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## NOTE

# The Eighth Circuit Allows a Child Tax Credit Exemption in Bankruptcy Proceedings: A Minty Fresh Start or Abuse of the System?

*Hardy v. Fink (In re Hardy)*, 787 F.3d 1189 (8th Cir. 2015).

REBEKAH KELLER\*

### I. INTRODUCTION

Between 2014 and 2015, bankruptcy filings across the country decreased over ten percent.<sup>1</sup> In the Eighth Circuit, bankruptcy filing rates have dropped from 57,746 in 2014 to 51,301 in 2015.<sup>2</sup> The decrease in filings in the Eighth Circuit is telling when compared to the filing statistics from 2008 and 2009 in the same circuit: in 2008, bankruptcy filings in the Eighth Circuit reached 73,677, and in 2009, filings reached 90,539.<sup>3</sup> During the height of the economic downturn in the United States, bankruptcy filings nationwide increased almost thirty-two percent from 2008 to 2009.<sup>4</sup> Even though filings rates are slowly decreasing across the nation, American citizens are still feeling the effects of the economic crisis that occurred between 2007 and 2009. While there are numerous reasons debtors file for bankruptcy, the market crash in 2008 and the subsequent economic downturn can be attributed to many individuals' financial problems.

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\* B.A., Macalester College, 2014; J.D. Candidate, University of Missouri School of Law, 2017. Associate Managing Editor, *Missouri Law Review*, 2016–2017. I would like to offer a sincere thank you to Professor Michelle Arnopol Cecil for her constant support and guidance throughout law school, particularly through the learning, writing, and editing process of this Note.

1. *U.S. Bankruptcy Courts—Bankruptcy Cases Filed, Terminated, and Pending—During the 12-Month Periods Ending September 30, 2014 and 2015*, U.S. CTS., <http://www.uscourts.gov/statistics/table/f/bankruptcy-filings/2015/09/30> (last visited Mar. 24, 2016) (bankruptcy filings have decreased nationally 10.7%).

2. *Id.* The data for 2014 bankruptcy filings was collected from October 1, 2013, through September 30, 2014. *Id.* Data for 2015 was collected from October 1, 2014, through September 30, 2015. *Id.*

3. *U.S. Bankruptcy Courts—Bankruptcy Cases Filed, Terminated, and Pending—During the 12-Month Periods Ending December 31, 2008 and 2009*, U.S. CTS., <http://www.uscourts.gov/statistics/table/f/bankruptcy-filings/2009/12/31> (last visited Mar. 24, 2016). This is an increase of 22.9% over one year. *Id.*

4. *Id.*

With money problems still pervasive in American society, and bankruptcy filing rates still so high, there are few ways in which debtors can recover from such drastic economic situations. Bankruptcy protection is one of the most common ways debtors facing insurmountable economic difficulties can pull themselves out of debt. The bankruptcy code is designed to give a fresh start to those in near financial ruin by ensuring they are unencumbered by past debt. One way to accomplish this fresh start is by a discharge of debts that are not paid in bankruptcy proceedings.<sup>5</sup> Another way to achieve this fresh start is through the exemption scheme.

Exemption schemes vary from state to state, but they generally allow debtors to keep their assets to continue a socially acceptable standard of living.<sup>6</sup> This Note addresses a common source of relief that most debtors take advantage of when filing for bankruptcy: exemption statutes and its applicability to low-income debtors who qualify for “public assistance benefits” and income-based tax credits. One exemption that commonly appears in federal and state exemption schemes is the public assistance benefit.<sup>7</sup> While commonly included in exemption statutes, public assistance benefits are not often defined within these statutes; however, the most basic definition of a public assistance benefit is a form of financial aid for the “needy.”<sup>8</sup> The scope of public assistance benefits has been a subject of scrutiny for years.<sup>9</sup> Currently, there is a hopeless split among bankruptcy courts across the country in determining whether the Child Tax Credit constitutes a public assistance benefit or not. The Eighth Circuit is the first appellate court to take up this issue.

Part II of this Note examines the issues presented in the instant case, *Hardy v. Fink*, in which the Eighth Circuit became the first circuit court to include the Child Tax Credit as a “public assistance benefit” under the Missouri exemption statute in a bankruptcy proceeding. Part III explores the

5. This is not within scope of this Note, but see generally A. Mechele Dickerson, *Lifestyles of the Not-so-Rich or Famous: the Role of Choice or Sacrifice in Bankruptcy*, 45 BUFF. L. REV. 629 (1997).

6. Some argue these exemption schemes are overly generous and rather than giving a fresh start, actually provide a head start to these debtors post-bankruptcy. See Elijah M. Alper, Note, *Opportunistic Informal Bankruptcy: How BAPCPA May Fail to Make Wealthy Debtors Pay Up*, 107 COLUM. L. REV. 1908 (2007); Timothy D. Moratzka, *Fresh Start, Head Start, or Running Start: Bankruptcy Exemption Planning*, 22-APR AM. BANKR. INST. J. 10 (2003); Lawrence Ponoroff & F. Stephen Knippenberg, *Debtors Who Convert Their Assets on the Eve of Bankruptcy: Villains or Victims of the Fresh Start?*, 70 N.Y.U. L. REV. 235 (1995).

7. 11 U.S.C. §522(d) (2012); IDAHO CODE ANN. § 11-603(3) (West 2016); 735 ILL. COMP. STAT. ANN. 5/12-1001(g)(1) (West 2016); IOWA CODE ANN. § 627.6(8)(a) (West 2016); MO ANN. STAT. § 513.430.1(10)(a) (West 2016).

8. See *Hardy v. Fink* (*In re Hardy*), 503 B.R. 722, 723 (B.A.P. 8th Cir. 2013), *rev'd*, 787 F.3d 1189 (8th Cir. 2015).

9. Many debtors across the country put the question before the bankruptcy court as to whether the Earned Income Tax Credit, the Child Tax Credit, and the Adoption Tax Credit constitute public assistance benefits for the purposes of bankruptcy exemption schemes. See *infra* notes 72–73 and accompanying text.

applicable laws, legislative history, and recent case law that addressed these issues. Part IV explores the *Hardy* decision's in-depth examination of the legislative history surrounding the Child Tax Credit and the underlying purpose behind including public assistance benefits in both state and federal exemption schemes. Part V offers a framework for analyzing exemption schemes across the country by examining the Missouri exemption scheme and attempting to provide clarity in the current statute for debtors and courts in the future.

## II. FACTS AND HOLDING

Pepper Minthia Hardy, sole provider for a family of four,<sup>10</sup> filed for Chapter 13 bankruptcy in October 2012.<sup>11</sup> As part of her filing, she was required to complete an array of forms, each setting out her assets, debts, and income.<sup>12</sup> On her Schedule B,<sup>13</sup> she indicated that she was expecting an income tax refund, part of which was to be from a Child Tax Credit ("CTC").<sup>14</sup> Ms. Hardy estimated that her total income tax refund would be \$4950.<sup>15</sup> In her bankruptcy filing, she indicated that \$4895 of her expected \$4950 return<sup>16</sup> was to be exempt from her bankruptcy estate.<sup>17</sup>

The U.S. Bankruptcy Court for the Western District of Missouri established that Ms. Hardy's actual federal income tax refund was \$6311.<sup>18</sup> Of this \$6311 refund, \$2000 was from a CTC<sup>19</sup> that Ms. Hardy listed as exempt from her Chapter 13 bankruptcy as a "public assistance benefit" under Missouri bankruptcy exemption laws.<sup>20</sup> The trustee handling Ms. Hardy's Chapter 13 bankruptcy objected to Ms. Hardy's claim that a portion of her federal income tax refund attributable to the CTC was exempt from the reach of her

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10. Pepper Hardy claimed two dependent children under the age of seventeen and a dependent brother on her 2012 taxes. *In re Hardy*, 495 B.R. 440, 442 (Bankr. W.D. Mo. 2013), *aff'd*, 503 B.R. 722, *rev'd*, 787 F.3d 1189.

