

# POVERTY, FRESH STARTS, AND THE SOCIAL SAFETY NET

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## ABSTRACT

*For decades low-income families have relied on the filing of individual income tax returns to claim critical social welfare benefits in the form of refundable tax credits, most notably the Earned Income Tax Credit and the Child Tax Credit. But what happens to those families when the social safety net is not enough to meet their financial obligations, and they must seek a fresh start by filing for bankruptcy?*

*This Article, at the intersection of tax law, bankruptcy law, and the social safety net, examines the ways in which state bankruptcy laws treat refundable tax credits when an individual debtor files for bankruptcy. There is no federal bankruptcy exemption available to protect a debtor's entitlement to refundable tax credits; the split over whether states provide such an exemption or not results in inconsistency across the country depending on where a debtor resides.*

*State legislation and case law from U.S. bankruptcy courts provide a critical lens through which to view the tax-based social safety net, highlighting the evolving way in which lawmakers and judges have come to view refundable tax credits. This Article draws upon these perspectives to consider legislative models that might provide more robust protection for debtors who are entitled to these refundable credits, enabling them to better pursue a fresh start.*

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## INTRODUCTION

Over the course of the last five decades, the Earned Income Tax Credit (EITC) has become ingrained as a critical safety net for low-income workers with children.<sup>1</sup> For more than twenty-five years, the Child Tax Credit (CTC) has supplemented this safety net.<sup>2</sup> As a result of Congress enacting these refundable tax credits, the Internal Revenue Service (IRS) has become an administrator of social benefits. The COVID-19-era expansion of such distributions further highlighted the critical role of such tax-based payments in the U.S. social safety net; as the magnitude of the economic disruption created by the public health crisis became apparent, Congress quickly turned to the IRS and asked it to administer relief in the form of economic impact payments. To further aid families, Congress enhanced the scope and availability of the CTC on a temporary basis during the pandemic.<sup>3</sup> In essence, these different tax credits and stimulus payments are all social benefits, albeit with different requirements, thresholds, and amounts. To some degree, each has played a role in the social safety net.

Sometimes the safety net falls short and an individual may need to seek protection under the bankruptcy laws. When a debtor seeks such relief, how does that intersect with that family's eligibility to receive refundable tax credits? Currently, the answer depends on the state in which the debtor lives and may further depend on the specific type of refundable credit received.<sup>4</sup> Imagine, for example, a single mother anxiously awaiting

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1. I.R.C. § 32.

2. *Id.* § 24.

3. *IRS Revises the 2021 Child Tax Credit and Advance Child Tax Credit Frequently Asked Questions*, IRS: FACT SHEET (July 2022), <https://www.irs.gov/pub/taxpros/fs-2022-32.pdf> [<https://perma.cc/GVK8-KDKfM>].

4. This Article draws inspiration from those who have highlighted the issue in blog posts over a period of years. See, e.g., Keith Fogg, *Exempting the Earned Income Tax Credit from the Bankruptcy Estate*, TAX NOTES: PROCEDURALLY TAXING (Jan. 11, 2023), <https://www.taxnotes.com/procedurally-taxing/exempting-earned-income-tax-credit-bankruptcy-estate/2023/01/11/7h696> [<https://perma.cc/Y98V-JUSX>]; Phil Rosenkranz, *8th Circuit Exempts Additional Child Tax Credit from Bankruptcy Estate in Missouri Cases*, PROCEDURALLY TAXING (Jan. 11, 2016) (on file with the Temple Law Review); see also Jennifer E. Spreng, *When "Welfare" Becomes "Work Support": Exempting Earned Income Tax Credit Payments in Consumer*

her tax refund because she needs it to afford home repairs. For many taxpayers, these repairs are not attainable when living paycheck to paycheck, but the large lump-sum nature of the EITC and CTC creates an annual opportunity to attend to these more expensive repairs. Upon receiving federal and state tax refunds totaling \$5,861, the taxpayer immediately spends it to repair her air conditioning and hot water heater.<sup>5</sup> Around the same time (but prior to receiving the refunds), the taxpayer filed for Chapter 7 bankruptcy; on those schedules she listed the tax refund amounts as an unknown amount and sought to exempt them.<sup>6</sup> This particular debtor lived in New Mexico, which does not provide any state exemption for the EITC or for federal public assistance benefits.<sup>7</sup> The trustee objected to her exemption claim to the extent that it exceeded New Mexico's statutory wildcard claim of \$500.<sup>8</sup> In this case, the United States Bankruptcy Court for the District of New Mexico ruled that the taxpayer had to pay back most of the EITC that she had spent on the home repairs.<sup>9</sup> In its opinion, the court acknowledged that these were important home repairs and expressed that it was sympathetic to her circumstances.<sup>10</sup> However, the court's analysis of the applicable statutory provisions concluded that her EITC was not exempt property.<sup>11</sup> Had this same taxpayer lived one state to the north—in Colorado—her case would have turned out differently. The state bankruptcy exemption law in Colorado would have allowed her to exempt her entire EITC.<sup>12</sup>

