IT IS SO ORDERED.

Dated: August 11, 2015
04:53:26 PM

Kay Woods
Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	**CASE NUMBER 10-40790**
MICHAEL CHARLES SOSNOWSKI and	*	
STEPHANIE MELISSA SOSNOWSKI,	*	**CHAPTER 13**
	*	
Debtors.	*	**HONORABLE KAY WOODS**
	*	

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

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Before the Court is Motion Objecting to Trustee's Demand for Tax Refund Pursuant to Section 1 B of the Chapter 13 Plan (Doc. 58) filed by Debtors Michael Charles Sosnowski and Stephanie Melissa Sosnowski on June 12, 2015. Michael A. Gallo, Standing Chapter 13 Trustee ("Trustee"), filed a Response (Doc. 62) on June 30, 2015. The Court held a hearing on the Motion on July 23, 2015.

At the hearing, Robert A. Ciotola, Esq., counsel for the Debtors, argued that, because the Debtors received their 2014

income tax refund after making their last chapter 13 plan payment, the Trustee does not have a right to such refund. Mr. Ciotola further argued that, even if the Trustee could demand the tax refund, the Debtors should not be required to turn it over to the Trustee because (i) the amount of the tax refund is de minimis; (ii) the Debtors used the tax refund to pay for necessary expenses such as car repairs, prescription eye glasses and utility payments to avoid shutoff; and (iii) turning over the tax refund would be a hardship for the Debtors.

The Trustee argued that the Debtors became entitled to receive the 2014 tax refund on January 1, 2015 – *i.e.*, prior to the Debtors making their final plan payment – thus making the tax refund property of the bankruptcy estate and part of the Debtors' projected disposable income during the plan period. He further stated that he was unaware of any necessary expenditures made by the Debtors for which offset might be appropriate.

At the conclusion of the hearing, the Court asked for additional briefing regarding the positions of the Debtors and the Trustee. On August 6, 2015, the Trustee filed Amended Report of Standing Chapter 13 Trustee Requirement for Contribution of Income Tax Refund (Doc. 62). The Debtors filed Supplement to Debtors' Objection to Trustee's Demand for Debtors' Tax Refund (Doc. 65) on August 10, 2015.

By way of background, the Debtors filed their chapter 13 case on March 11, 2010. The Chapter 13 Plan (Doc. 2) called for payments in the amount of $650.00 per month for 60 months with a dividend of ten percent to unsecured creditors.[1] In addition to the monthly plan payments, the plan also provided that the Debtors could be required to devote all federal, state and/or local income tax refunds (excluding certain credits) greater than $1,500.00 (defined in the plan as the "Excess Tax Refund") for the repayment of creditors, which could increase the dividend to unsecured creditors. (*See* Plan, Art. 1 B.)

The Debtors made the required monthly plan payments, making their last payment to the Trustee on January 26, 2015. The Trustee requested the Debtors to contribute their 2014 federal Excess Tax Refund in the amount of $866.00. (Debtors' Supp. at 1 n.1.) Based upon a review of the docket, this is the first time in the five-year duration of the plan that the Trustee has made a demand for the Excess Tax Refund.

The Court agrees that the Debtors' 2014 Excess Tax Refund constitutes property of the Debtors' bankruptcy estate and is encompassed within the definition of "projected disposable income" in 11 U.S.C. § 1325(b)(2). Based upon the Trustee's Amended Report, the Court is satisfied that the Trustee's process regarding

[1] The Debtors' monthly plan payments were increased to (i) $700.00 on October 22, 2010 (Doc. 22); (ii) $800.00 on June 16, 2011 (Doc. 25); and (iii) $945.00 on March 12, 2012 (Doc. 33). The dividend to unsecured creditors did not change.

the timing for requesting contribution of an Excess Tax Refund is consistent and comports with § 1325.

At the hearing, Mr. Ciotola requested that, even if the Trustee could demand turnover of the Excess Tax Refund, the Debtors be able to offset the amounts the Debtors expended on car repairs, prescription eye glasses and utility payments to avoid shutoff. In the Debtors' Supplement, the Debtors specifically requested offsets of $75.00 for the cost of preparation of their 2014 tax returns and $135.65 for payment to avoid shutoff of their electricity. The Court finds that the Debtors are not entitled to a setoff for the cost of tax return preparation, but the Debtors may be entitled to a setoff of their electricity payment in accordance with the Trustee's customary practices and procedures when determining the amount of an Excess Tax Refund. For the reasons set forth herein, the Court hereby denies the Debtors' Motion.

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