UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

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In re:

JOSEPH FLORIAN BATES,

Debtor.

ORDER DETERMINING STATUS OF PROPERTY AS PROPERTY OF THE BANKRUPTCY ESTATE

BKY 5-88-287

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At Duluth, Minnesota, this _____ day of September, 1990.

This Chapter 7 case came on before the Court on May 10, 1989, for hearing on Debtor's motion for a determination that his entitlement to payments under the Disaster Assistance Act of 1988 was not property of the bankruptcy estate. Debtor appeared personally and by his attorney, Mark H. Meyer. The Chapter 7 Trustee appeared by his local counsel, Steven J. Running. Upon the evidence adduced at the hearing, the briefs and arguments of counsel, and the other relevant files and records in this case, the Court makes the following order.

The facts are not controverted. Debtor is a Morrison County, Minnesota farmer. During the 1988 crop year, he put in crops of corn and oats. On October 5, 1988, he filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. After his bankruptcy filing, Debtor filed three different applications for assistance from the U.S. Department of Agriculture under the Disaster Assistance Act of 1988, Pub. L. No. 100-387, 92 Stat. 924 ("the Act"), based upon the crop losses which he incurred from the drought conditions which prevailed in Minnesota throughout 1988. The Morrison County office of the Department of Agriculture's Agricultural Stabilization and Conservation Service ("ASCS") had begun accepting applications under the Act on October 3, 1988. The Morrison County ASCS and its county committee evaluated the applications, determined Debtor's eligibility for assistance under the Act, and issued checks on account of the applications. The data on the applications and their results is summarized as follows:

APPLICATION DATE	CROP	ASCS CHECK NO.	AMOUNT
October 11, 1988	corn	22391030	$1,284.00
October 11, 1988	corn/alfalfa	22391028	$2,349.00
October 11, 1988	oats	22391039	$ 180.00
December 1, 1988	corn	22391036	$1,193.00
January 12, 1989	oats	22391033	$ 148.00
		TOTAL	$5,154.00

Because Debtor was in bankruptcy at the time, the ASCS office made the checks payable jointly to Debtor and the Trustee of his bankruptcy estate. The Trustee has negotiated the checks and holds the funds in escrow pending the outcome of this proceeding.

Debtor now moves for a determination of whether the funds held by the Trustee, as the proceeds of his entitlement to payment under the Act, are property of his bankruptcy estate. Because he neither applied nor received ASCS approval until his bankruptcy filing, he argues that his right to the payments did not vest until after the ASCS approved his application. Thus, he maintains, he had no enforceable right to the payments when he filed for bankruptcy and no such rights passed into the bankruptcy estate.

In response, the Trustee essentially argues that all of the factual conditions precedent to Debtor's entitlement to payment under the Act occurred before his bankruptcy filing, and Debtor's filing of his applications and the processing thereof were mere ministerial acts which had no effect on the underlying, pre-existing legal entitlement. Thus, the Trustee argues, the right to receive payment on account of those events passed into the bankruptcy estate, and the payments later made on account of those rights are subject to his administration.

The Bankruptcy Code provides, in pertinent part:

> The commencement of a case under section 301 . . . of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> > (1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. Section 541(a)(1). Congress intended that the reach of this language be quite broad. In re Graham, 726 F.2d 1268, 1270 (8th Cir. 1984); In re Swanson, 873 F.2d 1121, 1122 (8th Cir. 1989). The question, then, is whether Debtor had a legally-cognizable property interest under the Disaster Relief Act of 1988 when he filed for bankruptcy. He did.

Two crucial circumstances, one factual and one legal, dictate this conclusion: all of the events which established Debtor's right to disaster payments under the Act occurred before his bankruptcy filing, and the Act and its implementing program regulations required no significant continuing performance from Debtor after the date of his bankruptcy filing. Debtor's 1988 drought loss was established as an event in history before the creation of his bankruptcy estate; the legislation which created his right to assistance from the Department of Agriculture had been enacted, and the program had been fully implemented, before that same date. The assistance was there for the asking; Debtor's actual application for it, and the government's determination of his eligibility, were mere ministerial acts which did not bear on Debtor's underlying entitlement to the payments.