This Article examines the intersection of Chapter 7 bankruptcy and the Internal Revenue Code's (IRC) various social welfare benefits.<sup>13</sup> It outlines four distinct ways that tax-based social benefits are treated in different jurisdictions. While these tax-based benefits are federal in nature, bankruptcy exemption provisions vary by state, resulting

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*Bankruptcy*, 78 AM. BANKR. L.J. 279, 338 (2004) (arguing in favor of Congress enacting federal legislation exempting the Earned Income Tax Credit (EITC) or, in the absence of that, states doing so).

5. *In re Medina*, No. 22-10233-j7, 2022 WL 17742527, at \*1–2 (Bankr. D.N.M. Dec. 16, 2022).

6. *Id.* at \*1.

7. *Id.* at \*3–4.

8. *Id.* at \*2. A state wildcard exemption is a specific statutory dollar amount that debtors may use to protect any type of property, as opposed to a statutorily named type of property. Wildcard exemptions provide additional flexibility to the debtor.

9. *Id.* at \*7.

10. *Id.* at \*6.

11. *Id.* (“[T]he decision whether to permit a debtor in bankruptcy to protect a sufficient amount of her tax refunds/EITC to make such home repairs is a decision for the legislature. Neither Congress nor the New Mexico legislature has enacted exemptions that would protect the funds in this case.”).

12. See *infra* Part III.A.2 for a discussion of Colorado's exemption provision. There is a long history behind the “widely divergent” disparities in state exemption laws. TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA 26–30 (1989).

13. The specific focus of this Article is Chapter 7 bankruptcies, which involve a liquidation of an individual debtor's nonexempt assets. Most individual, nonbusiness bankruptcies are filed under Chapter 7 of the Bankruptcy Code rather than under Chapter 11 or Chapter 13. *E.g.*, Table F-2: *U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending December 31, 2024*, U.S. CTS., [https://www.uscourts.gov/sites/default/files/2025-01/bf\\_f2\\_1231.2024.pdf](https://www.uscourts.gov/sites/default/files/2025-01/bf_f2_1231.2024.pdf) [<https://perma.cc/DJ9Q-BBDG>] (last visited Oct. 17, 2025) (reporting total commencement of 298,049 nonbusiness Chapter 7 bankruptcy cases, 428 nonbusiness Chapter 11 bankruptcy cases, and 195,724 nonbusiness Chapter 13 bankruptcy cases in the United States during the 2024 calendar year).

in a debtor taxpayer in Virginia or Colorado experiencing a different outcome than a debtor taxpayer residing in North Carolina or New Mexico. In some states, the result may vary according to which part of the state the debtor resides.<sup>14</sup> Almost uniformly, courts are sympathetic to low-income debtors who wish to retain their refundable credits. However, courts recognize that bankruptcy exemptions are within the domain of legislatures, not the courts.<sup>15</sup>

This Article draws upon a sampling of these bankruptcy cases and the differences in treatment of the exemption of refundable tax credits. The discussion of these differences will inform a vision of how Congress and states might move forward collectively to better serve the low-income families who receive these benefits.

This comprehensive review of case law examines refundable tax credits through the lens of state law and U.S. bankruptcy courts.<sup>16</sup> This perspective better reveals the evolution of the legal and public perception of tax credits as a tool of the social safety net. This perspective is shaped by the tax credits' ability to lift up both the working poor and taxpayers of greater economic means.

Section I of this Article introduces the various refundable tax credits found in the IRC and provides context as to their different legislative histories and subsequent statutory evolutions. Section II provides an overview of exemptions allowable in Chapter 7 bankruptcies, setting the stage for why outcomes differ from state to state. Section III of this Article sets forth a typology of bankruptcy exemption laws in different states, identifying four basic approaches. The examples from these typologies provide a fascinating lens through which to view evolving perceptions of the EITC and the CTC over the last quarter century. Section IV of this Article makes a normative argument for why refundable tax credits should be protected in bankruptcy. This Article concludes with legislative proposals.

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14. See *infra* Part III.B.5 for a discussion of Illinois's exemption provision and the differing interpretations of the provision across the bankruptcy courts in Illinois's federal districts.

