

**In re:**

**Objections to 2012 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 made various arguments challenging the exemption: 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 that trustee avoidance powers under 11 U.S.C. § 544(a)(2) defeat the exemption.

This General Order applies to all cases filed in the Topeka Division on or after January 1, 2012 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 it 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 2012 not later than **February 28, 2013**, 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.)

3. **Filing Stipulations or Hearing:** The debtor and the objector shall file a joint stipulation stating: (1) the date the returns were filed, (2) the amount, if

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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.

any, of the debtor's expected refunds that are attributable to the EIC, (3) the estate's share of the refunds under *In re Borowsky*,<sup>2</sup> and (4) what portion of the estate's share is comprised of EIC benefits. The stipulation is due **14 days after filing tax returns** under ¶ 2 above, and is due, in any event, not later than **March 14, 2013**. The trustee is responsible for uploading the stipulation.

**NOTE: IF NO STIPULATION IS FILED, OR IF THE PARTIES REQUEST IT, THE OBJECTION TO EXEMPTION WILL BE SET FOR EVIDENTIARY HEARING.**<sup>3</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.

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, 2013**. The debtor's and State of Kansas' responses are due not later than **April 11, 2013**. The objector's reply is due not later than **April 18, 2013**.<sup>4</sup>

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<sup>2</sup> See *Barowsky v. Serelson (In re Barowsky)*, 946 F.2d 1516, 1519 (10th Cir. 1991) (concluding that the portion of the Chapter 7 debtor's income tax refund that was "attributable to the pre-petition portion of the taxable year" was property of the bankruptcy estate).

<sup>3</sup> Any objections to exemption originally or previously noticed for hearing are cancelled. With this order, the Court places all 2012 objections under advisement, pending compliance with the deadlines in this General Order.

<sup>4</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 2012 EIC cases. Any amicus will be held to the same briefing deadlines set out in this paragraph.

5. **No Reservation of EIC Funds Required:** In light of this Court's prior order in *In re Westby*<sup>5</sup> rejecting the trustee's objection to exemption of the EIC, the Court does not require retention of the EIC refund by any party. 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. This General Order supersedes any prior administrative order entered in this Division concerning 2012 EIC exemption objections, and supersedes prior orders in any 2012 cases in which alternate deadlines were set regarding the EIC objections.

It is so ORDERED this 18th day of September, 2012.

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

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<sup>5</sup> *In re Westby*, 473 B.R. 392 (Bankr. D. Kan. 2012).