ORDERED.

Dated: January 17, 2020

Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re	)	
	)	
Abraham Jacob Kokin and	)	Case No. 6:19-bk-02413-KSJ
Heather Denise Kokin,	)	Chapter 7
	)	
Debtors.	)	

ORDER PARTIALLY GRANTING
TRUSTEE'S MOTION FOR TURNOVER OF PROPERTY OF THE ESTATE

In his Motion for Turnover of Property of the Estate ("Motion"),[1] the Chapter 7 Trustee asks for payment or turnover of two items: a 2008 Nissan Rogue ("Vehicle") and the non-exempt portion of the Debtor's 2018 federal income tax refund of $5,257 ("Tax Refund"). As it stands, the Motion is granted, in part.

Debtors filed this Chapter 7 bankruptcy case on April 12, 2019 ("Petition Date").[2] On their schedules listing assets and liabilities, the Debtors included the Vehicle with a current value of $2,700, a PNC checking account with a balance of $3,865.95 (the "Checking Account"), and a PNC custodial money market account with a zero balance (the "Custodial Account"). Debtors

[1] Doc. No. 12. Debtors filed a response to the Motion (Doc. No. 15), which they later supplemented (Doc. No. 25). A trial was held on October 2, 2019.
[2] Doc. No. 1.

claimed exemptions totaling $2,000.00 for the Vehicle, an exemption of $3,865.95 for the Checking Account, and no exemption for the Custodial Account. [3] The Trustee does not challenge these exemptions but seeks turnover or payment of the value of the Vehicle exceeding $2,000 and argues that a portion of the Tax Refund is not exempt.

Vehicle

At trial, the parties presented evidence on the value of the Vehicle. After considering the testimony, I orally ruled the Vehicle had a value of $2,975 on the Petition Date and the Debtors were entitled to $2,000 in exemptions for the Vehicle, but the Debtors owed the Trustee an additional $325 due to depreciation after the Petition Date because they continued to use the car. Thus, the estate's interest in the Vehicle is $1,300 ($2,975 - $2,000 + $325 = $1,300). The Trustee's Motion is granted to require the Debtors either to turnover the Vehicle to the Trustee or pay $1,300 within 30 days or as otherwise agreed.

Debtors' 2018 Tax Refund

On February 22, 2019, the Debtors received the Tax Refund totaling $5,257, of which $2,123 is allocated for Earned Income Credit (the "EIC") and $1,400 for Additional Child Tax Credit (the "Child Tax Credit"). The remainder—$1,734—is a refund for overpaying their routine federal tax liability. The Debtors deposited the Tax Refund into the Checking Account, and then transferred $5,000 into the Custodial Account on February 25, 2019.

Between February and the Petition Date, the Debtors used monies from both accounts to pay living expenses, deposited income of $11,358.02 into the accounts,[4] and moved monies between the accounts. At trial, the evidence demonstrated that, on the Petition Date, the Checking

[3] Doc. No. 1; Bankruptcy Schedule C at 16-17. Mrs. Kokin claimed $1,000.00 of the Vehicle exempt under FLA. CONST. ART. X, § 4(a)(2), $1,000.00 of the Vehicle exempt under Fla. Stat. Ann. § 222.25(1), and $3,865.95 of the Checking Account exempt under Fla. Stat. Ann. §222.18 as disability income benefits.

[4] The Debtors deposited wages, Social Security payments, and Aetna disability insurance payments into the accounts.

Account had a balance of $3,727.97, and the Custodial Account had a balance of $2,977.97, which is significantly more than the zero-amount scheduled.[5]

Trustee requests turnover of all funds in the Custodial Account ($2,977.97) alleging the funds are the Debtors' non-exempt portion of the Tax Refund. Debtors respond the funds in the Custodial Account on the Petition Date are not property of the estate.[6] Debtors further argue the funds in the Custodial Account consist of exempt income, not the Tax Refund.

Ordinarily, a custodial account held by a debtor is not property of the estate provided the debtor uses it solely for the benefit of a child. [7] A debtor may hold legal title of the custodial account, but may not receive a benefit from the account.[8] Debtors, here however, conceded they frequently transferred funds between the accounts and benefitted as a result. Debtors' personal use of the Custodial Account renders it property of the estate.[9]

Having found the Custodial Account property of the estate, both parties fail to consider a significant issue with their arguments. Debtors have not claimed any exemption for the funds in the Custodial Account. Because the Debtors fail to claim the Custodial Account as exempt, the source of the funds is immaterial. As a result, the Trustee is entitled to all of the funds in the Custodial Account - $2,977.97.