15. Several bankruptcy courts have expressed the same sentiment as the court in *In re Medina*. No. 22-10233-j7, 2022 WL 17742527, at \*6 (Bankr. D.N.M. Dec. 16, 2022). *In re Thompson*, for example, provides:

This Court is not without sympathy for the debtor's circumstances. The Court notes that other state legislatures, obviously recognizing the character of the earned income credit and its importance to those in need, have enacted statutes which specifically exempt it from execution. The Court must, however, apply statutes as they are written.

336 B.R. 800, 803 (Bankr. D. Nev. 2005) (footnote omitted).

16. In her 2004 article, Professor Jennifer Spreng wrote about this issue and what she referred to as "the uncertain status of the EITC in the exemption case law." Spreng, *supra* note 4, at 306. At the time of Spreng's article, only four states (Oklahoma, Colorado, Florida, and Oregon) had exemption laws explicitly exempting the EITC. Twenty years later, fourteen do. These are discussed in Part III.A. Similarly, at the time of her article, only the Fifth Circuit, in *In re Collins*, 170 F.3d 512, 513 (5th Cir. 1999), had considered whether the EITC might be exempt under a public assistance statute, and it held that it was not, due to the restrictive language of the statute. Spreng, *supra* note 4, at 308–09. As Part III.B discusses, this issue has now reached multiple courts of appeals; the public assistance statutes in these subsequent cases were not as narrowly drafted as the one at issue in *Collins* and have been interpreted as including the EITC. At the time of Professor Spreng's article, neither legislatures nor courts recognized an exemption for any portion of the Child Tax Credit (CTC) (refundable or nonrefundable).

# I. REFUNDABLE TAX CREDITS: TAX REFUNDS AS SOCIAL BENEFITS

Section I provides an overview of how refundable tax credits form part of the social safety net, to compare and contrast these tax benefits with traditional forms of public assistance. While the EITC and the CTC are similar in certain respects, each is distinct in important ways. Understanding the legislative history—and legislative evolution—of each credit is critical to developing a theory of if and how these credits should be protected in bankruptcy. To the extent that these credits constitute public assistance, it helps to understand the argument in favor of statutory protection of these amounts during a Chapter 7 bankruptcy.

By design, refundable tax credits are not like traditional welfare benefits.<sup>17</sup> Taxpayers determine their own eligibility and claim the amount annually on their individual income tax return, meaning they receive the benefit as a lump-sum payment with their tax refund upon filing.<sup>18</sup> There are many benefits to this approach, including reduced administrative cost to the government and reduced stigma to the recipient.<sup>19</sup>

A tax credit, whether refundable or nonrefundable, will offset any tax due on a dollar-for-dollar basis.<sup>20</sup> If a tax credit is refundable, the taxpayer will receive a refund of any amount of the credit that exceeds the tax due.<sup>21</sup> A taxpayer will receive a refundable credit as a tax refund even if the taxpayer has no federal income tax liability.<sup>22</sup> In contrast, a nonrefundable tax credit can reduce a taxpayer's federal income tax liability to zero, but it cannot result in a refund to the taxpayer.<sup>23</sup>

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17. For excellent discussions of the EITC as a hybrid welfare benefit, see Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 536–44 (1995); Lawrence Zelenak, *Tax or Welfare? The Administration of the Earned Income Tax Credit*, 52 UCLA L. REV. 1867, 1873–75 (2005); Leslie Book, *Preventing the Hybrid from Backfiring: Delivery of Benefits to the Working Poor Through the Tax System*, 2006 WIS. L. REV. 1103, 1124–30 (2006).

18. See *How To Claim the Earned Income Tax Credit (EITC)*, IRS (Feb. 18, 2025), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/how-to-claim-the-earned-income-tax-credit-eitc> [https://perma.cc/X27V-A429].

19. See generally Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515, 522–23 (2013) (addressing the lack of stigma associated with the EITC); SARAH HALPERN-MEEKIN, KATHRYN EDIN, LAURA TACH & JENNIFER SYKES, *IT'S NOT LIKE I'M POOR: HOW WORKING FAMILIES MAKE ENDS MEET IN A POST-WELFARE WORLD* 69 (2015) (describing how EITC recipients are empowered by the lump-sum delivery); Richard Pulvera, Kaitlyn Jackson, Wendi Gosliner, Rita Hamad & Lia C.H. Fernald, *The Association of Safety-Net Program Participation with Government Perceptions, Welfare Stigma, and Discrimination*, HEALTH AFF. SCH., Jan. 2024, at 1, 5 (exploring perceptions of stigma related to welfare participation).

20. *Tax Credits for Individuals: What They Mean and How They Can Help Refunds*, IRS (Apr. 9, 2023), <https://www.irs.gov/newsroom/tax-credits-for-individuals-what-they-mean-and-how-they-can-help-refunds> [https://perma.cc/EBD5-U4Q3].

