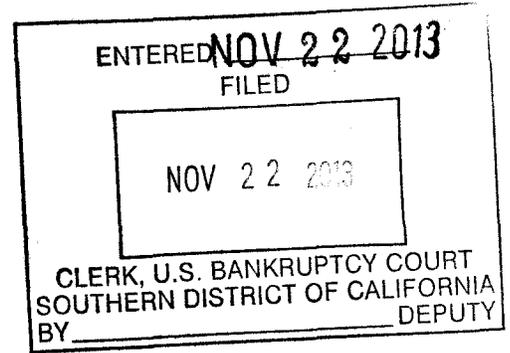


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WRITTEN DECISION – NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re: ) BANKRUPTCY NO: 13-02903-MM7  
SERGEY EGOROV, )  
Debtor, ) CHAPTER: 7  
) MEMORANDUM DECISION RE  
) TRUSTEE'S OBJECTION TO CLAIM OF  
) EXEMPTION FILED BY DEBTOR  
)  
) DATE: October 10, 2013  
) TIME: 10:00 a.m.  
) CRTRM: 1  
)  
) JUDGE: Margaret M. Mann

---

1 **I. INTRODUCTION**

2 On March 25, 2013, debtor Sergey Egorov ("Debtor") voluntarily filed a Chapter 7 bankruptcy  
3 petition. As a California debtor, Egorov was required to select from the California exemption options  
4 instead of the federal exemption options because California opted out of the federal exemption regime  
5 through 11 U.S.C. § 522(b)(2). See Cal. Civ. Proc. Code § 703.130; *Drummond v. Urban (In re*  
6 *Urban)*, 375 B.R. 882, 888 (B.A.P. 9th Cir. 2007).

7 Under California law, a debtor in bankruptcy may choose from two alternative sets of  
8 exemptions: the exemptions available under Cal. Civ. Proc. Code § 703.140(b) that mirror the federal  
9 exemptions, or the regular state law exemptions. *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R.  
10 386, 390 (B.A.P. 9th Cir. 2003). Debtor chose the regular state law exemptions, which provide a large  
11 homestead exemption, but do not include a wildcard exemption that could cover any property up to a  
12 specified amount. He initially scheduled exemptions for two cars, equity in his residence, furnishings  
13 and personal effects. He later amended his schedules and claimed several more exemptions, including  
14 an exemption for a federal tax refund worth \$5,561.00, consisting exclusively of earned income tax  
15 credits ("EITC") and child tax credits (collectively "Tax Credits").

16 Debtor claimed the full amount of the Tax Credits exempt under Cal. Code Civ. Pro. § 704.210,  
17 which exempts all property not subject to a money judgment; in other words, property interests that are  
18 not assignable or transferable. See Cal. Civ. Proc. Code § 695.030(a) ("Except as otherwise provided  
19 by statute, property of the judgment debtor that is not assignable or transferable is not subject to  
20 enforcement of a money judgment."). Debtor argues that the Tax Credits are inalienable public  
21 assistance benefits, citing Cal. Welf. & Inst. Code § 11002, providing that aid given under any public  
22 assistance program is "absolutely inalienable" by sale, assignment or otherwise. Debtor did not  
23 schedule the exemption specifically available for public assistance benefits. Cal. Civ. Proc. Code  
24 § 704.080 exempts "public benefits" held in a deposit account, but only to the extent of \$1,225.

25 Chapter 7 Trustee Leslie Gladstone timely filed an objection to Debtor's exemption for the Tax  
26 Credits, arguing that the Tax Credits are not exempt under any California exemption since they are not  
27 aid given under a public assistance program. The Trustee reasonably speculates Debtor relied on the  
28

1 potentially unlimited general exemption for inalienable property since the value of the Tax Credits is  
2 greater than the cap for the specific public benefits exemption.

3 Having analyzed the parties' contentions, the Court concludes: 1) the Tax Credits are subject to  
4 levy under federal law and cannot fit within the general exemption for inalienable property interests  
5 claimed by Debtor as provided by Cal. Code Civ. Pro. § 704.210; and 2) the Tax Credits are not a  
6 public assistance benefit as necessary to qualify for the \$1,225 specific exemption provided under Cal.  
7 Civ. Proc. Code § 704.080. Since the Tax Credits are not exempt on any ground under California law,  
8 the Court sustains the Trustee's objection.

