

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**IN RE: JEREMIAH AND JOANNA INGHAM, Debtors**

**No. 5:12-bk-70338  
Ch. 13**

**ORDER SUSTAINING TRUSTEE'S OBJECTION TO CONFIRMATION**

Before the Court is the debtors' *Amendment to Plan of Reorganization* filed on October 23, 2014, and the chapter 13 trustee's *Objection to Confirmation of Plan as Modified Post-Confirmation on October 23, 2014* filed on October 29, 2014. The Court heard the objection on February 12, 2015. The debtors' amendment relates specifically to the treatment of creditor Ally's collateral in the debtors' plan and includes a strict compliance provision that states that "the debtor [sic] shall make each and every remaining plan payment to the Chapter 13 Trustee in a full and timely manner and in strict compliance with the terms of the debtors' Chapter 13 plan." The trustee's objections are three-fold:

1. 11 U.S.C. § 1325(b)(1) - The payments to be distributed to unsecured creditors are inconsistent with disposable income. The debtors' confirmed plan requires the debtors to submit from their tax refunds that exceed \$2,000.00, the amount over \$2,000.00 into the plan on an annual basis. The debtors will need to submit their federal tax returns for 2011-2013 to demonstrate they did not receive tax refunds over \$2,000.00 in any of those years. If the debtors did receive refunds over \$2,000.00, the appropriate amount should be paid into the plan in order for the debtors' plan to complete.
2. 11 U.S.C. § 1325(a)(1) - The plan does not comply with the provisions of Chapter 13 and the other provisions of the Bankruptcy Code. The debtors have failed to submit their tax returns for 2011-2013 to the Trustee as required by the plan.
3. 11 U.S.C. § 1322(a)(1) - The plan does not commit to the supervision and control of the Trustee funds sufficient for execution of the plan. The proposed plan payment is insufficient to pay the creditors as proposed in the plan.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(L). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014. For the reasons stated below, the Court sustains the trustee's objection in part.

As a preliminary matter, the Court overrules the trustee's second objection as moot. That objection states that the debtors have failed to submit their 2011 to 2013 tax returns to the trustee. However, at trial, the parties stipulated to the introduction of the debtors' tax information in the form of tax transcripts for the years 2011 to 2013 and a copy of the debtors' tax return for the year 2014.

The Court also overrules the trustee's third objection, which states that the proposed plan payment is insufficient to pay the creditors as proposed in the plan. The trustee did not introduce any evidence to suggest that the debtors' amended plan changes the debtors' previously confirmed plan provision that requires the debtor to pay \$974 per month to the trustee. Because a chapter 13 plan or modification to a plan that meets the requirements for confirmation under the code would be confirmed absent objection by a creditor, the objecting creditor has the initial burden of proof. *Educ. Assistance Corp. v. Zellner*, 827 F.2d 1222, 1226 (8th Cir. 1987). In this instance, the trustee has failed to meet her burden.

The Court now turns to the trustee's first objection. Under the debtors' confirmed plan, the debtors were to "pay any income tax refunds over \$2,000.00 into the plan during the applicable commitment period." Based on the debtors' proposal to pay income tax refunds into the plan, the trustee objected to the plan modification because the debtors had not submitted their federal tax returns. The most relevant language in the trustee's first objection is the last sentence: "If the debtors did receive refunds over \$2,000.00, the appropriate amount should be paid into the plan in order for the debtors' plan to

complete.” Nowhere in the debtors’ confirmed plan, the debtors’ modified plan, or in the trustee’s objection is the turnover of earned-income credit [EIC] mentioned. However, that was the exclusive subject of the parties’ argument: whether EIC should be included in determining if the debtors received a refund exceeding \$2000.

For the past four years, the debtors have received income tax refunds that exceed \$2000 every year. Included in that amount were EIC payments. A review of the transcripts and return that were introduced at trial indicates that in 2011 the debtors received a refund of \$3195, of which \$417 was EIC; in 2012 they received a refund of \$4653, of which \$728 was EIC; in 2013 they received a refund of \$5783, of which \$2971 was EIC; and in 2014 they received a refund of \$5962, of which \$3910 was EIC. The debtors argue that the plain language of their confirmed plan states that they will pay into the plan any income tax refund over \$2000 but that their entitlement to EIC is not in the nature of a refund. Rather, it is a credit that does not have to be turned over to the trustee for the benefit of the debtors’ creditors.

The Court finds that the debtors’ argument is fundamentally flawed. The EIC is not like a typical tax credit that can only be used to off-set tax obligations. The EIC is considered a “refundable” credit. *Sorenson v. Sec’y of Treas. of U.S.*, 475 U.S. 851, 854 (1986).

