

Michelle Nicole Torrez, Case No. 10-64385
Appellate No. 6:12-cv-251-HO

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Debtor claimed an exemption in her making work pay tax credit under ORS 18.345(n) which provides an exemption for “an earned income tax credit under federal tax laws and any moneys that are traceable to a payment of an earned income tax credit under the federal tax laws.” The Chapter 7 Trustee objected, contending that the making work pay tax credit was not an “earned income tax credit” within the meaning of 18.235(n). The bankruptcy court overruled the objection and the Trustee appealed.

The district court affirmed, noting that ORS 18.345(n) “does not specifically refer to the earned income tax credit found at 26 U.S.C. § 32”. Rather, the district court noted, the exemption applies to “an earned income tax credit” (emphasis in district court opinion.) According, the district court reasoned, since the making work pay credit was a credit against a tax on earned income, the debtor was entitled to exempt the credit under ORS 18.345.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RONALD STICKA,)
) No. 6:12-cv-251-HO
 Appellant-Trustee,)
) ORDER
 v.)
)
 MICHELLE NICOLE TORREZ,)
)
 Appellee-Debtor.)
)
)
)

The Trustee appeals from an order of the bankruptcy court, Judge Trish M. Brown, overruling the Trustee's objection to the debtor's claim of exemption of her making work pay tax credit.¹ Under O.R.S. § 18.345(n), "an earned income tax credit under the federal tax laws and any moneys that are traceable to a payment of

¹Judge Brown found a similar decision by Judge Elizabeth Perris in In re Viktor & Galina Ruban, No. 11-30815-elp7(Bankr. D.Or. 2011), to be persuasive.

an earned income tax credit under the federal tax laws" is exempt from property of the estate. 11 U.S.C. § 522(b). The Trustee contends that the making work pay credit is distinct from and independent of an earned income credit.

This appeal involves interpretation of a statute and, therefore, is reviewed *de novo*. Dumdeang v. C.I.R., 739 F.2d 452, 453 (9th Cir. 1984). Section 18.345(n), as an exemption law that is remedial in character, should be liberally construed in favor of the debtor. In re Canutt, 264 F.Supp. 919, 920 (D.Or. 1967); Childers v. Brown, 81 Or. 1, 7-8 (1916).

The first step in interpreting a statute is an examination of the text and its context. PGE v. Bureau of Labor and Industries, 317 Or. 606, 610-11 (1993). The second step is consideration of appropriate legislative history that a party may proffer. ORS § 174.020. Finally, if the legislature's intent remains unclear after examining text, context, and legislative history, the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty. PGE 317 Or. at 612.

The statute exempts "an earned income tax credit under federal tax law." O.R.S. § 345(n) (emphasis added). The statute does not refer specifically to the earned income tax credit found at 26 U.S.C. § 32. Section 32 of the Internal Revenue Code is not the only federal tax law to reference a credit based on earned income. The making work pay credit at 26 U.S.C. § 36A, which Congress

enacted after the Oregon legislature enacted the exemption at issue (but has not currently renewed), also refers to credit against a tax imposed based on "earned income."

26 U.S.C. 32 reads, in part,

(a) Allowance of credit.--

(1) In general.--In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed the earned income amount.

(Emphasis added).

26 U.S.C. § 36A reads, in part,

(a) Allowance of credit.--In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of--

(1) 6.2 percent of earned income of the taxpayer....

(Emphases added).

Other credits allowed by the internal revenue code, such as the child care credit that the Trustee worries would also be exempted under Judge Brown's reading of ORS 18.345(n), do not similarly base the credit on earned income.² See, e.g., 26 U.S.C. § 21 (allowance of a credit for dependant care expenses necessary

²Accordingly, the Trustee's fear that bankruptcy practitioners will have difficulty determining what is exempt and resort to asserting all available tax credits or face malpractice, should be allayed.

for gainful employment); 26 U.S.C. § 24 (allowance of credit of \$1,000 for each qualifying child).