9 **A. Jurisdiction**

10 The Court has jurisdiction to resolve objections to exemption claims pursuant to 28 U.S.C.  
11 § 157(b)(2)(B). *Urban*, 375 B.R. at 887. This Court has authority to enter a final judgment on the  
12 Trustee's exemption objection as the objection resolves claims to property of the estate, and is therefore  
13 central to the public bankruptcy scheme. *In re Carlew*, 469 B.R. 666, 672-73 (Bankr. S.D. Tex. 2012),  
14 *aff'd. West v. Carlew*, 2012 U.S. Dist. LEXIS 101770 (S.D. Tex., July 23, 2012) (*Stern v. Marshall*,  
15 131 S. Ct. 2594 (2011), did not limit bankruptcy court's authority to enter a final order in resolving an  
16 exemption objection).

17 **B. Standard of Review**

18 A claimed exemption is "presumptively valid." *Tyner v. Nicholson (In re Nicholson)*, 435 B.R.  
19 622, 630 (B.A.P. 9th Cir. 2010). "[I]f a party in interest timely objects, 'the objecting party has the  
20 burden of proving that the exemptions are not properly claimed.'" *Id.* (quoting Fed. R. Bank. Proc.  
21 4003(c)). While the allocation of the burden of proof is not at issue in this case since no facts are in  
22 dispute and the issue is purely one of law, the Court recognizes that the availability of exemptions is to  
23 be liberally construed in favor of the debtor. *Hitt v. Glass (In re Glass)*, 164 B.R. 759, 764 (B.A.P. 9th  
24 Cir. 1994); *In re Gardiner*, 332 B.R. 891, 894 (Bankr. S.D. Cal. 2005). Even liberally construing the  
25 presumption in favor of claimed exemptions, the Court cannot find the Tax Credits exempt under  
26 California law.

1 **II. ANALYSIS**

2 **A. Nature of Tax Credits**

3 Logically, the first step in considering the validity of an exemption claim is to determine the  
4 nature of the property interest at issue. *See In re Rutter*, 204 B.R. 57, 59 (Bankr. D. Or. 1997); *In re*  
5 *Thompson*, 336 B.R. 800, 801 (Bankr. D. Nev. 2005). Tax Credits are considered an overpayment of  
6 tax, or a tax refund, under the relevant provisions of the Social Security Act and the Internal Revenue  
7 Code. *Sorenson v. Secretary of Treas. of U.S.*, 475 U.S. 851, 859 (1986) (EITC are an overpayment of  
8 tax that can be intercepted by state authorities and used to pay child support obligations).

9 **B. Tax Credits are Not Inalienable**

10 As properly characterized, Tax Credits are therefore generally subject to levy. *Sorenson*, 475  
11 U.S. at 864 n.7 (noting that "once an individual has actually received his tax-refund payment, the  
12 proceeds of that refund, even if they reflect an earned-income credit component, are subject to levy");  
13 26 U.S.C. § 6331 (authorizing the Secretary of the Treasury to levy upon all property and rights to  
14 property when there is a lien for the payment of a tax); 31 U.S.C. § 3720A (authorizing levy of tax  
15 refunds for the payment of past-due child support obligations, as well as any legally enforceable debt  
16 against a federal agency); *Brandt v. Fleet Capital Corp. (In re TMCI Elecs.)*, 279 B.R. 552, 555  
17 (Bankr. N.D. Cal. 1999 (stating the right to receive a tax refund is a general intangible, to which a  
18 security interest may attach once the debtor acquires rights in it); *see also Official Comm. of*  
19 *Unsecured Creditors of Touse, Inc. v. Citigroup N. Am., Inc. (In re Touse, Inc.)*, 406 B.R. 421, 429  
20 (Bankr. S.D. Fla. 2009) (describing "a blanket lien on intangibles that attaches to a federal tax refund").  
21 Since Debtor's Tax Credits are generally subject to levy, they are not inalienable and cannot be exempt  
22 under Cal. Code Civ. Pro. § 704.210.

23 Debtor nevertheless contends that California law carves out a specific exemption for the Tax  
24 Credits because they are public assistance benefits as defined in Cal. Welf. & Inst. Code § 10061,  
25 which are categorically inalienable under Cal. Welf. & Inst. Code § 11002. To analyze this contention,  
26 the Court must first consider whether this specific California exemption overrides federal law deeming  
27 the Tax Credits subject to levy. *Sorenson*, 475 U.S. at 864 n.7.