11. *Id.*

12. *Id.*

13. A Schedule B document is a list debtors are required to make of all their personal items and their value. *Bankruptcy Forms, Schedule A/B: Property (individuals)*, U.S. CTS., <http://www.uscourts.gov/forms/individual-debtors/schedule-ab-property-individuals> (last visited Mar. 24, 2016).

14. *In re Hardy*, 495 B.R. at 442.

15. *Id.*

16. Ms. Hardy claimed \$595 under the Missouri wild card exemption, \$2300 as a head of household exemption, and \$2000 attributable to the Child Tax Credit as a public assistance benefit. *Id.* at 441 (citing MO. REV. STAT. § 513.430.1(3), .440, .430.1(10)(a) (Cum. Supp. 2013)).

17. *Id.* at 442.

18. *Id.*

19. This credit is actually referred to as the Additional Child Tax Credit, which will be addressed *infra* Part III.

20. *In re Hardy*, 495 B.R. at 442; § 513.430.1(10)(a).

creditors.<sup>21</sup> The bankruptcy court consolidated Ms. Hardy's case with another Chapter 13 case raising the same issue.<sup>22</sup>

In the accompanying case, Larry and Tara Lovelace filed for Chapter 13 bankruptcy in October 2012.<sup>23</sup> On their Schedule B, Mr. and Mrs. Lovelace indicated they would be receiving an income tax refund, part of which would be attributable to a CTC.<sup>24</sup> Mr. and Mrs. Lovelace claimed three dependent children on their federal and state income tax returns.<sup>25</sup> The bankruptcy court established that Mr. and Mrs. Lovelace were to receive a federal tax refund of \$4391.<sup>26</sup> Of their \$4391 federal refund, \$3000 of it was attributable to the CTC.<sup>27</sup> Like Ms. Hardy, Mr. and Mrs. Lovelace listed the CTC as exempt from their Chapter 13 bankruptcy proceeding as a public assistance benefit.<sup>28</sup> The trustee for the Lovelaces' Chapter 13 bankruptcy objected to the exemption of the CTC from their bankruptcy estate.<sup>29</sup>

In its memorandum opinion, the bankruptcy court sustained the trustees' objections in both the Hardy and Lovelace cases to the exemption of a CTC as a public assistance benefit.<sup>30</sup> The court held that, based on the legislative history of the CTC and Missouri's bankruptcy exemption laws, the CTC was not a valid public assistance benefit that could be exempted from bankruptcy estates.<sup>31</sup> The court then addressed multiple Missouri cases in which debtors have attempted to persuade the bankruptcy court that the CTC was a public assistance benefit.<sup>32</sup> None of the debtors in the cited cases were successful in doing so, and the court remained unconvinced in the cases at bar.<sup>33</sup>

Ms. Hardy then appealed the bankruptcy court's decision to the U.S. Bankruptcy Appellate Panel for the Eighth Circuit.<sup>34</sup> The Bankruptcy Appel-

21. *In re Hardy*, 495 B.R. at 443.

22. *Id.* at 441.

23. *Id.* at 442.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 443.

29. *Id.*

30. *Id.* at 447.

31. *Id.*

32. *Id.* at 444–45.

33. *Id.* at 444.

34. *Hardy v. Fink (In re Hardy)*, 503 B.R. 722, 723–24 (B.A.P. 8th Cir. 2013), *rev'd*, 787 F.3d 1189 (8th Cir. 2015). When appealing a decision from the federal bankruptcy court, a petitioner can appeal to the federal district court or to the Bankruptcy Appellate Panel for the district in which the debtor resides. *Appeals*, U.S. CTS., <http://www.uscourts.gov/about-federal-courts/types-cases/appeals>. The Bankruptcy Appellate Panel is a panel of court of appeals judges and district court judges who are considered to be specialists in bankruptcy law and hear bankruptcy court appeals. *Id.* In order to take an appeal to the Bankruptcy Appellate Panel, both parties must agree to the venue. *Id.*

late Panel affirmed the bankruptcy court's order sustaining the trustee's objection to the debtor's claimed exemption.<sup>35</sup> The sole issue on appeal was Ms. Hardy's claimed exemption of the \$2000 CTC from her 2012 federal tax return.<sup>36</sup> Ms. Hardy argued that the CTC fit within the common meaning of a public assistance benefit, which she argued was "quite plainly an assistance that benefits the public."<sup>37</sup> The court stated that the statute, legislative history, and dictionary did not support Ms. Hardy's proffered definition of a public assistance benefit.<sup>38</sup> The court instead relied on a *Merriam-Webster's* dictionary that defined a public assistance benefit as: "government aid to needy, aged, or disabled persons and to dependent children."<sup>39</sup> Under its definition of a public assistance benefit, the Bankruptcy Appellate Panel held that the CTC was not a public assistance benefit under Missouri law and, therefore, could not be exempted from her bankruptcy estate.<sup>40</sup>

Ms. Hardy appealed the Bankruptcy Appellate Panel's decision to the U.S. Court of Appeals for the Eighth Circuit.<sup>41</sup> The court, though still not persuaded by Ms. Hardy's proffered definition of a public assistance benefit under Missouri law, ultimately ruled in Ms. Hardy's favor.<sup>42</sup> The court relied on the legislative intent and history of the amendments to the CTC instead of previous case law based on older versions of the CTC.<sup>43</sup> This decision made the Eighth Circuit the first circuit court to rule in a debtor's favor regarding the CTC exemption.<sup>44</sup> The Eighth Circuit reversed the lower court's order sustaining the trustee's objection to the debtor's exemptions.<sup>45</sup> The court held that the true legislative intent behind the CTC statute was to benefit low-income families, which fit within Missouri's public assistance benefit exemption statute, and the credit should be exempt from Ms. Hardy's bankruptcy estate.<sup>46</sup>

### III. LEGAL BACKGROUND

The legislative history of the United States Code is filled with attempts to provide aid, support, and tax assistance to low-income or impoverished citizens. These attempts are clearly established in the legislative history of

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35. *In re Hardy*, 503 B.R. at 726.

36. *Id.* at 724.

37. *Id.* at 725.

38. *Id.* at 725–26.

39. *Id.* at 725 (citing MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1005 (11th ed. 2012)).

40. *Id.* at 726.

41. *Hardy v. Fink (In re Hardy)*, 787 F.3d 1189, 1192 (8th Cir. 2015).

42. *Id.* at 1190–91.

43. *See id.*

44. *Id.*; *In re Hardy*, 495 B.R. 440, 447 (Bankr. W.D. Mo. 2013), *aff'd*, 503 B.R. 722 (B.A.P. 8th Cir. 2013), *rev'd*, 787 F.3d 1189.

45. *In re Hardy*, 787 F.3d at 1191.

46. *Id.*

both the federal bankruptcy laws and the federal tax laws. Because both the bankruptcy code and the tax code are integral to the decision in the instant case, it is important to establish a basic understanding of how each statute operates in this context and how the statutes affect individuals in Missouri. This Part establishes a framework of the bankruptcy laws relevant to debtors' exemption claims, paying particular attention to the differences between the federal bankruptcy code's exemption scheme and Missouri's exemption statutes. Next, it analyzes the CTC in the tax code, focusing on the legislature's intent in enacting the law and tracing how it has evolved over time. Finally, this Part discusses how lower courts have addressed the issue of whether the CTC is included within the definition of public assistance benefits.

