UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

KATHLEEN W. WROBEL Case No. 00-16168 K

Debtor

Of the two issues presented here, only one will be addressed in the present decision - that is the issue of the exemptibility of the Earned Income Tax Credit ("EITC"). The other issue is the exemptibility of cash in the bank alleged to be attributable to earnings exemptible (to the extent of 90% thereof) under CPLR § 5205(d). That issue will be addressed in a separate decision where that will include another case presenting the same issue (the case of *In re Mallia*, No. 01-10487 K).

The Debtor's claim of exemption in the EITC is rejected for the reasons set forth by the Court in the case of *In re Garrett*, 225 B.R. 301 (Bankr. W.D.N.Y. 1998) and by the Trustee. The Court will add only these few comments.

The Debtor's arguments as to 11 U.S.C. § 541(a) and (d) and as to the alleged Congressional purpose in enacting the EITC are imaginary. Almost two dozen courts,[1] including the U.S. Supreme Court, have held that the purpose of the EITC was to eliminate the

---

[1] *Sorenson v. Secretary of Treasury*, 475 U.S. 851 (1986); *Montgomery v. Jones*, 224 F.3d 1193 (10th Cir. 2000); *In re I Mina' Bente Sing'Ko NA Liheslaturan Guahan*, 2001 WL 113985 (Guam. Terr. 2001); *In re Brasher*, (M.D. Ala. 2000); *In re Fraire*, 1997 WL 45465 (D. Kan. 1997); *In re Trudeau*, 237 B.R. 803 (B.A.P. 10th Cir. 1999); *In re Dickerson,* 227 B.R. 742 (B.A.P. 10th Cir. 1998); *In re Dever*, 250 B.R. 701 (Bankr. D. Idaho 2000); *In re Crampton*, 249 B.R. 215 (Bankr. Idaho 2000); *In re Longstreet*, 246 B.R. 611 (Bankr. S.D. Iowa 2000); *In re Ray*, 1999 WL 621524 (Bankr. N.D. Ill. 1999); *In re Ferns*, 232 B.R. 453 (Bankr. D. Ariz. 1999); *In re Fish*, 224 B.R. 82 (Bankr. S.D. Ill. 1998); *In re Brockhouse*, 220 B.R. 623 (Bankr. C.D. Ill. 1998); *In re Papai*, 1997 WL 840293 (Bankr. N.D. Ohio 1997); *In re Rutter*, 204 B.R. 57 (Bankr. D. Or. 1997); *In re Brown,* 186 B.R. 224 (Bankr. W.D. Ky. 1995); *In re Goldsberry,* 142 B.R. 158 Bankr. E.D. Ky. 1992); *In re Davis,* 136 B.R. 203 (Bankr. S.D. Iowa 1991).

"disincentive to work" created by (1) the non-refundability of the employee's share of FICA and FUTA, even as to a low income wage earner, and (2) the supposed reduction of the employee's wage rate because of the employer's share of payroll taxes. The Debtor's focus on a perceived legislative intention to benefit the employee's child to the exclusion of any equitable or beneficial interest of the employee is fantasy, unsupported by any cases[2] or citations of legislative history. And arguments about the interpretation of 11 U.S.C. § 541(a) and (d) are unnecessary, even counterproductive. They are, in this writer's view, a "wild goose chase" that we are led on by the Debtor because this State's exemption laws are narrower than those of other states.

The same is true of the "support" argument. Congress did not state any intention to "support" any children, nor is the state law exemption for "support" susceptible of interpretation that would take it so far outside the traditional context of obligations arising out of marriage or parenthood (or a court order or agency determination in relation to marriage or parenthood).

The EITC has been ably described as follows, and cannot conceivably fall within the definition of "support" under the state exemption law or any case law construing 11 U.S.C. § 541; it has been stated

---

[2] Viewed generously in favor of the Debtor, the cited cases (*In re Searles*, 445 F. Supp. 749 (D. Conn. 1978); *Nelson v. Regan*, 731 F.2d 105 (2nd Cir. 1984); *Rucker v. Secy. of Treasury,* 751 F.2d 351 (10th Cir. 1984); and *Begier v. I.R.S.*, 496 U.S. 53 (1990)) do not stand for the proposition that only the dependent children may benefit from the EITC. The *Searles* case was an 1898 Act case and was abrogated by the 1978 Code. The *Nelson* case addressed only the *Sorenson* issue, and was overruled by *Sorenson*. Similarly the *Rucker* court was simply pointing out that giving money to the parent more "directly benefits" the child than would giving money to the state to reimburse it for past child support that the state provided. And *Begier* did not say that money intended for payment to the I.R.S. is excluded under § 541(d); it said that money held in trust pursuant to a statute so providing, is excluded under § 541(d).

the case for the EITC . . . reflects the uneasy state of current welfare politics, in which the EITC's redistributive function is cloaked in anti-welfare rhetoric to attract maximum political support.

. . .

Thus far, the EITC has found a secure niche in welfare policy by responding to two strong themes in current debates: a bipartisan consensus on work-based welfare reform and widespread dissatisfaction with traditional welfare administration. One familiar critique of welfare is that it allows and encourages recipients to violate important norms of individual responsibility. Critics argue that, by providing a guaranteed minimum income and sharply reducing benefits in response to any earnings, the welfare system discourages work and marriage and prevents the poor from accumulating the work experience that would improve their prospects over the long term. Another common criticism is that the current welfare system is miserly, stigmatizing, and uneven in coverage - that it rewards the 'dependent' poor but provides too little assistance to working poor. These views reflect widely varying normative premises and support different policy prescriptions.

. . .

In the current political climate . . . work and responsibility are 'in' and traditional welfare is 'out'. It may appear to those committed to providing public assistance that there is little to lose - and much to gain for the poor - by promoting the EITC as the 'pro work' and 'pro family' solution to welfare's perceived disincentives and administrative failures. David Ellwood, formerly of Harvard's Kennedy School of Government and now Assistant Secretary of the Department of Health and Human Services, described by EITC this way: "[t]he EITC helps the working poor while mainly avoiding the conundrums [of welfare]. The rewards of work are increased, not diminished . . . people are helped without any need of a stigmatizing, invasive, and often degrading welfare system, and their autonomy is increased, not decreased. Since it truly would be part of the tax system (unlike the badly named negative income tax, which really was welfare all over again), people would

not be isolated."

Ann L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 Harv. L. R. 533, 537 (1995) (footnotes omitted).

The Debtor's effort here to shoehorn the EITC into a pre-existing exemption for "child support" endeavors to put a square peg in a round hole.

The objection to the claim of exemption in the earned income tax credit is sustained.

SO ORDERED.

Dated: Buffalo, New York
June 11, 2001

/s/ Michael J. Kaplan

U.S.B.J.