1 State exemptions do not overcome the operation of federal law; rather, state exemptions apply  
2 subject to federal law. *United States v. Bess*, 357 U.S. 51, 57 (1958). Because the state exemptions do  
3 not apply to the federal government, the tax refund payment is subject to levy by the federal  
4 government regardless of whether it is determined to be a public assistance benefit under California  
5 law. *Little v. United States*, 704 F.2d 1100, 1105 (9th Cir. 1983) ("Of course, once it is determined that  
6 the taxpayer possesses property or rights to property recognizable under state law the federal tax  
7 consequences pertaining to such rights are solely a matter of federal law and, consequently, liens  
8 provided by federal statute may not be defeated by state exemption statutes.").

9 Because the Tax Credits are subject to levy under federal law regardless of whether they are  
10 public assistance benefits exempt under state law, the Court concludes they cannot fit within the  
11 general unlimited exemption provided by Cal. Code Civ. Pro. § 704.210.

12 **C. The Tax Credits are not Public Assistance Benefits under California Law**

13 Even though the Tax Credits are generally subject to levy and Cal. Code Civ. Pro. § 704.210  
14 does not apply, the limited \$1,225 exemption under Cal. Civ. Proc. Code § 704.080 could be available  
15 if the Tax Credits can be considered public assistance benefits as defined in Cal. Welf. & Inst. Code  
16 § 10061. Section 10061 provides a comprehensive list of over 30 different "public assistance  
17 programs" defined as those included in Part 3 of Cal. Welf. & Inst. Code § 11000, *et. seq.*, which lists  
18 aid for needy families, supportive services, and general aid, among other items. *See, e.g.*, Cal. Welf. &  
19 Inst. Code § 11450 (aid for needy families); Cal. Welf. & Inst. Code §11323.2 (payments for  
20 supportive services); Cal. Welf. & Inst. Code §11006.4 (AFDC payments); Cal. Welf. & Inst. Code  
21 §11006.5 (aid to the aged, blind and disabled); Cal. Welf. & Inst. Code §11008.4 (property tax  
22 assistance); Cal. Welf. & Inst. Code §11008.10 (student loans). No type of tax credits are on the list  
23 provided in Part 3 of Cal. Welf. & Inst. Code § 11000, *et. seq.* and the Court is bound to interpret the  
24 statute according to its plain language. *See Orange County Dep't of Educ. v. Cal. Dep't of Educ.*, 668  
25 F.3d 1052, 1055 (9th Cir. 2011) ("Under California law, a question of statutory interpretation begins  
26 with the statute's plain language, as the words the Legislature chose to enact are the most reliable  
27 indicator of its intent.").

1 Even though the list is statutorily required to be construed in a fair and equitable manner, *see*  
2 Cal. Welf. & Inst. Code § 11000, it is beyond this Court's authority to add an excluded item such as the  
3 Tax Credits to this well-defined list. *See Sanders v. Lawson*, 164 Cal. App. 4th 434, 440 (Cal. App. 2d  
4 Dist. 2008) ("Where the words of a statute are clear, we may not add to or alter the statute to  
5 accomplish a purpose which does not appear on its face."); *see also Silvers v. Sony Pictures Entm't,*  
6 *Inc.*, 402 F.3d 881, 885 (9th Cir. 2005) (en banc) ("The doctrine of *expressio unius est exclusio alterius*  
7 as applied to statutory interpretation creates a presumption that when a statute designates certain  
8 persons, things, or manners of operation, all omissions should be understood as exclusions."). As a  
9 federal court interpreting California law, this Court must follow these interpretive guidelines set by the  
10 California courts. *Lewis v. Tel. Employees Credit Union*, 87 F.3d 1537, 1545 (9th Cir. 1996).

11 Particularly because the California Legislature was aware of the relationship between tax  
12 refunds and public assistance benefits, the Court is convinced that the exclusion was intentional and  
13 deserving of respect. For tax year 1974 only, the California Legislature clarified that federal tax  
14 refunds were not to be considered for either public assistance eligibility or calculation of benefits. Cal.  
15 Welf. & Inst. Code § 11008.3. Tax refunds from other years are otherwise not mentioned in Part 3 of  
16 Cal. Welf. & Inst. Code § 11000, *et. seq.* Debtor's Tax Credits derive from tax year 2012, nearly 40  
17 years later than the specific 1974 tax refund that was referenced in Part 3 of Cal. Welf. & Inst. Code  
18 § 11000, *et. seq.* Even for the 1974 tax refund, the California Legislature did not consider it to be aid  
19 under a public assistance program. Instead, it was referenced to emphasize that the tax refund was not to  
20 affect the aid otherwise provided.

