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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In Re: )  
 ) No. 99-01962-W13  
VANETTEN, CARL M., )  
 ) MEMORANDUM DECISION  
Debtor. )

THIS MATTER came on for hearing before the Honorable Patricia C. Williams on August 4, 1999 and November 1, 1999 upon the Chapter 13 Trustee's objection to confirmation of the debtor's plan. The basis for the Trustee's objection to confirmation is that the debtor is not devoting future federal income tax refunds to fund the plan even though a claim for past due child support is to be satisfied by the plan.

**FACTS**

11 U.S.C. § 1325(b)(1)(B) provides that if an objection to confirmation of the plan is filed, the court may not approve the plan unless it provides that all of the debtor's projected disposable income be applied to make payments under the plan. The only evidence before the court of the debtor's projected disposable income in this case is that contained in the court file, primarily the debtor's proposed Chapter 13 plan and schedules, including Schedule "E". Those documents reflect that the debtor's gross monthly income is wages of \$1,995.60

*R 43*

**FILED**

MEMORANDUM DECISION - 1

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ENTERED DEC 13 1999

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*W. Natzinger*

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U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

*AH*

1 [including overtime] or roughly \$23,940 per year. Schedule "I"  
2 reflects a monthly withholding from his wages of \$225 for social  
3 security and payroll taxes. The debtor's net monthly income is then  
4 \$1,770.60 according to Schedule "I". The debtor is single and has one  
5 child of whom he apparently now has custody as Schedule "J" shows no  
6 expense for current child support and an expense for day care.

7 The plan proposes a monthly payment of \$740 for 37 months. The  
8 plan will pay a continuing claim secured by the debtor's home and  
9 payment in full for a priority claim filed by the Department of Social  
10 and Health Services of the State of Washington. That priority claim  
11 represents past due child support and is in the amount of \$1,668.25.  
12 Unsecured creditors will receive nothing under the plan.

#### 13 ISSUE

14 If a Chapter 13 plan proposes to satisfy a significant priority  
15 claim for past due child support, must the debtor devote future federal  
16 income tax refunds to fund the plan?

#### 17 DISCUSSION

18 The Trustee proposes that this court rule that all Chapter 13  
19 debtors whose plans propose to satisfy a priority claim for delinquent  
20 child support be required to submit their federal income tax returns to  
21 fund their plan. Although both federal and state public policy favors  
22 the enforcement and collection of delinquent child support obligations,  
23 the method by which the Trustee seeks to accomplish this policy is not  
24 supported by 11 U.S.C. § 1325.

25 Since *In re Anderson*, 21 F.3d 355 (9<sup>th</sup> Cir. 1994), it has been  
26 recognized that a Chapter 13 Trustee can require payment of all  
27 projected but not all actual disposable income to a plan. In that case,

1 the Trustee required all Chapter 13 debtors to sign a "Best Efforts  
2 Certificate" which was an agreement by the debtors to pay all actual  
3 disposable income to the Trustee. The Trustee would periodically review  
4 the debtors' financial status and then adjust their plan payments to  
5 reflect their actual disposable income. The Ninth Circuit held that  
6 such a blanket requirement to pay actual disposable income was contrary  
7 to 11 U.S.C. § 1325(b)(1)(B) which provides that a plan must require  
8 payment of "all of the debtor's projected disposable income" as of the  
9 date of confirmation. The court further held that the Trustee's  
10 unilateral adjustment of plan payments contravened § 1329 as the Trustee  
11 could only request a modification of plan, not unilaterally modify it  
12 without court approval.

13 Unlike the situation in the *Anderson* case, here the Trustee has no  
14 blanket requirement that all debtors agree to devote actual disposable  
15 income to the plan or even that all debtors devote federal income tax  
16 refunds to the plan. Rather, the requirement sought to be imposed by  
17 the Trustee is that those debtors who have significant priority claims  
18 for past due child support devote any actual income tax refunds to the  
19 plan.

20 One of the bases for the Trustee's position is the Tax Refund  
21 Interception Program which arises under 26 U.S.C. § 6402(c). That  
22 program assists state governments in collecting past due child support.  
23 When an individual is identified as owing a specific amount of past due  
24 support by the state, that information is sent to the IRS which  
25 determines whether the individual is entitled to a tax refund. If one  
26 is due, the IRS intercepts the refund and pays the refund (to the extent  
27 it does not exceed the support owed) to the state. The procedure is set

1 forth in 42 U.S.C. § 664(a)(3)(A) and 45 C.F.R. 303.72. The  
2 Congressional policy of enforcing delinquent child support obligation is  
3 so strong that 26 U.S.C. § 6305 provides the IRS with full collection  
4 power resulting in the taxpayer's assets being seized to satisfy past  
5 due support obligations. That strong Congressional policy is also  
6 apparent in the Bankruptcy Code which excepts child support obligations  
7 from discharge and provides priority status to such claims. 11 U.S.C.  
8 § 507(a)(7).

9 Absent this bankruptcy proceeding, any federal income tax refunds  
10 of the debtor would be intercepted and paid to the state's Department of  
11 Social and Health Services for application to the debtor's past due  
12 child support obligation. The Trustee argues that if debtors such as  
13 this one are not required to devote income tax refunds to the funding of  
14 the plan, the strong federal policy favoring collection of child support  
15 debt is abrogated at least to the extent it is implemented by the Tax  
16 Interception Program. Such debtors would be able to avoid their  
17 obligation to devote income tax refunds to the payment of past due child  
18 support contrary to the policy and obligations expressed in 26 U.S.C. §  
19 6402(c).

