**UNITED STATED BANKRUPTCY COURT**
**FOR THE DISTRICT OF COLORADO**
**Honorable Howard R. Tallman**

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| **In re:** | ) | |
| | ) | |
| **WILLIAM JUDSON GOLDSBORO, JR.** | ) | **Case No. 08-14404 HRT** |
| **and** | ) | **Chapter 7** |
| **JACQUELINE RENEE GOLDSBORO,** | ) | |
| | ) | |
| **Debtors.** | ) | |
| | ) | |
| | ) | |
| **In re:** | ) | **Case No. 08-14410 HRT** |
| | ) | **Chapter 7** |
| **MOHAMED A. MAMDU and** | ) | |
| **JANICE E. RHYNE,** | ) | |
| | ) | |
| **Debtors.** | ) | |
| | ) | |

**ORDER ON MOTIONS FOR TURNOVER OF ECONOMIC STIMULUS PAYMENT**

The cases of Debtors William Judson Goldsboro, Jr. and Jacqueline Renee Goldsboro ("Goldsboros") and Debtors Mohamed A. Mamdu and Janice E. Rhyne ("Mamdu/Rhyne") come before the Court on the *Trustee's Motion for Debtors' Turnover of "Economic Stimulus Act of 2008" Payment as Property of the Estate Pursuant to 11 U.S.C. § 521(3), (4), & § 542* (the "Motion"), filed by Jeffrey L. Hill ("Trustee"). In the Goldsboros' case, the Motion was filed on May 23, 2008 (Docket #13), and the Debtors' response was filed on June 3, 2008 (Docket #15). In the Mamdu/Rhyne case, the Motion was filed on May 22, 2008 (Docket #15), and the Debtors' response was filed on June 3, 2008 (Docket #17). Following a combined evidentiary hearing held on September 17, 2008, the Court took the Motions under advisement. The Debtors filed a combined brief on September 23, 2008. The Court is now prepared to rule and hereby makes the following findings of fact and conclusions of law.

On February 13, 2008, the President signed the Economic Stimulus Act of 2008 (the "Act"), Pub. L. No. 110-185, 122 Stat. 613. The Act provided for certain stimulus payments (the "Payments") to eligible taxpayers. When the Debtors filed their voluntary Chapter 7 petitions on April 4, 2008, they were eligible to receive Payments but had not yet received them. At the Debtors' § 341 meetings, the Trustee requested that the Debtors turn over any Payments to him upon receipt. When the Debtors declined to do so, the Trustee filed the Motions. At the hearing on the Motions, Debtor Jacqueline Goldsboro testified that she and her husband received a Payment of $1,500. Debtor Janice Rhyne testified that she and her husband received a Payment of $2,100.

## Discussion

A debtor's estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). The term "property" is construed broadly, "and an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed." *Segal v. Rochelle*, 382 U.S. 375, 379 (1966) (holding that a loss-carryback refund constitutes property of the estate). When enacting § 541, Congress adopted the definition of "property" in *Segal* and confirmed that the right to a tax refund is included in property of the estate. *See* S. Rep. No. 95-989, at 82 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5868; H.R.Rep. No. 95-595, at 367 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6323.

When a Chapter 7 debtor's tax refund is based at least in part on prepetition wage withholdings, the prepetition portion of the refund is property of the debtor's estate. *See In re Barowsky*, 946 F.2d 1516, 1518-19 (10th Cir. 1991). When a refund is based on tax credits rather than wage withholdings, the result is the same – the prepetition portion of the tax refund is property of the debtor's estate. *See In re Montgomery*, 224 F.3d 1193, 1195 (10th Cir. 2000) (prepetition portion of tax refund based on Earned Income Credit was property of debtor's estate). The prepetition portion of a tax refund is property of a debtor's estate even if the debtor's petition is filed before the tax year ends. *See Barowsky*, 946 F.2d at 1517-18; *Montgomery*, 224 F.3d at 1195.

Under the Act, the Debtors are treated as having made tax payments in 2007 in an amount equal to the amount of the Payments, which were refunded to the Debtors as an overpayment of 2007 taxes. *See* 26 U.S.C. § 6428(g); *In re Smith*, 2008 WL 4000175 (Bankr. S.D. Ind. 2008) (relying on IRS *amicus* brief to interpret Act; holding that payments under the Act are payments of 2007 taxes). The Payments are indistinguishable from tax refunds based on prepetition tax credits and are thus property of the Debtors' estates. *See Montgomery*, 224 F.3d at 1195; *Smith*, 2008 WL 4000175; *In re Campillo*, 2008 WL 2338316 (Bankr. D. Ariz. 2008) (payments under the Act are property of a debtor's estate).