21. CONG. BUDGET OFF., PUB. NO. 4152, REFUNDABLE TAX CREDITS 1 (2013), [https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/43767\\_RefundableTaxCredits\\_2012\\_0\\_0.pdf](https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/43767_RefundableTaxCredits_2012_0_0.pdf) [https://perma.cc/4K55-GPS8].

22. A significant percentage of low-income workers do not have a federal income tax liability because each filer is entitled to the standard deduction when calculating their tax liability. See I.R.C. § 63(c). The standard deduction amount is adjusted annually for inflation. In tax year 2023, the standard deduction was \$13,850 for single filers and \$27,700 for married couples filing a joint return. Rev. Proc. 2022-38, 2022-45 I.R.B. 445 § 3.15. This standard deduction is subtracted from taxable income when calculating tax due, effectively creating an income threshold below which no income tax is due.

23. CONG. BUDGET OFF., *supra* note 21, at 5.

### A. *Distinguishing Among Different Refundable Tax Credits*

This Article focuses on the social benefits Congress embedded in the IRC that are administered by the IRS. This Section will briefly introduce the two refundable tax credits that are the primary subjects of state exemption provisions and bankruptcy cases discussed in Section III: the EITC and the CTC. Together, these two tax credits play a significant role in lifting millions of working families out of poverty.<sup>24</sup> In 2022, more than twenty-nine million tax refunds included a refundable CTC, and more than thirty-two million included a refundable EITC.<sup>25</sup>

For context and contrast, this Section also addresses other types of refundable credits, as well as the temporary COVID-19-era Economic Impact Payments and expanded CTC provisions enacted by Congress in 2020 and 2021.

#### 1. Earned Income Tax Credit

The EITC is designed to support low- and moderate-income households.<sup>26</sup> As implied by the term *earned income* in the credit's name, work is (and has always been)<sup>27</sup> required to receive the credit.<sup>28</sup> An individual is eligible to receive the EITC after the first dollar earned.<sup>29</sup> The credit phases in gradually, per fifty-dollar increments of income, with the amount of the credit varying depending upon the number of qualifying children in the taxpayer's household, the amount of earned income, and the taxpayer's marital status.<sup>30</sup> After a certain amount of earnings, the amount of the EITC plateaus at a maximum amount; this plateau occurs at different earnings levels depending on

24. CTR. ON BUDGET & POL'Y PRIORITIES, THE EARNED INCOME TAX CREDIT 3 (2023) (citing census data demonstrating that these two tax credits lifted 10.6 million people above the poverty line in 2018, including 5.5 million children, and reduced the severity of poverty for an additional 17.5 million people, including 6.4 million children).

25. I.R.S., DEP'T OF THE TREASURY, PUBL'N 55-B, INTERNAL REVENUE SERVICE DATA BOOK, 2022, at 2 (2023). In fiscal year 2022, 160.6 million individual income tax returns were filed. *Id.*

26. This Part touches upon the highlights of the legislative history of the EITC as support for low-income working families. For a comprehensive legislative history of the EITC tracing the origin back to Nixon-era welfare reform debates and Senator Russell Long's "work bonus plan," see generally MARGOT L. CRANDALL-HOLICK, CONG. RSCH. SERV., R44825, THE EARNED INCOME TAX CREDIT (EITC): A BRIEF LEGISLATIVE HISTORY (2018) [hereinafter CRANDALL-HOLICK, EITC LEGISLATIVE HISTORY]. For an overview of the political evolution of the EITC and the administrative design choice to use lump-sum delivery, see MICHELLE LYON DRUMBL, TAX CREDITS FOR THE WORKING POOR: A CALL FOR REFORM 5-45 (2019).

27. Congress has, at times, temporarily provided a look-back option for specific federal disasters and during the pandemic, allowing taxpayers to calculate EITC based on a prior year's earnings, if higher. But even in those look-back years, the credit was still tied to earnings from work. For examples and specifics, see Matt Weidinger, *Another Pandemic Legacy: Removing the EITC's Work and Earnings Requirement*, AM. ENTER. INST. (Aug. 3, 2023), <https://www.aei.org/articles/another-pandemic-legacy-removing-the-eitcs-work-and-earnings-requirement/> [https://perma.cc/478P-C5YL].

28. I.R.C. § 32(a)(1), (c) (defining earned income as "wages, salaries, tips, and other employee compensation" and net earnings from self-employment).

29. See *Earned Income and Earned Income Tax Credit (EITC) Tables*, IRS (Oct. 16, 2025), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-and-earned-income-tax-credit-eitc-tables> [https://perma.cc/7DKY-N2BU].

