

ENTERED

12-2-97

L.A.B.

FILED

UNITED STATES BANKRUPTCY COURT

97 DEC -1 PM 4: 14

FOR THE DISTRICT OF SOUTH CAROLINA

COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

William B. Woods and Rose Y. Woods,

Debtor.

Kevin Campbell, Trustee,

Plaintiff,

v.

William B. Woods and Rose Y. Woods,

Defendant.

C/A No. 96-76877-W

Adv. Pro. No. 97-80172-W

**JUDGMENT**

Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the portion of the refund from the United States Internal Revenue Service designated as earned income credit is property of the estate and shall be turned over to the Trustee. However, the Trustee is only entitled to recover a pro rata share of the earned income credit up through the date of the bankruptcy petition and therefore is entitled to \$2,532.30 or 734% of the refund attributed to the earned income credit (equal to 268 days of a 365 day calendar year). Additionally, the \$250.00 refund from the State of South Carolina and \$329.00 of the refund classified as a refund and not earned income credit from the United States Internal Revenue Service is property of the estate and shall be immediately turned over to the Trustee.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
December 1, 1997.

ENTERED

12-2-97

L.A.B.

UNITED STATES BANKRUPTCY COURT

FILED

FOR THE DISTRICT OF SOUTH CAROLINA

97 DEC -1 PM 4: 26

IN RE:

William B. Woods and Rose Y. Woods,

Debtor.

Kevin Campbell, Trustee,

Plaintiff,

v.

William B. Woods and Rose Y. Woods,

Defendant.

COURT OF THE DISTRICT OF SOUTH CAROLINA  
C/A No. 96-76877-W

Adv. Pro. No. 97-80172-W

**ORDER**

Chapter 7

THIS MATTER comes before the Court for trial upon the complaint of Kevin Campbell, the Chapter 7 Trustee ("Trustee"), seeking the turnover of portions of the Debtors' tax returns pursuant to 11 U.S.C. § 542.<sup>1</sup> After receiving the testimony and considering all the evidence, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable by Rule 7052 of the Federal Rules of Bankruptcy Procedure.<sup>2</sup>

**FINDINGS OF FACT**

The Debtors filed for relief under Chapter 7 on September 25, 1996. Kevin Campbell is

<sup>1</sup> Further references to the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, shall be by section number only.

<sup>2</sup> The court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

*96-1866-*

the duly appointed and acting Trustee. Sometime post petition and after December 31, 1996, the Debtor Rose Y. Woods ("Ms. Woods") filed federal and state tax returns for the calendar year 1996.<sup>3</sup> All of the income reported on these tax returns was generated from income earned by Ms. Woods for that calendar year. Ms. Woods received her refund sometime after February 25, 1997.

Ms. Woods requested a refund of \$329.00 and "Earned Income Credit" of \$3,450.00 on her federal return and a refund of \$250.00 on her state return. The Debtors do not dispute that the Trustee is entitled the \$250.00 refund from the State of South Carolina and \$329.00 of the refund from the Internal Revenue Service ("IRS").

### CONCLUSIONS OF LAW

The issue remaining for this Court to determine is whether the \$3,450.00 designated and claimed by Ms. Woods as an earned income credit on her federal tax return is property of the estate pursuant to § 541 and subject to being turned over to the Trustee pursuant to § 542.

An earned income credit, created by 26 U.S.C. § 32 (1994), is a refundable tax credit provided for low income workers who have dependent children and who maintain a household. In the Matter of Davis, 136 B.R. 203, 205 (Bankr.S.D.Iowa 1991). Courts have characterized the earned income credit as "an item of social welfare legislation" effectuated through income tax laws. Hoffman v. Searles, 445 F.Supp. 749, 753 (D.Conn.1978); In re Brown, 186 B.R. 224, 226 (Bankr.W.D.Ky.1995); Davis, 136 B.R. at 205.

Cases are split regarding whether an earned income credit constitutes property of the estate. Cases which hold the earned income credit is not property of the estate are primarily older cases, which looked to the policy of the now superseded Bankruptcy Act to construe what constituted property of the estate, and emphasized the distinction between the credit and a tax refund. See Hoffman v. Searles, 445 F.Supp. 749, 753 (D.Conn.1978); In re Hurles, 31 B.R. 179 (Bankr.S.D.Ohio 1983).

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<sup>3</sup> The Debtor William B. Woods has not filed tax returns for the calendar year 1996.

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More recent cases decided under the Bankruptcy Code have held that the earned income credit is property of the estate under the express language of 11 U.S.C. § 541(a). In re George, 199 B.R. 60, 61 (Bankr.N.D.Okla.1996); In re Goldsberry, 142 B.R. 158, 159 (Bankr.E.D.Ky.1992); In re Buchanan, 139 B.R. 721, 722 (Bankr.D.Idaho 1992); In the Matter of Davis, 136 B.R. at 203, 207 (Bankr.S.D.Iowa 1991); see also, In re Brown, 186 B.R. 224 (Bankr.W.D.Ky.1995) (held earned income credit could be exempted under state statute, thus implicitly finding earned income credit was property of the estate).

