

MINNESOTA LAWYER

November 18, 2013

minnlawyer.com

THE DOLAN
COMPANY

Vol. 17, No. 46

Hands off property tax refunds, judges say

By Patrick Thornton

patrick.thornton@minnlawyer.com

Property tax refunds are exempt from wage garnishments, according to the majority of bankruptcy court judges for the district of Minnesota. Three of the five judges have ruled that refunds fall under the category of government assistance based on need and can be protected from creditors.

This new development is a significant one, said Bloomington bankruptcy attorney Craig Andresen. Bankruptcy law allowed for wage garnishment of 25 percent above the federal minimum wage. And trustees counted on the yearly refund checks as a reliable source of income to pay back creditors, he said. Lower-income debtors now have more power to hold on to their state and federal refunds.

Minnesota already treats the federal earned income tax credit as government assistance and therefore exempt from wage garnishment. That money is usually received in February or March and is exempt from garnishment for six months, or through August or September. Minnesota property tax refunds are mailed out in September, at which point the debtor is exempt for another six months, or until sometime in February or March.

There could be a few weeks where the exemption doesn't overlap, Andresen said, but for most of the year, the debtor would be immune to garnishment as long as the federal and state benefits continue.

U.S. Bankruptcy Judges Michael Ridgway, Gregory Kishel and Katherine

Constantine have issued similar opinions on the question. The last two decisions were made in September.

Almost all of Andresen's clients either get a renter's credit, a property tax refund or a federal income tax rebate.

"For the longest time these refunds have been a gravy train for the trustees," he said. "Now, they can't win. If a property tax refund is relief based on need, you can't get that money if you are a high earner. And, the broker you are, the more money you're eligible for."

A tale of two cases

Andresen represented Grace Johnson, an 88-year-old Bloomington woman, who filed for bankruptcy in March 2013. Andresen said Johnson was helping her daughter's family out financially for many years and the debt slowly built up.

According to the bankruptcy court documents, the value of her home was approximately \$200,000. Her sole source of income was \$1,460 in monthly Social Security checks. She also noted on her bankruptcy schedule that she received \$250 a month, the pro-rated figure for her annual property tax refund of \$1,946. She claimed that money as exempt from wage garnishment.

The bankruptcy trustee objected to Johnson exempting the refund check. Specifically taking issue with the categorization of that money as "government assistance based on need." State statute allows people to exempt public assistance dollars from creditors



Craig Andresen

or banks. Examples of public assistance dollars are: Supplemental Security Income, Medical Assistance, Minnesota Care, Medicare Part B premiums, general assistance and the Minnesota Family Investment Program.

In August, the two sides appeared before U.S. Bankruptcy Judge Michael Ridgway.

(The trustee in the case, Nauni Manty of Minneapolis, declined to comment for this story.)

According to court documents, the trustee argued that property tax refund checks did not fall under that category. The money was not "need" based and could therefore be gar-

Refunds ‘... what about other income-based eligibility?’

Continued from page 1

nished to pay back Johnson’s debt.

The judge concluded that property tax refunds are similar to Supplemental Security Income. Further, because the refunds are intended to provide relief for lower-income families, it satisfies the “based on need” component. The order was issued Sept. 11.

The day after the Johnson decision, Judge Constantine decided *in re Padilla*, a case that dealt with the same question. Constantine also concluded that property tax refunds were exempt. That was an oral order issued from the bench, Andresen said.

Both trustees appealed the decisions.

“I happen to think it’s fundamentally wrong, but so far the people that matter don’t agree with me.”

—Michael Iannacone,
bankruptcy trustee

Revenue Department’s stance

Lake Elmo attorney Michael Iannacone is the trustee for the Padilla case. (Padilla’s lawyer, Michael Davey of St. Paul, could not be reached for comment.)

Iannacone said he was flabbergasted when debtors’ attorneys first started to make the argument to exempt refund checks.

“I know that a lawyer’s job is to tunnel over, through or around the laws, but I have been doing this for a long time and it was an unusual argument,” Iannacone said. “I happen to think it’s fundamentally wrong, but so far the people that matter don’t agree with me.”

Following the *Padilla* decision, he



called the Minnesota Department of Revenue, the body that issued the refund check. He asked if the department believed that Padilla received assistance based on need.

“They told me they don’t administer relief based on need,” he said.

The bankruptcy judge based the decision on the fact that Padilla was a recipient based on need “so I don’t know how you can say that if the commissioner says we don’t give relief based on need,” he said.

‘Where does it end?’

Additionally, Iannacone said there are several policy implications with the treatment of refund checks as exempt from wage garnishments.

“If you get a property tax refund every year, are you perpetually a

recipient of relief based on need?” he said. “I understand where the court is coming from, but what about other income-based eligibility? What if your kid qualifies for free and reduced lunch or gets a scholarship [to go to college]? Are you a recipient of relief based on need? Those judgments have to be made.”

The recent bankruptcy decisions have opened the doors to an endless stream of ‘what ifs,’ he said.

He also noted that the income cut-off to receive a property tax refund is \$90,000 a year: a comfortable living for someone to ask to be exempt from wage garnishment.

“Where does it start and where does it end?” he said. “Under [the decisions], there is no end in sight.”