30. See I.R.C. § 32(b). Each tax year's EITC amounts are provided in a table included in the instructions to Internal Revenue Service (IRS) Form 1040. *Earned Income and Earned Income Tax Credit (EITC) Tables*, *supra* note 29.

whether the taxpayer has zero, one, two, or three or more qualifying children.<sup>31</sup> These figures are adjusted annually for inflation.<sup>32</sup>

While low-income workers without qualifying children may receive a modest amount of EITC,<sup>33</sup> the most significant beneficiaries of the EITC are parents of qualifying children. In 2023, the maximum EITC available for taxpayers with one qualifying child was \$3,995; for two qualifying children it was \$6,604; and for three or more qualifying children it was \$7,430.<sup>34</sup>

Each of these categories of taxpayers with children have an income threshold at which the credit begins to phase out, meaning taxpayers above that income level receive less than the maximum EITC amount.<sup>35</sup> The amount of EITC received is gradually reduced<sup>36</sup> until the income exceeds the completed phaseout amount, at which point a taxpayer is no longer eligible for any amount of credit.<sup>37</sup> As of 2023, an unmarried parent with one qualifying child is ineligible for EITC once he or she earns \$46,560 or more, while a married couple with three qualifying children is ineligible once they earn \$63,398 or more.<sup>38</sup>

Another design feature of the EITC is that individuals who receive significant investment income are ineligible for the credit. An individual who receives more than \$11,000 in interest (taxable or tax-exempt), dividends, net rent, and net capital gains will not receive any EITC.<sup>39</sup> This prevents individuals who have accumulated wealth but only a modest earned income from receiving the EITC.<sup>40</sup>

The EITC, enacted in 1975, has its legislative roots in welfare reform as a work incentive. Relative to the present-day version, its original iteration was far more modest in dollar amount, more narrowly targeted to households with children, and explicitly

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31. For a more detailed explanation of the phase-in and phaseout levels with illustration, see MARGOT L. CRANDALL-HOLLOCK, GENE FALK & CONOR F. BOYLE, CONG. RSCH. SERV., R43805, THE EARNED INCOME TAX CREDIT (EITC): HOW IT WORKS AND WHO RECEIVES IT 5–6 (2023).

32. I.R.C. § 32.

33. In 2023, unmarried taxpayers without qualifying children who earned less than \$17,640 received an EITC of up to \$600. Rev. Proc. 2022-38, 2022-45 I.R.B. 445 § 3.06.

34. *Id.* The income threshold phaseout amount for unmarried taxpayers with any number of qualifying children is \$21,560 and is \$28,120 for married taxpayers filing jointly. *Id.* A married couple with three or more children is eligible to receive some amount of EITC until their income exceeds \$63,398. *Id.*

35. With respect to the phaseout, the categories vary according to the number of children and according to whether the taxpayer is filing a joint income tax return or not. I.R.C. § 32(b).

36. As with the phase-in, the phaseout occurs gradually in increments as each additional \$50 of income is earned. I.R.C. § 32(a)(2), (f)(2).

37. *Id.* For example, in tax year 2023, the income amount at which the phaseout begins for an unmarried taxpayer with no qualifying children is \$9,800, with the \$600 maximum reduced at income levels higher than that until the income reaches the completed phaseout amount of \$17,640. Rev. Proc. 2022-38, 2022-45 I.R.B. 445 § 3.06. The income threshold phaseout amount is higher (\$16,370), as is the completed phaseout amount (\$24,210), for married taxpayers filing jointly (though the maximum EITC available is the same). *Id.*

38. Rev. Proc. 2022-38, 2022-45 I.R.B. 445 § 3.06.

39. I.R.C. § 32(i); Rev. Proc. 2022-38, 2022-45 I.R.B. 445 § 3.06(2).

40. See CRANDALL-HOLLOCK, EITC LEGISLATIVE HISTORY *supra* note 26, at 7–8 n.30 (describing changes made to the EITC in 1996 in response to congressional concern with ensuring that “scarce EITC dollars go to the working poor who need it, not to the individuals with substantial business income who do not need it” (quoting 142 CONG. REC. 17862 (1996))).



designed to induce individuals to transition from welfare rolls to the workforce.<sup>41</sup> It has been expanded in amount and scope several times over the previous several decades,<sup>42</sup> the effect of which has been to transform the credit from a work incentive to a full-fledged antipoverty program.<sup>43</sup> Over a fifty-year span, the EITC has consistently retained bipartisan support for its goal of providing financial support to the working poor.<sup>44</sup>

