



Richter Logue as an unsecured creditor of \$5,000.00 for payments on delinquent support payments for her son, Michael Shane Richter.

2. On September 6, 1988, DHS filed a motion for relief from stay. In said motion, DHS argued: 1) Debtors' obligation to pay child support to Karen Richter Logue is nondischargeable under §523(a)(5); and 2) collection of child support should be exempt from the automatic stay under §362(b)(2).

3. On September 15, 1988, Debtors filed a resistance and argued, in relevant part, that their future income is part of the bankruptcy estate, thus precluding DHS from attaching the property even for a nondischargeable debt.

4. During the September 30, 1988, hearing, the Court overruled DHS's motion as to Debtors' present income, but took under advisement the issue of whether Debtors' state and federal income tax refunds are subject to the automatic stay. The Court further ordered Debtors to pay their entire child support debt inside their plan.

5. Debtors are currently paying \$315.00 per month into the plan, and Trustee is paying \$75.00 a month of this amount on the child support debt.

#### DISUCSSION

The issue in this case is whether a chapter 13 debtor's state and federal income tax refunds are subject to the automatic stay while the case is pending. A resolution of this

issue depends upon an interpretation of §362(b)(2) which provides:

(b) The filing of a petition...does not operate as a stay--

(2) ...of the collection of alimony, maintenance or support from property that is not property of the estate[.]

11 U.S.C. §362(b)(2) (emphasis added). The key is whether the refunds are property of Debtors' estate. If the answer is no, §362(b)(2) is applicable and DHS may attach the refunds because the debt is back child support. If, on the other hand, the answer is yes, §362(b)(2) is not applicable and the stay does apply.

Section 541(a) defines property of the estate as including all interests of the debtor in property as of the commencement of the case. Section 1306(a)(2) expands that definition to include post-petition earnings. Thus, in a chapter 13 case, both pre-petition and post-petition wages earned by the debtor are property of the estate. In re Mack, 46 B.R. 652, 655 (Bankr. E.D. Pa. 1985).

A tax refund is property of the estate to the extent that the wages to which the refund is allocable are property of the estate. Id. Tax refunds are property of the estate under §1306(a). In re Holcomb, 18 B.R. 839, 841 (Bankr. S.D. Ohio 1982). In the case at bar, since Debtors' pre-petition and post-petition wages are property of the estate, and since the

tax refunds are allocable to those wages, the Court concludes Debtors' state and federal income tax refunds are property of Debtors' estate. As a result, the Court further concludes §362(b)(2) is not applicable, and the automatic stay does apply to any action by DHS to attach Debtors' state and federal income tax returns.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that since Debtors' state and federal income tax returns are property of the estate, the automatic stay does apply to any collection efforts by DHS to attach said refunds.

IT IS ACCORDINGLY ORDERED that DHS's motion for relief from automatic stay is overruled.

Dated this 12th day of January, 1989.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE