

IT IS SO ORDERED.

Dated: February 19, 2016  
01:51:38 PM

  
*Kay Woods*  
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Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

PAUL MICHAEL WAGGLE,

Debtor.

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CASE NUMBER 14-42367

CHAPTER 13

HONORABLE KAY WOODS

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MEMORANDUM OPINION REGARDING THE DEBTOR'S MOTION OBJECTING TO  
STANDING CHAPTER 13 TRUSTEE'S REQUEST FOR TAX REFUND  
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This cause is before the Court on Motion Objecting to Standing Chapter 13 Trustee's Request for Tax Refund ("Tax Refund Motion") (Doc. 41) filed by Debtor Paul Michael Waggle on December 8, 2015. Michael A. Gallo, Standing Chapter 13 Trustee ("Trustee"), filed Trustee's Response in Opposition to Debtor's Motion Objecting to Standing Chapter 13 Trustee's Request for Tax Refund (Doc. 44) on February 12, 2016.

The Court held a hearing on the Tax Refund Motion on February 18, 2016, at which appeared Robert A. Ciotola, Esq. on behalf of the Debtor and the Trustee. The Court denied the Tax Refund Motion at the hearing and hereby enters this Memorandum Opinion and accompanying Order to memorialize that ruling.

### **I. BACKGROUND**

The Debtor filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code on November 18, 2014. The Debtor's Schedule I and Schedule J indicate a monthly net income of \$500.00. (Doc. 1, Sched. J ¶ 23c.) Schedule J includes a monthly medical and dental expense of \$150.00 and a monthly car repair and maintenance expense of \$100.00, which annually total \$1,800.00 and \$1,200.00, respectively. (*Id.* ¶¶ 11, 21.)

On November 18, 2014, the Debtor filed Chapter 13 Plan (Doc. 3), in which the Debtor proposed monthly plan payments of \$500.00 for 60 months. On June 22, 2015, the Court entered Order Providing for Increased Payments into Debtor's Plan (Doc. 30), which increased the Debtor's monthly plan payments to \$590.00. The order was jointly submitted and approved by the Debtor, Mr. Ciotola and the Trustee. The Court confirmed the Chapter 13 Plan on June 24, 2015 (Doc. 32).

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 of this Court's uniform chapter 13 plan is to discourage debtors from attempting to shelter, through excess tax withholdings, disposable income that should be used to pay creditors.<sup>1</sup>

The Debtor failed to turn over his 2014 Excess Tax Refund in the amount of \$1,645.00 to the Trustee, which resulted in the Trustee filing Trustee's Motion to Dismiss for Failure to Contribute Excess Tax Refund (Doc. 39) on November 17, 2015. In response to the Trustee's Motion to Dismiss, the Debtor filed the Tax Refund Motion.

## **II. ARGUMENTS OF THE PARTIES**

In the Tax Refund Motion, the Debtor argues that he should not be required to turn over the 2014 Excess Tax Refund because it is not disposable income and was used for necessary expenses. Specifically, the Debtors states that he expended \$811.00 on tires for his work truck and \$479.00 on eyeglasses and safety glasses.

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<sup>1</sup> 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.

The Debtor further states that he was unable to work one week in October 2015 due to injury and did not receive pay for that week.

The Trustee states that, pursuant to the Chapter 13 Plan, the Debtor is entitled to exempt \$1,500.00 of his 2014 tax refunds from contribution to his Chapter 13 Plan.<sup>2</sup> The Trustee notes that the expenses itemized in the Tax Refund Motion total \$1,290.00, which amount is less than the exempt portion of the Debtor's 2014 tax refunds. The Trustee also states that the Debtor's monthly budget includes \$100.00 for car repairs and maintenance. Thus, the Trustee argues that the Debtor has not demonstrated that the 2014 Excess Tax Refund was used for necessary expenses.