Debtors, in their Supplemental Response, however did reserve the right to claim the funds in the Custodial Account as exempt.[10] A debtor may freely amend schedules provided the debtor

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[5] Debtors' Exhs. 2 and 3.
[6] Doc. No. 15 at ¶ 9.
[7] *See Beiger v. I.R.S.*, 496 U.S. 53, 59 (1990). Because the debtor does not own an equitable interest in property he holds for another, that interest is not property of the estate.
[8] *Id.*
[9] *In re Cauley*, 374 B.R. 311, 313-315 (Bankr. M. D. Fla. 2007).
[10] Doc. No. 35 at ¶ 8. The Debtors "reserve the right to assert the exemptions should the Court determine that Debtors were still in possession of the tax refund sought by the Trustee." Further, Debtors stated that "[d]ebtors only sources of income are Abraham Jacob Kokin's exempt head of family wages, Heather Denise Kokin's exempt Social Security Disability Income and exempt disability insurance income, and their daughter's exempt Social Security Disability Income." Because the Debtors already claimed the Checking Account as exempt, the Debtors must be referring to the Custodial Account in this paragraph.

does not prejudice an interested party.[11] A simple delay in filing an amendment does not alone prejudice an interested party.[12]

Here, the Court finds an amendment albeit belated would not prejudice the Trustee. At trial, both parties argued the Tax Refund issue assuming the Debtors claimed the Custodial Account as exempt. The Debtors' failure to exempt the Custodial Account appears to be a ministerial error and oversight. Debtors should be allowed to receive the full breadth of their exemptions.

Because of the relatively small amount in dispute and because both parties already fully briefed and presented evidence on the turnover issue, the Court will assume the Debtors will file an amended Schedule C within 30 days that exempts the Custodial Account. If so, the Court then would need to resolve two issues: (1) how much of the Tax Refund is exempt, and (2) how much of the non-exempt portion of the Tax Refund remained in the Debtors' possession on the Petition Date.

The parties agree the EIC is exempt under Florida law,[13] and the Income Withholdings are not. The parties, however, disagree as to the Child Tax Credit. With little explanation, the Trustee argues the Child Tax Credit is non-exempt. The Debtors respond Fla. Stat. § 222.25(3) clearly exempts the Child Tax Credit.

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[11] *See Law v. Siegel*, 571 U.S. 415, 425 (2014). Before this case, debtors had free discretion to amend schedules and claim an exemption unless the amendment was in bad faith or would prejudice an interested party. In *Law v. Siegel*, the Supreme Court stated the Bankruptcy Code provides no such authority for bankruptcy courts to deny an exemption. Debtors may freely amend their schedules unless the Bankruptcy Code or relevant state law provides an explicit reason for bankruptcy courts to deny an amendment. *See also In re Rivera-Cintron*, Case No. 6:14-bk-12581-KSJ. This Court recognized the ruling in *Law v. Siegel* and still analyzed whether an amendment was in bad faith or resulted in prejudice.

[12] *In re Rivera-Cintron*, Case No. 6:14-bk-12581-KSJ.

[13] Fla. Stat. § 222.25(3) which states "The following property is exempt from attachment, garnishment, or other legal process: (3) A debtor's interest in a refund or credit received or to be received, or the traceable deposits in a financial institution of a debtor's interest in a refund or credit, pursuant to s. 32 of the Internal Revenue Code of 1986, as amended" with a limited exception of debt owed for child support or spousal support is not exempt.

The Court finds the Child Tax Credit is exempt. This Court previously addressed the exemption of an additional child tax credit in *In re Gilland*.[14] In *Gilland*, this Court held that an additional child tax credit is exempt property unless a debt is owed for child support or spouse support.[15] This limited exception does not apply here. So, the only non-exempt portion of the Tax Refund is the Income Withholdings totaling $1,734.