### A. Bankruptcy and Exemption Statutes

Title XI of the United States Code sets forth the federal bankruptcy statutes.<sup>47</sup> Title XI also designates the different types of bankruptcy filings available.<sup>48</sup> An individual debtor may file for bankruptcy under three different code chapters: Chapter 7, Chapter 11, and Chapter 13.<sup>49</sup> Debtors' first duties under each filing option are to report all income, personal property, and other assets in their bankruptcy petitions.<sup>50</sup>

As part of filing for Chapter 13 bankruptcy,<sup>51</sup> debtors are also required to propose a bankruptcy plan.<sup>52</sup> The plan lays out all of the debtors' assets that are included in the bankruptcy estate,<sup>53</sup> as well as any exemptions that debtors may have to exclude from the estate.<sup>54</sup> It then establishes all allowable deductions and formulates the remaining amount as disposable income.<sup>55</sup> This disposable income then goes toward funding debtors' bankruptcy plans, which shows how much each creditor will be paid over a three or five year period.<sup>56</sup> In Chapter 13 bankruptcy proceedings, debtors retain all their assets – even those that are not exempted from the bankruptcy estate.<sup>57</sup> The debt-

47. See, e.g., 11 U.S.C.A. § 101 (West 2016).

48. See 11 U.S.C. §§ 701, 1101, 1301 (2012).

49. *Id.*

50. *Id.*

51. A debtor or debtor organization may also file for bankruptcy under Chapter 7 or Chapter 11; however, this Note focuses on the organization and structure of Chapter 13 bankruptcy proceedings only because that was the subject of the instant case.

52. 11 U.S.C.A. § 1322. The plan is an organization of the debtor's assets and responsibilities. *Id.* This works to provide a strategy for repaying the debtor's creditors during the bankruptcy proceedings. *Id.*

53. *Id.* The "bankruptcy estate" is the term used for the compilation of the debtor's assets and incomes that are applied to the debtor's debts in the plan. 11 U.S.C.A. § 541. It is created by operation of law pursuant to I.R.C. § 541 (West 2016).

54. 11 U.S.C.A. § 1322.

55. *Id.*

56. *Id.*

57. 11 U.S.C. § 1305 (2012).

ors' estates are then assigned trustees who are in charge of obtaining a payment each month from the debtors and using those funds to pay creditors in accordance with the plan.<sup>58</sup>

Generally, all property in debtors' estates is available to pay creditors; however, debtors can exempt certain portions of their property from their bankruptcy estates.<sup>59</sup> Section 522 of Title XI establishes allowable exemptions.<sup>60</sup> In a Chapter 7 bankruptcy proceeding, non-exempt property must be turned over to the bankruptcy trustee.<sup>61</sup> This property will be distributed and sold to creditors.<sup>62</sup> Under a Chapter 13 bankruptcy proceeding, debtors are required to pay at least as much to their unsecured creditors as they would have received under a hypothetical Chapter 7 proceeding.<sup>63</sup> Although debtors keep all their property whether exempt or not in Chapter 13, exemptions are very important in determining how much debtors must pay to creditors over the life of the bankruptcy plan.<sup>64</sup> Generally, debtors can choose either the federal bankruptcy exemption scheme, set forth in Section 522(d) of the bankruptcy code, or their state's allowable exemptions, whichever is greater.<sup>65</sup> However, states may "opt out" of the federal exemption scheme and force debtors domiciled in that state to choose its own exemptions.<sup>66</sup>

Missouri has opted out of the Section 522 exemptions in favor of adopting its own exemption scheme that applies to all Missouri residents who file for bankruptcy.<sup>67</sup> Missouri's exemptions statute is comprehensive<sup>68</sup> and includes an exemption for debtors' rights to receive "[a] Social Security benefit, unemployment compensation or a public assistance benefit."<sup>69</sup> The term "public assistance benefit" is not defined within the statute.<sup>70</sup> In fact, until

58. *Id.* § 1302 (2013); 11 U.S.C.A. § 1322. A debtor's disposable income consists of the debtor's income less allowed expenses for the six-month period preceding the bankruptcy filing. 11 U.S.C.A. § 1325 (West).

59. 11 U.S.C.A. § 522.

60. *Id.* Some common exemptions include: debtors' interests in real estate-up to a certain value; interest in a motor vehicle-up to a certain value; jewelry used primarily for personal or family reasons; and furniture, appliances, and clothing-up to a certain value. *Id.* § 522(d)(1)-(5).

61. 11 U.S.C. § 704.

62. Secured creditors are paid back before unsecured creditors. *Id.* § 502. Certain unsecured creditors have priority over other unsecured creditors. 11 U.S.C.A. § 507.

63. 11 U.S.C.A. § 1325(a)(4). This means that in order to establish how and how much each of the creditors will be paid in a Chapter 13 proceeding, debtors' plan must determine how much each of the debtors' unsecured creditors would have received if the debtors had filed under Chapter 7 instead. *Id.*

64. *Id.*

65. *Id.* § 522.

66. *Id.* § 522(b).

67. MO. REV. STAT. § 513.427 (2000).

68. MO. REV. STAT. ANN. § 513.430 (West 2016).

69. *Id.* § 513.430.1(10)(a).

70. *Id.*



2012 the statute read “local public assistance benefit.”<sup>71</sup> The removal of the word “local” in 2012 expanded the scope of Missouri’s allowable exemptions.<sup>72</sup> Bankruptcy courts have already determined that some federal tax credits constitute public assistance benefits, such as the Earned Income Tax Credit and the Adoption Tax Credit.<sup>73</sup> Nevertheless, bankruptcy courts still must look to Missouri’s exemption statutes to determine whether these federal tax credits are exemptible for Missouri debtors.

### B. *The Evolution of the Child Tax Credit*

Congress adopted the Internal Revenue Code (“Code”) as it exists today in 1986 in a complete overhaul of the internal revenue laws in the United States.<sup>74</sup> In order to determine a taxpayer’s federal taxes each year, the Code established a formula that starts with the taxpayer’s adjusted gross income<sup>75</sup> and subtracts from it any deductions that the taxpayer might have to yield taxable income.<sup>76</sup> Once a taxpayer’s taxable income is determined, the tentative tax liability can be established.<sup>77</sup>

A taxpayer’s tax liability can then be reduced by credits against the tentative tax.<sup>78</sup> There are three types of tax credits: nonrefundable, refundable, and a combined non-refundable/refundable credit.<sup>79</sup> Nonrefundable tax credits can be applied only to reduce outstanding tax liability<sup>80</sup> to zero dollars; any leftover nonrefundable tax credit disappears and cannot be returned to the

71. *In re Corbett*, No. 13–60042, 2013 WL 1344717, at \*1 (Bankr. W.D. Mo. Apr. 2, 2013).

72. *Hardy v. Fink* (*In re Hardy*), 787 F.3d 1189, 1193 (8th Cir. 2015).

73. See *supra* note 8 and accompanying text. See also *In re Hatch*, 519 B.R. 783 (Bankr. S.D. Iowa 2014); *In re Johnson*, 480 B.R. 305, 316 (Bankr. N.D. Ill. 2012).

74. Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085.

75. Another example of a combined tax credit is the American Opportunity Tax Credit. I.R.C. § 25A(i) (2015); REV. PROC. 2014-61, 2014-47 I.R.B. 860, §3.05.

76. I.R.C. § 63 (West 2016).

77. *Id.* § 26(b)(1).