The United States tax code references EIC in a section titled “Amounts treated as overpayments”:

If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, D, G, H, I and J of such part IV), the amount of such excess shall be considered an overpayment.

26 U.S.C. § 6401(b)(1).<sup>1</sup> The next section of the tax code discusses the authority to make credits or refunds of overpayments:

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<sup>1</sup> The refundable credits which are referred to in subpart C include EIC, which is addressed specifically at 26 U.S.C. § 32.

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e), and (f) *refund any balance to such person*.

26 U.S.C. § 6402(a) (emphasis added). In discussing this specific section of the tax code, the Supreme Court stated that “[a]n individual who is entitled to an earned-income credit that exceeds the amount of tax he owes thereby receives the difference as if he had overpaid his tax in that amount.” *Sorenson v. Sec’y of Treas.*, 475 U.S. 851, 855 (1986).

*Sorenson* involved a provision of the Social Security Act that directed the Secretary of the Treasury to intercept tax refunds, including EIC payments, to persons who failed to meet child-support obligations. *Sorenson*, 475 U.S. at 852-53. The Supreme Court granted certiorari from the Court of Appeals for the Ninth Circuit because of a split in the circuit courts. In its ruling, the Ninth Circuit found that the tax code expressly defines excess EIC as an overpayment and, to the extent the excess credits were disbursed through the income tax refund process, the credits were payable as refunds of federal taxes paid. *Id.* at 858 (citing *Sorenson v. Sec’y of Treas.*, 752 F.2d 1433, 1441 (9th Cir. 1985)). As a refund, the EIC was susceptible to interception by the Secretary of the Treasury for past child-support obligations. In affirming the Ninth Circuit, the Supreme Court stated that “[t]he Ninth Circuit correctly held that, to the extent an excess earned-income credit is ‘payable’ to an individual, it is payable *as if* it were a refund of tax paid.” *Id.* at 863. The Court explained why the tax code’s treatment of EIC makes it tantamount to a tax refund:

An individual can receive the amount by which his entitlement to an earned-income credit exceeds his tax liability only because § 6401(b) of the Code defines that amount as an “overpayment,” and § 6402 provides a mechanism for disbursing overpayments, namely, *the income tax refund process*. The refundability of the earned-income credit is thus inseparable from its classification as an overpayment of tax.

*Id.* at 859 (emphasis added).<sup>2</sup>

In the case before the Court, the debtors' confirmed plan states that they will pay any income tax refund over \$2000 into the plan. The EIC received by the debtors and included in their tax refunds was disbursed through the income tax refund process and is payable to the debtors as if it were a refund of a tax paid. For these reasons, the Court finds that the debtors' income tax refunds include EIC. Therefore, the Court sustains the trustee's first objection. To the extent the refunds, including EIC, exceeded \$2000 for the years 2011 through 2014, the excess shall be turned over to the chapter 13 trustee pursuant to the debtors' confirmed plan for the benefit of the unsecured creditors.

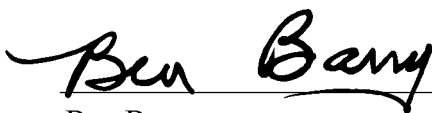
Without deducting any amounts that the debtors may have already turned over to the trustee, the excess payments related to the debtors' federal tax refunds are as follow:

<u>Year</u>	<u>Total Refund from IRS</u>	<u>Amount to be Turned Over to Trustee</u>
2011	\$3195	\$1195
2012	\$4653	\$2653
2013	\$5783	\$3783
<u>2014</u>	<u>\$5962</u>	<u>\$3962</u>
Totals	\$19,593	\$11,593

Further, if the debtors received income tax refunds from the state for the tax years 2011 through 2014, those refunds shall also be turned over to the chapter 13 trustee for the benefit of the debtors' unsecured creditors pursuant to the debtors' confirmed plan.

IT IS SO ORDERED.

cc: Don Brady, attorney for the debtors  
Joyce B. Babin, chapter 13 trustee  
Brad Chaffin, attorney for the trustee

  
Ben Barry  
United States Bankruptcy Judge  
Dated: 03/06/2015

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<sup>2</sup> In *Sorenson*, the Petitioner also argued that including EIC in § 6401(b)'s broad definition of overpayment was not accurate because sometimes EIC is paid to a person that may not have actually paid any taxes. The Court dismissed this argument, recognizing that "Petitioner must characterize herself as a person who has 'made' an overpayment; otherwise, she cannot claim her excess earned-income credit." 475 U.S. at 860.