

Federal Tax Rebate Credit
Property of the Estate

Christopher and Katherine Lambert, Case No. 601-61015-fra7
Appellate No. OR-02-1136-MoRyk

08/26/2002 BAP aff'g FRA

Published

Debtors filed their bankruptcy petition under Chapter 7 of the Code on February 22, 2001. Subsequently, Congress passed legislation pursuant to which the Debtors received a check in the amount of \$600, which they delivered to the Trustee in response to his written demand for its surrender. Debtors thereafter filed a motion to compel the Trustee to abandon the funds on the grounds that the funds are not property of the estate.

The amount of the check was calculated based on the Debtors' 2000 income, but was payable in 2001. The Trustee argued that the entire \$600 was property of the estate because it was "sufficiently rooted in the prebankruptcy past," pursuant to Segal v. Rochelle. The court determined, however, that the check represented an advance refund of taxes paid in 2001 and must be prorated between the pre and post-petition part of the 2001 tax year.

The Trustee appealed the court's ruling to the BAP, arguing that the refund should be attributed to the year 2000. In affirming the bankruptcy court, the BAP said its ruling was in conformity with the plain meaning of the Act creating the benefit, as well as other case law and the IRS's interpretation of the Act.

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

In re:) BAP No. OR-02-1136-MoRyK
CHRISTOPHER T. LAMBERT and)
KATHERINE D. LAMBERT,)
Debtors.)

RONALD R. STICKA, Chapter 7
Trustee,

Appellant,

v.

CHRISTOPHER T. LAMBERT and
KATHERINE D. LAMBERT,

Appellees.

FILED

AUG 26 2002

NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

OPINION

Argued and Submitted by Telephone Conference¹
on July 26, 2002

Filed - August 26, 2002

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Frank R. Alley, III, Bankruptcy Judge, Presiding.

Before: MONTALI, RYAN and KLEIN, Bankruptcy Judges.

¹ Appellees did not filed a brief in this appeal and pursuant to a Conditional Order of Waiver issued by the Clerk of the Bankruptcy Appellate Panel, they accordingly waived their right to appear at oral argument.

1 MONTALI, Bankruptcy Judge:

2
3 After filing their voluntary Chapter 7 petition,² Christopher
4 Todd Lambert and Katherine Dee Lambert ("Debtors") received a
5 \$600.00 check from the United States Treasury pursuant to the
6 Economic Growth and Tax Relief Reconciliation Act of 2001,
7 26 U.S.C. § 6428 ("the Act"). Appellant Ronald R. Sticka
8 ("Trustee") claimed that the check belonged to the estate, and
9 upon his demand, Debtors surrendered it to him. Later, the
10 bankruptcy court found that the \$600.00 check was not, as Trustee
11 claimed, attributable to pre-bankruptcy year-2000 taxes, but was
12 instead either partly or entirely attributable to the post-
13 petition period. It held that only the portion of the money
14 attributable to the pre-petition part of the 2001 tax year
15 belonged to the estate. Consequently, it ordered that the check
16 be returned to Debtors with the instruction that they remit to
17 Trustee the amount belonging to the estate after a determination
18 of their year-2001 tax liability. Trustee appeals from the
19 bankruptcy court's order. We AFFIRM.

20 **I. FACTS**

21 Debtors filed their voluntary Chapter 7 petition on February
22 22, 2001 (the "Petition Date"). Subsequently, Congress enacted
23 the Act. On June 27, 2001, in anticipation that Debtors might
24 receive a check under the Act, Trustee sent them a letter titled
25 "NOTICE FOR REBATE TURNOVER," demanding that they forward any such
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27 ² Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

1 check (a "Relief Check"). Later, Debtors received a Relief Check
2 from the Treasury, dated September 21, 2001, in the sum of
3 \$600.00.

4 On October 18, 2001, Debtors filed a motion to compel Trustee
5 to abandon their Relief Check. Debtors argued that because the
6 Act was not enacted until three months after they had filed for
7 bankruptcy, the \$600.00 Relief Check was not property of the
8 estate under § 541(a) for, as of the Petition Date, they had no
9 right, claim, or entitlement to the tax credit created by the Act.
10 In the alternative, they argued that even if the bankruptcy court
11 decided that the estate had some legitimate interest in the Relief
12 Check, only a portion of it was attributable to the part of 2001
13 before the Petition Date. Debtors calculated that portion as
14 52/365 days or approximately 14.25%.³