78. I.R.C. § 21 (2012). There are three ways to reduce tax liability: the first is through “above the line deductions,” which are deductions taken from the taxpayer’s taxable income before reaching adjusted gross income; the second set of deductions, often referred to as below the line deductions, or, alternatively, as itemized deductions, are deducted after adjusted gross income, and result in taxable income. *An Overview of Tax Deductions*, IRS, <https://www.irs.com/articles/overview-tax-deductions> (last visited Mar. 24, 2016). Taxable income is the taxpayer’s tax base. See *id.* It is multiplied by progressive tax rates to establish tentative tax liability. *Id.* Finally, credits are applied against a taxpayer’s tentative tax liability to yield the amount owed to the government. *Id.* Credits are preferred over deductions because they reduce tax liability dollar-for-dollar, whereas deductions reduce income before applying progressive tax rates and are then worth less to the taxpayer. See *id.*

79. I.R.C. §§ 21, 31 (2012).

80. *In re Hardy*, 495 B.R. 440, 443 (Bankr. W.D. Mo. 2013), *aff’d*, 503 B.R. 722 (B.A.P. 8th Cir. 2013), *rev’d*, 787 F.3d 1189 (8th Cir. 2015).

taxpayer as a refund.<sup>81</sup> With refundable credits on the other hand, a taxpayer can receive a refund of any remaining tax credit once the taxpayer's liability is reduced to zero dollars.<sup>82</sup> Credits that are a combination of nonrefundable and refundable credits can directly reduce tax liability and provide a partial cash refund once liability is reduced to zero dollars.<sup>83</sup> The CTC is an example of a combined tax credit.<sup>84</sup>

Congress adopted the CTC in 1997.<sup>85</sup> It was initially adopted as a means to “reduce the individual income tax burden of [families with dependent children, to] better recognize the financial responsibilities of raising dependent children, and [to] promote family values.”<sup>86</sup> The CTC established a \$500 credit per qualifying child for parents<sup>87</sup> with three or more children whose modified adjusted gross income fit within certain limits.<sup>88</sup> The CTC was originally codified as a nonrefundable credit.<sup>89</sup> However, it has gone through several substantial amendments since 1997, including the supplement of the Additional Child Tax Credit (“ACTC”), the term for the inclusion of a refundable portion of the CTC.<sup>90</sup>

In 2001, Congress increased the CTC from \$500 per child to \$600.<sup>91</sup> The CTC also became available to all families, not just those with three or more children.<sup>92</sup> In addition, Congress created a refundable portion of the CTC, the ACTC.<sup>93</sup> This created a tax refund of ten percent of the taxpayer's earned income minus the refundability threshold, up to the maximum amount available to the taxpayer per qualifying child.<sup>94</sup>

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81. *Id.* (discussing the use of nonrefundable credits).

82. *Id.* at 443–44 (discussing the application of the refundable earned income tax credit).

83. *Id.* (discussing the use of the CTC).

84. I.R.C. § 24 (West 2016); Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, §201, 115 Stat. 38, 45–47.

85. Taxpayer Relief Act of 1997, Pub. L. 105–34, § 101, 111 Stat. 788 (codified as amended at I.R.C. § 24).

86. *Hardy v. Fink (In re Hardy)*, 787 F.3d 1189, 1193 (8th Cir. 2015) (alteration in original) (citing H.R. REP. NO. 105-148, at 310 (1997)).

87. Only taxpayers with families of three or more children under age seventeen could qualify for the CTC originally. Taxpayer Relief Act of 1997 § 101.

88. I.R.C. §24(b)(1). The threshold income amounts are: \$55,000 for married filing separately; \$75,000 for head of household; and \$110,000 for married filing jointly. *Id.* § 24(b)(2). This threshold is the point in a taxpayer's income where the credit begins to be scaled down—\$50 for every \$1000 above the threshold amount. *Id.*

89. *See* Taxpayer Relief Act of 1997 § 101.

90. I.R.C. § 24(d).

91. Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 201, 115 Stat. 38, 45–47.

92. *Id.*

93. *Id.*

94. *Id.* The refundability threshold was \$10,000. *Id.*

Then in 2003, Congress increased the CTC to \$1000 per child, which was extended in 2004.<sup>95</sup> Additionally, Congress increased the refundable ACTC from ten percent of earned income over \$10,000 to fifteen percent.<sup>96</sup> In 2008, Congress again amended the ACTC, reducing the refundability threshold amount of earned income from \$10,000 to \$8500.<sup>97</sup> This threshold amount was again reduced in 2009 to \$3000.<sup>98</sup> These amendments “enabled more low-income earners to claim a refund and increased the refund amount for many low-income earners who previously were receiving a small refund.”<sup>99</sup>

The ACTC is easiest to understand through an example. Taxpayers are a married couple who earned \$25,000 in income and have four qualifying children. Their CTC would be a maximum of \$4000, \$1000 per qualifying child. In order to calculate the refundable portion, the tax code requires the taxpayers to subtract from their earned income the refundability threshold of \$3000, which reduced their income for the credit to \$22,000. Multiply this income amount by the fifteen percent refundability percentage, which yields \$3300. Thus, \$3300 of their available \$4000 of CTC is refundable to the taxpayers. So, if the taxpayers’ tax liability is \$500, the remaining \$700 available through the nonrefundable portion of the CTC can wipeout the taxpayers’ tax liability to \$0. The remaining \$200 of the credit is lost.

### C. Recent Developments in the Lower Courts

Whether the CTC and ACTC fit within the scope of public assistance benefits in bankruptcy has been debated in federal bankruptcy courts across the country, and there remains a split of authority on the issue.<sup>100</sup> In 2001, in *In re Steinmetz*, the U.S. Bankruptcy Court for the District of Idaho ruled that the CTC could not be exempted in bankruptcy as public assistance type aid,

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95. Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, § 101, 117 Stat. 752, 753; Working Families Tax Relief Act of 2004, Pub. L. No. 108-311, §§ 101–02, 118 Stat. 1166, 1167–68.

96. Working Families Tax Relief Act of 2004 §§ 101–02.

97. Emergency Economic Stabilization—Energy Improvement and Extension—Tax Extenders and Alternative Minimum Tax Relief, Pub. L. No. 110-343, § 501, 122 Stat. 3765, 3876 (2008).

98. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1003, 123 Stat. 115, 313. In 2010, Congress extended this minimum threshold through tax years 2011 and 2012. Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 103, 124 Stat. 3296, 3299.

99. *Hardy v. Fink (In re Hardy)*, 787 F.3d 1189, 1195 (8th Cir. 2015).

100. Compare *In re Koch*, 299 B.R. 523, 527–28 (Bankr. C.D. Ill. 2003), *In re Vazquez*, 516 B.R. 523, 526–28 (Bankr. N.D. Ill. 2014), and *In re Hatch*, 519 B.R. 783, 791–92 (Bankr. S.D. Iowa 2014), with *In re Steinmetz*, 261 B.R. 32, 35 (Bankr. D. Idaho 2001), *In re Dever*, 250 B.R. 701, 706 (Bankr. D. Idaho 2000), and *In re Jackson*, No. 12-9635-RLM-7A, 2013 WL 3155595, at \*2 (Bankr. S.D. Ind. June 20, 2013).

finding that because the CTC contained a high-income threshold of \$110,000, Congress did not intend for the CTC to be “a form of public assistance legislation.”<sup>101</sup>

More recently, the U.S. Bankruptcy Court for the Southern District of Indiana ruled in *In re Jackson* that although the ACTC and the Earned Income Tax Credit (“EITC”) were both refundable credits, they served very different purposes.<sup>102</sup> The EITC is a refundable tax credit designed as an antipoverty program.<sup>103</sup> The EITC is available to low-income wage earners and has been found by bankruptcy courts across the country to be a public assistance benefit.<sup>104</sup> The EITC was primarily enacted to provide economic relief to low-income taxpayers while the ACTC was designed to aid a larger portion of taxpayers with higher-earned income thresholds.<sup>105</sup> Under these circumstances, the court held that the EITC and the ACTC should not be treated similarly in bankruptcy because they provide different functions for taxpayers.<sup>106</sup>

On the other side of the split, in *In re Koch* the U.S. Bankruptcy Court for the Central District of Illinois found that it was possible to distinguish between the general CTC, which is nonrefundable, and the ACTC, which is refundable, for exemption purposes.<sup>107</sup> Since the ACTC was added in 2001, it has provided additional government aid for low-income taxpayers.<sup>108</sup> The court reasoned that “as structured, the additional child tax credit, refundable to taxpayers of limited financial means and serving to meet the basic needs of their dependent children, may be claimed exempt as a public assistance benefit.”<sup>109</sup> The court in *Koch* concluded that the debtor was allowed to claim the ACTC as exempt, but not the general CTC.<sup>110</sup> *Koch* was decided only two years after *Steinmetz*; however, as the court in *Koch* pointed out, the first major amendments to the CTC were adopted after *In re Steinmetz* was decided.<sup>111</sup>

101. *In re Steinmetz*, 261 B.R. at 35.