From 1978 to 2010, taxpayers could elect to take a portion of the EITC in each paycheck, rather than entirely as a lump-sum refund. This option, known as the Advance EITC, required an employee to coordinate with the employer to adjust paycheck withholding according to EITC eligibility.<sup>45</sup> Despite IRS efforts to publicize this advance option, the Advance EITC never became popular among taxpayers; studies conducted by the IRS found it only had a single-digit take-up rate.<sup>46</sup> While the reason for this cannot be known for certain, research suggests that many taxpayers preferred receiving the EITC in a lump sum.<sup>47</sup> While the Advance EITC option was eliminated in 2010, scholars and policy analysts have continued to study taxpayer preferences and propose ways the EITC could be distributed as periodic payments in order to improve its function as a safety net.<sup>48</sup> Periodic payments provide more consistent financial support throughout the year,

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41. STAFF OF JOINT COMM. ON TAX'N, 94TH CONG., ANALYSIS OF THE HOUSE VERSION OF THE TAX REDUCTION ACT OF 1975 (H.R. 2166) AND POSSIBLE ALTERNATIVES 33 (Comm. Print 1975). The legislative history explicitly referenced Social Security taxes:

This new refundable credit will provide relief to families who currently pay little or no income tax. These people have been hurt the most by rising food and energy costs. Also, in almost all cases, they are subject to the social security payroll tax on their earnings. Because it will increase their after-tax earnings, the new credit, in effect, provides an added bonus or incentive for low-income people to work, and therefore, should be of importance in inducing individuals with families receiving Federal assistance to support themselves. Moreover, the refundable credit is expected to be effective in stimulating the economy because the low-income people are expected to spend a large fraction of their increased disposable incomes.

S. REP. NO. 94-36, at 11 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 54, 64.

42. Legislation increasing the amount of the EITC was enacted in 1978, 1986, 1990, 1993, and 2009. RANDALL-HOLLOCK, EITC LEGISLATIVE HISTORY, *supra* note 26, at 3.

43. See DRUMBL, *supra* note 26, at 14–15. I have argued elsewhere that the turning point in this transformation was in 1990, when Democratic Congressman Dan Rostenkowski proposed increasing the credit to vary by family size and President George H. W. Bush signed a version of the bill that increased the EITC for families with two or more children. *Id.*

44. See *id.* at 5–24 (providing details and examples of bipartisan support for the EITC).

45. See *id.* at 36–45 (discussing the Advance EITC).

46. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-07-1110, ADVANCE EARNED INCOME TAX CREDIT: LOW USE AND SMALL DOLLARS PAID IMPEDE IRS'S EFFORTS TO REDUCE HIGH NONCOMPLIANCE 3, 11 (2007).

47. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-92-96, EARNED INCOME TAX CREDIT: ADVANCE PAYMENT OPTION IS NOT WIDELY KNOWN OR UNDERSTOOD BY THE PUBLIC 15–16 (1992) (exploring the low take-up rate among eligible taxpayers who were aware of the advance option and citing some of the reasons given by those individuals, which included fear of owing the IRS at year end and the relatively low amount available per paycheck); see also Damon Jones, *Information, Preferences and Public Benefit Participation: Experimental Evidence from the Advance EITC and 401(k) Savings*, 2 AM. ECON. J.: APPLIED ECON. 147, 147–49 (2010) (finding that eligible recipients actively forgo the Advance EITC option).

48. See, e.g., STEVE HOLT, KALI GRANT & FUNKE ADERONMU, MATCHING TIMING TO NEED: REFUNDABLE TAX CREDIT DISBURSEMENT OPTIONS 38–48 (2020), <https://www.georgetownpoverty.org/wp-content/uploads/2020/11/MatchingTimingtoNeed-Nov2020.pdf> [<https://perma.cc/E2SJ-4QJU>].

allowing for consumption smoothing and more effective budgeting. Congress temporarily offered this alternative for the CTC in 2021.<sup>49</sup>

Throughout its fifty-year evolution, the EITC generally has been distinguished from traditional welfare due to its work requirement, which largely accounts for its bipartisan political support and public popularity.<sup>50</sup> Empirical studies show that EITC recipients distinguish the tax credit from welfare in their minds as well—they do not feel the stigma associated with traditional welfare.<sup>51</sup> Studies also reveal how meaningful the EITC is to families and its effectiveness as a social safety net, both in short-term and long-term impact.<sup>52</sup> The EITC allows for asset building, debt reduction, and protection against financial shocks.<sup>53</sup> Beyond mere temporary financial support, the benefits include longer-term improved health, educational, and career outcomes for children whose households received the EITC.<sup>54</sup>

In program design, semantics matter. As legal scholar and Professor Dorothy Brown describes it, congressional members characterize programs as “welfare” if they want to garner opposition, but avoid that characterization when they want to garner support.<sup>55</sup> Illustrating this, Professor Brown contrasts congressional messaging regarding the EITC with messaging relating to government aid to farmers, citing specific statements made in the context of the 1996 Agricultural Market Transition Act.<sup>56</sup> When

49. I.R.C. § 7527A.

50. See, e.g., Alstott, *supra* note 17, at 537 (“[T]he EITC’s redistributive function is cloaked in anti-welfare rhetoric to attract maximum political support.”).