21 Debtor relies upon the decisions of other bankruptcy courts around the country that have found  
22 Tax Credits exempt, but his reliance is misplaced. All of these decisions can be reconciled based upon  
23 whether the specific state exemption statutes considered Tax Credits an exempt public assistance  
24 benefit. Where the state statute does not include Tax Credits within the definition of public assistance  
25 benefits, the Tax Credits are not found exempt. *See Thompson*, 336 B.R. at 803 (no state or federal  
26 exemptions apply to the EITC); *Rutter*, 204 B.R. at 61 (no exemption for EITC exists under Oregon  
27 law). Where the state statute is general or specifically includes Tax Credits, they are found exempt. *See*  
28 *In re Longstreet*, 246 B.R.611, 617 (Bankr. S.D. Iowa 2000) (holding EITC are equivalent to

1 government grants and public assistance under Iowa law and are exempt from execution); *In re Brown*,  
2 186 B.R. 224, 229 (Bankr. W.D. Ky. 1995) (EITC explicitly exempt by Kentucky law); Colo. Rev.  
3 Stat. §13-54-102(1)(o) (explicitly exempting full amount of any federal or state income tax refund  
4 attributed to an EITC or a child tax credit). The California statutes governing the exemption of public  
5 assistance benefit are simply more similar to the Oregon and Nevada exemption statutes than the states  
6 that have statutes deeming the Tax Credits exempt.

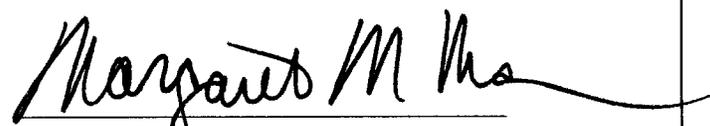
7 Debtor does not address whether the Tax Credits fit within the California statutory definition of  
8 public assistance under Cal. Welf. & Inst. Code § 10061. He instead stresses the policy reasons why he  
9 should be able to retain the Tax Credits as exempt property, citing *Sorenson*, 475 U.S. at 864 and  
10 *Vaessen v. Woods*, 35 Cal.3d 749 (1984). Relying upon the policy of protecting the indigent, *Vaessen*  
11 held that Tax Credits are excluded from the calculation of AFDC eligibility under California law as  
12 "resources" rather than as an income stream. *Id.* at 756. *Vaessen*, however, does not hold that Tax  
13 Credits are public assistance benefits, and in effect suggests the opposite. If Tax Credits were public  
14 assistance benefits, the Supreme Court in *Vaessen* would not have reversed the injunction issued by the  
15 lower court that reduced the AFDC aid to the indigent by the Tax Credits they received. *Id.* at 764.  
16 *Sorenson*, 475 U.S. at 864-65, similarly did not hold or even imply that EITC constitutes public  
17 assistance benefits; it merely acknowledged one of the goals of EITC was to provide relief for low-  
18 income families.

19 This Court wholeheartedly supports the public policy goals behind the Tax Credits, but this  
20 support does not permit it to override the clear statutory definition provided by California law.

21 **III. CONCLUSION**

22 The Tax Credits cannot be exempted under Debtor's stated exemption or under any alternative  
23 available to him given his choice to exempt the equity in his house. The Trustee's objection is  
24 sustained and she may upload an order disapproving the exemption.

25  
26 Dated: November 22, 2013

27   
28 MARGARET M. MANN, JUDGE  
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
325 West "F" Street, San Diego, California 92101-6991**

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*In re Sergey Egorov*  
Bankruptcy Case No. 13-02903-MM7

**CERTIFICATE OF MAILING**

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

MEMORANDUM DECISION RE TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION FILED  
BY DEBTOR – NOT FOR PUBLICATION

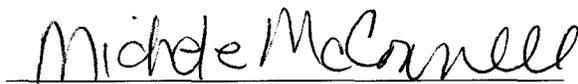
was enclosed in a sealed envelope bearing the lawful frank of the Bankruptcy Judges and mailed to each of the parties at their respective address listed below:

**Sergey Egorov**  
4119 Twilight Ridge  
San Diego, CA 92130-8690

**Leslie T. Gladstone**  
401 Via Del Norte  
La Jolla, CA 92037

**Daniel J. Winfree**  
1010 Second Avenue, Suite 1015  
San Diego, CA 92101

Said envelope(s) containing such document were deposited by me in a regular United States mail box in the City of San Diego, in said district on November 22, 2013.

  
Michele McConnell, Judicial Assistant

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TOTAL: 4

### Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Sergey Egorov	4119 Twilight Ridge	San Diego, CA 92130-8690
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