102. 2013 WL 3155595, at \*2; I.R.C. § 32 (2012).

103. MARGOT L. CRANDALL-HOLLICK, CONG. RESEARCH SERV., R44057, THE EARNED INCOME TAX CREDIT (EITC): ECONOMIC ANALYSIS I (2015).

104. *Id.* See also *In re Hatch*, 519 B.R. at 790; *In re Corbett*, No. 13–60042, 2013 WL 1344717, at \*8 (Bankr. W.D. Mo., Apr. 2, 2013); *In re Goldsberry*, 142 B.R. 158, 159 (Bankr. E.D. Ky 1992) (“[E]arned income credit is a money grant to poor working families with dependent children, that it therefore fits within the definition of ‘public assistance’ and is exempt under [KY. REV. STAT. ANN. §] 205.220(3).”).

105. *In re Jackson*, 2013 WL 3155595, at \*2.

106. *Id.*

107. *In re Koch*, 299 B.R. 523, 527–28 (Bankr. C.D. Ill. 2003).

108. *Id.* at 528.

109. *Id.*

110. *Id.* at 527–28.

111. *Id.* at 528. Since *Koch*, another court in Illinois reached a similar result in *In re Vazquez*. 516 B.R. 523 (Bankr. N.D. Ill. 2014). In 2014, the *Vazquez* court held that because the ACTC was available only for low-income taxpayers as a refund, the

## IV. INSTANT DECISION

In the original bankruptcy court case, Ms. Hardy's petition was consolidated with another Chapter 13 debtor's case in order to determine the inclusion of the CTC as a public assistance benefit.<sup>112</sup> In holding that the CTC was not a public assistance benefit, the bankruptcy court relied on previous bankruptcy court opinions in finding that the legislative intent behind the CTC did not fit within the definition of a public assistance benefit.<sup>113</sup> On appeal, the Bankruptcy Appellate Panel for the Eighth Circuit affirmed the bankruptcy court's decision, again relying on past case law examining the legislative intent of the CTC as enacted in 1997.<sup>114</sup> Ms. Hardy appealed the Bankruptcy Appellate Panel's judgment to the Eighth Circuit.<sup>115</sup>

On appeal to the Eighth Circuit, the issue before the court was "whether a portion of a tax refund based on the ACTC is exempt from the bankruptcy estate as a public assistance benefit under Missouri law."<sup>116</sup> In framing the holding, the court first addressed the Missouri exemption statute, Missouri Revised Statutes Section 513.430.1(10)(a), and sought to establish a definition for a public assistance benefit under Missouri law.<sup>117</sup> Because the exemption statute provided no definition for a public assistance benefit, the court sought out the intent of the legislature through the term's plain meaning.<sup>118</sup> Ultimately, the court agreed with the definition set out by the Bankruptcy Appellate Panel below, stating, "public assistance benefits' are those government benefits provided to the needy."<sup>119</sup>

The court then analyzed whether the ACTC fits within this definition of "public assistance benefits."<sup>120</sup> In order to make this determination, the court looked to the intent of the legislature, the history of the statute, and the "operation of the statute in practice."<sup>121</sup> In finding that the ACTC fit within the public assistance benefit exemption, the court explained its rationale based on

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analysis in *Koch* remained valid. *Id.* at 527. The court in *Vazquez* compared the analysis of *Koch* with the Bankruptcy Appellate Panel's decision in *Hardy* and opined that it was not the court's responsibility to "decide the parameters and limits of exemptions or other forms of government assistance unless a legislative body delegates that authority to it." *Id.* at 526; *see supra* notes 34–39 and accompanying text.

112. *In re Hardy*, 495 B.R. 440 (Bankr. W.D. Mo. 2013), *aff'd*, 503 B.R. 722 (B.A.P. 8th Cir. 2013), *rev'd*, 787 F.3d 1189 (8th Cir. 2015).

113. *See supra* notes 31–33 and accompanying text.

114. *See supra* notes 38–40 and accompanying text.

115. *In re Hardy*, 787 F.3d at 1192.

116. *Id.*

117. *Id.*

118. *Id.* at 1193.

119. *Id.* (citing *Hardy v. Fink (In re Hardy)*, 503 B.R. 722, 725 (8th Cir. B.A.P. 2013), *rev'd*, 787 F.3d 1189).

120. *Id.*

121. *Id.*

the amendments to the ACTC since its creation in 1997.<sup>122</sup> The court examined the initial intent behind the CTC: to reduce the tax burden of families and to promote family values.<sup>123</sup> Since its enactment, however, the CTC has undergone substantial changes, changes the court found to “demonstrate that the tax credit has been modified to benefit low-income families.”<sup>124</sup>

The court highlighted two major aspects of amendments to the CTC, making the refundable portion a public assistance benefit: (1) the addition of the refundable portion of the CTC and (2) the reduction of the refundability threshold from \$10,000 to \$3000.<sup>125</sup> First, the court noted that while the CTC, as first enacted, was limited to families with three or more children, Congress eliminated the limit on the number of children and increased the CTC from \$500 per qualifying child to \$600 in 2001.<sup>126</sup> The court indicated that while this amendment made the credit accessible to families with fewer than three children, the real foundational change to the CTC came with Congress’s addition of the refundable ACTC.<sup>127</sup> Second, the court emphasized the amendments Congress made to the ACTC between 2005 and 2008, increasing the refundability percentage and lowering the refundability threshold from \$10,000 to \$3000.<sup>128</sup> The court noted that this change in particular allowed low-income taxpayers to claim a greater portion of the CTC as a refund.<sup>129</sup>

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122. *Id.*

123. *Id.* The court looked specifically at the language in the legislative history of the statute, which stated:

At its most basic, the original CTC statute allowed parents under a certain income threshold to claim a nonrefundable credit of \$500 per qualifying child. After MAGI meets that threshold—\$55,000 married filing separately, \$75,000 head of household, and \$110,000 married filing jointly—the credit is reduced by \$50 per \$1000 MAGI.

*Id.* (citing Taxpayer Relief Act of 1997, Pub. L. No. 105-34, §101, 111 Stat. 788, 796–99).

124. *Id.* at 1194.

125. *Id.* at 1193–95 (citing Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 201, 115 Stat. 38, 45–47).

126. *Id.* at 1193 (Economic Growth and Tax Relief Reconciliation Act of 2001 § 201). Congress also set up additional increases: 2001–2004 tax years: \$600; 2005–2008 tax years: \$700; 2009 tax year: \$800; and 2010 and after: \$1000. Economic Growth and Tax Relief Reconciliation Act of 2001 § 201.

127. *In re Hardy*, 787 F.3d at 1193 (citing Economic Growth and Tax Relief Reconciliation Act of 2001 § 201).

128. *Id.* at 1195 (citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1003, 123 Stat. 115, 313 (2009)). Adjusted for inflation based on 2001 dollars. *Id.* at 1194.

129. This is particularly beneficial to low-income taxpayers who may have very little tax liability. Before the refundable portion of the CTC became available, any amount of the credit that low-income taxpayers could receive was limited to reducing their tax liability. Taxpayer Relief Act of 1997, Pub. L. No. 105-34, §101, 111 Stat.

