

THIS OPINION IS NOT INTENDED FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE)	CASE NO. 98-54209
)	
HUGHEY D. JENKINS,)	CHAPTER 7
)	
)	JUDGE MARILYN SHEA-STONUM
Debtor.)	
)	ORDER RE: TRUSTEE'S MOTION
)	FOR TURNOVER

This matter came on for a hearing on August 18, 1999 on the Motion for Turnover, filed by the chapter 7 trustee Harold A. Corzin and the Debtor's Response to Trustee's Motion for Turnover of Property, filed by Debtor's counsel Morris H. Laatsch. During the hearing, the parties represented to the Court that the only issue in the trustee's motion remaining in dispute was whether the Debtor's 1998 state and federal income tax refunds are property of the bankruptcy estate under 11 U.S.C. § 541. The Debtor argued that since the Internal Revenue Service Code and Regulations did not allow him to file and receive the tax refunds until the close of the 1998 tax year, the refunds are not property of the estate. The trustee's position was that the income tax refunds are attributable to withholdings in the same year in which the bankrupt's petition was filed and thus, the refunds are property of the estate. The parties agreed to resolve the matter by submitting briefs to the Court.

This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(E). This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b), 157(a) and (b)(1) and by the Standing Order of Reference entered in this District on July 16, 1984.

I. Issue:

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Whether in a case filed during calendar year 1998, the Debtor's 1998 state and federal income tax refunds payable to the Debtor for tax year 1998 are property of the bankruptcy estate under 11 U.S.C. § 541 and thus subject to turnover.

II. Findings of Fact:

The following facts are undisputed:

1. The Debtor filed for relief under chapter 7 on December 31, 1998. The Debtor filed his federal and state income tax returns for the 1998 tax year in February, 1999. Prior to the conclusion of the final § 341 meeting of creditors on March 29, 1999, the Debtor received tax refunds, attributable to withholdings for the 1998 tax year, in the aggregate amount of \$3,553.

2. On July 13, 1999, the Trustee filed a Motion for Turnover of \$2,803 representing the nonexempt portion of the Debtor's federal and state income tax refunds for the 1998 tax year.

III. Conclusions of Law:

11 U.S.C. § 541(a) provides what property is included in the bankruptcy estate.

§ 541(a)(1) states in pertinent part:

(a) ... Such an estate is comprised of all the following property, wherever located and by whomever held:

(1) ... all legal and equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. §541(a)(1).

Supreme Court precedent and the legislative history of § 541 support the trustee's position that a tax refund is part of the bankruptcy estate when it is attributable to withholdings in the same year in which the bankruptcy petition is filed. In *Segal v. Rochelle*, 382 U.S. 375 (1966), the Court considered whether potential loss-carry back

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refunds, as of the date the bankruptcy petition was filed, constituted property as used in §70a(5) of the Bankruptcy Act of 1898. *Id.* at 379. The Court noted that the purpose of §70a(5) was to secure for creditors everything of value the bankrupt may possess in alienable or leviable form when he files his petition. *Id.* Furthermore, the Court concluded that "the term 'property' has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment is postponed." *Id.* In *Segal*, the debtors filed their bankruptcy petition in 1961. As in the present case, the debtors in *Segal* argued that under the statutory scheme which governs the filing of tax returns, they had no right to file or receive a refund prior to the close of the 1961 tax year and therefore, the tax refund was not property of the estate at the time the petition was filed. *Segal*, 382 U.S. at 380. The Court held that the refund was "sufficiently rooted in the pre-bankruptcy past [to] be regarded as 'property' under § 70a(5)." *Id.*

In *Kokoszka v. Belford*, 417 U.S. 642, 647-648 (1974), the Court addressed whether an income tax refund, attributable to withholdings in the same year in which the debtors' petition was filed, is property of the debtor's estate under § 70a(5). Following the *Segal* decision, the *Kokaszka* Court held that the income tax refund was "'sufficiently rooted in the pre-bankruptcy past' to be defined as 'property' under §70a(5)." *Id.* at 648 (citing *Segal*, 382 U.S. at 380).¹ Although *Segal* and *Kokaszka* were decided under the Bankruptcy Act of 1898, the legislative history of the Bankruptcy

¹ In addition, the Court in both *Segal* and *Kokaszka* noted that passing title of the refund claims to the trustee would not hinder a debtor's ability to make a fresh start. *Kokaszka*, 417 U.S. at 648 (stating that "since a 'tax refund is not the weekly or other periodic income required by a wage earner for his basic support, to deprive him of it will not hinder his ability to make a fresh start unhampered by the pressure of preexisting debt,'""); *Segal*, 382 U.S. at 380 (stating "that a loss-carry back refund is sufficiently rooted in the pre-bankruptcy past and so little entangled with the bankrupts' ability to make an unencumbered fresh start that it should be regarded as 'property' under §70a(5)").

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Reform Act of 1978 provides that "the result of *Segal v. Rochelle*, 382 U.S. 375 (1966) is followed, and the right to a refund is property of the estate." H.R. Rep. No. 95-595, 782-83 (1977).

In interpreting the Bankruptcy reform Act of 1978, many courts have followed *Segal* and *Kokaszka* with respect to income tax refunds attributable to withholdings in the same year in which the bankruptcy petitions were filed. *Doan v. Huggins*, 672 F.2d 831, 833 (11th Cir. 1982)²; *In re Webb*, 234 B.R. 96, 97 (Bankr. W.D. Miss. 1999); *In re Whitmer*, 228 B.R. 841, 843 (Bank. W.D. Virginia 1998); *In re Dussing*, 205 B.R. 332, 333 (Bankr. M.D. Florida 1996); *In re Orndoff*, 100 B.R. 516 (E.D. California 1989); *In re Meade*, 84 B.R. 106, 108 (Bankr. S.D. Ohio 1988) (holding that uncertainty as to the actual amount of the refund does not exclude 11 U.S.C. §541(a)); *In re Rash*, *In re Knight*, *In re Cofield*, 22 B.R. 323, 324 (Bankr. D. Kansas 1982)(holding that a tax refund is property of the estate even though the debtor's right to receive a refund had not vested at the time the debtor's petition was filed); *Bekofske v. Thomas*, 14 B.R. 759, 763 (Bankr. E.D. Mich. 1981); *In re Koch*, 14 B.R. 64, 65 (Bankr. D. Kansas 1981); *In re DeVoe*, 5 B.R. 618, 619 (Bankr. S.D. Ohio 1980); *Leech v. Nichols*, 4 B.R. 711, 713-14 (Bankr. E.D. Mich. 1980).

The refund having been determined to be part of the estate, the amount of the refund subject to turnover must be determined. This determination is to be made on the facts of the specific case. Since this case was filed on the last day of the year, the entire non-exempt portion is property of the estate.

IV. Conclusion:

² In *Doan*, the debtors argued that because the amount of the refund does not become fixed until the end of the tax year after filing, the disposition of a case could be held up for many months until the amount of the refund finally is resolved. However, the *Doan* court held that Supreme Court precedent makes it clear that the broad sweep of §541 is not limited by this argument. *Id.* (citing *Segal*, 382 U.S. 375 (1966)).

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Based on the foregoing, the Court holds that the \$2,803 representing the nonexempt portion of the Debtor's state and federal income tax refunds for the 1998 tax year is property of the bankruptcy estate under 11 U.S.C. § 541(a) and subject to turnover.

IT IS SO ORDERED

MARILYN SHEA-STONUM
Bankruptcy Judge

DATED: 3/30/00