20 The Trustee is correct in his conclusion that if debtors with  
21 significant past due child support are not required to commit federal  
22 income tax refunds to fund a Chapter 13 plan, those debtors will avoid  
23 the effects of the Tax Refund Interception Program. However, the  
24 avoidance of a program which automatically intercepts income tax refunds  
25 is simply another benefit of commencing a bankruptcy proceeding. The  
26 intercept program is a device or procedure to collect a debt, albeit a  
27 debt with a strong social policy of repayment. Many debt collection

1 procedures or devices are nullified or disrupted by a bankruptcy  
2 proceeding.<sup>1</sup> The Bankruptcy Code may and does modify many substantive  
3 rights of those who hold claims against the debtor. There is nothing in  
4 the federal statutes authorizing the Tax Refund Interception Program  
5 which renders the Bankruptcy Code inapplicable to the Program. The  
6 issue of whether any Chapter 13 debtor must devote future income tax  
7 refunds to the plan is to be determined by the application of the  
8 Bankruptcy Code.

9 A Chapter 13 debtor is required to devote "projected disposable  
10 income" to the funding of a plan. 11 U.S.C. § 1325(b)(1)(B).  
11 Procedurally then, in order to require a debtor to devote income tax  
12 refunds or any other source of income to a plan, the issue must first be  
13 raised in an objection to confirmation, and the Trustee, after review of  
14 the individual case, has the burden of coming forward with some evidence  
15 that the debtor may receive such income. Although not addressing the  
16 issue of past due child support, the appellate court stated in *In re*  
17 *Heath*, 182 B.R. 557, 559 (9<sup>th</sup> Cir. BAP 1995):

18 The Trustee's requirement in these cases, that the debtors  
19 submit any future tax refunds they receive toward payment  
20 under their plan, regardless of whether any refund could be  
21 projected as of the effective date of the plan, runs afoul of  
22 *Anderson*. Like the trustee in *Anderson*, the Trustee is  
23 requiring the debtors here to submit actual rather than  
24 projected income to the plan payments.

25 The inclusion in the plan of a past due child support claim does  
26 not change this analysis. The analysis of whether debtors should be  
27 required to devote federal income tax refunds to the funding of a plan  
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<sup>1</sup>No issue has been raised concerning the right of the IRS to  
continue to intercept income tax refunds post-bankruptcy filing.

1 requires a case-by-case analysis of whether that debtor is likely to  
2 receive any such income tax refunds. If so, assuming that the refunds  
3 constitute disposable income, they must be devoted to the plan  
4 regardless of the nature of claims to be paid by the plan. If refunds  
5 are not projected, the debtor cannot be required to agree to devote any  
6 such refunds to the funding of the plan. This would be equivalent to a  
7 requirement to devote actual disposable income which is contrary to the  
8 holding in *Anderson, supra*. As discussed in *In re Heath* and *In re*  
9 *Kuehn* 177, B.R. 671 (D. Ariz. 1995), tax refunds may be projected based  
10 upon the debtor's Schedule "I" which reflects that deductions from wages  
11 for social security and taxes is above the standard deductions for that  
12 particular debtor. Schedule "I" in this case demonstrates a withholding  
13 of \$225 per month for social security and payroll taxes from gross wages  
14 of \$1,995.60. There is no evidence that this debtor is "over  
15 withholding" or that a tax refund is likely to be received.

16 The Trustee argues that if not required to devote income tax  
17 refunds to a plan, debtors may be tempted to either manipulate wage  
18 deductions pre-confirmation or change them post-confirmation in order to  
19 receive a tax refund. Pre-confirmation manipulation of withholding  
20 would ordinarily be detected by the Trustee and by the court from a  
21 review of Schedule "I". The Trustee is familiar with the standard  
22 payroll deductions for social security and federal taxes and those are  
23 readily available to him. If the Trustee believes over withholding may  
24 be present, but that the evidence of Schedule "I" itself is not  
25 sufficient, he can always request copies of actual pay records or ask  
26 questions concerning withholding at the 341 meeting. There may be other  
27 easily obtainable evidence that income tax refunds are projected such as

1 a debtor's admission of a history of receiving such refunds or copies of  
2 tax returns from prior years.

3 Post-confirmation manipulation would not benefit the debtor as the  
4 debtor would be "robbing Peter to pay Paul." If wage deductions are  
5 increased after confirmation that simply decreases the net income  
6 available to the debtor for living expenses but does not change the  
7 amount due under the plan. The debtor would be forced to reduce regular  
8 living expenses, which as part of the confirmation process the court has  
9 already determined to be reasonable. The debtor would in effect be  
10 "robbing Peter" (reducing amount available for living expenses) to "pay  
11 Paul" (receive a tax refund).

12 The Trustee, based upon a review of the schedules and plan or, if  
13 necessary, other easily obtainable information, should be able to meet  
14 his burden of producing evidence of his contention that income tax  
15 refunds are projected. Once such evidence is submitted, the debtor will  
16 continue to have the ultimate burden of proof that the proposed plan  
17 complies with the requirements of the Code, including the requirement  
18 that all projected disposable income is devoted to the funding of the  
19 plan.

#### 20 CONCLUSION

21 A debtor who proposes to satisfy a priority claim for past due  
22 child support is not required to devote future federal income tax  
23 refunds to the plan unless the Trustee first puts the debtor's  
24 disposable income at issue by raising an objection to plan confirmation  
25 and meeting his burden of producing evidence that income tax refunds  
26 constitute projected disposable income. In this case, Schedule "I"  
27 contains no such evidence and no other evidence has been presented. The

1 plan filed March 31, 1999 is confirmed and an order will be entered  
2 accordingly.

3 The Clerk of the Court is directed to file this Memorandum Decision  
4 and provide copies to counsel.

5 DATED this 10<sup>th</sup> day of December, 1999.

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8 PATRICIA C. WILLIAMS, Bankruptcy Judge

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