

**IT IS SO ORDERED.**



**Dated: June 05, 2009  
02:44:38 PM**

**Honorable Kay Woods  
United States Bankruptcy Judge**

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

**IN RE:**

**MICHELLE M. JOYCE and  
BILLY L. JOYCE, JR.,  
  
Debtors.**

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\* **CASE NUMBER 08-43602**  
\*  
\* **CHAPTER 7**  
\*  
\* **HONORABLE KAY WOODS**  
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**MEMORANDUM OPINION REGARDING TRUSTEE'S OBJECTION TO  
DEBTORS' CLAIMED EXEMPTION OF CHILD TAX CREDIT**  
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This cause is before the Court on Trustee's Objection to Debtors' Claimed Exemption ("Objection to Exemption") (Doc. # 16) filed on March 13, 2009, by Richard G. Zellers, chapter 7 Trustee ("Trustee"), in the instant bankruptcy case. On March 13, 2009, Debtors Michelle M. Joyce and Billy L. Joyce, Jr. ("Debtors") filed Response to Trustee's Objection to Exemption ("Response") (Doc. # 18). The Court scheduled the matter for hearing on April 30, 2009 ("Hearing"). Prior to the Hearing, on April 29, 2009, Trustee filed Memorandum in Support of Trustee's Objection to Debtors' Claimed

Exemption ("Trustee's Brief") (Doc. # 22). As a result of the arguments made at the Hearing, the Court requested the parties to file briefs in support of their respective positions. On May 7, 2009, Debtors filed Memorandum in Support of Response to Trustee's Objection to Debtors' Claimed Exemption ("Debtors' Brief") (Doc. # 24). On May 15, 2009, Trustee filed Trustee's Reply to Debtor's [sic] Memorandum in Support of Response to Trustee's Objection to Debtor's [sic] Claimed Exemption ("Trustee's Reply") (Doc. # 25).

The issue before the Court is whether Debtors are entitled to claim as exempt property the amount of the child tax credit that reduced their federal income tax liability.

Debtors filed a voluntary chapter 7 petition on December 8, 2008. Debtors' Schedule C listed the following: "Other Liquidated Debts Owing Debtor [sic] Including Tax Refund, 2008 Federal Tax Refund." Debtors listed the current value of the property as "Unknown." Debtors cited to O.R.C. § 2329.66(A)(18) to exempt \$1,256.00, and to O.R.C. § 2329.66(A)(9)(g) to exempt an additional "[u]nknown" amount, of such property.

In the Objection to Exemption and supporting Briefs, Trustee argues that O.R.C. § 2329.66(A)(9)(g) does not entitle Debtors to an additional exemption in their 2008 Federal Tax Refund.<sup>1</sup> O.R.C. § 2329.66(A)(9)(g) provides:

(A) Every person who is domiciled in this state may hold property exempt from execution, garnishment,

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<sup>1</sup>As permitted by 11 U.S.C. § 522(b)(2), Ohio has opted out of the federal exemptions provided for in 11 U.S.C. § 522(d).

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.

O.R.C. § 2329.66 (Westlaw 2009). Section 24 of the Internal Revenue Code deals with the child tax credit, and section 32 deals with the earned income tax credit.

Trustee asserts that Debtors are not entitled to the exemption because "any 'Child Tax Credit' claimed on Line 52 of IRS Form 1040 . . . is merely a credit which goes to reduce the Debtors' tax liability for the 2008 tax year, not a 'payment'." (Tr. Brief at 2.)<sup>2</sup> Trustee relies on two recent decisions in this district issued by Judge Mary Ann Whipple in support of his position. These two cases are: *In re Renee L. Ruhl*, Ch. 7 Case No. 08-36030 (Bankr. W.D. Ohio April 27, 2009) and *In re Brian Leroy Luke*, Ch. 7 Case No. 08-35623 (Bankr. W.D. Ohio April 27, 2009).

