

ORDERED.

Dated: April 04, 2022



Jacob A. Brown
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Case No. 3:21-bk-2304-JAB

KEVIN J. HUNTOON
and LOU ANN HUNTOON,

Chapter 7

Debtors.

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**ORDER DIRECTING DEBTORS TO PROVIDE A COPY OF THEIR 2021
FEDERAL INCOME TAX RETURN**

This case came before the Court upon the Court's own Motion. On September 29, 2021, the Debtors filed this Chapter 7 bankruptcy petition. On October 29, 2021, the Chapter 7 Trustee (the "Trustee") filed an Objection to the Debtors' Claim of Exemptions as to personal property and bank accounts (Doc. 13). On December 22, 2021, the Trustee filed a Motion for Turnover of Property, seeking the turnover of, among other things, the Debtors' 2021 federal income tax return and refund (Doc. 27).

On January 19, 2022, the Court conducted a preliminary hearing on the Objection to Exemptions and the Motion for Turnover. At the hearing, the parties informed the Court that they had agreed on all issues except the issue of whether the portion of the Debtors' 2021 federal income tax refund attributable to the Child Tax Credit is property of the Debtors' bankruptcy estate.¹ The parties represented to the Court that they would submit an agreed order on the resolved matters and requested that they be permitted to brief the outstanding issue.

On January 21, 2022, the Trustee withdrew the Motion for Turnover (Doc. 37). On January 24, 2022, the Court entered an Order Sustaining Trustee's Objection to Debtors' Claim of Exemptions (the "Agreed Order") (Doc. 39). The Agreed Order provides in relevant part:

The Debtors shall turnover to the Trustee at P.O. Box 922, Palatka, FL 32178-0922, a copy of their 2021 federal income tax return. A portion of the refund (272/365) is property of the bankruptcy estate subject to certain exemptions. Any Earned Income Credit is exempt. The parties disagree as to whether or not the Child Tax Credit, if any, is exempt and shall within thirty (30) days from the date of this Order each submit to the Court a Brief as to their respective positions on the exemption of the Child Tax Credit. Otherwise, subject to an Order from the Court, the nonexempt portion of the refund shall be turned over to the Trustee following the Court's ruling on whether or not the Child Tax Credit is exempt.

On February 24, 2022, the parties filed their briefs (Docs. 43, 44).

¹ The Child Tax Credit, which was first introduced as part of the Taxpayer Relief Act of 1997, is an annual tax credit available to taxpayers with qualifying dependent children. P.L. 105-34, § 101.

The American Rescue Plan Act of 2021, codified in part at section 6428B of the Internal Revenue Code, established a tax credit for eligible individuals in the amount of \$1,400 (\$2,800 if filing a joint return), plus \$1,400 multiplied by the number of dependents. 26 U.S.C. § 6428B. Section 6428B allows the payments as a refundable tax credit on a taxpayer's federal tax return (identified on line 30 of the 1040 federal income tax return as the Recovery Rebate Credit) but also permitted advance payments, referred to as Economic Impact Payments, during 2021.² Additionally, the American Rescue Plan increased the Child Tax Credit from \$2,000 to \$3,000 per child over the age of six, increased the Child Tax Credit from \$2,000 to \$3,600 for children under the age of six, and made the credit refundable.

As part of the Consolidated Appropriations Act of 2021, Congress amended § 541 of the Bankruptcy Code to exclude “recovery rebates made under section 6428 of the Internal Revenue Code (‘I.R.C.’) of 1986 from the bankruptcy estate property.” 11 U.S.C. § 541(b)(11).³ Accordingly, if the portion of the Debtors' refund at issue is a Recovery Rebate Credit, it is not property of the bankruptcy estate and not subject to turnover to the Trustee. However, if the portion of the refund at issue is the Child Tax Credit, it is: 1) property of the Debtors' bankruptcy estate; 2) not exempt from the claims of the Debtors' creditors; and 3) subject to turnover and administration by the

² The Recovery Rebate Credit can only be claimed if a taxpayer did not receive the full amount of the Economic Impact Payments during 2021.

³ The Consolidated Appropriations Act of 2021 was signed into law on December 27, 2020, and provided for a sunset on December 27, 2021, one year after its enactment. Pub. L. 116-260 § 1.

Trustee. See In re Dupree, 619 B.R. 516, 518 (Bankr. M.D. Fla. 2020); Fla. Stat. § 222.25(3).

While the Agreed Order indicates the parties disagree as to whether the Child Tax Credit is exempt, the Debtors argue in their brief that the portion of their 2021 tax refund attributable to the Child Tax Credit is excluded from property of the estate pursuant to § 541(b)(11). Consequently, it is not clear to the Court whether the portion of the refund at issue is attributable to the Recovery Rebate Credit or to the Child Tax Credit. Accordingly, to clarify the issue before it, the Court finds it appropriate to require the Debtors to provide the Court a copy of their 2021 tax return. Upon the foregoing, it is

ORDERED:

No later than April 11, 2022, the Debtors shall e-mail a copy of their 2021 federal income tax return to flmb-intake-jacksonville@flmb.uscourts.gov. Upon receipt and review of the tax return, the Court will enter an order on the Trustee's objection.

Clerk's Office to Serve