51. HALPERN-MEEKIN ET AL., *supra* note 19, at 67. Scholars who have conducted qualitative studies of EITC recipients note both the lack of stigma associated with it and taxpayers’ satisfaction in having earned the credit through work:

It is the EITC’s link to employment . . . and the fact that it explicitly excludes those who are allegedly “sitting on their asses”—the characterization our families often use to describe welfare recipients—that is probably responsible for the fact that it is not perceived as a government handout. In fact, it is seen as the antithesis of a handout; it’s a well-deserved hand up.

*Id.*

52. These include nonfinancial benefits to children, including improved birth weight and overall health, higher test scores and graduation rates, and increased college enrollment. E.g., CTR. FOR L. & SOC. POL’Y, RESEARCH SHOWS LONG-LASTING BENEFITS OF EITC 1–2 (2017), <https://www.clasp.org/wp-content/uploads/2022/04/Research-shows-long-lasting-benefits-of-EITC-5.pdf> [https://perma.cc/AZ3D-W4H7]; see also Jennifer Sykes, Katrin Kriz, Kathryn Edin & Sarah Halpern-Meeke, *Dignity and Dreams: What the Earned Income Tax Credit (EITC) Means to Low-Income Families*, 80 AM. SOCIO. REV. 243, 259–62 (2015) (describing the meaning attached to the lump-sum EITC by its recipients).

53. Ruby Mendenhall, Kathryn Edin, Susan Crowley, Jennifer Sykes, Laura Tach, Katrin Kriz & Jeffrey R. Kling, *The Role of Earned Income Tax Credit in the Budgets of Low-Income Households*, 86 SOC. SERV. REV. 367, 374–76 (2012).

54. See, e.g., ELAINE MAAG, WILLIAM J. CONGDON & EUNICE YAU, U.S. DEP’T OF HEALTH & HUM. SERVS., OPRE REP. 2021-34, THE EARNED INCOME TAX CREDIT: PROGRAM OUTCOMES, PAYMENT TIMING, AND NEXT STEPS FOR RESEARCH 13–14 (2021) (providing examples of nonfinancial benefits of the EITC).

55. Dorothy Brown, *The Tax Treatment of Children: Separate but Unequal*, 54 EMORY L.J. 755, 796 (2005) (“Anyone looking for consistency in the definition of welfare is left sorely disappointed.”) [hereinafter Brown, *Tax Treatment of Children*]; Dorothy Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790, 790 (2007) [hereinafter Brown, *Race and Class Matters*].

56. Brown, *Tax Treatment of Children*, *supra* note 55, at 796–801.

members of Congress referred to the proposed farm subsidies as welfare, some took offense at this characterization.<sup>57</sup>

These characterizations, of stigma or offense taken at the idea of welfare, provide an especially interesting lens through which to understand the bankruptcy case law analyzing the EITC as public assistance discussed further in Part III.B.

## 2. Child Tax Credit

The CTC was first enacted in 1997, has expanded in scope over time, and has always reached a broader income range than the EITC. While it provides a level of benefits to many low-income families with children, the CTC has historically been characterized as a middle-class tax credit.<sup>58</sup> As described herein, the Tax Cuts and Jobs Act of 2017 (TCJA) has exacerbated the degree to which the CTC benefits wealthier households.<sup>59</sup>

The legislative history of the CTC differs from that of the EITC in several significant respects. While the EITC originated as a means of transitioning workers off welfare rolls and into the workforce, the CTC originated in proposals designed to provide government support in response to the increased financial burden on parents as the family size increases.<sup>60</sup> While the EITC can be traced back to debates on welfare reform and Senator Russell Long's "work bonus" plan to aid the poor,<sup>61</sup> the CTC can be traced back to the bipartisan National Commission on Children's recommendation to strengthen families with a universal credit for children that "would not be a relief payment, nor would it categorize children according to their 'welfare' or 'nonwelfare' status."<sup>62</sup>

The eligibility requirements for the CTC and the EITC overlap, resulting in many EITC recipients also being eligible for the CTC. The requirements are different, however,

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57. *Id.* at 798 n.202.

58. See, e.g., Brown, *Race and Class Matters*, *supra* note 55, at 802 (citing numerous specific examples of this characterization); Brown, *Tax Treatment of Children*, *supra* note 55, at 783 (same).

