

§541

ORS 23.166

ORS 23.185

In re::

MICHAEL J. STALFORD

Case No. 385-03394

Judge Elizabeth L. Perris

Dec. 31, 1986

Trustee's action to require the turnover of a prorated portion of the debtor's tax refund for the year bankruptcy was filed.

The opinion states:

1. The fact that the amount of a tax refund does not become fixed until the end of the tax year and after the filing of a bankruptcy petition, does not prevent the refund from being part of the bankruptcy estate. However, only that portion of the refund attributable to prepetition withholdings is properly included in the estate.
2. The amount of the refund which is property of the estate shall be determined by a calendar day proration of the refund. However, the debtor may present evidence to show that this method is inappropriate in particular instances.
3. The mere fact that property has its source in wages does not subject it to a wage exemption.

1320 (4)

HLH ___ DDS ___ BLP ___ THD ___
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Case No. 385-03394
MICHAEL J. STALFORD,)
Debtor.) MEMORANDUM OPINION

The Trustee, Mr. Ronald R. Sticka, seeks an Order directing the Debtor, Mr. Michael J. Stalford, to turnover a prorated portion of the tax refund he received for tax year 1985. The Debtor resists the motion on several grounds. The Court is not persuaded by the Debtor's arguments, and will enter the Order requiring turnover.

The Debtor argues that because he filed bankruptcy during the tax year 1985, but before his tax obligation was finally determined, the tax refund is not property of the estate. This argument has been rejected by every court to consider the issue under the Bankruptcy Code. Matter of Doan, 672 F.2d 831 (11 Cir. 1982); In re Sutphin, 24 Bankr. 149 (Bankr. E.D. Va. 1982); In re Rash, 22 Bankr. 323 (Bankr. D. Kan. 1982); In re Koch, 14 Bankr. 64 (Bankr. D. Kan. 1981); In re DeVoe, 5 Bankr. 618 (Bankr. S.D. Ohio 1980); and Matter of Nichols, 4 Bankr. 711 (Bankr. E.D.

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1 Mich. 1980). Most notably, the Court of Appeals for the Eleventh Circuit
2 in Matter of Doan, 672 F.2d 831 (1982), held that the fact that the
3 amount of a tax refund does not become fixed until the end of the tax
4 year and after the filing of a bankruptcy petition, does not prevent the
5 refund from being part of the bankruptcy estate. The Court felt that its
6 conclusion was required by Segal v. Rochelle, 382 U.S. 375, 86 S.Ct. 511
7 (1966). In Segal the Supreme Court held that a "loss carryback" refund
8 for losses suffered during the tax year in which the bankruptcy case was
9 filed was property of the estate, even though the amount of the refund
10 did not become fixed until the end of the tax year. While Segal was
11 decided under the old Bankruptcy Act, the legislative history makes it
12 clear that Segal retains its vitality and also that the applicability of
13 the holding is not limited to loss carrybacks. Matter of Doan, 672 F.2d
14 at 833. Thus, this Court finds that tax refunds are property of the
15 estate, even though the amount of the refund is not fixed until after the
16 date of the filing of the bankruptcy petition. However, only that
17 portion of the refund attributable to pre-petition withholding is
18 properly included in the estate. Segal made it clear that post-petition
19 property inures to the benefit of the debtor's fresh start.

20 In the cases which consider the division of the refund between
21 the debtor and the estate, several courts acknowledge the possible
22 shortcomings of using a purely calendar day proration, but opt to use it
23 because of the ease of application. See In re Rash, 22 Bankr. 323, 326
24 (Bankr. D. Kan. 1982). This Court will endorse the calendar day method
25 of proration, with the caveat that the debtor must be allowed the

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1 opportunity, if he so desires, to show that the refund was generated by
2 events which took place post-petition such as the birth of a child or
3 acquisition of large medical bills. Calendar day proration is most
4 appropriate when a debtor has a steady stream of income both before and
5 after the bankruptcy petition.

6 The Debtor also claims that the tax refund is exempt under ORS
7 23.185 and ORS 23.166 arguing that the refund is actually nothing more
8 than a return of withheld wages. ORS 23.185 limits wage garnishments,
9 and ORS 23.166 creates an exemption for identifiable exempt funds
10 deposited in a bank account. Neither of these provisions can be applied
11 to exempt tax refunds. In Kokoszka v. Belford, 417 U.S. 642, 94 S.Ct
12 2431 (1974), the Supreme Court held that tax refunds were property of the
13 estate and not subject to exemption as wages. The Court held that the
14 mere fact that property had its source in wages does not subject it to a
15 wage exemption. Thus, the tax refund is not subject to exemption as
16 wages.

17 The Trustee's motion for turnover is granted. The Debtor is
18 ordered to turnover the sum of \$1,389.22 to the Trustee. Such sum is
19 241/365's of the total amount of the 1985 refund. (The bankruptcy
20 petition was filed on August 30, 1985, the 241st day of the year. The
21 Debtor submitted no evidence which would indicate that calendar day
22 proration is not appropriate in this case.)

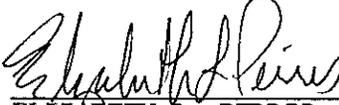
23 This Memorandum Opinion shall constitute Findings of Fact and
24 Conclusions of Law, and pursuant to Bankruptcy Rule 7052, they will not

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1 be separately stated. The Trustee is directed to submit an Order in
2 accordance with the views expressed herein.

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6 ELIZABETH L. PERRIS
7 Bankruptcy Judge

8 cc: Gregory J. Christensen
9 Ronald R. Sticka
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