The court reasoned that the only taxpayers who would receive the refundable portion of the ACTC would be low-income individuals, as higher income taxpayers would not be eligible to receive a refund.<sup>130</sup> The court also relied on comments made by members of Congress and Presidents Bush and Obama in passing the amendments to the CTC.<sup>131</sup> The court cited Senator Snowe, who sought to explain the legislation's effect:

In its original form, the tax relief plan would not have reached all fulltime workers—the tax reduction would have disappeared for wageearners [sic] with net incomes of less than about \$22,000. Indeed, without refundability, there are almost 16 million children whose families would not benefit from the doubling of the Child Tax Credit.<sup>132</sup>

The court also acknowledged Congress's reduction of the threshold refund eligibility amount from \$10,000 to \$8500 in 2008 and then down to \$3000 in 2009.<sup>133</sup> In fact, the court found the 2008 and 2009 amendments to be particularly instructive regarding the legislative intent behind the CTC.<sup>134</sup> The court stated, "These amendments substantially shifted the balance between providing incentives for taxpayers to earn income, on the one hand, and simply providing benefits to the needy, on the other."<sup>135</sup>

In summarizing the analysis of the legislative history and intent of the CTC and ACTC, the court concluded, "the intent of the legislature when

788, 796–99. Therefore, if a taxpayer qualified for a \$2000 CTC but only had \$500 in actual tax liability, the taxpayer could only recognize \$500 of the credit. *See id.*

130. *In re Hardy*, 787 F.3d at 1194. The CTC begins to phase out at \$55,000 for married taxpayers filing separately; \$75,000 for head of household taxpayers; and \$110,000 for married taxpayers filing jointly. Taxpayer Relief Act of 1997 § 101. However, even many taxpayers who are below these phase-out amounts do not receive the full credit amount as a refund because the majority of their credit would be used to reduce tax liability. *See* MARGOT L. CRANDALL-HOLLICK, CONG. RESEARCH SERV., R41873, THE CHILD TAX CREDIT: CURRENT LAW AND LEGISLATIVE HISTORY 2 (2014).

131. *In re Hardy*, 787 F.3d at 1194–95 (citing comments from Senators Boxer, Snowe, Wellstone, and Baucus and statements made by President Bush and President Obama). "The child credit expansion to low-income families is immediate. Over 16 million more children will be helped by the provisions of this bill." *Id.* (quoting 147 CONG. REC. S5770-01 (2001)) (statement of Sen. Charles "Chuck" Grassley). *See also* 147 CONG. REC. S5770-01 (2001) (statements of Sen. Paul Wellstone); 147 CONG. REC. S5028-01 (2001) (statement of Sen. Max Baucus); Remarks on Signing the Working Families Tax Relief Act of 2004, 2004 U.S.C.C.A.N. S27; Statement by President Obama Upon Signing H.R. 4853, 2010 U.S.C.C.A.N. S41.

132. *In re Hardy*, 787 F.3d at 1194 (quoting 147 CONG. REC. S5770-01 (2001) (statement of Sen. Olympia Snowe)).

133. *In re Hardy*, 787 F.3d at 1195.

134. *Id.*

135. *Id.*

modifying the ACTC was to benefit low-income families. The ACTC has fulfilled Congress's goals. In practice, it appears to overwhelmingly benefit low-income families.<sup>136</sup> The court also concluded that the inclusion of the ACTC as a public assistance benefit was supported by a number of bankruptcy courts that have addressed the issue.<sup>137</sup> Finally, the court acknowledged that not all other courts have reached the same conclusion but opined that the courts which drew the opposite conclusion had not adequately taken into account the many amendments to the CTC and the clear legislative intent behind the changes.<sup>138</sup> The court ultimately concluded:

Here, the [Bankruptcy Appellate Panel] focused too narrowly on the CTC as originally enacted. It is necessary to also consider the various statutory amendments that modified the refundable portion of the credit—the portion of the credit at issue in this case. These modifications demonstrate Congress intended to benefit the needy with the ACTC. Accordingly, we find the ACTC meets the Missouri exemption requirement of a public assistance benefit.<sup>139</sup>

The court found that the amendments to the original CTC that created a refundable portion of the credit were intended to benefit the “needy.”<sup>140</sup> The court also found that public assistance benefits under Section 513.430.1(10)(a)<sup>141</sup> consisted of those government benefits intended to be provided to the “needy.”<sup>142</sup> Therefore, the court concluded that the refundable portion of the CTC met the Missouri exemption requirement for a public assistance benefit.<sup>143</sup>

## V. COMMENT

Whether the *Hardy* decision was correctly decided depends on both the policies underlying bankruptcy exemptions generally, as well as the purpose and scope of the exemption for the public assistance benefits specifically. This Part explores these interrelated questions in turn. The court in *Hardy* accepted that public assistance benefits were exemptible from the bankruptcy estate because they were listed in the Missouri exemption statute. But, in order to fully evaluate whether the *Hardy* decision was correctly decided, a frame of analysis is necessary to examine the purposes behind bankruptcy exemptions generally. Policymakers agree that the primary purpose of bankruptcy exemptions is to provide debtors with the bare necessities of life fol-

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136. *Id.* at 1196.

137. *Id.*

138. *Id.* at 1197.

139. *Id.*

140. *Id.*

141. MO. ANN. STAT. § 513.430.1(10)(a) (West 2016).

142. *In re Hardy*, 787 F.3d at 1197.

143. *Id.*



lowing bankruptcy.<sup>144</sup> Yet, there is a vigorous debate over exactly which property should be exempt from the reach of creditors.<sup>145</sup>

### A. *The Purposes of Bankruptcy Exemption Statutes*

Recall that debtors are generally entitled to choose between the federal exemption scheme outlined in Section 522(d) of the bankruptcy code or the exemptions of the state in which they reside.<sup>146</sup> The bankruptcy statute also allows each state to opt out of the federal exemption statute and instead requires debtors to use that state's exemptions.<sup>147</sup> Although Missouri has opted out of the federal exemption statute,<sup>148</sup> its exemptions are not significantly different. In fact, both the federal statute and the Missouri exemption statute have come to many of the same conclusions regarding the assets and property that allow debtors to maintain a sufficient standard of living following bankruptcy.<sup>149</sup> Missouri's exemption scheme and the federal exemption scheme have very similar language for the exemptions of public assistance benefits.<sup>150</sup>

Professor Alan Resnick, a leading bankruptcy scholar, has established a nuanced framework for understanding the basic purposes of bankruptcy exemption laws:

1. To provide a debtor enough money to survive.
2. To protect his dignity and his cultural and religious identity.
3. To afford a means of financial rehabilitation.

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144. ELIZABETH WARREN & JAY WESTBROOK, *THE LAW OF DEBTORS AND CREDITORS* 169 (5th ed. 2006) ("The law of every state makes at least some property exempt from execution and other legal process so that no debtor can be reduced to absolute destitution.").

145. See generally David Gray Carlson, *The Role of Valuation in Federal Bankruptcy Exemption Process: The Supreme Court Reads Schedule C*, 18 AM. BANKR. INST. L. REV. 461 (2010); Heather M. Forrest, *Are Bankruptcy-Specific State Exemptions Constitutional?*, 31-NOV AM. BANKR. INST. J. 14 (2012); Timothy D. Moratzka, *Fresh Start, Head Start, or Running Start: Bankruptcy Exemption Planning*, 22-APR AM. BANKR. INST. J. 10 (2003).

146. See *supra* notes 65–66 and accompanying text.

147. 11 U.S.C.A. § 522 (b)(2) (West 2016) ("Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.").

148. MO. REV. STAT. § 513.427 (2000).

149. See MO. ANN. STAT. § 513.430 (West 2016); 11 U.S.C.A. § 522(d).

150. Compare MO. ANN. STAT. § 513.430.1(10)(a) ("A Social Security benefit, unemployment compensation or a public assistance benefit"), with 11 U.S.C.A. § 522(d)(10)(A) ("a social security benefit, unemployment compensation, or a local public assistance benefit").

