

**UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa**

<b>In the Matter of</b>	:	<b>Case No. 97 – 1117 - WH</b>
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<b>DENISE RENEE PECKHAM,</b>	:	<b>Chapter 7</b>
	:	
<b>Debtor.</b>	:	
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**ORDER – OBJECTIONS TO CLAIM OF EXEMPTIONS**

On March 13, 1997, Debtor, Denise Renee Peckham, filed a Voluntary Petition for Chapter 7 relief under the U.S. Bankruptcy Code. On August 21, 1997, a telephonic hearing was held on the Trustee's Objections to Claimed Exemptions and Objections thereto. Debtor Denise Peckham was represented by attorney Mark W. Hunter; Deborah L. Petersen appeared as the Chapter 7 trustee. At the conclusion of the hearing, the Court took the matter under advisement. The Court now considers the matter fully submitted.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1) and § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(B). The Court, upon review of the briefs, pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

**FINDINGS OF FACT**

1. Denise Renee Peckham filed for bankruptcy protection under Chapter 7 on March 13, 1997. On Schedule C, Debtor scheduled as exempt a tax refund of unknown value pursuant to Iowa Code § 627.6 (10)(e).

2. The § 341 meeting was held on April 25, 1997.
3. On May 22, 1997, the Trustee, Deborah L. Petersen, filed an Objection to Debtor's Claim of Exemption, which was resisted by Debtor.
4. Debtor filed an amended Schedule C on June 2, 1997, claiming unpaid wages of \$268.60 and net tax refunds of \$731.40 as exempt pursuant to Iowa Code §§ 627.6 (9)(c), (8)(a). Included in Debtor's total tax refunds is \$3,153.00 in Earned Income Credit ("EIC"), which Debtor apparently claims as exempt in its entirety.
5. Trustee again objected to Debtor's claim of an Earned Income Credit as being exempt; Debtor resists Trustee's Objection, asserting that the Earned Income Credit is exempt under Iowa Code § 627.6 (8)(a).

### **DISCUSSION**

Debtor's Earned Income Credit is property of the bankruptcy estate. See 11 U.S.C. § 541 (a)(1); In Matter of Davis, 136 B.R. 203, 207 (Bankr. S.D.Iowa 1991). At issue is whether an EIC is exempt under Iowa exemption law. Trustee cites to In re Goertz, 202 B.R. 614 (Bankr. W.D.Mo. 1996) as support for her argument that an EIC is not a "local public assistance benefit" and therefore not exempt under § 627.6 (8)(a). Debtor cites to this Court's decision in Davis for support of her argument that an EIC is exempt.

In Davis, this Court found an EIC to be exempt under Iowa Code § 627.6 (8)(a). The decision was expressly qualified with the following language:

In his brief the trustee has not contested the debtor's argument that an earned income credit constitutes a "local public assistance benefit" under § 627.6(8)(a). While the Court recognizes that the term "local" qualifies the type of benefits which are exempt, the trustee has made no argument that an earned income credit is not a "local" public assistance benefit.

Absent any such argument by the trustee, and in light of the liberal interpretation courts are to give Iowa exemption statutes, the Court finds the earned income credit in this case is exempt under § 627.6(8)(a).

Davis, 136 B.R. at 207.

Unlike Davis, the issue squarely before the court in this case is whether an EIC is a "local public assistance benefit" under Iowa Code § 627.6 (8)(a). Other courts in this circuit recently addressed this issue, concluding that an EIC is not exempt under either Iowa or Missouri exemption laws. See Matter of Alley, No. 97-01033-WJ (Bankr. S.D.Iowa August 19, 1997) (noting similarity of Iowa and Missouri statutes; adopting the reasoning of Goertz); In re Crouch, No. 96-23085-D (Bankr. N.D.Iowa May 13, 1997)(not exempt as local public assistance benefit, as social security benefit, or as alimony, support or separate maintenance); In re Goertz, 202 B.R. 614 (Bankr. W.D.Mo. 1996)(not exempt under Missouri statute).

The courts in other circuits that have found EICs exempt have based that conclusion on specific statutory language. See i.e., In re George, 199 B.R. 60, 62 (Bankr. N.D.Okla. 1996)("support"); In re Brown, 186 B.R. 224, 227-29 (Bankr. W.D.Ky. 1995)("public assistance"); In re Dennett, 1995 WL 128474 (Bankr. D.Idaho 1995)("federal, state or local public assistance legislation").

Whether Debtor's EIC is exempt from the bankruptcy estate is determined by Iowa exemptions law. See 11 U.S.C. § 522(b); Iowa Code § 627.10 (1997). The exemption statute at issue provides in part:

627.6 General exemptions.

A debtor who is a resident of this state may hold exempt from execution the following property:

...

8. The debtor's rights in:

- a. A social security benefit, unemployment compensation, or a local public assistance benefit.

Iowa Code § 627.6 (8)(a) (1997).

Iowa's exemption statutes are construed liberally in favor of debtors in light of the purposes of the exemption. See In re Wallerstedt, 930 F.2d 630, 631 (8th Cir. 1991); Allison-Bristow Comm. School Dist. V. Iowa Civil Rights Comm'n, 461 N.W.2d 456, 458 (Iowa 1990); In re Eby, 76 B.R. 140, 141 (Bankr. S.D.Iowa 1987). However, the court should not "depart substantially from the express language of the exemption statute or extend the legislative grant" in applying Iowa exemption statutes. See In re Huebner, 141 B.R. 405 (N.D.Iowa 1992) aff'd 986 F.2d 1222 (1993).

The Code provision at issue expressly limits exemptions to local public assistance benefits. Although the Code does not define the phrase, it does require that "words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such meaning." Iowa Code § 4.1 (38) (1997).

While an EIC may be a public assistance benefit, when the modifier "local" is given effect, exempt benefits are limited to something less than federal or state public assistance benefits. See Crouch, No. 96-23085-D, slip op. at 4; Goertz, 202 B.R. at 617-618. The EIC is a creation of federal law. See 26 U.S.C. § 32 (1995). By the plain language of Iowa Code § 627.6 (8)(a), an earned income credit is not a "local" public assistance benefit and is therefore not exempt from the bankruptcy estate.

**ORDER**

IT IS THEREFORE ORDERED that Trustee's Objection to Debtor's Claim of Exemption is SUSTAINED;

IT IS FURTHER ORDERED that Debtor's Earned Income Credit is not exempt under Iowa Code § 627.6 (8).

Dated this \_\_\_\_\_ day of January, 1998.

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RUSSELL J. HILL, CHIEF JUDGE  
U.S. BANKRUPTCY COURT