15 Trustee filed an opposition to the motion, arguing that the
16 Relief Check was a year-2000 tax refund in the form of a credit in
17 2001. Because entitlement to the Relief Check was based on
18 Debtors' 2000 tax return, he claimed, "the amount of credit was
19 identifiable by retroactive impact as of the commencement of this
20 bankruptcy case," and therefore the entire Relief Check was estate
21 property.⁴ On or about November 14, 2001, before the bankruptcy
22

23 ³ As noted, Debtors have not appeared on this appeal, nor
24 have they filed a cross-appeal from that portion of the bankruptcy
25 court's order rejecting their argument that the Relief Check is
entirely a post-petition benefit. Except for our general
discussion of the Act's meaning, we do not reach that issue.

26 ⁴ Trustee argued in the alternative that even if the Relief
27 Check were indeed a year-2001 tax refund, it should be prorated
28 using a slightly different ratio than what Debtors suggested:
53/365 instead of 52/365. Trustee does not raise this issue on
(continued...)

1 court heard Debtors' motion to compel abandonment, Debtors
2 delivered the Relief Check to Trustee.

3 After a hearing, the bankruptcy court issued a Memorandum
4 Opinion on December 11, 2001, in which it ruled that the Relief
5 Check was a 2001 benefit, calculated by using 2000's tax return
6 only as a template.⁵ It ruled that the Act had no retroactive
7 effect on year-2000 tax liability and the Relief Check was
8 intended to be an advance refund of Debtors' anticipated 2001 tax
9 payments. If Debtors' 2001 tax liability ("2001 Tax Liability")
10 turns out to be \$600.00 or more, the bankruptcy court held that
11 the entire \$600.00 Relief Check would be an advance year-2001 tax
12 refund. In that situation, because Debtors' Petition Date was in
13 2001, the \$600.00 Relief Check would be estate property only to
14 the extent attributable to the pre-petition part of the 2001 tax
15 year. The bankruptcy court held that the estate's share would
16 then be 14.25% of the Relief Check, which it calculated to be
17 \$84.00.⁶

18 _____
19 ⁴(...continued)
20 this appeal, and we assume without deciding that 52/365 is the
21 correct ratio for any proration.

22 ⁵ The bankruptcy court's Memorandum Opinion has been
23 published. In re Lambert, 273 B.R. 887 (Bankr. D. Or. 2001).

24 ⁶ The bankruptcy court also held that if Debtors' 2001 Tax
25 Liability turns out to be less than the Relief Check, then only
26 that portion of the Relief Check which represents the 2001 tax
27 refund should be prorated. Lambert, 273 F.2d 887. Further, in
28 that situation, because according to the legislative history the
difference between the Relief Check and the 2001 Tax Liability
(the "Excess Amount") would not need to be repaid to the United
States Treasury, the court characterized the Excess Amount as a
"new benefit" created post-petition. The bankruptcy court held
that because the Excess Amount is a benefit created post-petition
and is not rooted in the pre-bankruptcy past, any such amount
(continued...)

1 On January 15, 2002, the bankruptcy court issued an order
2 implementing the Memorandum Opinion. In relevant part, the order
3 ruled that the \$600.00 Relief Check "is property of the estate
4 only to the extent of the portion attributable to that part of the
5 2001 tax year prior to February 22, 2001," and it directed Trustee
6 to return the \$600.00 Relief Check to Debtors.

7 Trustee subsequently filed a timely appeal. The bankruptcy
8 court's order has been stayed pending appeal.

9 II. ISSUE

10 Did the bankruptcy court err in interpreting the Act as
11 authorizing an advance refund of year-2001 taxes, rather than a
12 payment attributable to the 2000 tax year?

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16 ⁶(...continued)
17 would belong to Debtors, citing Sliney v. Schmitz (In re Schmitz),
18 270 F.3d 1254 (9th Cir. 2001) and Drewes v. Vote (In re Vote), 261
19 B.R. 439 (8th Cir. BAP 2001), aff'd, 276 F.3d 1024 (8th Cir.
20 2002). The bankruptcy court concluded that Trustee should return
21 the Relief Check to Debtors, who should then calculate their tax
22 liability and remit funds to the estate accordingly.

