

**In re:**  
**Objections to 2013 Exemption of the Earned Income Tax Credit**

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**General Order**

This matter is before the Court on the case trustees' objections to exemption of the earned income tax credit ("EIC"), exempted by debtors pursuant to K.S.A. § 60-2315. The trustees in this Court have previously made various arguments challenging the exemption, namely, that the exemption: is unconstitutional under the Uniformity and Supremacy Clauses, violates due process and equal protection principles, is an unauthorized transfer under 11 U.S.C. § 549, is limited in application to the prior Bankruptcy Code, violates pro rata distribution rules, conflicts with provisions of the Internal Revenue Code, and is defeated by trustee avoidance powers under 11 U.S.C. § 544(a)(2).

This General Order applies to all cases filed in the Topeka Division on or after January 1, 2013 in which the trustee or a creditor or party in interest has filed an objection to the debtor's claimed exemption of EIC benefits. In order to more efficiently manage these objections, the Court orders the following:

1. **Certification of Constitutional Question; Intervention of State of Kansas:** In any case in which the constitutionality of K.S.A. § 60-2315 is questioned, the Court certifies to the Attorney General for the State of Kansas that the constitutionality of the statute has been challenged.<sup>1</sup> The State of Kansas is thereafter deemed to have intervened in the contested matter without further order of the Court, and its participation shall be governed by this General Order and any pretrial or other procedural order this Court may enter. The Clerk shall add the Attorney General to the list of parties as an intervenor pursuant to Fed. R. Bankr. P. 9005.1(c), so he will receive notice of proceedings in the case.

2. **Filing Tax Returns:** The debtor shall file both federal and state income tax returns for tax year 2013 not later than **February 28, 2014**, and immediately thereafter provide a copy of the returns to the trustee assigned to the case (and to the Attorney General if the constitutionality of the exemption statute has been challenged). If for any reason the debtor is prevented, by no fault of his or her own, from filing these returns by February 28, 2014, the Court expects the debtor to timely file an appropriate motion for extension, setting forth the exact bases for the extension.

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<sup>1</sup> This certification is made pursuant to Federal Rule of Civil Procedure 5.1(b) and 28 U.S.C. § 2403(b), as made applicable to bankruptcy cases by Federal Rule of Bankruptcy Procedure 9005.1.

3. **Filing Stipulations or Hearing:** The debtor and the objector shall file a joint stipulation stating: (1) the date the returns were filed and (2) the amount, if any, of the debtor's expected refunds that are attributable to the EIC. The stipulation is due **14 days after filing tax returns** under ¶ 2 above, and is due, in any event, not later than **March 14, 2014**. The trustee is responsible for uploading the stipulation.

NOTE: IF NO STIPULATION IS FILED, OR IF THE PARTIES REQUEST IT, THE COURT WILL SET THAT CASE FOR HEARING.<sup>2</sup>

If the debtor receives either a federal or Kansas refund stemming in whole or in part from the EIC, the debtor shall file an additional Notice with the Court **within 10 days of receipt of the refund**. That Notice shall include the following information: (1) the total federal refund received and the total federal EIC; (2) the total state refund received and the total state EIC; and (3) the date the federal and state refunds were received.

NOTE: IF NO NOTICE IS FILED WITHIN 30 DAYS IN ANY OF THE CASES IN WHICH A JOINT STIPULATION HAS BEEN FILED, THE COURT WILL SET THAT CASE FOR HEARING.

If, based upon the filed returns or for any other reason, the debtor is not entitled to or does not receive a federal or Kansas refund stemming in whole or in part from the EIC, the debtor shall **amend the Schedule C within 10 days of learning that they are not entitled to a refund subject to the exemption**. In that event, the **case trustee shall then withdraw the objection to exemption within 10 days of the amendment to Schedule C**.

4. **Briefing:** The objector's brief supporting the objection to exemption is due within 14 days of the stipulation's filing, and, in any event, not later than **March 28, 2014**. The debtor(s)' and (if the statute's constitutionality is challenged in the 2013 cases) the State of Kansas' responses are due not later than **April 11, 2014**. The objector's reply is due not later than **April 18, 2014**.<sup>3</sup>

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<sup>2</sup> Any objections to exemption originally or previously noticed for hearing are cancelled. With this order, the Court places all 2013 objections under advisement, pending compliance with the deadlines in this General Order.

<sup>3</sup> If any individual or group seeks to intervene and file an amicus brief, they should contact chambers to ascertain in which case to file a motion. The Court will designate a lead case for the filing of that brief, and will consider the amicus brief in its ruling on all the 2013 EIC cases. Any amicus will be held to the same briefing deadlines set out in this

5. **No Reservation of EIC Funds Required:** In light of this Court's prior orders rejecting the trustee's objection to exemption of the EIC, the Court does not require any debtor to retain the EIC refund pending final order. Any party seeking such relief may apply to the Court in accordance with the provisions of Fed. R. Civ. P. 65 and Fed. R. Bankr. P. 7065.

The Clerk shall file a copy of this General Order in every case in which a party objects to the debtor's claim of exemption in EIC proceeds under K.S.A. § 60-2315.

IT IS SO ORDERED this 1st day of April, 2013.

/s/ Janice Miller Karlin  
Judge, U.S. Bankruptcy Court  
Division of Kansas

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