### **III. ANALYSIS**

Section 1325(b) of the Bankruptcy Code requires all of a debtor's projected disposable income, less amounts reasonably necessary for the maintenance or support of the debtor or the debtor's dependents, to be contributed to the chapter 13 plan. See 11 U.S.C. 1325(b). As a matter of policy, this Court permits chapter 13 debtors to exempt \$1,500.00 of their annual tax refunds from contribution to their chapter 13 plan. In essence, chapter 13 debtors are permitted to use that amount for reasonably necessary maintenance or support expenses without Court intervention. However, if a debtor chooses to object to turnover

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<sup>2</sup> The Trustee alleges, and the Debtor does not dispute, that the Debtor's total federal and state tax refunds for 2014 were \$3,145.00. Thus, the Trustee has only demanded turnover of \$1,645.00 as the 2014 Excess Tax Refund.

of any portion of the Excess Tax Refund, the debtor must demonstrate that such amount is (i) not disposable income; or (ii) reasonably necessary for the maintenance or support of the debtor or the debtor's dependents.

In this case, the Court finds that the Debtor has failed to carry his burden of proof that the 2014 Excess Tax Refund (i) does not constitute disposable income; or (ii) is reasonably necessary for the maintenance or support of the Debtor.<sup>3</sup> The Debtor asserts that he expended \$811.00 on tires and \$479.00 on eyeglasses and safety glasses, totaling \$1,290.00. The Court agrees that, in this case, the expenditures for tires, eyeglasses and safety glasses were reasonably necessary for the maintenance and support of the Debtor. However, the Debtor's monthly budget in Schedule J includes \$100.00 for car repairs and maintenance and \$150.00 for medical and dental expenses. Those amounts were used to determine the Debtor's projected disposable income and, thus, the Debtor's required monthly plan payments. The Debtor has not asserted that the budgeted amounts for car repairs and maintenance or medical and dental expenses were insufficient to cover the itemized expenses in the Tax Refund Motion. Moreover, at the hearing, Mr. Ciotola made no representations concerning the Debtor's loss of

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<sup>3</sup> The Debtor does not have any dependents. (Doc. 1, Sched. J, at 1.)

income in October 2015. Therefore, the Debtor has not demonstrated that the 2014 Excess Tax Refund is not disposable income.

Furthermore, nothing in the record indicates that the Debtor was required to use the 2014 Excess Tax Refund, rather than the exempt portion of his 2014 tax refunds or other funds, to pay the expenses set forth in the Tax Refund Motion. The exempt portion of the 2014 tax refunds in the amount of \$1,500.00 exceeds the \$1,290.00 that the Debtor expended on tires, eyeglasses and safety glasses. Therefore, the Debtor has failed to demonstrate that the 2014 Excess Tax Refund is necessary for the maintenance or support of the Debtor.

For the reasons set forth herein, the Court hereby denies the Tax Refund Motion. An appropriate order will follow.

# # #

IT IS SO ORDERED.

Dated: February 19, 2016  
01:51:38 PM



*Kay Woods*  
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 Kay Woods  
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

PAUL MICHAEL WAGGLE,

Debtor.

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CASE NUMBER 14-42367

CHAPTER 13

HONORABLE KAY WOODS

\*\*\*\*\*  
 ORDER DENYING THE DEBTOR'S MOTION OBJECTING TO  
 STANDING CHAPTER 13 TRUSTEE'S REQUEST FOR TAX REFUND  
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This cause is before the Court on Motion Objecting to Standing Chapter 13 Trustee's Request for Tax Refund ("Tax Refund Motion") (Doc. 41) filed by Debtor Paul Michael Waggle on December 8, 2015. Michael A. Gallo, Standing Chapter 13 Trustee ("Trustee"), filed Trustee's Response in Opposition to Debtor's Motion Objecting to Standing Chapter 13 Trustee's Request for Tax Refund (Doc. 44) on February 12, 2016.

The Court held a hearing on the Tax Refund Motion on February 18, 2016, at which appeared Robert A. Ciotola, Esq. on behalf of the Debtor and the Trustee.

For the reasons set forth in the Court's Memorandum Opinion Regarding the Debtor's Motion Objecting to Standing Chapter 13 Trustee's Request for Tax Refund entered on this date, the Court hereby:

1. Finds that the Debtor is required to turn over to the Trustee his 2014 Excess Tax Refund in the amount of \$1,645.00; and
2. Denies the Tax Refund Motion.

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