Debtors counter that the *Ruhl* and *Luke* decisions are not applicable because they "relied on authority that determined whether the Child Tax Credit is property of the estate. This Line of authority is irrelevant in Ohio considering the enactment of

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<sup>2</sup>Trustee asserted that, as of April 29, 2009 - the date Trustee filed his Brief - Debtors had failed to provide Trustee with a copy of their 2008 Federal Income Tax Return. (Tr. Brief at 1.) Debtors subsequently filed a copy of their 2008 Federal Income Tax Return Form 1040 on April 30, 2009 (Doc. # 23).

§2319.66(A)(9)(g), which makes the Child Tax Credit exempt property of the estate." (Debtors' Brief at 1-2.)

This Court finds that Judge Whipple thoroughly analyzed and set forth the law regarding the Child Tax Credit exemption in O.R.C. § 2329.66(A)(9)(g). This Court hereby adopts Judge Whipple's excellent reasoning and analysis and incorporates it herein.

Debtors' Form 1040 indicates a Child Tax Credit of \$1,108.00 at line 52. Debtors "do not agree with [Judge Whipple's] reasoning" in *Ruhl* and *Luke* because Debtors "would be deprived of a benefit in the amount of \$1,108.00 of the Child Tax Credit if the credit is not considered exempt. The credit increases the Debtors' tax refund by the same amount as the credit claimed." (Debtors' Brief at 2.)

This Court agrees with Judge Whipple that (i) the non-refundable portion of the child tax credit is not and cannot be property of a debtor's bankruptcy estate, and (ii) the Ohio exemption cannot apply unless the child tax credit is first property of the bankruptcy estate. Debtors argue that O.R.C. § 2329.66(A)(9)(g) "makes the Child Tax Credit exempt property of the estate." (Debtors' Brief at 2.) Debtors' argument lacks merit because, unless the child tax credit constitutes property of the bankruptcy estate, pursuant to section 541 the Bankruptcy Code, there is nothing to exempt. As Judge Whipple held,

To the extent that the non-refundable child tax credit is not property of the estate and is, therefore, not subject to collection and liquidation by the Trustee, Debtor cannot claim it as an exemption from property of the estate. See 11 U.S.C. 522(b)(1) (providing that a

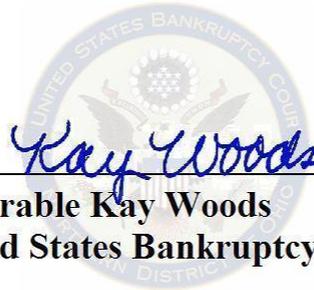
"debtor may exempt *from property of the estate*" property as set forth in that statute)[.]

*Ruhl*, Case No. 08-36030 at 5 (emphasis in original).

For the foregoing reasons, this Court finds that the non-refundable portion of the child tax credit is not property of Debtors' bankruptcy estate and, accordingly, cannot be exempted therefrom. Trustee's Objection to Exemption is sustained. An appropriate order will follow.

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**IT IS SO ORDERED.**



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**Honorable Kay Woods  
United States Bankruptcy Judge**

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\* **HONORABLE KAY WOODS**  
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**ORDER SUSTAINING TRUSTEE'S OBJECTION TO  
DEBTORS' CLAIMED EXEMPTION OF CHILD TAX CREDIT**  
\*\*\*\*\*

On March 13, 2009, (i) Richard G. Zellers, chapter 7 Trustee filed Trustee's Objection to Debtors' Claimed Exemption ("Objection to Exemption"); and (ii) Debtors Michelle M. Joyce and Billy L. Joyce, Jr. ("Debtors") filed Response to Trustee's Objection to Exemption.

The issue before the Court is whether Debtors are entitled to claim as exempt property the non-refundable amount of the child tax credit that reduced their federal income tax liability. This Court

finds that the non-refundable portion of the child tax credit is not property of Debtors' bankruptcy estate and, accordingly, cannot be exempted therefrom.

For the reasons set forth in the Court's Memorandum Opinion entered this date, the Court hereby sustains the Objection to Exemption.

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