## IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF IOWA

IN THE MATTER OF: :

Jennifer Lynn Johnson, : Case No. 97-05414-CJ

Debtor. : Chapter 7

:

## ORDER DENYING MOTION FOR RECONSIDERATION

On December 1, 1997 Debtor Jennifer Lynn Johnson filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. On Schedules B and C she listed accrued and unpaid wages and state and federal income refunds in unknown amounts.

On November 4, 1998 the Trustee Donald F. Neiman filed a motion to compel the Debtor to turn over non-exempt 1997 tax refunds in the amount of \$4,562.00. On November 18, 1998 the Debtor filed her objection. She denied the property in question was property of the estate. She alleged the refund consisted of both sums that were withheld postpetition and federal earned income credit (EIC) that was not available to her on the petition date.

On December 10, 1998 the Trustee amended his motion to indicate the amount sought was \$4,104.84. The attached calculation sheet set out a total 1997 tax refund of \$5,562.00 (federal tax refund of \$5,014.00 plus state tax refund of \$548.00) times 91.78082% (the filing date day of the year or 335 divided by 365) minus the exemption allowance of \$1,000.00.

On January 12, 1999 the Court conducted a telephonic hearing on the controversy and entered an Order granting the motion. In support of his position that the EIC was property of the estate, the Trustee had cited In re Goertz, 202 B.R. 614 (Bankr. W.D. Mo.

1996). Debtor's counsel mentioned Matter of Crouch, No. 96-23085-D (Bankr. N.D. Iowa May 13, 1997) but observed it did not specifically address the issue in this case. <sup>2</sup>

On January 22, 1999 the Debtor timely filed a motion for reconsideration. She notes that the EIC in issue amounts to \$3,656.00 of the \$5,014.00 federal tax refund reflected on the Trustee's calculation sheet. The Debtor again argues she had no interest in that EIC as of the December 1, 1997 petition date because the credit did not vest until December 31, 1997. The Debtor now asks the Court to adopt the approach taken in four decisions from the Kansas Bankruptcy Court even though the Debtor acknowledges those decisions were reversed on appeal in <u>In re Montgomery</u>, 219 B.R. 913 (10<sup>th</sup> Cir. BAP 1998).

On January 26, 1999 the Trustee filed his response. He points out that the Sixth Circuit followed the Montgomery analysis in In re Johnston, 222 B.R. 552 (6<sup>th</sup> Cir. BAP 1998).

The Court does not find the motion to reconsider, based on reversed trial court decisions, persuasive. Though the Kansas Bankruptcy Court decisions held that no portion of the EICs in issue were property of the estates because the debtors had not filed

<sup>&</sup>lt;sup>1</sup> The <u>Goertz</u> Court held that the concept of property of the estate under 11 U.S.C. section 541 included an EIC. <u>In re Goertz</u>, 202 B.R. 614, 616-17 (Bankr. W.D. Mo. 1996). The Court's opinion, however, does not address the specific issue before this Court. That is, the Debtor in <u>Goertz</u> filed the bankruptcy petition after filing the tax return for the preceding year.

Parenthetically, the <u>Goertz</u> Court also held an EIC was not exempt under state law as a local public assistance benefit. <u>Id</u>. at 617-18. The undersigned judge relied on <u>Goertz</u> in holding an EIC was not exempt as a local public assistance benefit under Iowa Code section 627.6(8)(a). <u>Matter of Alley</u>, No. 97-01033-W J (Bankr. S.D. Iowa August 19, 1997)(A summary of the telephonic ruling is currently available on PACER.)

<sup>&</sup>lt;sup>2</sup> The <u>Crouch</u> Court held that property of the estate included a Debtor's interest in an EIC. The Debtor in that case had an interest in an EIC for 1996. She filed her Chapter 7 petition on December 2, 1996. <u>Matter of Crouch</u>, No. 96-23085-D, slip op. at 2 (Bankr. N.D. Iowa May 13, 1997).

Parenthetically, the <u>Crouch</u> Court also held the EIC was not exempt as a social security benefit or a local public assistance benefit under Iowa Code section 627.6(8)(a) or as alimony, support or separate maintenance reasonably necessary for the support of the Debtor and dependents of the Debtor under Iowa Code section 627.8(d).

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their returns prior to filing their petitions, those opinions were grounded in case law

interpreting the Bankruptcy Act that was repealed when the Bankruptcy Code was

enacted in 1978. Montgomery, 219 B.R. at 915. Citing Goertz among other cases, the

Tenth Circuit Bankruptcy Appellate Panel observed that most courts hold EICs are

property of the estate based on the broad reach of section 541 and the refund nature of the

credits. <u>Id</u>. at 917. In support of its conclusion that "qualifying individuals may request

payment of EICs at the end of the tax year, or at any time during the tax year," the panel

cited In re Davis, 136 B.R. 203, 205 (Bankr. S.D. Iowa 1991) for the proposition that

neither possession nor constructive possession prior to or contemporaneous with filing

the petition is required to vest a debtor with an interest in an EIC. Montgomery, 219

B.R. at 917.

Likewise, the Bankruptcy Appellate Panel for the Sixth Circuit noted that case

law under the Bankruptcy Code overwhelming supports including EICs in property of the

estate. Johnston, 222 B.R. at 553-54. The panel relied on the Montgomery decision in

holding that EICs are property of the estate under section 541 even when the petition is

filed prior to the end of the applicable tax year. <u>Id</u>. at 555.

THEREFORE IT IS ORDERED that the Debtor's Motion to Reconsider is

denied.

Dated this 31<sup>st</sup> day of March 1999.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE

Parties Served: Debtor, D. Reed, Trustee, U.S. Trustee