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In re:	:	
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Stamatios F. Pelardis,	:	Chapter 13
	:	Case No. 15-10949 (CGM)
Debtor.	:	
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**MEMORANDUM DECISION AND ORDER
DENYING TRUSTEE’S MOTION TO DISMISS**

A P P E A R A N C E S :

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Chapter 13 Standing Trustee

**CECELIA G. MORRIS
CHIEF UNITED STATES BANKRUPTCY JUDGE**

Before the Court is the Chapter 13 Trustee (the “Trustee”)’s Motion to Dismiss (the “Motion to Dismiss,” ECF No. 21) with the Affirmation Accompanying Reply Memorandum of Law In Support of Motion to Dismiss (the “Affirmation,” ECF No. 27), seeking to dismiss Stamatios F. Pelardis (the “Debtor”)’s chapter 13 case primarily on the ground that the Debtor’s failure to turn over the entire amount of the 2018 tax refund constitutes a material default under the Debtor’s confirmed chapter 13 plan. The Debtor filed Oppositions to the Trustee’s Motion to Dismiss (the “Opposition,” ECF Nos. 22, 34), asserting that the Debtor is only obligated to pay the Debtor’s share of the joint tax refund, excluding his non-debtor spouse’s share. On

December 12, 2019, the Court held a hearing on the Motion to Dismiss and the Opposition and denied the Trustee's Motion for the following reasons set forth in this Memorandum Decision.

Jurisdiction

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334(a), 28 U.S.C. § 157(a) and the Standing Order of Reference signed by Chief Judge Loretta A. Preska dated January 31, 2012. Consideration of this Motion to Dismiss constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A).

Background

On April 16, 2015, the Debtor filed the instant chapter 13 case. On April 16, 2015, the Debtor proposed a chapter 13 plan, which was amended on September 1, 2015 (the "Plan," ECF No. 12) and confirmed on September 15, 2015 by the Court order (the "Order Confirming Plan" ECF No. 14). The terms of the Plan obligated the Debtor to pay "[a]ll tax refunds in excess of \$1,500." Plan, at 1. On August 19, 2019, the Chapter 13 Trustee (the "Trustee") filed the Motion to Dismiss and the Affirmation, seeking to dismiss the Debtor's case for the Debtor's failure to remit the entire amount of the 2018 tax refund. The Affirmation states that the Debtor failed to submit his non-debtor spouse's portion (50%) of the total amount of the 2018 joint tax refund (\$6,938)¹ to the Trustee. The Debtor filed the Opposition, asserting that the Debtor is only obligated to turn over the Debtor's share of the post-confirmation joint tax refund.

The issue in this case is whether the *non-debtor spouse's* share of post-confirmation tax refund should be also turned over to the Trustee for distribution to the Debtor's creditors pursuant to the Plan. The Trustee argues that the failure to surrender the non-debtor spouse's

¹ There is a slight discrepancy (\$36.00) between what the Trustee and the Debtor assert to be the total amount of the tax funds received (Trustee: \$ 6,974.00; Debtor: \$ 6,938.00).

share of the tax refund constitutes a material default under the Plan, because the non-debtor spouse pledged her entire income to the Plan and the Plan language is clear in that the entire tax refund, including the non-debtor spouse's share, should be remitted.

The non-debtor spouse's share of the refund is not the property of the estate and the terms of the Plan did not specify that the non-debtor's share of the tax refund would be turned over to the Trustee. The Court finds that only the Debtor's portion of the tax refund should be remitted to the Trustee. The Trustee's Motion is denied.

Discussion

The non-debtor spouse's share of the joint tax refund is not property of the post-confirmation estate under sections 1306 and 541 of the Bankruptcy Code. *See* 11 U.S.C. § 541(a)(1) (“[E]state is comprised of ... all legal or requisite interests of the *debtor* in property as of the commencement of the case.”) (emphasis added); 11 U.S.C. § 1306 (“Property of the estate includes ... earnings from services performed by the *debtor* after the commencement of the case...”) (emphasis added); *In re Crowson*, 431 B.R. 484, 488-90 (10th Cir. BAP 2010) (holding that only the portion of the joint refund allocated to the debtor is included as property of the estate); *In re Malewicz*, 457 B.R. 1, 5 (Bankr. E.D.N.Y. 2010) (“[T]he Court finds that there is no basis to conclude that the Non-Debtor Spouse's interest in the tax refund is property of the estate under the Bankruptcy Code.”); *In re Edwards*, 363 B.R. 55 (Bankr. D. Conn. 2007) (finding that the estate's interest in a joint refund consisted only of the amount of the refund allocated to the debtor). In the instant case, a refund is due to each the Debtor and his non-debtor spouse. The Court finds that the respective interests should be allocated between the Debtor and his spouse and that only the Debtor's interest in the refund is property of the estate.

The fact that the non-debtor spouse's monthly income was included to fund the Debtor's Plan does not automatically compel the spouse to contribute *her* property to the Plan. *See In re Malewicz*, 457 B.R. at 7 (“[W]hile a non-debtor spouse’s income is considered in determining projected disposable income, this cannot in and of itself be the basis to require the non-debtor to contribute such income for distribution to creditors under the Plan.”); *In re Ladieu*, 548 B.R. 49, 61 (Bankr. D. Vt. 2016) (“Since only the debtor is required to make plan payments, the non-debtor’s spouse’s income is merely a factor in calculating the debtor’s disposable income; the non-debtor spouse’s contribution to household expenses are not specifically ‘pledged’ or earmarked for turnover to the trustee.”).

The Plan provision at issue requiring the Debtor to pay “[a]ll tax refunds in excess of \$1,500” does not make a specific reference to the non-debtor spouse’s share or to jointly filed returns. Nor does the Order Confirming Plan require the non-debtor spouse’s interest in post-confirmation tax refund to be devoted to the Plan. Order Confirming Plan, ECF No. 14 at 1. As such, the Trustee cannot reach her share of the tax refunds. *See In re Malewicz*, 457 B.R. at 7 (the language, “[i]ndicated tax refunds are to be paid to the Trustee upon receipt” is not clear enough to reach the non-debtor spouse’s share of the tax refunds, because it does not specifically refer to the non-debtor spouse’s share of the joint tax refund).

Conclusion

The non-debtor spouse’s share of the refund is not the property of the estate and the terms of the Plan did not specifically refer to the non-debtor spouse’s share of the joint tax refund so as to allow the Trustee to reach the non-debtor spouse’s share of the tax refunds. The Trustee’s Motion to Dismiss is **DENIED**.

Dated: January 24, 2020
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge
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