

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

COUNTER COPY - DO NOT REMOVE - ~~CONFIDENTIAL~~

In re)	Bankruptcy Case No. 81C-03514
)	
STEVEN M. DAY and)	Chapter 7
EMMA DELORES DAY,)	
)	
Debtors.)	O R D E R

The debtor and the Trustee herein moved this Court for an order permitting the stipulation exempting debtors' 1981 tax refund which had been orally assigned pre-petition to a secured creditor.¹ There are five issues presented by this stipulation: 1. Whether a tax refund is or may be classified as an exemption; 2. Whether a tax refund is property of the estate; 3. Whether the assignment was a security interest and, if so, then whether it was properly perfected; 4. If the assignment was a security interest and properly perfected then whether the tax refund is after-acquired property governed by 11 U.S.C. § 552; 5. Whether the assignment was valid.

Debtors' recumbency on the exemption of the assigned tax refund is inapt since an exemption for tax refunds is not provided within UTAH CODE ANN. 78-23-1 et. seq.

The Court finds that the second issue is governed by 11 U.S.C. § 541 which defines property of the estate. The legislative history to § 541 states that the rule of Segal vs Rochelle, 382 U. S. 375 (1966) is expressly adopted.² The Supreme Court held in Segal that income tax refunds are property of the estate. Therefore, the property focused upon here is property of the estate.

1. The term secured creditor is used since this creditor has a mortgage on the debtors' residence in addition to the alleged assignment of the tax refund.

2. House Report No. 95-595, 95th Cong. 1st Sess. (1977) 367-368; Senate Report No. 95-989, 95th Cong. 2nd Sess. (1978) 82-83

Assuming, for resolution of this issue, that the assignment to the secured creditor was valid, the Court finds that the interest created by that assignment is a security interest as defined by UTAH CODE ANN. 70A-1-201(37). Inasmuch as the secured creditor's interest is within the scope of Article 9, perfection is required. The Court finds no evidence of perfection of this interest and, therefore, cannot ratify the stipulation of the Trustee and the debtors on the alternative ground of a valid pre-petition transfer of property.

In view of the Court's findings on the first three issues, it is not necessary to reach the final two issues. The Court requires, in any further proceeding in regards to this transfer of property, that notice be given to all parties in interest.

IT IS THEREFORE ORDERED that the motion is denied.

DATED this 29 day of September, 1982.

BY THE COURT:



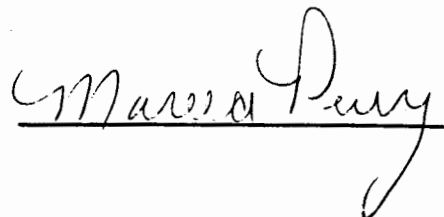
GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing order to the following this 29 day of September, 1982.

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