The Court must determine if the Income Withholdings remained in the Custodial Account on the Petition Date.[16] Courts have applied three methods to trace exempt and non-exempt potions of a tax refund comingled in an account: the lowest intermediate balance method, the straight percentage method, and the "first in, first out" method. [17] Under the lowest intermediate balance method, courts adopt the fiction that a debtor first withdraws the non-exempt portion of the tax refund from the account and leaves the exempt portion to the extent possible in the account.[18] The straight percentage method requires courts to calculate the percentage of the tax refund that is exempt and apply that percentage to the account balance on the petition date.[19] And with the "first in, first out" method, courts presume the debtor spends both exempt and non-exempt funds in the account before spending any additional funds deposited.[20]

Debtors argue the Court should apply either the lowest intermediate balance method or the "first in, first out" method in this case. And after applying either method, the Debtors' bank

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[14] *In re Gilland*, Case No. 6:18-bk-00939-KSJ.
[15] *Id.*
[16] To the extent any Income Withholdings remained in the Checking Account on the Petition Date, the funds are deemed exempt. Debtors claimed the Checking Account exempt and Trustee did not object. *Taylor v. Freeland & Kronz*, 503 U.S. 638, 643 (1992); In *re Brown*, 221 B.R. 902, 904 (Bankr. M.D. Fla. 1998). "If a party does not object within the 30-day period after the conclusion of the meeting of creditors, then the party is forever barred from objecting to the debtor's claim of exemptions."
[17] *In re: Wharton-Price*, No. 9:15-bk-03126-FMD, 2015 WL 4230856 at *1 (Bankr. M.D. Fla. July 6, 2015).
[18] *Id.*
[19] *Id.*
[20] *Id.*

account records demonstrate the Debtors did not have possession of the Income Withholdings on the Petition Date.

The Trustee argued at trial the Court should adopt a straight-line accounting method. Under the straight-line accounting method, the Trustee contends after deposit of the Tax Refund, if any funds remain in the accounts on the Petition Date, then the account funds still must include the Withholding Income. The Trustee did not provide any legal authority to support application of a straight-line accounting method. And, after independent research, I could find no precedent applying the straight-line accounting method in tracing monies to determine whether they were exempt or not.[21] The Court rejects the straight-line accounting method.

Having considered the three methods actually used by courts, the Court here will apply the "first in, first out" method. The straight percentage method is improper because there are intervening deposits into the accounts.[22] The straight percentage method would be useful only if the Debtor withdrew money from the accounts. Likewise, the lowest intermediate balance method is improper. The lowest intermediate balance method is an equitable device designed to protect a debtor harmed by a third party with control of the debtor's funds.[23] That is not the situation in this case.

After applying the "first in, first out" method, the Court finds the Custodial Account no longer held any portion of the Income Withholdings on the Petition Date. On the Petition Date, the Debtors had $2,977.97 in the Custodial Account, all consisting of deposits that occurred after the

[21] *See In re Hillsborough Holdings Corp.*, 432 B.R. 318, 325 (Bankr. M.D. Fla. 2010). The Middle District of Florida did use the straight-line accounting method to determine a debtor's federal income tax liability but not in an exemption/tracing context. No other precedent exists that applied the straight-line accounting method to trace exempt and non-exempt portions of a tax refund.
[22] *In re King*, 508 B.R. 71, 80 (Bankr. N.D. Ind. 2014).
[23] *Id.* at 80-81.

Debtors transferred $5,000 of the Tax Refund to the Custodial Account. [24] The "first in, first out" method presumes the Debtors spent the $5,000 of the Tax Refund before the subsequent deposits. Because the subsequent deposits exceed the balance of the Custodial Account on the Petition Date, none of the Income Withholdings remained in the Custodial Account.

The Trustee's Motion is partially granted. Debtors must either turnover the Vehicle to the Trustee or pay $1,300 within 30 days or as otherwise agreed. Debtors may amend their Schedule C to claim an exemption to the Custodial Account within 30 days. If the Debtors amend their Schedule C, the result is that the Income Withholdings are the only non-exempt portion of the Tax Refund, and the Custodial Account held no portion of the Income Withholdings on the Petition Date. If the Debtors fail to timely amend their Schedule C, however, the Trustee is entitled to all of the funds in the Custodial Account - $2,977.97. Accordingly, it is

ORDERED:

1. The Motion (Doc. No. 12) is **PARTIALLY GRANTED.**
2. Debtors must either turnover the Vehicle to the Trustee or pay $1,300 within 30 days or as otherwise agreed.
3. Debtors may amend their schedules to claim an exemption of the Custodial Account, up to February 14, 2020. If an amended Schedule C is filed, all monies in the Custodial Account are exempt.
4. If the Debtors fail to timely claim an exemption for the monies in the Custodial Account, the Debtors shall turnover $2,977.97 to the Trustee by February 28, 2020.

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Trustee Richard B. Webber is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.

[24] Debtors' Exh. 3. The Debtors deposited a total of $4,674 in the Custodial Account. The $4,674 consisted of wages, Social Security income, and Aetna Insurance disability benefits received after the Tax Return.