

**FILED**

at \_\_\_\_ O'clock & \_\_\_\_ min. \_\_\_\_ M

**JUN 19 2006**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court  
Columbia, South Carolina (26)

IN RE:

Russell Ashley Horne  
Kitty Ann Horne

Debtors.

Case No. 05-13069-hb

Chapter 7

**JUDGMENT**

Based on the findings of fact and conclusions of law recited in the attached Order of the Court, S.C. Code Ann. § 43-5-190 does not provide an exemption in any portion of a refund that is property of the estate and resulting from the Earned Income Tax Credit.

The trustee's Objection to the exemption is **SUSTAINED**.

  
UNITED STATES BANKRUPTCY JUDGE

Spartanburg, South Carolina  
June 19, 2006

**ENTERED**

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**L. G. R.**

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**ORDER****L. G. R.**

This matter came before the Court pursuant to the Trustee's objection to the Debtors' amended schedule of exemptions. The Debtors timely filed a response to the trustee's objection.

The facts are not in dispute. On October 13, 2005 the Debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code. Included in the Debtors' list of assets was the Debtors' interest in an anticipated federal tax refund for the year ending December 31, 2005. A portion of that tax refund was due post-petition to the Debtors as a result of their entitlement to an Earned Income Tax Credit ("EITC"). The Debtors are entitled to exemptions under South Carolina law and have claimed an exemption in an EITC refund. An EITC is a tax credit for workers who do not earn high incomes. If a worker qualifies for the credit, he or she pays less federal tax, pays no tax or may even receive a refund beyond the amount of the tax withheld. To receive the benefit the worker must file a federal tax return and the "refund" is made either in a lump sum from the U.S. Treasury Department after the tax return is filed, along with any tax refund due, or in smaller increments each time he or she receives a paycheck. The purpose of the credit is to help lift families above the poverty line and encourage them to work. See IRS

*Publication 596, Earned Income Tax Credit.* The pro rata share of an EITC through the date of the bankruptcy petition is property of the bankruptcy estate. Campbell v. Woods, No. 97-80172, 1997 WL 33343975, at \*3 (Bankr. D.S.C. Dec. 1, 1997).

Numerous courts have addressed the issue of whether an EITC is exempt. Courts are split on the result. See, e.g., cases finding an exemption for the EITC: In re Brockhouse, 220 B.R. 623, 625 (Bankr. C.D. Ill. 1998); In re Brown, 186 B.R. 224, 227 (Bankr. W.D. Ky. 1995); accord In re Goldsberry, 142 B.R. 158, 159 (Bankr. E.D. Ky. 1992) and Flanery v. Mathison, 289 B.R. 624, 628 (W.D. Ky. 2003); In re Jones, 107 B.R. 751, 752 (Bankr. D. Idaho 1989); In re Longstreet, 246 B.R. 611, 615 (Bankr. S.D. Iowa 2000); In re James, 406 F.3d 1340, 1345 (5<sup>th</sup> Cir. 2005) (interpreting Alabama law); cases finding no exemption for the EITC: In re Collins, 170 F.3d 512, 513 (5<sup>th</sup> Cir. 1999) (interpreting Louisiana law); In re Trudeau, 237 B.R. 803, 807 (B.A.P. 10<sup>th</sup> Cir. 1999) (interpreting Wyoming law); In re Rutter, 204 B.R. 57, 60 (Bankr. D. Or. 1997); In re Thompson, 336 B.R. 800, 802 (Bankr. D. Nev. 2005). When reviewing these decisions, it is important to note that each court reviewed a different state statute and statutory exemption scheme, none of which are applicable to this case. Each court was charged with the obligation of interpreting statutory language under the facts presented and the laws and intentions of each state's legislature to determine the extent of each exemption. While a review of these cases is helpful, none is controlling on the issue of whether an EITC refund is exempt under South Carolina law.

The South Carolina Bankruptcy Court has also previously addressed the EITC exemption question. South Carolina exemptions that may be applicable to the EITC are found in state law. S.C. Code Ann. § 15-41-35 (1976, as amended). The bulk of South

Carolina's exemptions are found in S.C. Code Ann. § 15-41-30 under the headings "Civil Remedies and Procedures-Homestead and Other Exemptions-Property exempt from attachment, levy and sale" (hereinafter "Chapter 41"). Chapter 41 includes a laundry list of most of the exemptions available in South Carolina. Chapter 41 provides an exemption for various specific public assistance programs and includes catch-all language also exempting a "local public assistance benefit." This Court previously examined the language of that statute very carefully and found that since the EITC is not a "local" public assistance benefit – but rather a federal benefit – that it is therefore not covered under that language. In re Moir, No. 04-01098, slip op. at 6 (Bankr. D.S.C. July 9, 2004) (interpreting S.C. Code Ann. § 15-41-30(10)(A)).

