogous to tax refund and can be intercepted for past-due child support) and Wallerstedt v. Sosne (In re Wallerstedt), 930 F.2d 630 (8th Cir. 1991) (tax refunds are property of bankruptcy estate) in ruling that earned income credits are property of the bankruptcy estate).

As to debtor's efforts to exempt part of his earned income credit under Neb. Rev. Stat. § 68-1013, it appears that such a reading is beyond even a liberal interpretation of the state's exemption statutes. Section 68-1013 provides as follows:

No person shall have any vested right to any claim against the county or state for assistance of any kind by virtue of being or having been a recipient of assistance to the aged, blind or disabled, aid to dependent children, or medical assistance for the aged. No such assistance shall be alienable by assignment or transfer, or be subject to attachment, garnishment or any other legal process.

Chapter 68 of the Nebraska statutes deals with Paupers and Public Assistance, and Article 10 deals with Assistance, Generally. Section 1013 is grouped with statutes concerning Assistance to the Aged, Blind, or Disabled. The preceding sections in that group, §§ 68-1001 to -1008, address only assistance to the aged, blind, or disabled; aid to dependent children is not included until § 68-1013. That statute was enacted in 1965; no amendments or reported judicial interpretations have occurred since.

Reading the statute in context leads to the conclusion that the "aid to dependent children" referred to therein means assistance payments made through the aid to dependent children program administered by the Nebraska Department of Health and Human Services. It would be incongruous to interpret the statutory language as covering only county- or state-provided assistance for the aged, blind, or disabled – as it says – but any assistance for dependent children, regardless of origin.

Separate order will be entered.

DATED: May 30, 2003

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

Bert Blackwell United States Trustee
*Phil Kelly

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

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
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JASON VANCE,) CASE NO. BK03-40124
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ORDER

Hearing was held in Lincoln, Nebraska, on April 30, 2003, on the Trustee's Objection to Exemption in Tax Refund (Fil. #4), and Debtor's Resistance (Fil. #8). Bert Blackwell appeared for the debtor, and Philip Kelly appeared as the Chapter 7 Trustee.

IT IS ORDERED: For the reasons stated in the Memorandum of today's date, the Trustee's Objection to Exemption in Tax Refund (Fil. #4) is sustained.

DATED: May 30, 2003

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
Bert Blackwell
*Phil Kelly
United States Trustee

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