In re Goertz, 202 B.R. 614 (Bkrtcy.W.D. Mo. 1996).

While this Court was not able to find any opinions either way within the Fourth Circuit, the Fourth Circuit has recognized a broad definition of property of the estate.

11 U.S.C. § 541 provides in part that the bankruptcy estate is comprised, with exceptions not applicable here, of "all ... property, wherever located and by whomever held ..., [including] all legal or equitable interests of the debtor in property as of the commencement of the case." The estate also includes "proceeds, products, offspring, rent or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case."

In re Richman, 117 F.3d 1414 (Table), 1997 WL 360644 (4th Cir. 7/1/97)(unpublished).<sup>4</sup>

While the Debtors do not appear to dispute this broad definition of property of the estate, it is their position that the earned income credit was not a legal or equitable interest of the Debtors on the date of the filing of the petition because Ms. Woods did not file her tax return until after the filing of the bankruptcy petition and after the close of the tax year.

The Debtors argue that on the date of the commencement of the case, entitlement to an earned income credit was at best a contingency; contingent upon a number of factors. These

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<sup>4</sup> Although unpublished Fourth Circuit opinions are not binding precedent (I.O.P 36.5 and 36.6), they may supply "helpful guidance". In re Serra Builders, Inc., 970 F. 2d 1309, 1311 (4th Cir. 1992).



factors include whether the Debtors filed a joint tax return, whether upon filing separate returns which Debtor would claim the children as dependents and whether there would be additional income after the date of the petition which would decrease or eliminate the entitlement.

However, the Supreme Court in interpreting the predecessor to § 541 has previously stated that a refund (loss carry back refund) which was only contingent on the petition date, was property of the estate.

The main thrust of § 70a(5) is to secure for creditors everything of value the bankrupt may possess in alienable or leviable form when he files his petition. To this end the term 'property' has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed. E.g., Horton v. Moore, 6 Cir., 110 F.2d 189 (contingent, postponed interest in a trust); Kleinschmidt v. Schroeter, 9 Cir., 94 F.2d 707 (limited interest in future profits of a joint venture); see 3 Remington, Bankruptcy §§ 1177--1269 (Henderson ed. 1957) . . . Turning to the loss- carryback refund claim in this case, we believe it is sufficiently rooted in the pre-bankruptcy past and so little entangled with the bankrupts' ability to make an unencumbered fresh start that it should be regarded as 'property' under § 70a(5).

Segal v. Rochelle, 382 U.S. 375, 86 S.Ct. 511 (1966). In Segal v. Rochelle, the Supreme Court made this decision despite evidence which showed that because taxes had been paid on the net income within the prior three years and because there was a net operating loss in the current year on the petition date, the realization of the refund was contingent and could not be claimed until the end of the calendar year. In the Segal v. Rochelle opinion, the Supreme Court held that "the contingency or uncertainty of said refund, given the possibility that by the end of the year the business could net a profit, was on no consequence." Segal v. Rochelle, 382 U.S. at 380, 86 S.Ct. at 515. While Segal v. Rochelle involved a contingent right to a loss carryback refund, its

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holding has also been applied to income tax refunds. In re Rash, 22 B.R. 323 (Bkrtcy.D.Ka. 1982).

This Court agrees with this approach and finds that even if the entitlement to the earned income credit was contingent on post-petition acts, the right to the credit occurred during that calendar year and as to the portion that was earned pre-petition, it becomes property of the estate. This Court further agrees with In re Rash that as a practical matter, the most efficient method to determine which part of the credit is pre-petition and property of the estate is calendar day pro-rationing. This method has been approved by the Fourth Circuit Court of Appeals. United States v. Reynolds, 764 F.2d 1004 (4th Cir. 1985). Therefore, consistent with this ruling, the Trustee is entitled to receive .734% of the refund designated as earned income credit (equal to 268 days of a 365 day calendar year) in the amount of \$2,532.30.<sup>5</sup>

The Trustee has also asked for an award of costs and attorney's fees in having to bring this adversary proceeding. However, as there was no evidence presented as to the amount of attorney's fees and because there was no filing fee paid with the filing of the complaint, the Court will deny the request. For the reasons stated within, it is therefore,

**ORDERED**, that with the stipulation of the Debtors, the \$250.00 refund from the State of South Carolina and \$329.00 of the refund from the United States Internal Revenue Service is property of the estate and shall be immediately turned over to the Trustee. It is further

**ORDERED**, that the portion of the refund from the United States Internal Revenue Service designated as earned income credit is property of the estate and shall be turned over to

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<sup>5</sup> In this adversary proceeding, the only issue raised was whether the earned income tax credit was part of the bankruptcy estate and subject to turnover to the Trustee. As the Debtors have not claimed an exemption in the tax refunds, the Court need not address that issue.



the Trustee. However, the Trustee is only entitled to recover a pro rata share of the earned income credit up through the date of the bankruptcy petition. Therefore the Trustee is entitled to receive .734% of the refund designated as earned income credit (equal to 268 days of a 365 day calendar year) in the amount of \$2,532.30.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
December, 1997.

  
UNITED STATES BANKRUPTCY JUDGE

