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UNPUBLISHED OPINION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re)	Bankruptcy Case No. 84C-01985
)	
ROBERT J. SEDGWICK and)	Chapter 7
LOLA SEDGWICK, fdba)	
LOLA'S CERAMICS,)	
)	
Debtors.)	DECISION AND ORDER

The matter presently before the court is the Chapter 7 trustee's objection to the debtors' claimed exemption in income tax refunds. The debtors have claimed a portion of the tax refunds as exempt under Utah Code Ann. § 70C-7-103 (a provision in the Utah Consumer Credit Code) and Rule 64D of the Utah Rules of Civil Procedure. A hearing was held on June 27, 1989. R. Kimball Mosier appeared on behalf of himself as trustee. Janet A. Goldstein appeared on behalf of the debtors, Robert J. and Lola Sedgwick. Counsel presented argument, after which the court took the matter under advisement. The court has carefully considered and reviewed the arguments of counsel and the memoranda submitted by the parties and has made an independent review of the pertinent authorities. Now being fully advised, the court renders the following decision.

On May 10, 1989, the debtors in this Chapter 7 case filed an amendment to Schedule B-4, claiming a portion of income tax refunds as exempt under Utah Code Ann. § 70C-7-103 and Rule 64D of the Utah Rules of Civil Procedure. Section 70C-7-103 and Rule 64D(e)(v) are the applicable law in Utah governing exemptions to garnishments. Rule 64D(e)(v) provides, *inter alia*, that a judgment creditor cannot garnish more than 25 percent of a defendant's disposable earnings for each pay period.¹ Under Utah law, therefore, a defendant is entitled to exempt 75 percent of his periodic disposable earnings from garnishment. Rule 64D(e)(iv) defines "disposable earnings" as "that part of a defendant's earnings remaining after the deduction of all amounts required by law to be withheld." "Earnings" or "earnings from personal services" is defined as "compensation paid or payable for personal services, whether denominated wages, salary, commission, bonus, or otherwise" Utah R. Civ. P.

¹The full text in Rule 64(D)(e)(v) provides:

The maximum portion of the aggregate disposable earnings of an individual becoming due any individual which are subject to garnishment is the lesser of:

(a) twenty-five per centum [25%] of defendant's disposable earnings for that week; or

(b) the amount by which defendant's aggregate disposable earnings computed for that week exceeds forty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act in effect at the time the earnings are payable;

(c) In the case of earnings for a pay period other than a week, the amount of disposable earnings shall be the amount prescribed by the administrator of the Utah Uniform Consumer Credit Code under the authority of § 70B-5-105 [repealed; superseded by Utah Code Ann. § 70C-7-103], U.C.A., 1953, as amended.

64D(e)(iv). Section 70C-7-103 of the Utah Consumer Credit Code contains language similar to that in Rule 64D(e)(v) but is limited to judgments arising from a consumer credit agreement.

This court has previously determined in *In re Stewart*, 32 B.R. 132 (Bankr. D. Utah 1983), that individual debtors in bankruptcy in Utah may claim an exemption in disposable earnings unpaid but earned as of the date of petition, as provided for in Rule 64D and section 70C-7-103.² The issue presented in this case is whether or not an income tax refund constitutes disposable earnings from personal services. The trustee concedes that if income tax refunds are determined to be disposable earnings of the debtor, a portion of the tax refunds in this case may be claimed as exempt under *Stewart*.

Counsel cited to and discussed a United States Supreme Court decision, *Kokoszka v. Belford*, 417 U.S. 642 (1974), which this court believes directs the answer to the issue presented. Although *Kokoszka* dealt with the federal Consumer Credit Protection Act's limitation on wage garnishment, 15 U.S.C. §§ 1671-77, the pertinent language in that Act, which the Supreme Court was interpreting, is quite similar to the language and exemption found in Rule 64D and section 70C-7-103 of the Utah

²In *Stewart*, 32 B.R. at 133, this court indicated that the debtor also claimed an exemption for wages under the federal Consumer Credit Protection Act, 15 U.S.C. §§ 1671-77. However, the court found it unnecessary "to inquire [into] whether 15 U.S.C. § 1673 provides an exemption in bankruptcy for wages." *Id.* at 139.

Consumer Credit Code.³ The Court determined that an income tax refund does not constitute disposable earnings, and a debtor in bankruptcy is thus not entitled to exempt the tax refund.

The Court began its discussion on this issue by stating the debtor's contention: "In essence, the petitioner's position is that a tax refund, having its source in wages and being completely available to the taxpayer upon its return without any further deduction, is 'disposable earnings,' within the meaning of the statute. 15 U.S.C. § 1672(b)." *Kokoszka*, 417 U.S. at 649. The Court then reviewed the objects and policy of the law, taking into consideration the language and purpose of both the Bankruptcy Act and the Consumer Credit Protection Act. Those same policy concerns and issues are present in this case. According to the Court, depriving the debtor of the tax refund would not hinder his fresh start.

The Court concluded:

The Court of Appeals held that the terms "earnings" and "disposable earnings," as used in 15 U.S.C. §§ 1672, 1673, did not include a tax refund, but were limited to "periodic payments of compensation and [do] not pertain to every asset that is traceable in some way to such compensation." 2 Cir., 479 F.2d, at 997. This view is fully supported by the legislative history. There is every indication

³See also *In re Koch*, 14 B.R. 64, 66 (Bankr. D. Kan. 1981) ("The Consumer [Credit Protection] Act dealt with in *Kokoszka* is similar in wording and design to [a Kansas statute]. Both statutes protect the earnings of individuals from excessive garnishment. The language of neither statute is sufficiently broad to include a tax refund as disposable earnings currently received as a periodic payment from an employer. Though . . . *Kokoszka* [was] decided prior to the advent of the Code, [its holding was] neither circumvented nor obviated by it.")

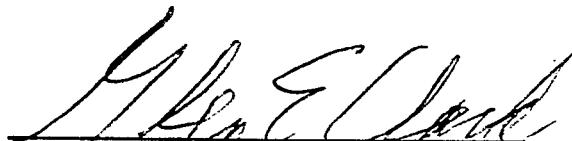
that Congress, in an effort to avoid the necessity of bankruptcy, sought to regulate garnishment in its usual sense as a levy on periodic payments of compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis. There is no indication, however, that Congress intended drastically to alter the delicate balance of a debtor's protections and obligations during the bankruptcy procedure. We therefore agree with the Court of Appeals that the Consumer Credit Protection Act does not restrict the right of the trustee to treat the income tax refund as property of the bankrupt's estate.

Id. at 651-52. Based on the Supreme Court's decision in *Kokoszka*, this court determines that an income tax refund does not constitute disposable earnings; a debtor in bankruptcy is thus not entitled to exempt the tax refund under Utah Code Ann. § 70C-7-103 or Rule 64D of the Utah Rules of Civil Procedure.

Accordingly, IT IS HEREBY ORDERED that the trustee's objection to the debtors' claimed exemption in income tax refunds is SUSTAINED. The claimed exemption shall be disallowed.

DATED this 7 day of July, 1989

BY THE COURT:


GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT