

1996).¹ 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.²

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 In re Montgomery, 219 B.R. 913 (10th 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 (6th 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

¹ The Goertz Court held that the concept of property of the estate under 11 U.S.C. section 541 included an EIC. In re Goertz, 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 Goertz filed the bankruptcy petition after filing the tax return for the preceding year.

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

² The Crouch 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. Matter of Crouch, No. 96-23085-D, slip op. at 2 (Bankr. N.D. Iowa May 13, 1997).

Parenthetically, the Crouch 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).

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. Id. 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. Id. at 555.

THEREFORE IT IS ORDERED that the Debtor’s Motion to Reconsider is denied.

Dated this 31st day of March 1999.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE

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