

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

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**In Re:**

**CASE NO. 96-20123**

**Rachael Routly Gardner,**

**DECISION & ORDER**

**Debtor(s).**

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**BACKGROUND**

On January 18, 1996, Rachael Gardner (the “Debtor”) filed a petition initiating a Chapter 7 case. On her Schedule C the Debtor claimed the following personal property as exempt pursuant to Section 522(b)(2) of the Bankruptcy Code and the New York Debtor and Creditor Law (the “Debtor and Creditor Law”): (1) cash on hand of \$10.00; (2) amounts on deposit at First Federal Savings & Loan Association totaling \$92.00; and (3) a security deposit with her landlord in the amount of \$525.00 (the “Security Deposit”).

On February 23, 1996, the case Trustee, Warren H. Heilbronner, Esq. (“ the Trustee”), filed a minute report of a February 22, 1996 Section 341 meeting which indicated that there were possible assets in the case in the nature of tax refunds.

On March 6, 1996, after she had prepared her 1995 income tax returns, the Debtor amended her Schedules B and C and claimed as exempt the following additional personal property: (1) 1995 Federal and New York State income tax refunds in the total amount of \$1,494.00 (the “Tax

Refunds”); and (2) 1995 Federal and New York State earned income credits in the total amount of \$3,036.00, which were to be paid to the Debtor in the form of refund checks by the respective taxing authorities (the “Earned Income Credits”). The Debtor’s amended Schedule C also indicated that she was reserving the right to assert, as an alternative position, that the Earned Income Credits were not property of the estate.

On March 20, 1996, the Trustee filed an objection to the Debtor’s amended claim of exemptions (“the Trustee Objection”). In the Objection the Trustee took the position that the Debtor could not retain any part of the Earned Income Credits in excess of \$1,006.00. He asserted that the Credits were: (1) property of the estate; (2) not separately exempt assets under Section 282(iii)(2)(a)<sup>1</sup> of the Debtor and Creditor Law; and (3) only partially exempt to the extent necessary to enable the Debtor to obtain the maximum cash exemption of \$2,500.00 under Section 283(2)<sup>2</sup> of the Debtor and Creditor Law.

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<sup>1</sup> Section 282 provides in pertinent part:

Under section five hundred twenty-two of title eleven of the United States Code, entitled “Bankruptcy”, an individual debtor domiciled in this state may exempt from the property of the estate, to the extent permitted by subsection (b) thereof, only (i) personal and real property exempt from application to the satisfaction of money judgments under sections fifty-two hundred five and fifty-two hundred six of the civil practice law and rules, (ii) insurance policies and annuity contracts and the proceeds and avails thereof as provided in section three thousand two hundred twelve of the insurance law and (iii) the following property:

2. Bankruptcy exemption for right to receive benefits. The debtor’s right to receive or the debtor’s interest in: (a) a social security benefit, unemployment compensation or a local public assistance benefit; (b) a veterans’ benefit; (c) a disability, illness, or unemployment benefit.

<sup>2</sup> Section 283 provides in pertinent part:

On April 29, 1996, the Debtor filed a motion (“the Dismissal Motion”) which requested that the Court dismiss the Trustee Objection and allow the Debtor’s amended claim of exemptions as being within the scope and intentions of the exempt property provisions of the Debtor and Creditor Law. The Dismissal Motion asserted that the Earned Income Credits were a public assistance benefit primarily intended to assist low income families and as such were a permissible exemption in the bankruptcy of a New York resident as provided for under Section 282(iii)(2)(a) of the Debtor and Creditor Law.

On June 6, 1996, the Trustee filed a response to the dismissal motion which asserted that however one might characterize the Earned Income Credits, they were not a local public assistance benefit as required by the clear language of the Debtor and Creditor Law if they were to be separately exempt assets under Section 282(iii)(2)(a) of the Debtor and Creditor Law.

After oral argument the parties filed additional submissions setting forth their positions on the issue before the Court for decision; whether the Debtor can retain the Earned Income Credits

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2. Contingent alternative bankruptcy exemption. Notwithstanding section two hundred eighty-two of this article, a debtor, who (a) does not elect, claim, or otherwise avail himself of an exemption described in section fifty-two hundred six of the civil practice law and rules; (b) utilizes to the fullest extent permitted by law as applied to said debtor’s property, the exemptions referred to in subdivision one of this section which are subject to the five thousand dollar aggregate limit; and (c) does not reach such aggregate limit, may exempt cash in the amount by which five thousand dollars exceeds the aggregate of his exemptions referred to in subdivision one of this section or in the amount of two thousand five hundred dollars, whichever amount is less. For purposes of this subdivision, cash means currency of the United States at face value, savings bonds of the United States at face value, the right to receive a refund of federal, state and local income taxes, and deposit accounts in any state or federally chartered depository institution.

because they are: (1) a “local public assistance benefit”; (2) not property of the estate; or (3) separately exempt under Section 137 of the New York Social Services Law.