In addition to the exemptions found in Chapter 41, the legislature has provided for various additional exemptions in other provisions of the South Carolina Code. Most are worded very specifically to exempt the particular assets established by the title in which the exemption appears. See, e.g., S.C. Code Ann. § 9-1-1680 (South Carolina Retirement System); S.C. Code Ann. § 59-2-140 (South Carolina College Investment Program); S.C. Code Ann. § 59-4-40 (South Carolina Tuition Prepayment Program); S.C. Code Ann. § 42-9-360 (workers' compensation). The Debtors in this case are claiming an exemption under another of the "extra" exemption provisions, which is found in Title 43 of the South Carolina Code under the heading "Social Services." That title as a whole establishes the South Carolina Department of Social Services (SCDSS) and sets forth the duties and obligations of that entity. Title 43 sets forth various procedures and programs whereby the state can provide aid and information to citizens of South Carolina. The exemption language in question is found in Title 43, Chapter 5 as follows:

**§ 43-5-190. Payments to be exempt from taxes, levy or other process; payments to be inalienable and unassignable; bankruptcy.**

All amounts paid or payable as assistance shall be exempt from any tax levied by the State or any subdivision thereof, shall be exempt from levy and sale, attachment or any other process whatsoever, and shall be inalienable and unassignable in advance in any form and, in case of bankruptcy, shall not pass to the trustee or other person acting on behalf of the creditors of the recipient of assistance.

It is the Debtors' position that this statute provides an exemption for any EITC refund as a form of "assistance." The trustee asserts that this language only exempts public assistance "paid or payable as assistance" under Title 43.

Given the absence of legislative history, the exact words and meaning of the applicable statute must be examined applying South Carolina law. It is well established that a federal court interpreting state legislation must employ that state's rules of statutory construction. Phillips v. Chandler, 215 B.R. 684, 688 (E.D. Va. 1997) (citing Phelps v. Hamilton, 59 F.3d 1058, 1071 (10<sup>th</sup> Cir. 1995)). In South Carolina the terms of a statute must be construed in context and their meaning determined by looking at the other terms used in the statute. Southern Mut. Church Ins. Co. v. South Carolina Windstorm and Hail Underwriting Ass'n., 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991).

Preceding the exemption language, the following provisions appear which provide a better understanding of the exemption statute:

**§ 43-5-10. Implementation and administration of public welfare program; regulations.**

The Department of Social Services shall be responsible for maintaining uniformity in the administration of public welfare throughout the State. . . . In adopting regulations the department shall strive for clarity of language which may be readily understood by those administering aid and by those who apply for or receive aid.

**§ 43-5-15. Applications for assistance; manner and form.**

Applications for assistance under the provisions of this chapter shall be made as provided in this chapter and when no such provision has been made in accordance with the manner and form described by the department.

**§ 43-5-45. Notice by department of intended action.**

The department shall provide timely and adequate notice in all cases of intended action to discontinue, terminate, suspend, or reduce an assistance grant except in those cases where adequate notice alone would be consistent with the requirements of state law or regulations. . . .

**§ 43-5-70. Identification and proof of residence; verification of employment, income and other information; absence from state.**

The department shall require that all persons applying for assistance shall provide acceptable identification and proof of residence. . . .

If a recipient is or will be absent from the State for a period of thirty days or longer, the department shall consider the recipient ineligible for assistance. . . .

These provisions shed light on the purpose of the statute and the use of the term

“assistance” therein. The statute does not define the word “assistance.” It does, however, mention the EITC:

**§ 43-5-1225. Outreach and information programs.**

In order to assure that all families working toward self sufficiency have access to all potential supportive services that will help ensure their success, the department, within existing revenues, may develop outreach and information programs which provide information and assistance on support services available to low income families including, but not limited to, information on earned income tax credits and medicaid eligibility.

EITC refunds are clearly not amounts “paid or payable as assistance” by the SCDSS.

Rather, the only reference to EITC refunds is limited to an outreach and informational program.

When applying South Carolina law, courts should consider not only the language of the particular clause being construed, but also the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. Whitner v. State, 328 S.C.

1, 16, 492 S.E.2d 777, 779 (1997). "The language must also be read in a sense which 'harmonizes with its subject matter and accords with its general purpose.'" Municipal Ass'n of South Carolina v. AT&T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (quoting Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). "In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole." Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). "A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 231, 612 S.E.2d 719, 724 (Ct. App. 2005). Finally, South Carolina law requires that "[a]ll rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." McClanahan v. Richland County Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002).

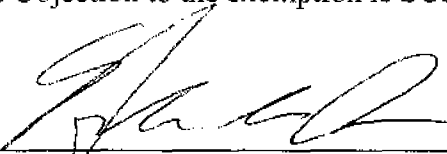
Applying these principles to this case, this Court's reading of the provisions of Title 43 in order and in context makes it clear that "all amounts paid or payable as assistance" therein was intended to define benefits paid under Title 43 only. The Court has carefully considered (1) the context of the exemption language found in Title 43; (2) the language itself; (3) the meaning of the term "assistance" found in other provisions of the same title; (4) the purpose of this statute; and (5) the language and context of this exemption as compared to the assistance exemptions found in Chapter 41. After completing this analysis, the Court finds that it was the intent of the South Carolina

legislature in placing this exemption within the limited Title 43 and, given the context of the words therein, to exempt only "all amounts paid or payable as assistance" under Title 43. As no EITC benefits are paid or payable under that title, they are not exempt thereunder.

**IT IS THEREFORE, ORDERED:**

That S.C. Code Ann. § 43-5-190 does not provide an exemption in any portion of a refund that is property of the estate and resulting from the Earned Income Tax Credit.

Therefore, the trustee's Objection to the exemption is SUSTAINED.

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UNITED STATES BANKRUPTCY JUDGE

Spartanburg, South Carolina  
June 19, 2006