

IT IS SO ORDERED.

Dated: January 5, 2016
02:46:53 PM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

JAMES MILLIKIN and
ADRIANNA MILLIKIN,

Debtors.

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CASE NUMBER 13-40636

CHAPTER 13

HONORABLE KAY WOODS

MEMORANDUM OPINION REGARDING THE DEBTORS' MOTION
OBJECTING TO THE TRUSTEE'S DEMAND FOR TAX REFUND

Before the Court is Motion Objecting to Trustee's Demand for Tax Refund Pursuant to Section 1B of the Chapter 13 Plan ("Tax Refund Motion") (Doc. 76) filed by Debtors James Millikin and Adrianna Millikin ("Debtors") on October 30, 2015. Michael A. Gallo, the Standing Chapter 13 Trustee ("Trustee"), filed Trustee's Response in Opposition to Debtors' Motion Objecting to Trustee's Demand for Tax Refund Pursuant to Section 1B of the Chapter 13 Plan (Doc. 78) on November 25, 2015.

The Court held a hearing on December 3, 2015, at which time the Court found that the Tax Refund Motion did not contain sufficient information to support the Debtors' claim for relief. The Court gave the Debtors two weeks to supplement or amend the Tax Refund Motion. On December 30, 2015, the Debtors filed Supplement to Motion Objecting to Trustee's Demand for Tax Refund Pursuant to Section 1B of the Chapter 13 Plan ("Supplement") (Doc. 79).

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 2012-7 entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. PROCEDURAL AND FACTUAL BACKGROUND

On March 27, 2013, the Debtors filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code. The Debtors' Chapter 13 Plan (Doc. 2) and supplemental Order Providing Increased Payments into the Plan (Doc. 17) provide for 60 monthly Chapter 13 Plan payments in the amount of \$850.00. The Chapter 13 Plan was confirmed on June 19, 2013 (Doc. 20).

The Chapter 13 Plan contains the following provision regarding tax refunds received post-petition:

Upon request of the Trustee, subject to objection by Debtor, the Debtor may be required to devote all annual federal, state and/or local income tax refunds (excluding earned income credits and child care credits) greater than \$1,500.00 (One Thousand Five Hundred Dollars) (the "Excess Tax Refund"), to the repayment of creditors under this Plan, which contribution shall be in addition to the payments in Article 1A above, and the dividend to general unsecured creditors shall increase commensurate with the additional contribution.

(Plan, Art. I, § 1B.) The purpose of Section 1B is to discourage a debtor from attempting to shelter, through excess tax withholding, disposable income that should be used to pay creditors.¹ See 11 U.S.C. 1325(b) (2015).

The Debtors failed to turn over their 2014 Excess Tax Refund in the amount of \$1,263.00 to the Trustee, which resulted in the Trustee filing Trustee's Motion to Dismiss for Failure to Contribute Excess Tax Refund (Doc. 74) on October 13, 2015.² In response to the Trustee's Motion to Dismiss, the Debtors filed the Tax Refund Motion.

II. TAX REFUND MOTION AND SUPPLEMENT

In the Tax Refund Motion, the Debtors urge that they should not be required to commit the 2014 Excess Tax Refund to their

¹ In *In re Edighoffer*, 375 B.R. 789 (Bankr. N.D. Ohio 2007), this Court held that projected disposable income in chapter 13 cases should reflect actual tax liability rather than the amount withheld for taxes.

² The Debtors also failed to turn over their 2013 Excess Tax Refund, which resulted in the Trustee filing a prior motion to dismiss (Doc. 57) on January 22, 2015. The first motion to dismiss was resolved by Agreed Order (Doc. 64) entered on March 9, 2015, in which, *inter alia*, the Debtors agreed to contribute their 2013 Excess Tax Refund to the Chapter 13 Plan. The Agreed Order increased the Debtors' monthly Chapter 13 Plan payment to \$1,495.00.

Chapter 13 Plan because: (i) Mrs. Millikin had surgery on May 5, 2015, which resulted in her being off work from May 5, 2015 to July 22, 2015; (ii) Mrs. Millikin had no income from her employer for six weeks; (iii) upon returning to work, Mrs. Millikin had to pay her employer \$400.00 for insurance premiums during the period she did not work; (iv) "[p]art of the refund was used to pay living expenses;" and (v) the Debtors used the 2014 Excess Tax Refund for necessary car repair expenses in the amount of \$634.82. (Tax Refund Mot. ¶ 3.) As a consequence, the Debtors contend that they utilized the 2014 Excess Tax Refund, which was received in April 2015, for necessary and reasonable living expenses. The Trustee counters that the Debtors have failed to demonstrate that they used the 2014 Excess Tax Refund for necessary and reasonable living expenses.