In this regard, Debtor's entitlement was, as the Trustee argues, somewhat analogous to a state or federal income tax refund. Income tax refunds, of course, are considered property of the bankruptcy estate if the event giving rise to the debtor's right to receive them has occurred prior to the bankruptcy filing. Segel v. Rochelle, 382 U.S. 375 (1966); In re Barfknecht, 15 Bankr. 463 (Bankr. D. Minn. 1981); In re Lange, 110 Bankr. 907 (Bankr. D. Minn. 1990). In the case of an income tax refund, that event is the accumulation of withheld wages for prospective income tax liability in amounts greater than the tax which the taxpayer

actually, ultimately owes for the year in question. The Courts implicitly recognize that the filing of an income tax return is a ministerial act which does not affect the underlying right to a refund; hence, they do not exclude the right to tax refunds from the estate merely because the debtor has not filed returns, or even because the debtor's current taxable year has not yet expired by the date of the bankruptcy filing.

An even closer analogy is that of a right of action for damages which the debtor has not yet put into suit as of the date of his bankruptcy filing. The debtor's right of recovery, again, is legally fixed by pre-petition events; the commencement of suit and the reduction of the claim to judgment only serve to fix and liquidate the debtor's pecuniary rights, but they do not create them. Congress fully intended that unliquidated rights of action would pass into the bankruptcy estate by operation of 11 U.S.C. Section 541(a)(1). H.R. REP. No. 595, 95th Cong., 1st Sess. 367 (1977); S. REP. No. 989, 95th Cong. 2d Sess. 82 (1978). The Courts have recognized and enforced this legislative intent. See, e.g., United States v. Whiting Pools, Inc., 462 U.S. 198, 205 n. 9 (1983); Jones v. Harrell, 858 F.2d 667 (11th Cir. 1988); In re Ozark Restaurant Equipment Co., Inc., 816 F.2d 1222 (8th Cir. 1987); Sierra Switchboard Co. v. Westinghouse Elect. Corp., 789 F.2d 705, (9th Cir. 1986); Tignor v. Parkinson, 729 F.2d 977 (4th Cir. 1984); In re Geis, 66 Bankr. 563 (Bankr. N.D. Ga. 1986); In re De Berry, 59 Bankr. 891 (bankr. E.D. N.Y. 1986); In re Richards, 57 Bankr. 662 (Bankr. D. Nev. 1986); In re Mucelli, 21 Bankr. 601 (Bankr. S.D. N.Y. 1982); Nat'l City Bank v. Coopers & Lybrand, 409 N.W.2d 862 (Minn. App. 1987), rev. den. (Minn. October 21, 1987).(1)

Footnote 1

The one detail which makes the unliquidated right of action an even closer corollary than an unpaid tax refund is the fact that, unlike in the case of an income tax refund, there is no discrete fund earmarked to the debtor's personal right of recover when the bankruptcy estate is created.

End Footnote

Debtor's right to payment sprang from his drought loss during crop year 1988; he could have applied for the assistance before he filed for bankruptcy, but did not. This distinguishes this case from In re Fowler, 41 Bankr. 962 (Bankr. N.D. Ia. 1984), in which farmer-debtors' rights to payment under the Department of Agriculture Payment-in-Kind ("PIK") program first implemented in early 1983 were determined not to be property of the estate in a Chapter 11 case commenced in 1981.

Beyond this, the Disaster Assistance Program was not structured so as to impose any duty of continuing performance on Debtor, as a condition of the receipt of continuing periodic payments; rather, it was structured to compensate Debtor for one historical incident of loss, via one payment. This distinguishes the present case from the several cases in which the courts have found that debtors' entitlements under pre- or post-petition applications for benefits under other Department of Agriculture programs were not property of the bankruptcy estate because they involved mutual, continuing duties which matured post-petition. See In re Schneider, 864 F.2d 683 (10th Cir. 1988) (debtors' rights to future benefits under PIK program were contingent upon their continuing post-petition performance of obligations to limit acreage in production and to practice soil conservation techniques;