Even if the Payments were considered a refund of 2008 taxes (as they are technically credits to be applied in 2008, *see* 26 U.S.C. § 6428(a)), the Payments would still be property of the Debtors' estates because the Debtors' petitions were filed during 2008. *See Barowsky*, 946 F.2d at 1517-18; *Montgomery*, 224 F.3d at 1195. Although courts often apportion a tax refund when a debtor files a petition during the year in which the refund accrued, no apportionment is necessary in these cases. The Debtors became entitled to 100% of the Payments before their petition dates. One hundred percent is therefore property of their estates. *Cf. In re Christie*, 233 B.R. 110, 113 (10th Cir. BAP 1999) (refund based on payments made 100% postpetition was not property of the debtors' estate).

The Debtors rely on *In re Lambert*, 283 B.R. 16 (9th Cir. BAP 2002). *Lambert* interpreted the Economic Growth and Tax Relief Reconciliation Act of 2001 (the "2001 Act"), which reduced the tax rate on 2001 income and provided for an advanced refund of the anticipated reduction in taxes. The court held that the advanced refund was property of the

estate on a prorated basis. Proration may have been appropriate for the 2001 Act's refund because the refund was based on a reduction of the tax rate on income from which withholdings were made throughout the year. But here, the Payments are deemed to be one-time payments, made as of the effective date of the Act. There is no basis upon which to spread the one-time payment throughout the year, and thus no basis for apportionment. *See In re Wooldridge*, 2008 WL 4145427, at *9-10 (Bankr. D. Idaho 2008) (distinguishing payments under the 2001 Act from payments under this year's Act and finding apportionment inappropriate).

The Debtors also cite *In re Rivera*, 2001 WL 1432286 (D. Colo. 2001). In *Rivera*, Judge Cordova analyzed the 2001 Act in the context of debtors who filed their petitions before the 2001 Act was enacted. *Rivera* has no application here, where the Payments are prepetition entitlements. *See Smith*, 2008 WL 4000175, at *1 n.4 (distinguishing *Rivera*).

The Debtors further request that this Court apportion the payment between the adults and the children in their households and conclude that the portion attributable to the children should not be included in property of their estates. They candidly admit that no case law supports their argument. The Court agrees with *Smith*, which held:

> [T]he portion of the ESR [Payment] attributable to the Debtors' "qualifying children" is not a payment made in trust for the Debtors' children, but rather is a right accorded by Congress to the parent(s) filing the tax return(s), because the expenses of raising the child are borne by the parent(s). It is not a severable stimulus payment . . . . The refund is not subject to any "child allowance" and the amount turned over to the trustee is not reduced by the number of the debtors' minor dependent children.

*Id.* at *3 n.11 (internal quotation to IRS *amicus* brief omitted).

Finally, the Debtors argue that even if the Payments are property of their estates, they should nevertheless be excused from turnover because they allege that the Trustee discriminated against them on the basis of their race or religion, or both. The only evidence in support of this argument is that the Trustee requested the Debtors' Payments, but not those of others whose § 341 meetings were held on the same date. The Court, having reviewed the transcript and recordings of the § 341 meetings, finds no evidence of discrimination. The transcript and recordings reveal that in most cases where the Trustee did not request turnover of the debtors' Payments, he explained his reasoning on the record. For example, in the case of Danielle Marie Sharp, No. 08-14398 HRT, the Trustee explained that the debtor's non-filing spouse would claim entitlement to one-half of the Payment, and the resulting amount of the Payment would be too small to keep the debtor's case open. In the case of James Edward Sporka, No. 08-14401 HRT, the Trustee explained that the Payment would be intercepted by the IRS because the debtor still owed money on his 2007 taxes. The Trustee testified at the hearing that he requested turnover in the Debtors' cases because the Payments were large enough to justify administration of a case. The Court finds the Trustee's testimony credible, demonstrating that the Trustee exercised

reasonable business judgment in the administration of the applicable cases. The Debtors will not be excused from compliance with the Trustee's legitimate request.

**Conclusion**

Based on the preceding discussion, the Court finds that the Payments are property of the Debtors' estates. Accordingly, it is

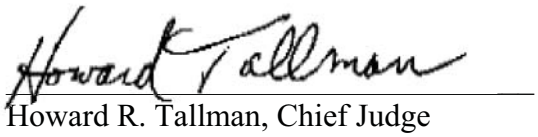
ORDERED that the Motion is GRANTED in each case.

IT IS FURTHER ORDERED that Debtors William and Jacqueline Goldsboro must pay $1,500 to the Trustee within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that Debtors Mohamed Mamdu and Janice Rhyne must pay $2,100 to the Trustee within thirty (30) days of the date of this Order.

Dated this 26th day of September, 2008.

BY THE COURT:



Howard R. Tallman, Chief Judge
United States Bankruptcy Court