The Supplement states only that the Debtors "submit the attached proof of payments." Five pages, which appear to be invoices or account statements, are attached to the Supplement. The Supplement contains no information about why the 2014 Excess Tax Refund was required to pay any amounts set forth on the attached pages. The attached pages consist of (i) a receipt and invoice dated May 8, 2015 from Muffler Man in the amount of \$280.82; (ii) an account summary from Ohio Edison that shows payments during the period May through July 2015 (the period when Mrs. Millikin was unable to work) in the total amount of \$284.06,

of which \$116.06 was paid by credit card; (iii) a statement from Dominion that shows payments during the period May through July 2015 in the amount of \$174.84; (iv) an account history from the Youngstown Water Department that shows payments (including penalties) during the period May through July 2015 in the amount of \$465.18; and (v) a receipt from Quaker Tax Service in the amount of \$185.00, which amount the Trustee has already taken into consideration in calculating the amount of the 2014 Excess Tax Refund.

III. ANALYSIS

The Court finds that the Debtors have failed to carry their burden of proof that (i) the 2014 Excess Tax Refund does not constitute disposable income; and (ii) the Debtors are entitled to keep the 2014 Excess Tax Refund because they used it for necessary and reasonable living expenses. There is nothing in the Tax Refund Motion or the Supplement that demonstrates that the Debtors used the 2014 Excess Tax Refund (instead of the exempt portion of their 2014 tax refunds in the amount of \$2,185.00,³ which the Debtors

³ The Chapter 13 Plan permits the Debtors to retain \$1,500.00 of their 2014 tax refunds, and the Trustee did not demand payment of the \$185.00 used for tax preparation services. The Debtors also received a \$500.00 child care credit. Because the Debtors received 2014 tax refunds totaling \$3,448.00, (i) the exempt portion of their 2014 tax refunds is \$2,185.00; and (ii) the Trustee is demanding turnover of the remaining 2014 Excess Tax Refund in the amount of \$1,263.00.

are entitled to retain, or other funds⁴) to pay the expenses set forth in the Tax Refund Motion and the Supplement.

On April 29, 2015, the Debtors filed Motion to Excuse Payments into Chapter 13 ("First Motion") (Doc. 66), which sought relief from making the Chapter 13 Plan payments for the months of May and June 2015 because Mrs. Millikin was off work for medical reasons. On May 4, 2015, the Court granted the First Motion (Doc. 67). On July 2, 2015, the Debtors filed Motion to Excuse Payments into Chapter 13 ("Second Motion") (Doc. 69), which sought relief from making the Chapter 13 Plan payment for the month of July 2015 based on Mrs. Millikin's medical issues. On July 7, 2015, the Court granted the Second Motion (Doc. 70). As a consequence, the Debtors' expenses for the period May through July 2015, when Mrs. Millikin was recovering from surgery, were reduced by three Chapter 13 Plan payments of \$1,495.00 each, in addition to the Debtors' income being increased by the amount of the exempt portion of the Debtors' 2014 tax refunds. The Debtors have failed to demonstrate that the decrease in expenses and increase in income were not sufficient to pay all of the Debtors' necessary and reasonable living expenses, including car repairs, insurance premiums and

⁴ Nothing in the record indicates that Mr. Millikin did not continue to work during this period of time.

utilities. Accordingly, the Court will deny the Tax Refund Motion.
An appropriate order will follow.

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IT IS SO ORDERED.

Dated: January 5, 2016
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

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HONORABLE KAY WOODS

ORDER DENYING THE DEBTORS' MOTION
OBJECTING TO THE TRUSTEE'S DEMAND FOR TAX REFUND

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For the reasons set forth in the Court's Memorandum Opinion Regarding the Debtors' Motion Objecting to the Trustee's Demand for Tax Refund entered on this date, the Court hereby:

1. Finds that the Debtors are required to turn over to the Trustee their 2014 Excess Tax Refund in the amount of \$1,263.00; and
2. Denies the Tax Refund Motion.