

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of	:	
	:	
TRAVIS R. YOURDON,	:	Case No. 90-3311-W H
	:	Chapter 7
Debtor.	:	
	:	

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**ORDER ON APPLICATION FOR TURNOVER OF PROPERTY**

On July 9, 1992 a telephonic hearing was held on Trustee's Application for Turnover of Property. Deborah L. Petersen appeared for the Trustee and Verd R. Bailey for the Debtor. At the conclusion of the hearing, the matter was taken under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E). Upon review of the pleadings and arguments of counsel, findings of fact and conclusions are entered pursuant to Fed.R.Bankr.P. 7052.

**FINDINGS OF FACT**

1. On December 31, 1990 Yourdon filed his petition for relief under Chapter 7 of the Bankruptcy Code.
2. On January 7, 1991 Deborah L. Petersen was appointed Trustee and on February 22, 1991 a meeting of creditors for examination of the Debtor was held pursuant to §§ 341 and 343.
3. On March 11, 1991 Debtor filed an amendment to his Schedule B-4 Property Claimed as Exempt to claim his 1990 income tax refund as exempt property. While not stating the amount of the refund to which he was entitled, he claimed an exemption of \$1,000 under Iowa law.

4. On April 24, 1991 an Order discharging the Debtor was entered.

5. On April 27, 1992 the Trustee filed an application for turnover of the tax refund to the extent it could not be claimed exempt under Iowa law. She alleged, and Debtor admits, that the Debtor testified at the § 341 meeting that he was entitled to receive federal and state income tax refunds after the date of filing his bankruptcy petition totaling \$2,211.00. This amount represents \$2,022 from the Internal Revenue Service and \$189 from the state of Iowa. Trustee requested that Debtor be ordered to turn over non-exempt funds totaling \$1,211, which he has refused to turn over.

6. On May 15, 1992 Debtor filed a resistance to Trustee's application arguing that he should not be required to turn over the refund monies because he was not entitled to receive the refunds nor was his tax liability determined or determinable, on the date of his bankruptcy filing, December 31, 1990.

7. Along with his resistance, Debtor submitted a copy of his payroll record marked exhibit A.

8. On June 3, 1992 the Trustee submitted a copy of a statement from David Hughes, Manager of Mondo's Restaurant marked exhibit A and a copy of Debtor's 1990 Federal and state Income Tax Returns marked exhibit B.

### DISCUSSION

The issue before the Court is whether or to what extent Debtor's 1990 tax refunds are property of the estate. Following the rationale of Barowsky v. Serelson (In re Barowsky), 946 F.2d 1516 (10th Cir. 1991), aff'g 102 B.R. 250 (D. Wyo. 1989), this Court holds that the portion of the Debtor's income tax refunds attributable to the prepetition portion of a taxable year is property of the bankruptcy estate. The refunds are sufficiently rooted in the prebankruptcy past, as funds withheld from prepetition income, that they should be regarded as property of the estate. See id. at 1517 (quoting Kokoszka v. Belford, 417 U.S. 642, 647, 94 S.Ct. 2431, 2434 (1974)). Furthermore, the nonexempt portion of the refund is so little entangled with the Debtor's ability to make an unencumbered fresh start that it should be regarded as property of the estate. Id.

### ORDER

IT IS ACCORDINGLY ORDERED that Trustee's Application for Turn Over of Property is granted.

Dated this 5th day of April, 1993.

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RUSSELL J. HILL  
U.S. Bankruptcy Judge