**DISCUSSION**

The parties have now agreed to, and have therefore not asked the Court to decide, the following: (1) the Debtor qualifies for the \$2,500.00 cash exemption provided for by Section 283(2) of the Debtor and Creditor Law; (2) the Security Deposit is exempt property under New York Civil Practice Law and Rules Section 5205(g), and therefore is not credited against the \$2,500.00 cash exemption; (3) the Debtor’s cash on hand, bank accounts and Tax Refunds, totaling \$1,596.00, were properly claimed as exempt property and are credited against the \$2,500.00 cash exemption, leaving an unused cash exemption of \$904.00; and (4) \$904.00 of the Earned Income Credits can be retained by the Debtor and credited against the cash exemption which results in the Debtor having received the full \$2,500.00 cash exemption provided for by Section 283(2)<sup>3</sup> of the Debtor and Creditor Law.

**I. PROPERTY OF THE ESTATE**

For purposes of this case, Section 541 includes in the estate all legal or equitable interests of the Debtor in property as of the commencement of the case. This broad definition clearly includes a right which the Debtor possessed at the time she filed her petition on January 18, 1996, after the close of her 1995 tax year on December 31, 1995, to receive the Earned Income Credits.

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<sup>3</sup> Presumably the Trustee’s failure to object to a portion of the Earned Income Credits being treated as cash for purposes of Section 283(2) of the Debtor and Creditor Law is based upon the decision of the United States Supreme Court in *Sorenson v. Secretary of Treasury*, 475 U.S. 851 (1986) wherein the Court treated Earned Income Credits as the equivalent of a tax refund.

This is the case even though: (1) her right to receive the Credits was subject to her filing the necessary returns; and (2) the Credits might subsequently be claimed as and found to be exempt. *See In re Davis*, 136 B.R. 203 (Bankr. S.D. Iowa 1991) and *In re Goldsberry*, 142 B.R. 158 (Bankr. E. D. Ky. 1992).

## **II. LOCAL PUBLIC ASSISTANCE BENEFIT**

Section 282(iii)(2)(a) of the Debtor and Creditor Law allows a New York State resident debtor to separately exempt a local public assistance benefit. Certainly the New York State Legislature when it enacted that subsection could not have contemplated that a Federal earned income credit, even if it might be considered to be a public assistance benefit, could be interpreted or found to be a “local” public assistance benefit. Similarly, the New York State Legislature when it enacted that subsection could not reasonably have considered a New York State earned income credit to be a “local” public assistance benefit. If the legislature had wished to provide that a New York State earned income credit was exempt as a public assistance benefit, it would not have needed to include the word “local”. Therefore, it must have used the term “local” to refer to a municipal or otherwise public entity different than itself.

Although it might not be difficult for many Courts to find that Federal or New York State earned income credits are a public assistance benefit<sup>4</sup>, it is not reasonable to interpret the statutory

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<sup>4</sup> In *Sorenson v. Secretary of Treasury*, 475 U.S. 851, 864 (1986) the Supreme Court stated that “[t]he earned-income credit was enacted to reduce the disincentive to work caused by the imposition of social security taxes on earned income . . . and to provide relief for low-income families hurt by rising food and energy prices.”

language of the New York State Legislature in such a way as to find those credits to be a “local” public assistance benefit.

**III. SECTION 137 OF THE NEW YORK SOCIAL SERVICES LAW:**

Section 137 of the New York Social Services Law provides:

**Exemption from levy and execution**

All moneys or orders granted to persons as public assistance or care pursuant to this chapter shall be inalienable by any assignment or transfer and shall be exempt from levy and execution under the laws of this state.

The Debtor has asserted that this Section of the New York Social Services Law provides “an appropriate basis for the exemption since it provides that all moneys granted or public assistance pursuant to this chapter shall be exempt from levy and execution under the laws of this state.” Clearly any Federal Earned Income Credits would not be public assistance granted pursuant to the New York Social Services Law. As to any New York State earned income credits, even if they were found to be public assistance granted pursuant to the New York Social Services Law, and therefore exempt from levy and execution under Section 137, they would not be an asset available for a New York debtor in bankruptcy to claim as exempt. That is because Section 282 of the Debtor and Creditor Law sets forth an exclusive list of property eligible to be claimed as exempt by a New York debtor in bankruptcy, and this list does not include moneys or orders granted pursuant to Section 137 of the New York State Social Services Law.

**CONCLUSION**