4. To protect the family unit from impoverishment.
5. To spread the burden of the debtor's support from society to his creditors.<sup>151</sup>

Does the inclusion of public assistance benefits in bankruptcy exemption statutes satisfy these five purposes laid out by Professor Resnick?

First, public assistance benefits, by definition, provide aid and assistance to the public in need;<sup>152</sup> therefore, under Professor Resnick's framework, public assistance benefits work to support debtors in providing some amount of money for them to survive. Moreover, public assistance benefits allow debtors to protect their cultural and religious identities by providing debtors with revenue that allows them to maintain their cultural and religious memberships and community involvement, even during their bankruptcy.<sup>153</sup>

In addition, aid from public assistance benefits contributes to debtors' rehabilitation after their bankruptcy, as public assistance benefits are cash payments that, as exempt from the bankruptcy estate, debtors can use to pre-

151. *In re Hahn*, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980) (citing Alan Resnick, *Prudent Planning or Fraudulent Transfer? The Use of Nonexempt Assets to Purchase or Improve Exempt Property on the Eve of Bankruptcy*, 31 RUTGERS L. REV. 615, 621 (1978)). This framework has been cited by several sources, including: 2 Bankruptcy Desk Guide § 13:11, Editor's Comment (March 2016); *Matter of Hahn*, 5 B.R. 242, 2 Collier Bankr. Cas. 2d (MB) 761 (Bankr. S.D. Iowa 1980); *In re Ellingson*, 63 B.R. 271, Bankr. L. Rep. (CCH) ¶71281 (Bankr. N.D. Iowa 1986); Honorable William Houston Brown, *Political and Ethical Considerations of Exemption Limitations: The "Opt-Out" as Child of the First and Parent of the Second*, 71 AM. BANKR. L.J. 149 (1997); Georgianne L. Huckfeldt, *Conversion of Nonexempt Assets to Exempt Assets Prior to Bankruptcy—A Question of Fraud?*, 56 MO. L. REV. 857 (1991); Matthew J. Kemmer, *Personal Bankruptcy Discharge and Myth of the Unchecked Homestead Exemption*, 56 MO. L. REV. 683 (1991).

152. A dictionary definition of "public assistance" is: "government aid to needy, aged, or disabled persons and to dependent children." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1005 (11th ed. 2012).

153. Professor Resnick illustrates the importance of protecting cultural and religious identities in bankruptcy, stating:

Most people have property which has significant sentimental value greatly outweighing its monetary worth. If an item has important subjective value to the debtor and would realize a relatively small amount of money on liquidation, respect for the item's personal worth to the debtor should dictate that the property be exempt from the creditor's grasp.

This rationale justifies many of the exemption laws today, including those for Bibles, family pictures, wedding rings and other jewelry, books, cemetery plots, seats occupied in places of worship, and domestic pets. The importance of these items is not their monetary value nor the physical survival of the debtor; they relate instead to the cultural, religious, and moral aspects of life which should be preserved despite the debtor's financial hardship.

Resnick, *supra* note 151, at 623–24.

vent new debts from arising. In a similar vein, because public assistance benefits are exempt, they provide money to debtors to prevent families from becoming impoverished. Finally, public assistance benefits provide debtors with support that fulfills all four other purposes and, in doing so, limits the burden on society by allowing debtors to maintain a sufficient standard of living during bankruptcy and encourages financial independence post-bankruptcy. Thus, it seems clear that public assistance benefits fit squarely within the policy justifications underlying exemptions in bankruptcy generally.<sup>154</sup>

### *B. The Additional Child Tax Credit as a Public Assistance Benefit*

The next step is to ascertain whether the court in *Hardy* correctly categorized the CTC as a public assistance benefit. Although the *Hardy* court points out multiple definitions of a public assistance benefit, at its core, a public assistance benefit is a program designed to help the “needy” survive at a subsistence level.<sup>155</sup> How does the CTC work to accomplish this goal?

Following the same framework Professor Resnick established to evaluate the purposes of exemptions in the bankruptcy code generally, the CTC should fulfill the same five purposes in order to qualify as a public assistance benefit exemption. First, a refundable tax credit would provide debtors with an additional amount of money to sustain their family, albeit a fairly small amount in some cases. Additionally, the ACTC is limited by income and by the number of qualifying children that taxpayers have, making the credit even smaller and less widely available. For example, Ms. Hardy’s refundable ACTC was only \$2000.<sup>156</sup> This refund does not dramatically affect Ms. Hardy’s disposable income or markedly improve her ability to pay back her creditors. This small refund, if added to her bankruptcy estate, probably would not appreciably change the payout to creditors; however, as exempt property, this refund could make a huge difference to her family, given that Ms. Hardy’s family is living on a very small fixed income, now made more limited by Ms. Hardy’s bankruptcy filing. The first and fourth purposes fit together in this way: the purposes of exemption laws in allowing for a sufficient standard of living and preventing impoverishment can be advanced simultaneously with the exemption of the refundable ACTC and the allowance for such funds to be used to support the family instead of debtors’ creditors.

Second, public assistance benefits are important to the purpose of protecting debtors’ dignity and identity. The CTC in particular was enacted to promote family values and has been amended to support low-income families

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154. See IDAHO CODE ANN. §11-603(3) (West 2016); 735 ILL. COMP. STAT. ANN. 5/12-1001(g)(1) (West 2016); IOWA CODE ANN. § 627.6(8)(a) (West 2016); MO. ANN. STAT. § 513.430.1(10)(a).

155. *Hardy v. Fink* (*In re Hardy*), 787 F.3d 1189, 1193 (8th Cir. 2015).

156. *In re Hardy*, 495 B.R. 440, 442 (Bankr. W.D. Mo. 2013), *aff’d*, 503 B.R. 722 (B.A.P. 8th Cir. 2013), *rev’d*, 787 F.3d 1189.

because raising children is neither cheap nor easy.<sup>157</sup> Allowing the ACTC to be exempted in bankruptcy can provide parents small amounts of funds to support and nurture their cultural and religious identity. Section 1325 of the Code allows for the inclusion of charitable contributions in calculating debtors' disposable income, so long as the contributions "meet the definition of 'charitable contribution' under section 548(d)(3)) to a qualified religious or charitable entity or organization . . . in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made."<sup>158</sup>

Third, exemptions of retirement accounts, social security benefits, and other public assistance benefits from the bankruptcy estate allow debtors a means to rehabilitate their financial situation after the close of their bankruptcy proceedings. Public assistance benefits are particularly useful for the purpose of providing for financial rehabilitation because they can allow debtors to maintain a sufficient standard of living during their bankruptcy without incurring further debt or financial stress.

Finally, as Professor Resnick argues, "Assuming that exemptions are necessary and effective in the financial rehabilitation of debtors, if state and federal governments did not grant any exemptions, society would have to support debtors in the form of welfare payments."<sup>159</sup> The ACTC is not a welfare program. Instead, it works as a bonus for working parents who are raising families and gives them an incentive to earn income and maintain a constant source of revenue to provide for their families. Resnick's concerns about reliance on welfare are not affected by allowing for the exemption of the ACTC. For example, in Ms. Hardy's situation, the \$2000 ACTC that she receives would not work to support her or her family for very long. Therefore, Ms. Hardy's reliance on society is minimal and is in no way increased by the exemption of the ACTC amount.

### *C. The Legislative Intent and Practical Application of the Child Tax Credit*

A major concern that many bankruptcy courts have expressed regarding the ACTC as a public assistance benefit revolves around the credit's accessibility to middle- and upper-income taxpayers.<sup>160</sup> Because the phase-out

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157. See 147 CONG. REC. S5770-01 (2001) (statement of Sen. Olympia Snowe); Working Families Tax Relief Act of 2004, Pub. L. No. 108-311, §§ 101–02, 118 Stat. 1166, 1167–68; Remarks on Signing the Working Families Tax Relief Act of 2004, 2004 U.S.C.C.A.N. S27; Statement by President Obama Upon Signing H.R. 4853, 2010 U.S.C.C.A.N. S41.

