

**IT IS SO ORDERED.**



**Dated: June 08, 2009  
09:44:57 AM**

**Honorable Kay Woods  
United States Bankruptcy Judge**

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

**IN RE:**

**DAVID L. CAMPBELL,  
  
Debtor.**

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\* **CASE NUMBER 08-43452**  
\*  
\* **CHAPTER 7**  
\*  
\* **HONORABLE KAY WOODS**  
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**MEMORANDUM OPINION REGARDING TRUSTEE'S OBJECTION TO  
DEBTOR'S CLAIMED EXEMPTION OF CHILD TAX CREDIT**  
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This cause is before the Court on Trustee's Objection to Debtor's Claimed Exemption ("Objection to Exemption") (Doc. # 17) filed on March 13, 2009, by Richard G. Zellers, chapter 7 Trustee ("Trustee"), in the instant bankruptcy case. On March 13, 2009, Debtor David Campbell ("Debtor") filed Response to Trustee's Objection to Exemption ("Response") (Doc. # 19). 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 Debtor's 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, Debtor filed Memorandum in Support of Response to Trustee's Objection to Debtor's Claimed Exemption ("Debtor's Brief") (Doc. # 24). On May 15, 2009, Trustee filed Trustee's Reply to Debtor's Memorandum in Support of Response to Trustee's Objection to Debtor's Claimed Exemption ("Trustee's Reply") (Doc. # 25).

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

Debtor filed a voluntary chapter 7 petition, including schedules, on November 24, 2008. Debtor amended Schedules B and C on March 6, 2009 (Doc. # 16). Amended Schedule C listed the following: "Other Liquidated Debts Owing Debtor Including Tax Refund, 2008 Federal and State Tax Refund." Debtor listed the current value of the property as \$3,308.00. Debtor cited to O.R.C. § 2329.66(A)(18) to exempt \$1,075.00; O.R.C. § 2329.66(A)(9)(g) to exempt \$1,000.00; and O.R.C. § 2329.66(A)(3) to exempt \$85.00 of such property.

In the Objection to Exemption and supporting Briefs, Trustee argues that Debtor is not entitled to the \$1,000.00 exemption in O.R.C. § 2329.66(A)(9)(g) for the 2008 Federal and State 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, 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 argues that Debtor is not entitled to the exemption because "he is not entitled to a 'payment' pursuant to . . . Section [24] of the Internal Revenue Code, due to the fact that none appears at line 66 of his Federal Income Tax Return which provides for 'payment for additional Child Tax Credit.'" (Obj. to Exemption at 1.) 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).

Debtor counters that the *Ruhl* and *Luke* decisions are not applicable because they "relied on authority that determined whether

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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).

the Child Tax Credit is property of the estate. This Line of authority is irrelevant in Ohio considering the enactment of §2319.66(A)(9)(g), which makes the Child Tax Credit exempt property of the estate." (Debtor's 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.

Debtor argues that Trustee defines "payment" too narrowly and states:

Common law, not IRS Form 1040, should be used to define the term "Payment" as used in Ohio Revised Code §2329.66(A)(9)(g) because Section 24 does not use the term "payment" to differential [sic] whether the credit is a non-exempt credit because it reduces tax liability in one section of Form 1040 or an exempt payment, as the Trustee would have it, after tax liability has been eliminated in another section. Under common law, it is entirely possible that the reduction of a liability is also a payment.

(Debtor's Brief at 3 (emphasis in original).) Despite Debtor's reliance on "common law," Debtor cites to no case law or other source to support his expansive definition of the term "payment." Black's Law Dictionary does not use the terms "payment" and "credit" interchangeably, but rather sets forth the following definitions:

**credit**, vb. . . . 2. To enter (as an amount) on the credit side of an account.

**payment**. 1. Performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation.

BLACK'S LAW DICTIONARY 396, 1165 (8th ed. 2004).

Even Debtor does not sound convinced of his argument since he merely states that "it is entirely possible" that reduction of a liability is also a payment. The Court finds no merit to this argument.

Moreover, 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. Debtor argues that O.R.C. § 2329.66(A)(9)(g) "makes the Child Tax Credit exempt property of the estate." (Debtor's Brief at 2.) Debtor's 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,

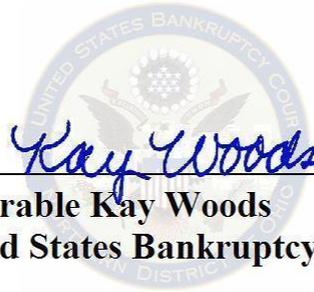
To the extent that the non-refundable child tax credit is not property of the estate and is, therefore, not subject to collection and liquidation by the Trustee, Debtor cannot claim it as an exemption from property of the estate. See 11 U.S.C. 522(b)(1) (providing that a "debtor may exempt *from property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



**Dated: June 08, 2009  
09:44:57 AM**

**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**  
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On March 13, 2009, (i) Richard G. Zellers, chapter 7 Trustee filed Trustee's Objection to Debtor's Claimed Exemption ("Objection to Exemption"); and (ii) Debtor David Campbell ("Debtor") filed Response to Trustee's Objection to Exemption.

The issue before the Court is whether Debtor is entitled to claim as exempt property the non-refundable amount of the child tax credit that reduced his federal income tax liability. This Court finds that the non-refundable portion of the child tax credit is not property of Debtor's 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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