

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re

TODD ALAN BRENNECKE and
KATHRYN LOUISE BRENNECKE,

Debtors.

Case No. 09-34193

Chapter 13

MEMORANDUM DECISION ON TRUSTEE'S OBJECTION TO CONFIRMATION

The debtors filed a chapter 13 petition on September 30, 2009. The debtors' plan proposed payments of \$634 per month for 60 months, for a total amount of \$60,569.00. The trustee opposed confirmation on the grounds that not all projected disposable income for the five year applicable commitment period had been provided. In particular, the debtors used a tax calculator to take a deduction on line 30 of the means test for taxes that result in a deduction of more than twice the actual taxes paid for calendar year 2008. The Court held an evidentiary hearing on February 3, 2010, wherein the debtor wife testified regarding her and her husband's income and expenses for 2009. The parties subsequently submitted letter briefs explaining their respective projected tax liability calculations.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(L), and the Court has jurisdiction under 28 U.S.C. § 1334. This decision constitutes the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052.

PARTIES' CALCULATIONS

The debtors assert their FICA/Medicare tax obligation is \$8,202.00, their state tax obligation is \$6,249.00, and their federal tax obligation is \$8,270.00, for a total 2009 annual tax obligation of \$22,721.00. The monthly tax obligation for line 30 of the means test is thus

\$1,893.00. The debtors base their state and federal tax calculations on 2009 income of \$107,219.00, and an adjusted income of \$60,699.00, after reductions for itemized deductions, education credits, student loan interest, and child care credits, along with exemptions for six people.

The trustee asserts the debtors' FICA/Medicare tax obligation is \$8,202.00, their state tax obligation is \$4,199.28, and their federal tax obligation is \$3,700.05, for a total 2009 annual tax obligation of \$16,101.33. The monthly tax obligation for line 30 of the means test is thus \$1,341.78. The trustee bases its state and federal tax calculations on 2009 taxable income of \$59,583.68 after reductions for itemized deductions, student loan interest, and exemptions for six people. The annual tax obligations are further deducted by education and child care credits.

DISCUSSION

The parties agree on the amount of the debtors' 2009 FICA/Medicare tax obligation, so that obligation for the purpose of the means test has been established at \$8,202.00 annually and \$683.50 monthly.

The trustee calculated the debtors' 2009 federal tax obligation as follows:

Box 1 2009 W2 Income	\$ 99,462.68
State 2008 Refund	+ 2,241.00
Total	101,703.68
Student Loan Interest	- 1,577.00
Federal Adjusted Gross Income	100,126.68
Debtors' Itemized Deductions	- 18,643.00
Total	81,483.68
Exemptions	- 21,900.00
Taxable Income	59,583.68
Tax (\$1,675 + 15% over 16,750)	8,100.05
Education Credit	- 2,000.00
Child Care Credit	- 2,400.00
Annual Federal Tax	<u>3,700.05</u>

From the documents attached to the debtors' letter brief, it appears as though the debtors

calculated their 2009 federal tax obligation as follows:

Box 3 & 5 2009 W2 Income	\$ 107,219.00
Student Loan Interest	- 1,577.00
Debtors' Itemized Deductions	- 18,643.00
Exemptions	- 21,900.00
Education Credit	- 2,000.00
Child Care Credit	- 2,400.00
Taxable Income	60,699.00
Annual Federal Tax	<u>8270.00</u>
(\$1,675 + 15% over 16,750)	

I am satisfied that the trustee properly calculated the debtor's federal tax obligation for 2009. The proper figures for taxable income are contained in Box 1 of an employee's annual W-2 Wage and Tax Statement. The figure in Box 1 includes the employee's wages, salary, reported tips, bonuses and other taxable compensation. The starting point used by the debtors was boxes 3 and 5. These report the total amount of wages subject to the Social Security and Medicare taxes, but they are not what the debtors actually earned. So the starting number in the debtors' calculation was overstated. Also, the debtors' Education and Child Care Credits are just that – tax *credits* – and reduce tax obligations dollar for dollar. The debtors treated them as deductions from their income, again throwing off the accuracy of their calculations. Since the trustee has justified his calculations and the debtors have not, the Court finds that the debtors' federal tax obligation for the purpose of the means test is \$3,700.05 annually, or \$308.34 monthly.

The trustee calculated the debtors' 2009 state tax obligation as follows:

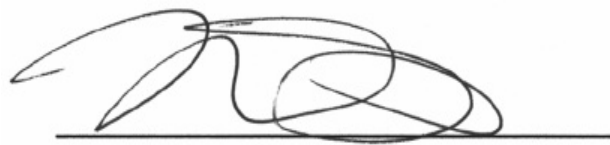
Federal Adjusted Gross Income	\$ 100,126.68
State 2008 Refund	- 2,241.00
Wisconsin Income	97,885.68
WI Standard Deduction 2009 Table (17,010 less 19.779% of excess over 19,100) (78,785.68 x 19.778% = 15,582.23) (17,010 - 15,582.23 = 1,427.77)	- 1,427.77
	96,457.91
Exemptions	- 4,200.00

Taxable Income		92,257.91
Tax		
(1,464.77 plus 6.5% of excess over 27,250)		
(65,007.91 x 6.5% = 4,225.51 + 1,464.77)	5,690.28	
Itemized deduction credit	-	721.00
Property Tax Credit	-	290.00
Married Couple Credit	-	480.00
Annual State Tax		<u>4,199.28</u>

In its calculations, the trustee used the amount of the debtors' 2008 itemized deduction credit, which may actually be lower as less mortgage interest was paid in 2009. Although the debtors are likely still eligible for this credit, the trustee conceded that a reduction in the itemized deduction credit would increase the debtor's annual state tax obligation, slightly reducing their obligation under the means test.

According to the debtors' calculations, their 2009 state tax obligation is \$6,249.00 after application of the Wisconsin Rate Chart, the standard deduction from their 2008 state tax return and exemptions. It is not clear how the debtors came up with their starting figure, but the trustee's numbers are clear. Therefore, I find that the debtors' state tax obligation for the purpose of the means test is \$4,199.28 annually, and \$349.94 monthly. The trustee's objection to confirmation is sustained. The debtors shall have 30 days from today's date to submit an amended Form B22C and plan consistent with this decision. A separate order will be entered.

April 23, 2010



Margaret Dee McGarity
Chief Judge, U.S. Bankruptcy Court