23 At oral argument the panel questioned Trustee (who was
24 appearing as a pro se litigant) about the foregoing apparently
25 unresolved issues -- the need for further calculations, the lack
26 of a specific dollar amount, and the stay of the order directing
27 Trustee to turn over the Relief Check. Our questions were
28 directed at whether the order is final or suitable for review.
Trustee advised the panel that although he had not yet received a
year-2001 tax return from Christopher Todd Lambert he has received
one from Katherine Dee Lambert, and that return shows a liability
of more than \$600.00. Therefore, we need not address that portion
of the Memorandum Opinion dealing with what happens if the 2001
Tax Liability is under \$600.00. In addition, although Trustee
challenges the appropriateness of pro-rating at all, he does not
challenge the bankruptcy court's calculation of \$84.00 as the
amount if pro-ration applies. Therefore, it appears the
bankruptcy court's order is final. To the extent it is
interlocutory, we grant leave to appeal. Wilborn v. Gallagher (In
re Wilborn), 205 B.R. 202, 206-07 (9th Cir. BAP 1996).

III. STANDARDS OF REVIEW

Whether property is included in a bankruptcy estate is a question of law subject to de novo review. Moldo v. Clark (In re Clark), 266 B.R. 163, 168 (9th Cir. BAP 2001). Whether the Act contemplated a year-2000 or a year-2001 tax refund is a question of statutory interpretation, which we review de novo. Onink v. Cardelucci (In re Cardelucci), 285 F.3d 1231, 1233 (9th Cir. 2002).

IV. DISCUSSION

For married individuals filing jointly the Act reduced the income tax rate, effective after December 31, 2000, for the first \$12,000 from 15% to 10%.⁷ The effect of the reduction is that the tax imposed on the first \$12,000.00 is reduced from \$1,800.00 to \$1,200.00, or by \$600.00. See 26 U.S.C. § 1(i)(1)(B).

Trustee argues that the Act intended a refund of year-2000 taxes, rather than an advance of the anticipated refund of year-2001 taxes. We disagree.

First, the Act is entitled "Acceleration of 10% income tax rate bracket benefit for 2001." 26 U.S.C. § 6428 (emphasis added). Second, subsection (a) of the Act provides for a "credit"

⁷ The first subsection of the Act states that "there shall be allowed as a credit against the tax imposed by chapter 1 [26 U.S.C. § 1, Normal Taxes and Surtaxes] for the taxpayer's first taxable year beginning in 2001 an amount equal to 5 percent of so much of the taxpayer's taxable income as does not exceed the initial bracket amount (as defined in section 1(i)(1)(B))." 26 U.S.C. § 6428(a). The section last referred to states that the initial bracket amount for married couples filing jointly for taxable years beginning before January 1, 2008, is \$12,000.00. See 26 U.S.C. § 1(i)(1)(B)(i). For unmarried individuals, the initial tax bracket amount is half that of married individuals filing jointly, therefore the 2001 tax credit will be \$300.00. See 26 U.S.C. § 1(i)(1)(B)(iii).

1 against income taxes "beginning in 2001" in "an amount equal to 5
2 percent" of so much of the taxpayer's income as does not exceed an
3 amount that, for Debtors, is \$12,000.00. 26 U.S.C. § 6428(a)
4 (emphasis added).⁸ Third, subsection (e) of the Act provides:

5 (e) Advance Refunds of Credit Based on Prior Year Data.

6 (1) In General. - Each individual who was an
7 eligible individual [as defined in subsection (c)
8 of the Act] for such individual's first taxable
9 year beginning in 2000 shall be treated as having
10 made a payment against the tax imposed by chapter 1
11 [26 U.S.C. § 1, Normal Taxes and Surtaxes] for such
12 first taxable year in an amount equal to the
13 advance refund amount for such taxable year.

14 (2) Advance refund amount. - For purposes of
15 paragraph (1), the advance refund amount is the
16 amount that would have been allowed as a credit
17 under this section for such first taxable year if
18 this section (other than subsection (d) and this
19 subsection) had applied to such taxable year.

20 26 U.S.C. § 6428(e) (emphasis added).⁹

21 ⁸ See footnote 7, supra.

22 ⁹ Section 6428(2)(e)(2), as quoted, was amended on March 9,
23 2002. See PL 107-147, 107th Cong., 2d Sess. (2002). The
24 amendment included structural changes and the addition of
25 subsection (2)(B). Because the added section only further details
26 the process of calculating the advance refund amount based on 2000
27 data, it does not affect our analysis. The relevant amended
28 section is quoted in full as follows:

(e) Advance refunds of credit based on prior year data. -

(1) In general. - Each individual who was an eligible
individual for such individual's first taxable year beginning
in 2000 shall be treated as having made a payment against the
tax imposed by chapter 1 [26 U.S.C. § 1, Normal Taxes and
Surtaxes] for such first taxable year in an amount equal to
the advance refund amount for such taxable year.

