

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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It's Tax Refund Time

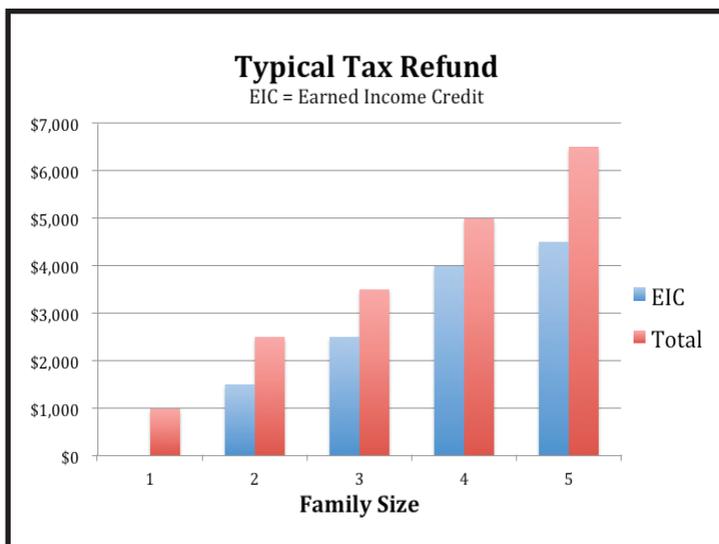
The good news is that it can give the debtor the money to file bankruptcy. The bad news is that if the debtor gets a big tax refund and has already filed bankruptcy, the bankruptcy court can take a portion of it or maybe all of it. As we mentioned last month, the Earned Income Tax Credit is exempt and cannot be taken by the bankruptcy court. The rest can.

So, there are two strategies: (1) Get your tax refund money back and spend it before you file bankruptcy, or, (2) if the tax refund money is small enough, generally less than \$1,500.00 not including Earned Income Tax Credit, file bankruptcy before you get your tax money. Generally, the court will not take a tax refund if it is less than \$1,500 and there are no other assets the

court can take (like the debtor has a boat).

Most debtors that are expecting a large tax refund opt to wait, get the money and spend it before filing bankruptcy. Even if the debtor is desperate and being garnished it is still better to wait a few weeks for that big tax refund. But, the refund must be spent, including the Earned Income Tax Credit portion, before the bankruptcy is filed. Basically the debtor is converting a non-exempt asset into exempt assets. This is perfectly legal if done the right way.

First, the debtor cannot give their tax refund money away or pay someone back (well, small sums may be OK). The debtor must spend it on living it on living expense, transportation expenses, or put it into IRA type retirement funds. For example, pay down on a vehicle loan, pay a couple of months' rent or house payments ahead, put it into a IRA retirement account, or load up at the grocery store. Often times, debtors want to save some of the tax refund for a rainy day. Generally that's smart thinking, but not if you are filing bankruptcy. You cannot have cash on hand or money in the bank the day you file bankruptcy. So, spend that extra cash from the tax refund on groceries. "Food in the pantry is as good as money in the bank."



JP...The Legal Cartoon



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TIP OF THE MONTH

The bankruptcy client should talk to the bankruptcy attorney before doing anything with a tax refund, including the exempt Earned Income Tax Credit. Though the Earned Income Tax Credit is exempt if not yet received, it could lose its exempt status when deposited into an account if you are waiting and filing bankruptcy after the tax refund is received. Finally, if you have a friendly ex-spouse and alternate the years you each take the kids as a tax deduction, this may be the year you want to be nice and let the ex take the kids as a deduction. It doesn't do you any good to get a big tax refund you do not get to keep.

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