

Kansas Bankruptcy News

A monthly publication for the non-bankruptcy attorney prepared by the Law Office of Donald C. Astle, Donald C. Astle, Attorney at Law.

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Earned Income Tax Credit

Line 38a on the Federal 1040A. Line 16 on the State of Kansas K-40. Called "EIC" for short. Effective April 14, 2011 this part of the bankruptcy debtor's tax refund is exempt. Note that this exemption only applies to a bankruptcy debtor. This is codified in KSA 60-2315. (See statute of the month.)

Other states have had this exemption for some time. It's new in Kansas. And, it slipped through rather quickly in the 2011 legislative session. It immediately started the all too familiar controversy concerning the constitutionality of state specific bankruptcy exemptions under the Supremacy Clause and bankruptcy clause of the U.S. Constitution. Bankruptcy trustees immediately objected to the exemption starting numerous appeals processes.

The constitutionality of the EIC exemption has been upheld by bankruptcy judges Robert Nugent of Wichita, Karen Karlin of Topeka, and the Bankruptcy Appellate Panel

for the Tenth Circuit. Those cases decided the trustees' constitutional challenges to the EIC exemption on a number of grounds, including whether it is ran afoul of the Supremacy Clause, the Uniformity Clause, and other provisions of the U.S. Constitution.

The United States Court of Appeals, Tenth Circuit, has finally weighed in. The court's opinion filed November 18, 2014, *In Re Connie Murry*, 14-3054, involved a challenge to the Kansas EIC exemption statute. Though it was not a published opinion it is probably the last nail in the coffin of the challenge to the Kansas Earned Income Tax exemption.

In this case the bankruptcy trustee asserted that the statute (KSA 60-2315) violates the Bankruptcy and Supremacy Clauses of the U.S. Constitution and is preempted by the provisions of the Bankruptcy Code because the statute exempts EICs only with respect to debtors in bankruptcy, rather than protecting those funds from all creditors. The lower court, as did the Bankruptcy Appellate Panel for the Tenth Circuit, rejected this theory. In a somewhat terse opinion the Tenth Circuit rejected the bankruptcy trustee's argument and affirmed the lower courts.

The argument that the exemption was only available to bankruptcy debtors, and not non-bankruptcy debtors, and thus unconstitutional seemed odd. As noted in November's newsletter, spousal maintenance is exempt as to bankrupt debtors under 11 USC 522(d)(10) but only exempt to non bankruptcy debtors under KSA 60-2308(e) when it is held by the Kansas Payment Center (or similar entity). So, there is a long precedence of having different exemptions for bankruptcy debtors and non-bankruptcy debtors.

Typical Tax Refund Breakdown



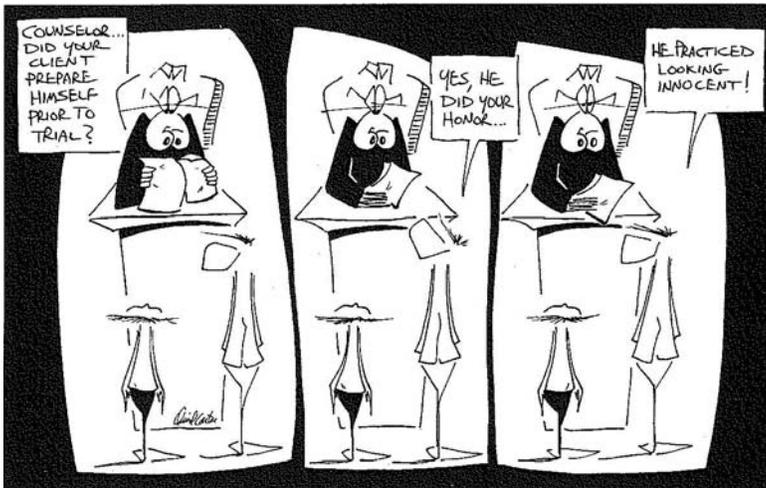
STATUTE OF THE MONTH

60-2315

Bankruptcy proceedings; earned income tax credits.

An individual debtor under the federal bankruptcy reform act of 1978 (11 U.S.C. § 101 et seq.), may exempt the debtor's right to receive tax credits allowed pursuant to section 32 of the federal internal revenue code of 1986, as amended, and K.S.A. 2012 Supp. 79-32,205, and amendments thereto. An exemption pursuant to this section shall not exceed the maximum credit allowed to the debtor under section 32 of the federal internal revenue code of 1986, as amended, for one tax year. Nothing in this section shall be construed to limit the right of offset, attachment or other process with respect to the earned income tax credit for the payment of child support or spousal maintenance.

JP...The Legal Cartoon



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OUR TAKE ON THIS:

The Kansas Earned Income Credit Exemption for bankruptcy debtors is here to stay. It will take a legislative change to eliminate this exemption. Once an exemption is granted by our legislature it is rarely taken away.

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