(2) Advance refund amount. - For purposes of paragraph (1),
the advance refund amount is the amount that would have been
allowed as a credit under this section for such first taxable
year if -

(continued...)

1 The title of subsection (e) indicates that the Act authorized
2 an advance payment in year-2001 of anticipated tax refund based on
3 year-2000's data. The refund is "advance" because, upon the Act's
4 enactment, year-2001 taxes were not yet due.¹⁰ Sections (e)(1) and
5 (2) then proceed to lay out how the Relief Check amount is to be
6 calculated. Section (e)(1) assumes that each eligible individual
7 in year-2000 has paid his or her taxes, in an amount equal to the
8 refund such individual would have received if the Act had applied
9 in year-2000. Section (e)(2) then treats that year-2000 amount as
10 the year-2001 advance refund amount. By saying that the advance
11 refund amount is the amount that "would have" been allowed as a
12 credit for tax year 2000 if the Act had applied then, Congress
13 implied that the refund does not apply to tax year 2000. The
14 year-2000 tax information is therefore only used as a way to
15 calculate the year-2001 refund. Together, the two sections

17 ⁹(...continued)

18 (A) this section (other than subsections (b) and (d) and this
19 subsection) had applied to such taxable year, and

20 (B) the credit for such taxable year were not allowed to
exceed the excess (if any) if -

21 (i) the sum of the regular tax liability (as defined in
22 section 26(b)) plus the tax imposed by section 55, over

23 (ii) the sum of the credits allowable under part IV of
24 subchapter A of chapter 1 [26 U.S.C. § 21] (other than the
credits allowable under subpart C thereof, relating to
refundable credits).

25 26 U.S.C. § 6428(e) (as amended, March 9, 2002).

26 ¹⁰ Congress authorized the Secretary of the Treasury to
27 "refund or credit such overpayment as rapidly as possible and, to
the extent practicable, before October 1, 2001. No refund or
28 credit shall be made or allowed under this subsection after
December 31, 2001." 26 U.S.C. § 6428(e)(3).

1 indicate that Congress intended to use an individual's year-2000
2 tax liability to calculate the amount of his or her Relief Check
3 issued in 2001. Therefore, we agree with the bankruptcy court
4 that Debtors' "2000 tax year provides a template for calculating
5 2001 benefits, and nothing more." Lambert, 273 B.R. at 890. The
6 Act indeed has no effect on the tax liability for year-2000.
7 While the 5% tax reduction authorized by the Act created an
8 anticipated overpayment of taxes in year-2001, it did not create
9 any overpayment of year-2000 taxes.

10 Trustee argues on this appeal, as he did before the
11 bankruptcy court, that subsection (e)(1) of the Act defines the
12 refund as one for year-2000 taxes. He argues that the reference
13 in subsection (e)(1) to "the advance refund amount for such
14 taxable year" can only mean for tax year 2000. 26 U.S.C.
15 § 6428(e)(1) (emphasis added). We agree that "such taxable year"
16 is tax year 2000, but that is beside the point. The "advance
17 refund amount" is just that: an "amount" that is calculated by
18 reference to year-2000, not an actual "refund" payable on account
19 of year-2000. As stated above, the amount that "would have" been
20 payable if the Act had applied to year-2000, and the corresponding
21 amount that would have been refunded in that year, are simply used
22 to calculate the amount of the Relief Check issued in anticipation
23 of a year-2001 refund. 26 U.S.C. § 6428(e)(1) and (2).¹¹

25 ¹¹ Trustee argues, in his brief on this appeal, that the
26 bankruptcy court's rulings "suggest[] confusion with the alternate
27 eligibility for a credit based upon calculation on the 2001
28 return, so that those without earnings for 2000, or an advance
credit refund claim, might still avail themselves of tax relief."
Trustee does not explain what subsection of the Act allows an
(continued...)

1 The bankruptcy court's interpretation of the Act, and our
2 own, is consistent with the only case we have found on point. The
3 court in In re Rivera, 2001 WL 1432286, 89 A.F.T.R.2d 2002-673,
4 (Bankr. D. Colo. 2001), held that the "amount of the advance
5 payment is based on the amount of tax liability for the year 2000"
6 but the funds distributed in the year 2001 "represent a tax credit
7 for the 2001 tax year." Id. That court recognized that the
8 Relief Check therein was "in reality an advance on the taxpayers'
9 2001 tax refund that would otherwise have been paid or credited to
10 [them] in 2002 for [their] 2001 tax return." Id.

