
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re

**ALAN LEIGH and
TANYA LYNN LEIGH,**

Debtors.

Bankruptcy Number 03-33764

Chapter 13

**MEMORANDUM DECISION DENYING DEBTORS'
MOTION TO CONFIRM BY CONSENT**

Before the Court is the issue of whether the Debtors must disclose and contribute any tax refunds received by them in a Chapter 13 Plan, when some portion of the refund is attributable to the Earned Income Credit. On March 16, 2004, the Debtors' Confirmation Hearing was held. The Court allowed the Trustee 10 days to file a brief on the matter and asked Debtors' counsel to file a response 10 days thereafter. The Chapter 13 Trustee filed his Memorandum on March 26, 2004. As of April 26, 2004, Debtors' counsel has not filed a response. The Court, having considered all of the pleadings, court papers, and counsel's oral arguments, and having conducted an independent review of applicable statutes and case law, hereby makes the following Memorandum Decision, which will constitute the Court's findings and conclusions as required by Rule 52 of the Federal Rules of Civil Procedure.¹

¹ Incorporated into the Bankruptcy Code via Bankruptcy Rule 7052.

JURISDICTION

The Court has jurisdiction over the parties and subject matter of this proceeding pursuant to 28 U.S.C. § 1334(b) and § 157(a). This is a core proceeding under 28 U.S.C. § 157(b)(2)(L), and as such the Court has authority to enter a final order. Venue is proper in the Central Division of the District of Utah under 28 U.S.C. § 1409.

FACTS

Mr. Leigh is self-employed as the owner of an auto body shop. The Debtors were setting aside \$200 per month for self-employment taxes. On September 18, 2003, at the Meeting of Creditors, the Trustee directed the Debtors to provide verification that they were making quarterly self-employment tax deposits to the IRS. On February 20, 2004, the Debtors provided the Trustee with an amended budget that removed the \$200 in self-employment taxes. When questioned by the Trustee about the need to make self-employment taxes, the Debtors provided the Trustee with a copy of their 2003 Federal Tax Return. The return showed that although they did not make any tax deposits for 2003, the Debtors were entitled to a tax refund of \$1,123 because of the Earned Income Credit. Prior to the Confirmation Hearing, the Trustee raised the issue as to why the Debtors should not be required to contribute the tax refund to their Chapter 13 Plan as a lump sum payment. At the Confirmation Hearing on March 16, 2004, the Debtors requested Court approval to use their tax refund to pay the accountant who prepared their return and to use the balance to make a deposit towards 2004 taxes. The Court then took the matter under advisement.

DISCUSSION

The Debtors must include tax refunds as projected disposable income and inform the Trustee of refunds for the periods governed by their plans. Under the Tenth Circuit case of In re Midkiff,² the court held that, “[t]he plain meaning of ‘projected disposable income’ includes tax refunds, because refunded tax amounts are at the disposal of the taxpayer.”³ In addition, the Midkiff Court affirmed that debtors have a duty to inform the Trustee of relevant developments in their financial situations, which includes tax refunds due for periods governed by their plans.⁴

The Trustee interprets Midkiff to require that Debtors in Chapter 13 disclose to the Court and verify with the Trustee all tax refunds to which they are entitled from the petition date through the thirty-sixth month following the 341 Meeting. Further, the Trustee contends that tax refunds are presumed to be disposable income and should be contributed to the plan unless the Debtors can establish that all or a portion of the tax refund is reasonably necessary for their maintenance or support under 11 U.S.C. § 1325(b)(2). The Trustee requests that the first \$1,000 of the tax return be deemed reasonably necessary for the Debtors’ maintenance and support, unless there is Court approval of a larger amount for cause. Any amount in excess of \$1,000 must be turned over to the Trustee. Where there is no response by the Debtor, this Court agrees.

² In re Midkiff, 342 F.3d 1194 (10th Cir. 2003).

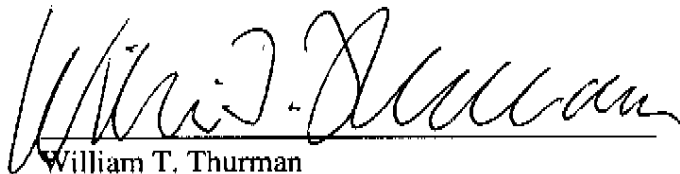
³ Id. at 1202 n.4 (citation omitted).

⁴ Id. at 1202.

CONCLUSION

Because Tenth Circuit case law dictates that tax refunds are considered disposable income, the Debtors must disclose and contribute any tax refunds received by them in a Chapter 13 Plan, even though some portion of the refund is attributable to the Earned Income Credit. As a result, the Debtor's Plan fails to comply with §1322(b)(1) and therefore the Court must deny confirmation of the Plan in its present form. The Chapter 13 Trustee is directed to submit an order consistent with this Memorandum Decision.

DATED this 27th day of April, 2004.



William T. Thurman
United States Bankruptcy Judge

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I, the undersigned, hereby certify that I served a true and correct copy of the foregoing **MEMORANDUM DECISION DENYING DEBTOR'S MOTION TO CONFIRM BY CONSENT** by mailing the same, postage prepaid, to the following, on the 27th day of April, 2004.

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