UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION-FLINT

In re:

LORENZO ROME COLLIER,

Case No. 22-30274-jda
Chapter 7
Hon. Joel D. Applebaum

Debtor.
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OPINION AND ORDER GRANTING FRANKENMUTH CREDIT UNION'S MOTION FOR RELIEF FROM STAY

This matter is before the Court on the motion of creditor, Frankenmuth Credit Union ("Frankenmuth"), for relief from the automatic stay so that Frankenmuth may enforce its pre-petition non-periodic writ of garnishment with respect to Debtor's 2021 tax refund. Debtor concedes that Frankenmuth's motion should be granted in part, but argues that the amount of the tax refund must be prorated. According to Debtor, only that portion of the tax refund attributable to the period prior to service of the writ of the garnishment on November 1, 2021 is subject to Frankenmuth's motion, even though Debtor did not file his chapter 7 bankruptcy petition until February 25, 2022. For the reasons set forth below, this Court GRANTS Frankenmuth's motion with respect to the entire tax refund.

I.

FACTUAL BACKGROUND

On August 28, 2019, Frankenmuth obtained a judgment against Debtor, Lorenzo Rome Collier, for $10,281.83 in 70th District Court in Saginaw (Case No. 19-0921-GC-5).

On June 30, 2021, Frankenmuth obtained a writ for garnishment in the state court case. On November 1, 2021, Frankenmuth served its writ on the Michigan Department of Treasury to obtain Debtor's 2021 tax refund, if any. At that time, the 2021 tax year had not ended, and Debtor had not yet filed his 2021 tax return.[1]

On February 25, 2022, Debtor filed his chapter 7 bankruptcy petition. On his Schedule C, Debtor exempted "Garnish Funds" in the amount of $1,600. (Dkt. No. 9). Debtor did not indicate that the garnishment applied to his 2021 state tax refund. On March 7, 2022, Frankenmuth notified the 70th District Court of the pending bankruptcy proceeding, and the state court case was administratively closed.

On March 10, 2022, Frankenmuth filed a motion for relief from stay in Debtor's bankruptcy case so that it could continue to exercise its lien rights over the Debtor's 2021 tax refund.

[1] Unless extended, the 2021 tax return could be timely filed as early as January 24, 2022 and as late as April 15, 2022.

On March 24, 2022, Debtor objected to Frankenmuth's motion on the ground that Frankenmuth is only entitled to a prorated amount of Debtor's tax refund.[2]

On April 4, 2022, the Court held a hearing on Frankenmuth's motion, at which time the Court adjourned the matter to permit the parties to submit briefs on the proration issue.

On May 5, 2022, Frankenmuth filed a brief in support of its motion, arguing that, because the subject refund was for a pre-petition tax year, there is no legal basis to prorate the tax refund.

On May 27, 2022, Debtor filed his response brief, conceding that lifting the stay is appropriate with respect to that portion of the tax refund that "accrued" prior to the service of the writ of garnishment on November 1, 2021, but arguing that Frankenmuth is not entitled to any of the tax refund attributable to the two month period after November 1, 2021.

On June 3, 2022, Frankenmuth filed its reply to Debtor's response.

II.

ANALYSIS

Garnishments of state tax refunds are specifically addressed in MCL §600.4061, MCL §600.4061a, and, provided that they do not conflict with these

[2] Debtor also argued that the State of Michigan was bound by the automatic stay and could not remit the refund to Frankenmuth, even if Frankenmuth was successful on its motion. Debtor has since abandoned this argument.

statutes, the Michigan Court Rules. *See* MCL §600.4061a(7). Here, there is no conflict between the statutes and the court rules. Under MCL §600.4061 and MCL §600.4061a, after the service of a writ of garnishment on the State, and assuming no timely objection is filed, the State is required to intercept the tax refund and deposit the amount available for garnishment with the Clerk of the Court or the plaintiff's attorney of record in the garnishment action. MCL §600.4061a; *See In re Newberry*, 604 B.R. 37 (Bankr. E.D. Mich. 2019)(outlining obligations of the State as a garnishee).