11 Our reading is also confirmed by the legislative history.
12 The relevant Committee Report states that issuance of the Relief
13 Checks operates "in lieu of the new 10-percent income tax rate
14 bracket for 2001." Comm. Rep. P.L. 107-16, 115 Stat. 38 (2001).
15 The goal of the Relief Checks was to "deliver economic stimulus to
16 the economy more rapidly than would implementation of a new 10-
17 percent rate bracket." Id. Clearly then, they were to take the
18 place of a tax reduction in the 2001 tax year. In addition,
19 consistent with the Act, the Committee Report also explained that
20 "the amount of the [Relief C]heck would be computed . . . on the
21 basis of tax returns filed for 2000 (instead of 2001)." Id.
22 Therefore, the legislative history indicates that the \$600.00
23 Relief Check is not a refund of taxes withheld in 2000. Rather,
24 it is an accelerated payment of the anticipated tax reduction for
25 earnings made in 2001, based on tax information from 2000. See

27 ¹¹(...continued)
28 "alternate" eligibility for a Relief Check on account of year-
2000. We find no such provision in the Act.

1 id.

2 Further, the Internal Revenue Service ("IRS") has expressed
3 an understanding of the Act consistent with our interpretation
4 that the Relief Check is an advance refund of 2001 taxes.¹² The
5 IRS's website states that, if the Relief Check amount is less than
6 the taxpayer's entitled 2001 tax reduction, the taxpayer can claim
7 the difference on his or her 2001 tax form and receive the
8 entitled reduction. Id. In other words, the Relief Check is
9 simply an advance payment of an anticipated tax refund for year-
10 2001.

11 In short, the plain meaning of the Act, the only case on
12 point, the legislative history, and the IRS all agree that the
13 Relief Checks were intended to accelerate the year-2001 tax
14 reduction by giving advance payments calculated by year-2000 tax
15 information. We join that group. The bankruptcy court did not
16 err in concluding that Debtors' Relief Check was intended to be an
17 advance refund for the taxes anticipated for year-2001.

18 Trustee does not dispute that if, as we have held, the Act
19 authorizes an advance refund of anticipated 2001 taxes, the Relief
20 Check should be prorated under well-established caselaw, nor does
21 he challenge the bankruptcy court's calculation of that
22 proration.¹³

23
24 ¹² Topic 609 - Rate Reduction Credit, Tax Topics, available at
25 www.irs.gov/businesses.

26 ¹³ See Segal v. Rochelle, 382 U.S. 375, 380 (1966) (debtor's
27 loss-carryback refund claim based on losses prior to the filing of
28 bankruptcy held to be sufficiently rooted in pre-bankruptcy past
that it belonged to estate; however, if any post-petition losses
increased the amount of refund, the refund was to be prorated)

(continued...)

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V. CONCLUSION

Congress provided for an advance payment, in the form of the Relief Check, on account of taxpayers' anticipated refund for year-2001 taxes. Because Debtors' Petition Date is in 2001, the bankruptcy court properly held that the Relief Check amount should be prorated according to the Petition Date rather than paid to Trustee based on the tax year prior to bankruptcy. The bankruptcy court's order is, therefore, AFFIRMED.

¹³(...continued)
(superceded on other issues by enactment of the Bankruptcy Code, as stated in Rau v. Ryerson (In re Ryerson), 739 F.2d 1423, 1426 (9th Cir. 1984)); Gabrielli v. Shults (In re Shults), 28 B.R. 395, 397 (9th Cir. BAP 1983) (court held that debtors had not intentionally concealed tax refunds from the estate but, even if they had, "[b]ecause the bankruptcy was filed mid-year[,], only a fraction of that sum [would be the] property of the estate").
Because no party has challenged the bankruptcy court's method of pro-ration, we express no opinion whether it would make a difference if Debtors had no income in 2001 or had paid no taxes prior to the Petition Date. See, e.g., Christie v. Royal (In re Christie), 233 B.R. 110, 113 (10th Cir. BAP 1999) (most important factor is whether refund was generated from pre-petition payments from what would otherwise have been property of estate). See also footnote 3, *supra* (we do not address whether Rebate Check was entirely a post-petition benefit); Rivera, 2001 WL 1432286 (holding that rebate check was not estate property).