158. 11 U.S.C.A. § 1325 (West).

159. Resnick, *supra* note 151, at 626.

160. See *In re Hardy*, 495 B.R. at 447; *In re Hardy*, 503 B.R. at 725–26; *In re Dever*, 250 B.R. 701, 706 (Bankr. D. Idaho 2000); *In re Law*, 336 B.R. 780, 783 n.2 (B.A.P. 8th Cir. 2006).

threshold begins at fairly high-income rates,<sup>161</sup> many courts have argued that the CTC is not intended as a benefit for just low-income taxpayers.<sup>162</sup> However, taxpayers with incomes reaching the phase-out threshold would likely use the CTC to offset tax liability and would not actually have any refundable portion.<sup>163</sup> For such taxpayers, using the CTC to offset tax liability would not be a public assistance benefit. The nonrefundable credit under the original legislative intent was to provide a tax break for families to promote family values.<sup>164</sup>

There is no question that the nonrefundable CTC is not a public assistance benefit itself. However, the refundable ACTC is different. The ACTC was adopted as a refundable portion of the CTC, but it was clearly adopted under a different legislative intent. The ACTC is entirely based on the taxpayers' incomes and works to provide a refund for taxpayers with limited tax liability.<sup>165</sup> The amendments alone do not necessarily indicate the evolution of the CTC into a public assistance benefit. However, it does indicate that as Congress has amended the CTC, adding a refundable portion to the CTC and allowing for the CTC to be "available to all families with qualifying children,"<sup>166</sup> the legislative intent behind this credit has evolved to be "a key to helping children in low-income families."<sup>167</sup>

The aspect of the CTC that more readily lends itself to fitting within the realm of a public assistance benefit is the "refundability threshold."<sup>168</sup> As amended, the threshold for the refundable portion of the CTC begins at \$3000

161. See *supra* note 88. The threshold income amounts are: \$55,000 for married filing separately; \$75,000 for head of household; and \$110,000 for married filing jointly. I.R.C. § 24(b)(2) (West 2016). This threshold is the point in a taxpayer's income where the credit begins to be scaled down – \$50 for every \$1000 above the threshold amount. *Id.*

162. See *In re Hardy*, 503 B.R. at 726 (quoting *In re Koch*, 299 B.R. 523, 528 (Bankr. C.D. Ill. 2003)) ("Rarely will a middle or an upper-income level taxpayer receive a refund of the child tax credit." However, 'rarely' is not the same as 'never,' and the court did not explain how the record before it supported this conclusion.").

163. See generally CRANDALL-HOLLICK, *supra* note 130.

164. See H.R. REP. NO. 105-148, at 310 (1997).

165. Senator Snowe explained the purpose of the ACTC as:

In its original form, the tax relief plan would not have reached all fulltime workers—the tax reduction would have disappeared for wage-earners with net incomes of less than about \$22,000. Indeed, without refundability, there are almost 16 million children whose families would not benefit from the doubling of the Child Tax Credit.

147 CONG. REC. S5770-01 (2001) (statement of Sen. Olympia Snowe).

166. *Hardy v. Fink (In re Hardy)*, 787 F.3d 1189, 1193 (8th Cir. 2015) (citing Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 211, 115 Stat. 38, 45–47).

167. 147 CONG. REC. S5770-01 (2001) (statement of Sen. Barbara Boxer).

168. CRANDALL-HOLLICK *supra* note 130, at 1.

of earned income.<sup>169</sup> Additionally, the refundability rate of fifteen percent means that “[f]or every dollar of earnings above [the \$3000 refundability threshold], the value of the taxpayer’s ACTC increases by 15 cents, up to the maximum amount.”<sup>170</sup> This means the minimum income required to start receiving an ACTC credit is \$3001 per year. The court in *Hardy* found these amendments in 2008 and 2009 to be the defining moment when the CTC became a public assistance benefit, highlighting the shift in balance between providing incentives to taxpayers, as the CTC was originally enacted, and providing benefits to the needy, made possible through the enactment of the refundable ACTC.<sup>171</sup>

Therefore, the ACTC overwhelmingly works to fulfill the five purposes of exemption laws as Professor Resnick lays them out. As such, its exemption from the bankruptcy estate for Ms. Hardy, and many other debtors in bankruptcy, does more good for people than it can do as part of the bankruptcy estate. The ACTC, as currently enacted, works much like the EITC, providing tax refunds based on earned income rather than simply as an incentive for having a family.<sup>172</sup>

While the court in *Hardy* appears to have reached the correct decision, this decision alone does not go far enough to help debtors or to clarify the ambiguous language of the statutes for courts. Because the Eighth Circuit is the first appellate court to address this issue, there is still a large split of authority among the lower courts.<sup>173</sup> As such, the controlling statutes need to be amended and clarified because there is no indication that other courts will follow the *Hardy* ruling in the future.<sup>174</sup> This Note proposes an amendment to the Missouri exemption statute with the intent to clarify Missouri’s exemption scheme and with the hope that it can be seen as a template for other similarly ambiguous state and federal exemption statutes. Section 513.430.1(10)(a) should be amended as follows:

(10) Such person’s right to receive:

(a) A Social Security benefit, unemployment compensation or a public assistance benefit, *including but not limited to*:

(i) The refundable portion of the Child Tax Credit (additional Child Tax Credit) as found in I.R.C. §24;

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169. *Id.*

170. *Id.* at 4.

171. *In re Hardy*, 787 F.3d at 1193.

172. *Id.*

173. *See supra* Part III.C.

174. Uniformity in state exemption statutes would resolve some of the ambiguity and inconsistencies in the lower courts. For an analysis of the need for uniformity in bankruptcy legislation, see Lawrence Ponoroff, *Constitutional Limitations on State-Enacted Bankruptcy Exemption Legislation and the Long Overdue Case for Uniformity*, 88 AM. BANKR. L.J. 353, 361 (2014).

- (ii) The Earned Income Tax Credit as found in I.R.C. §32; and
- (iii) The Adoption Tax Credit as found in I.R.C. §23.

As amended, this statute would provide clearer boundaries for the definition of public assistance benefits and will provide guidance to future courts and debtors in bankruptcy cases. The addition of “including but not limited to” provides for the possibility of additional public assistance benefits to fit within the statute, while also preventing further confusion in interpreting and defining such terms of art as public assistance benefits. Finally, this amendment would serve as a template for other ambiguous exemption statutes across the country in preventing misuse or continued ambiguous interpretation of statutory language that can so directly and drastically affect debtors’ lives during their bankruptcy.

## VI. CONCLUSION

The Eighth Circuit was correct in its decision that the ACTC qualifies as a public assistance benefit for the purposes of Missouri’s exemption scheme in bankruptcy filings. However, the Eighth Circuit is the first appellate court to set a precedent allowing the ACTC to be exempted from a bankruptcy estate under the public assistance benefits exemption. The court’s holding does not resolve the uncertainty revolving around the definition of public assistance benefits in exemption statutes across the country.

This Note attempts to clarify the definition by providing an amendment to the Missouri statute consistent with the purposes underlying bankruptcy exemptions. One goal of this Note is to encourage other states, as well as Congress, to make similar amendments to their exemption statutes so that already overburdened courts have one less issue to wade through in dealing with bankruptcy cases. Even while bankruptcy-filing rates are finally beginning to drop, there are still large portions of the population filing for bankruptcy each year. Bankruptcy exemption statutes seek to strike the balance between holding debtors accountable for their outstanding debts and providing relief from extensive and crippling debt. The exemption of public assistance benefits can make a huge difference for low-income debtors who qualify for such benefits, even in small sums like in the ACTC, without undermining the balanced intent of the bankruptcy code.