

Motion to use tax refund
Modified Plan
Chapter 13

Jamie Schulke, Case No. 09-65100

5/4/2010 FRA

Unpublished

Debtor filed a motion for an order allowing her to retain her recently received tax refund of approximately \$4,000 in order to pay certain personal expenses. Her confirmed chapter 13 Plan of Reorganization required that all tax refunds be tendered to the trustee for administration in the chapter 13 case.

The court denied the Debtor's motion, without prejudice to her filing a modified plan in which the tax refund is retained. Where the tax refund is material, as it was in this case, the court will require that a modified plan be filed. Where a debtor seeks to retain a small tax refund, in contravention of his or her confirmed chapter 13 plan, and the trustee agrees that it is not a material amount, the trustee and debtor may file a stipulated order modifying the plan to retain the tax refund.

E10-3(3)

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
JAMIE ANNE SCHULKE,) No. 09-65100-fra13
)
) MEMORANDUM OPINION
Debtor.)

The Debtor filed a motion for an order allowing her to retain her recently received tax refund in order to pay for unanticipated expenses. A hearing was held on April 14, 2010 at which I ruled that the motion would be denied without prejudice to the filing of a modified plan. I also indicated that I would expand upon my ruling in written form. This Memorandum Opinion fulfills my responsibility in that regard.

DISCUSSION

The Debtor filed a chapter 13 bankruptcy petition and a plan of reorganization on September 22, 2009. An order confirming plan was entered on January 27, 2010. The chapter 13 plan as confirmed provides at ¶ 1(c) that all net tax refunds for both pre-petition and post-petition tax years be tendered to the trustee during the 36 months of the Plan. The order confirming plan requires that the Debtor timely file all required tax returns and provide copies to the Trustee immediately upon

1 filing. Tax refunds received during the term of a chapter 13 plan are
2 part of the plan payment required of a debtor because receipt of a tax
3 refund indicates overwithholding of taxes by the debtor and should
4 rightly be included in disposable income.

5 On March 19, 2010, the Debtor filed the motion for an order
6 allowing her to retain her 2009 net tax refund. The motion indicates
7 that the money is needed to pay for surgery for her husband and to pay
8 her housing expense and make up for the loss in her food stamp
9 eligibility and benefits. At the hearing on the motion, Debtor's
10 attorney indicated that the refund is approximately \$4,000 and agreed
11 with the Trustee that additional information regarding the refund and its
12 use is needed.

13 11 U.S.C. § 1329(a) provides, in part, that a modified plan may
14 be filed at the request of the debtor, the trustee, or a holder of an
15 allowed unsecured claim to (1) increase or reduce the amount of payments
16 on claims" Debtor's motion seeks to do just this - it reduces by
17 approximately \$4,000 the amount that would otherwise be available for the
18 payment of allowed unsecured claims. Because this is a material amount,
19 it is appropriate that the change be made in the context of a modified
20 plan. A modified plan will allow interested parties to determine how the
21 modification affects their interests, where a motion generally would not.
22 This will give interested parties a chance to challenge the modification
23 and, if there are no objections to its confirmation and it otherwise
24 meets the requirements of the Code, the plan as modified becomes the plan
25 of reorganization without further hearing. 11 U.S.C. § 1329(b)(2).

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