

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

IN RE:	§	
	§	
JOHN WAYNE METCALF,	§	CASE NO. 00-10278-7
	§	
Debtor	§	
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HARVEY L. MORTON, TRUSTEE,	§	
	§	
Plaintiff	§	
	§	
v.	§	ADVERSARY NO. 00-1029
	§	
THE INTERNAL REVENUE SERVICE OF	§	
THE UNITED STATES OF AMERICA,	§	
	§	
Defendant.	§	

**MEMORANDUM OPINION**

Harvey Morton, the Trustee and Plaintiff, and the Defendant, the Internal Revenue Service, have filed cross-motions for summary judgment seeking a determination of whether the debtor's pre-petition overpayment of taxes to the Internal Revenue Service is property of the bankruptcy estate. The Internal Revenue Service argues that the debtor made an irrevocable election, pre-petition, to have the overpayment credited to his subsequent year's tax liability and, therefore, the overpayment cannot be property of the estate. The Trustee contends he is entitled to rescind the election and thus receive the overpayment as a refund.

This court has jurisdiction of this matter under 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b). This memorandum opinion contains the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and FED. R. BANKR. P. 9014.

### **Facts**

John Wayne Metcalf, the debtor, filed his individual federal income tax return for the 1999 tax year on February 28, 2000. Because of withholdings and quarterly tax payments, Metcalf overpaid the IRS in the amount of \$3,995.00. Metcalf elected to have the overpayment applied to his estimated tax liability for the succeeding tax year 2000. On April 4, 2000, Metcalf filed this Chapter 7 bankruptcy proceeding. The Trustee filed an amended tax return with the IRS seeking to rescind the election made by the debtor and receive the 1999 refund on behalf of the bankruptcy estate.<sup>1</sup>

### **Discussion**

The facts are stipulated to by the parties and they agree there is no genuine issue of material fact. *See* Stipulated Facts set forth in Trustee’s and IRS’s briefs. Rule 56 of the Federal Rules, as incorporated by Rule 7056 of the Rules of Bankruptcy Procedure, provides that a party may obtain summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c); *Stults v. Conoco, Inc.*, 76 F.3d 651, 654 (5<sup>th</sup> Cir. 1996).

Section 542(a) of the Bankruptcy Code (11 U.S.C.) requires that an entity in possession of property of the estate must turn that property over to the trustee. The term “property of the estate” is defined by the Code as “including all legal or equitable interests of the debtor in property as of the

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<sup>1</sup> The Trustee stands in the place of the debtor.

commencement of the case.” See 11 U.S.C. § 541(a)(1). The thrust of the argument made by the IRS is that since the debtor elected, pre-petition, to have the overpayment applied to his subsequent year’s tax liability, that election is irrevocable and, therefore, the overpayment is no longer property of the estate as the debtor no longer has any legal or equitable interest in the property. The Trustee disagrees, contending that the overpayment is property of the estate and the IRS is required under § 542(a) to deliver that property to the Trustee.<sup>2</sup>

Several courts, including the District Court for the Northern District of Texas, have held that once a taxpayer makes an election under 26 U.S.C. §§ 6402(b) and 6513(d), which allows a taxpayer to have an overpayment credited to the succeeding year’s tax liability, that election “is irrevocable and binding upon the taxpayer and the Internal Revenue Service.” See *In re Block*, 141 B.R. 609, 610-611 (N.D. Tex. 1992); *Georges v. United States Internal Revenue Service*, 916 F.2d 1520 (11<sup>th</sup> Cir. 1990); *Martin Marietta Corp. v. United States*, 572 F.2d 839, 841, 216 Ct.Cl. 47 (1978). Accordingly, once the overpayment is properly transferred to the IRS pre-petition, it cannot become property of the estate, and is not recoverable under § 542 of the Bankruptcy Code. See *In re Block*, 141 B.R. at 611.

The debtor made a pre-petition election to have the overpayment credited to his succeeding year’s tax liability. Once the election is made by the taxpayer, there is no refund to request and the overpayment becomes an advance payment on the subsequent year’s tax bill. See *In re Block*, 141 B.R. at 611. Consequently, the debtor’s “pre-petition estimated tax payment cannot be considered a

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<sup>2</sup> The Trustee does not contend that the election was a fraudulent transfer.

legal or equitable interest of the debtor in property as of the commencement of the case, and such payment is not subject to turnover.” See *In re Block*, 141 B.R. at 611; *In re Simmons*, 124 B.R. 606 (Bankr. M.D. Fla. 1991).

The Trustee relies on another case in the Northern District of Texas, *In re Canon*, 130 B.R. 748 (Bankr. N.D. Tex. 1991). The *Canon* case was decided by the bankruptcy court prior to the district court’s decision in *In re Block*. This court, therefore, declines to follow *In re Canon*.

### **Conclusion**

The tax refund was not property of the estate when the bankruptcy was commenced and, therefore, the Trustee is not entitled to the overpayment pursuant to 11 U.S.C. § 542(a). Summary Judgment is granted in favor of the Internal Revenue Service.

Signed August 17, 2001.

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ROBERT L. JONES  
UNITED STATES BANKRUPTCY JUDGE