thus, even though debtors had applied for program pre-petition, contract between debtors and Department of Agriculture was "executory" as of bankruptcy filing and right to post-petition payments was not property of the estate); In re Hofstee, 88 Bankr. 308 (Bankr. E.D. Wash. 1988) (post-petition periodic payments under Dairy Termination Program, in consideration for long-term abandonment of milk production, were not property of bankruptcy estate); In re Mattice, 81 Bankr. 504 (Bankr. S.D. Ia. 1987) (concluding, fairly summarily, that post-petition payments under Feed Grain ("Deficiency") Program were not property of the estate, apparently because of continuing post-petition duty to divert acreage from production); In re Lamb, 47 Bankr. 79 (Bankr. D. Vt.1985) (post-petition periodic payments under "executory" pre-petition contract for Milk Diversion Program were not property of estate, given debtors' continuing obligation to reduce dairy production). But see In re Lee, 35 Bankr. 663 (Bankr. N.D. Ohio 1983) (reaching opposite conclusion, as to PIK program). Debtor's rights under the 1988 Disaster Relief Program did not arise under a contract which was executory as of the date of his bankruptcy filing; to become entitled to payment, Debtor had only to perform the ministerial act of filing his application.(2)

Footnote 2

Debtor notes that the Morrison County ASCS committee required him to obtain crop insurance for his 1989 crops as a condition of his participation in the program. He argues that this requirement was a post-petition duty of performance which made the contract of his participation "executory," bringing it within the rule of the several cases he cites. The statute did require him to agree to obtain such insurance as a part of his application for benefits. P.L. No. 100-387, 207(a), 102 Stat. at 940. This single, isolated duty is readily distinguishable from the continuous, ongoing duties required in consideration for periodic government payments under the PIK, Diversion, and Dairy Termination programs involved in the cases Debtor cites. The nature of the requirement suggests Congress included it to avoid the possibility of repeating claims against future agricultural relief programs if disaster conditions persisted into 1989; as only a one-time payment for crop year 1988 was contemplated under the program, the requirement clearly was not imposed as a condition of receipt of continuing benefits. The statute imposes a requirement to repay 1988 disaster relief benefits on participants who failed to obtain the insurance in 1989. Pub. L. No. 100-387, 207(d), 102 Stat. at 941. As structured, this provision was really one which contemplated the defeasibility of a previously-vested contractual benefit; it did not contemplate mutual, executory obligations in both the participant and the government. Debtor's argument is a good try, but it must fail.

End Footnote

As part of his attempt to isolate the essence of the payments from any pre-petition activity or event, Debtor argues the statutory purpose of the Act was solely to provide assistance to eligible farmers for use during crop year 1989, in a manner with only incidental connections to their 1988 experience:

> It is the sense of Congress that disaster payments made to producers . . . are intended to preserve each producer's livelihood and farming operation, to enable the producer to meet pre-existing commitments and obligations, to protect the infrastructure of the United States agricultural production input, supply marketing and distribution systems, and to preserve the vitality and financial health of rural communities.

Pub. L. No. 100-387, Section 241, 92 Stat. at 944-5. However, the implementing regulations note that the program's purpose is "to make disaster payments to the eligible producers on a farm that has suffered a loss of production in 1988 crops due to drought, hail, excessive moisture, or related conditions in 1988." 7 CFR Section 1477.1 (1989). Participants alleging a loss of planted crops had to show a loss of at least 65 percent of their expected 1988 production. Pub. L. No. 100-387, Section 201(a), 100 Stat. at 933; 7 CFR Section 1477.5(a)(3)(ii) (1989). This intended function and actual result make payments under the Act quite analogous to crop insurance proceeds. To the extent they spring from a pre-petition loss, right to payment under an insurance policy are property of the estate. In re Titan Energy, Inc., 837 F.2d 325 (8th Cir. 1988); In re Hawkeye Chem. Co., 71 Bankr. 315 (Bankr. S.D. Ia. 1987).

The import of all these conclusions is that Debtor's motion must be denied.

IT IS THEREFORE DETERMINED AND ORDERED that the sum of $5,154.00, plus all accrued interest thereon, presently in possession of the Chapter 7 Trustee as the proceeds of Debtor's participation in the U.S. Department of Agriculture program under the Disaster Assistance Act of 1988, is property of his bankruptcy estate, and shall be administered by the Trustee.

BY THE COURT:

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GREGORY F. KISHEL
U.S. BANKRUPTCY JUDGE