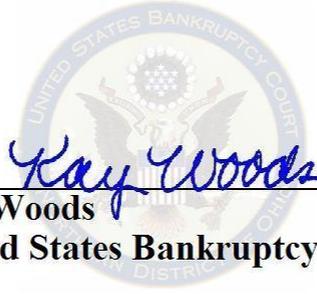


**IT IS SO ORDERED.**



**Dated: May 18, 2011  
12:57:50 PM**

**Kay Woods  
United States Bankruptcy Judge**

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

<b>IN RE:</b>	*	
	*	
	*	<b>CASE NUMBER 09-43067</b>
	*	
<b>BRIAN COLIAN,</b>	*	<b>CHAPTER 13</b>
	*	
<b>Debtor.</b>	*	<b>HONORABLE KAY WOODS</b>
	*	

\*\*\*\*\*  
**ORDER DENYING DEBTOR'S MOTION TO REVIEW  
TRUSTEE'S APPLICATION FOR INCOME TAX REFUND**  
\*\*\*\*\*

This cause is before the Court on Motion to Review Trustee's Application [sic] Debtor's Income Tax Refund ("Motion") (Doc. # 51) filed by Debtor Brian Colian on March 22, 2011. In the Motion, Debtor requests "review of the trustee's position" as it relates to the turnover of Debtor's federal income tax refund in the amount of \$4,579.00. (Mot. at 1.) The Motion states, "Debtor received a letter from the Chapter 13 Trustee's Office which demanded . . . \$3,079.00 [from the Debtor]." (Id.) Debtor argues, "[O]nly the amount of his interest in the income tax refund was subject to

recovery by the trustee. Debtor calculated this to be \$2,289.50, which is one-half of the refund [\$4,579.00]. Debtor then applied the \$1500 exemption to this amount and therefore sent the trustee . . . \$789.50." (Id.)

On April 5, 2011, the Chapter 13 Trustee ("Trustee") filed Standing Chapter 13 Trustee's Reply to Motion to Review Trustee's Application Debtor's Income Tax Refund ("Reply") (Doc. # 57). The Trustee argues "[I]n the instant case, all of the refund is attributable to the debtor and should be included in disposable income to be designated to the plan, less the Authorized Tax Refund Deductions established by this court in the Form Plan." (Reply at 8.)

The Court held a Hearing on the Motion on April 14, 2011 ("Hearing"), at which appeared Peter Horvath, Esq. on behalf of Debtor and Michael Gallo, Esq., standing Chapter 13 Trustee. At the Hearing, the Court granted Debtor two weeks to file a brief in support of the Motion, and granted the Trustee one week to reply to the Debtor's brief.

On April 23, 2011, Debtor filed Brief of Debtor Brian Colian ("Debtor's Brief") (Doc. # 60). On April 29, 2011, Trustee filed Reply of Standing Chapter 13 Trustee to Brief of Debtor Brian Colian ("Reply Brief") (Doc. # 62). For the reasons that follow, the Court finds that the Motion is without merit.

The Debtor's Chapter 13 Plan was confirmed on October 14, 2009 ("Confirmation Order") (Doc. # 34). The Confirmation Order

specifically deals with income tax refunds in paragraph 9, as follows: "Property of this bankruptcy estate shall consist of all items listed in §§ 541 and 1306 of the Bankruptcy Code, including . . . (ii) in accordance with Article I, Section 1B of the Plan, any Excess Tax Refunds." (Conf. Order at 4.) Article I, Section 1B of the Debtor's Plan (Doc. # 5) provides:

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 at 2.) Debtor received \$4,579.00 as his federal income tax refund for 2010. (Debtor's Brief at 1.) Pursuant to the Confirmation Order, the Trustee may request any income tax refund (less earned income and child care credits) the Debtor receives which exceeds \$1,500.00. Here, the Trustee requested Debtor to turn over \$3,079.00 (\$4,579.00 - \$1,500.00). (Reply Brief at 2.) Debtor provides no legal basis to support his contention that he is entitled to retain more than \$1,500.00 of his tax refund.

Debtor's Brief is replete with references to the Ohio Revised Code, which requires spouses to support one another. (Debtor's Brief at 1.) Apparently based upon this obligation to support, the Debtor makes the novel argument that his wife is a creditor. Debtor postulates, "It only seems fair to give the wife the same 'dividend' [as unsecured creditors]. . . ." (Id.)

This argument is nonsensical. The Debtor was not married when he filed his bankruptcy petition on August 12, 2009. Indeed, the Debtor acknowledged that he got married the following year in August 2010. Debtor's spouse was not listed on his schedule of creditors and she has not filed a proof of claim. The mere fact that each spouse has a legal duty to support the other does not result in a debtor/creditor relationship. The Debtor fails to support his contention with any case law or statutory authority, but instead makes bald assertions without providing a foundation upon which his contention may be evaluated.

At the Hearing, Debtor admitted that his wife earned no income in 2010, and that the entirety of the tax refund was based upon his income alone. Other than recitation of sections of the Ohio Revised Code (many of which relate to division of property when a marriage is dissolved - which are not relevant to the instant Motion), the Debtor provides neither analysis nor explanation why his spouse should be considered a creditor and/or why she is entitled to one-half of the Debtor's income tax refund.

Under the present circumstances, the Motion lacks merit. As a consequence, the Court hereby denies the Motion.

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