The text of O.R.S. § 345(n) unambiguously exempts federal earned income tax credits and the making work pay credit is a credit based on earned income. This is generally sufficient to end the inquiry, but the Trustee has provided some legislative history. See State v. Gaines, 346 Or. 160, 171-72 (2009) (an ambiguity in the text of a statute is no longer required before a court may consider legislative history).

The earned income tax credit exemption may have resulted from the Oregon Legislature's response to In re Rutter, 204 B.R. 57 (D.Or. 1997), in which Judge Albert Radcliffe determined that the earned income tax credit portion of a debtor's federal income tax refund was not exempt under the Oregon exemption for public or general assistance. In testimony in support of legislation to provide an exemption for the earned income credit (House Bill 2175), the spokesperson for the Oregon State Bar, Consumer Law Section, Richard Slottee, noted that courts in other states have exempted the credit as a public assistance benefit (an interpretation the Oregon courts did not adopt). Excerpt of Record at Tab D, Exhibit 3, p. 2 (attached to Appellant's Brief (#3). Slottee specifically refers to 26 U.S.C. § 32 as creating the earned income credit and notes that it focuses on lower income families and how important it is to those facing bankruptcy because

of the often desperate financial need of filers. Id. Audio recordings of committee discussions of the bill include a statement regarding the need to assist the poorest of the poor.³

While the making work pay credit does not necessarily provide credit to just poor income earners, the Oregon legislature did not similarly include an exemption for state earned income credits. Thus, the history does not contradict the clear language to exempt federal earned income credits. Moreover, those filing for bankruptcy certainly face dire financial conditions and filers who claimed the making work pay credit fall within the universe of those the Oregon Legislature sought to aid through the exemption.

At the time the Oregon Legislature enacted the earned income credit exemption, the making work pay credit did not exist. However, the legislature chose not to limit the exemption to just the one earned income credit. The language used is not "the earned income credit" and despite Slottee's testimony, the language does not even specifically reference 26 U.S.C. § 32. Because the legislature saw fit to specifically limit the exemption to federal earned income credits, its decision to use the words "an earned income tax credit" and failure to reference a specific earned income credit is telling. As Judge Perris noted in In re Viktor & Galina Ruban:

³The recordings can be accessed at http://arcweb.sos.state.or.us/pages/records/legislative/legislativeminutes/2001/house/judiciary_sub_civil/index.html

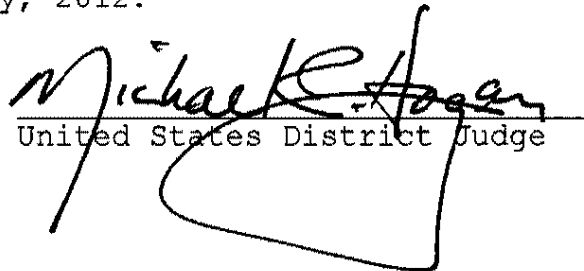
Although House Bill 2175 was clearly drafted to encompass the EIC, the legislature's choice of language is instructive. The EIC was first enacted in 1975 ... and has been part of the Internal Revenue Code for over 35 years. The Oregon Legislature easily could have cross-referenced the relevant section of the Internal Revenue Code if it intended ORS 18.345(n) to apply only to the EIC. Instead, the legislature created an exemption that covers "an earned income credit."

The text of the statute makes clear that the Oregon Legislature intended to exempt federal earned income credits. The making work pay credit is an earned income credit. Accordingly, the bankruptcy court correctly overruled the Trustee's objection to the exemption.

CONCLUSION

For the reasons stated above, the bankruptcy court's decision is affirmed.

DATED this 7th day of May, 2012.


United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

Ronald R Sticka,

Appellant-Trustee,

v.

Civil No. 6:12-cv-00251-HO

Michelle Nicole Torrez,

Appellee-Debtor.

JUDGMENT

The bankruptcy court's decision is affirmed. This action is dismissed.

Dated: May 9, 2012

MARY L. MORAN, Clerk

by s/ J. Wright
J. Wright, Deputy Clerk