

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:)	
)	
Elizabeth/Jose Molina)	JUDGE RICHARD L. SPEER
Clarence T. Foos)	
Troy Major)	Case No. 09-30143 (Molina)
)	08-35543 (Foos)
Debtor(s))	09-30215 (Major)
)	

DECISION AND ORDER

In each of the three cases before the Court, the Debtors have claimed as exempt the full amount of those funds allocable to the Federal “Child Tax Credit.” Each of the Debtors claimed this exemption pursuant to the recently revised O.R.C. § 2329.66(A)(9)(g) which provides:

(A) Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows:

(9) The person’s interest in the following:

(g) Payments under section 24 or 32 of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C. 1, as amended.

Section 24 of the Internal Revenue Code is entitled “Child tax credit.”

In each case, the Trustee, Louis Yoppolo, objected to the Debtors’ claim of exemption insofar as it sought to use O.R.C. § 2329.66(A)(9)(g) to exempt the non-refundable portion of the Child Tax Credit. As taken from his brief submitted in the case of Troy Major, the Trustee summarized his position as follows:

the Trustee is objecting to that portion of the Child Tax Credit being exempt, which is non-refundable and which appears for example on Form 1040 on line 52. The Trustee maintains that this portion of the Child Tax Credit is not

a “payment” which can be exempted, in that it can only be used as a credit for tax owed and is non-refundable. The Trustee does not object to the exemption in the Child Tax Credit taken in a given case under Form 1040 as the “Additional Child Tax Credit,” which is calculated on form 8812 and listed on line 66 Form 1040. This “refundable” portion of the Child Tax Credit is clearly a “payment” which is exempt under Ohio law.

(Doc. No. 15). Each of the Debtors objected to this position, presenting to the Court, orally and/or in writing, arguments in support of their respective positions.

The issue before the Court is this: may a debtor, pursuant to O.R.C. § 2329.66(a)(9)(g), claim as exempt their interest in the non-refundable portion of the Federal Child Tax Credit? This exact issue was recently addressed by my Colleague, the Honorable Mary Ann Whipple, United States Bankruptcy Judge, Northern District of Ohio, Western Division. The issue was brought before Judge Whipple in three cases: *In Re: Robert and Heather Klostermeier*, Case No. 08-36700; *In re Brian and Amanda Luke*, Case No. 08-35623; and *In re Renee Ruhl*, Case No. 08-36030.

In each of these cases, Judge Whipple held that, insofar as it concerned O.R.C. § 2329.66(a)(9)(g), the Debtors could not claim as exempt the non-refundable portion of their Child Tax Credit. For this decision, Judge Whipple explained in the case of *In re: Klostermeier*:

Debtors could only use the child tax credit to offset their income tax liability. The entire credit was, therefore, non-refundable. They have no interest in a “payment” in the amount of this credit, which is the term chosen by the Ohio legislature to describe the property subject to the exemption. As one court explained, although the non-refundable credit may facilitate a refund where prior payments or withholdings are in an amount greater than the tax liability net of the credit, the credit itself is never recoverable as a refund by taxpayers. This determination is consistent with the Internal Revenue Code’s provision authorizing the refund of any “overpayment” of income taxes, see 26 U.S.C. § 6402(a), and its treatment of only the refundable portion of the child tax credit as an overpayment, see 26 U.S.C. §§ 24(d)(1), 6401(b). The non-refundable child tax credit is not treated as an overpayment and, therefore, does not constitute any portion of a taxpayer’s income tax refund. As such, the non-refundable child tax credit is not property of Debtors’ bankruptcy estate and cannot be subject to collection and distribution by the Trustee. Debtors have already obtained the benefit of the entire child tax credit when they used the credit to reduce their tax liability. They cannot also

use the credit to insulate part of their tax refund from use by the Trustee for the benefit of their unsecured creditors.

(Doc. No. 49). (internal citation omitted).

After considering this position, in light of the arguments made by the Debtors and the Trustee, the Court concurs in the decision rendered by Judge Whipple. This Court will, therefore, adopt as its own the Memorandum of Decision Sustaining Objection to Exemption, attached hereto, as entered by Judge Whipple on May 14, 2009, in the case of *In Re: Robert and Heather Klostermeier*, Case No. 08-36700. For this reason, the Debtors are not entitled to claim as exempt the non-refundable portion of the Federal Child Tax Credit.

It is therefore,

ORDERED that the Objection of the Trustee to the Debtors' claim of exemption in the non-refundable portion of their Federal Child Tax Credit, be, and is hereby, **SUSTAINED**.

IT IS FURTHER ORDERED that the Debtors shall forthwith turnover to the Trustee the nonexempt portion of their tax refunds, including that portion of their tax return allocable to the non-refundable portion of the Federal Child Tax Credit.

Dated: May 29, 2009

Richard L. Speer
United States
Bankruptcy Judge