Under the Michigan Court Rules, the garnishee is liable for "all debts, *whether or not due*, owing by the garnishee to the defendant when the writ is served on the garnishee, except for debts evidenced by negotiable instruments or representing the earnings of the defendant." MCR 3.101(G)(1)(d)(emphasis added). Consequently, the State, as garnishee, would be liable for the entire tax refund, whether or not due, at the time the garnishment is served. *See e.g., In re Manuel*, 2014 WL 7405471, *2 (Bankr. E.D. Mich., December 24, 2014) *citing* MCL §600.4061a ("A writ of non-periodic tax garnishment continues until the creditor receives all of the money due under the garnishment, or the writ is otherwise terminated or released.").

In this case, the writ of garnishment was served on the State on November 1, 2021 to intercept Debtor's 2021 tax refund. At the time the writ was served, therefore, Frankenmuth had a perfected lien in the entire tax refund, and the garnishment attached to the entire 2021 tax refund. MCR 3.101(G)(1)(d). *See Bleau v. First of Am. Bank-Central (In re Arnold)*, 132 B.R. 13, 14-15 (Bankr. E.D. Mich. 1991) (lien perfected when writ of garnishment served). Consequently, Debtor's subsequent bankruptcy filing, although staying collection action, had no effect on the garnishment served pre-petition regarding a tax refund based entirely on a pre-petition tax year.

Relying on *Araj v. Kohut (In re Araj)*, 371 B.R. 240, 243-44 (E.D. Mich. 2007) and *In re Strong*, Case No. 12-21523-dob (Bankr. E.D. Mich. Dec. 21, 2012), Debtor seeks to apply bankruptcy concepts to a pre-petition tax refund garnishment to argue that proration is required. If the garnishment *and* Debtor's bankruptcy filing occurred in the same year, perhaps proration of the tax refund between the pre and post-petition periods would be required. *See e.g., Araj v. Kohut (In re Araj)*, 371 B.R. at 243 ("In this case the bankruptcy court prorated the tax refund so that only that portion of the refund that related to Araj's prepetition past became property of the estate. 'This is entirely appropriate when only part of the payment is based upon prepetition conduct.'") (internal citation omitted). Here, however, there is no bankruptcy justification to prorate a pre-petition tax refund garnishment. The issue is entirely one of state law which, as discussed, treats the entirety of the 2021 tax refund as subject to Frankenmuth's writ of garnishment.

Debtor also analogizes tax refund garnishments to non-periodic garnishments of bank accounts, arguing that just as Frankenmuth could only garnish the amount in a bank account at the time the garnishment was served, Frankenmuth can only garnish the amount of the tax refund that had accrued at the time its writ was served on the State.

This Court disagrees with Debtor's analogy. Unlike a tax refund, money deposited into a bank account after service of a non-periodic writ of garnishment is not on account of *a debt owing by the garnishee* bank to the defendant. Tax refunds, in contrast, are debts owed by the State to the defendant, and the Michigan Court Rules specifically allow garnishments of "debts, whether or not due, owing by the garnishee to the defendant." MCR 3.101(G)(1)(d). Accordingly, the garnishment applies to the taxes due for the entire year, which amount can only be determined after the tax year is completed and the tax returns are filed. To find otherwise would run contrary to the applicable statutes and court rules, create enormous accounting difficulties for the State that are not contemplated in the applicable statutes, and would improperly limit a creditor's ability to garnish tax refunds.

III.

CONCLUSION

Because Debtor has not raised any defenses to the motion for relief from stay, with the exception of the arguments related to proration, and based on the findings set forth in this Opinion,

IT IS HEREBY ORDERED that Frankenmuth's Motion to Lift the Automatic Stay is GRANTED.

Signed on June 29, 2022

/s/ Joel D. Applebaum

Joel D. Applebaum
United States Bankruptcy Judge