59. The current structure of the CTC has been described as "upside-down" insofar as families with lower income receive a smaller CTC amount than families with higher incomes. CHUCK MARR, KRIS COX & SARAH CALAME, CTR. ON BUDGET & POL'Y PRIORITIES, ANY YEAR-END TAX LEGISLATION SHOULD EXPAND CHILD TAX CREDIT TO CUT CHILD POVERTY 3-4 (2023), <https://www.cbpp.org/sites/default/files/11-7-23tax.pdf> [<https://perma.cc/KB69-G7EM>].

60. For a legislative history of the CTC, see generally MARGOT L. CRANDALL-HOLICK, CONG. RSCH. SERV., R45124, THE CHILD TAX CREDIT: LEGISLATIVE HISTORY (2021) [hereinafter CRANDALL-HOLICK, CTC LEGISLATIVE HISTORY]. Crandall-Hollick describes the congressional concern that the exemption for dependents was not keeping up with inflation; further, dependent exemptions were "unavailable to many families with children who . . . most needed economic assistance" because those families owed no income tax. *Id.* at 4; see also Brown, *Race and Class Matters*, *supra* note 55, at 802-03 (citing legislative history that the CTC had a threefold purpose: (1) to "reduce the individual income tax burden" of families with dependent children, (2) to "better recognize the financial responsibilities of raising dependent children," and (3) to "promote family values" (quoting STAFF OF JOINT COMM. ON TAX'N, 105TH CONG., GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN 1997, at 6-7 (Comm. Print 1997))).

61. CRANDALL-HOLICK, EITC LEGISLATIVE HISTORY, *supra* note 26, at 2.

62. DRUMBL, *supra* note 26, at 18-19 (describing the work of the bipartisan National Commission on Children). For a race-based analysis of these different legislative histories, see Brown, *Race and Class Matters*, *supra* note 55, 816-19. See generally CRANDALL-HOLICK, CTC LEGISLATIVE HISTORY, *supra* note 60 (describing the National Commission on Children and its recommendations).

in several respects. As Section III explores, this informs how bankruptcy courts see these credits differently.

Most significantly, the income threshold for CTC eligibility has always been higher than for the EITC, resulting in even relatively affluent households being eligible for the CTC.<sup>63</sup> While the CTC has always been available at a broader range of incomes than the EITC,<sup>64</sup> this difference has become starkly more pronounced since the enactment of the TCJA, which increased the limiting income threshold of the CTC to \$400,000 for married couples filing jointly, and \$200,000 for all other filers.<sup>65</sup> In other words, in 2023, a married couple with three or more children would see their maximum EITC amount begin to decline at an adjusted gross income of \$28,120 (and phase out entirely by an income of \$63,398), while a couple with an adjusted gross income of up to \$400,000 would receive the maximum CTC.<sup>66</sup>

The CTC amount is determined per child,<sup>67</sup> and unlike the EITC, is not limited to three qualifying children. Also, unlike the EITC, the amount of which increases slowly as income rises and then plateaus before it slowly decreases until phaseout, the amount of the CTC is fixed at \$2,200 per child, as of 2025, until the income phaseout threshold.<sup>68</sup> As of tax year 2025, up to \$1,700 of this amount per child is refundable.<sup>69</sup>

The eligibility also differs between the two credits according to the age of the qualifying child: The CTC is only available to parents of qualifying children under the age of seventeen, while the EITC is available to parents of qualifying children under the age of nineteen or a qualifying child who is a full-time student under the age of twenty-four.<sup>70</sup> Thus, for example, a low-income taxpayer who is a parent or guardian of an eighteen-year-old qualifying child may be eligible for the EITC, but not the CTC.<sup>71</sup>

63. See I.R.C. § 24(b)(2), (h)(3).

64. From 1997 to 2017, the income phaseout threshold starting point was \$75,000 for single taxpayers and \$110,000 for married taxpayers filing jointly. *Id.* § 24(b)(2).

65. *Id.* § 24(h)(3). It should be noted, however, that the Tax Cuts and Jobs Act (TCJA) also suspended the exemption for dependents, and the One Big Beautiful Bill Act made this suspension permanent. *Id.* § 151(d)(5). Increasing the threshold for the credit offsets the loss of the exemptions for some taxpayers. See WILLIAM G. GALE, HILARY GELFOND, AARON KRUPKIN, MARK J. MAZUR & ERIC TODER, URBAN-BROOKINGS TAX POL'Y CTR., EFFECTS OF THE TAX CUTS AND JOBS ACT: A PRELIMINARY ANALYSIS tbl. 1 (2018), [https://www.brookings.edu/wp-content/uploads/2018/06/ES\\_20180608\\_tcja\\_summary\\_paper\\_final.pdf](https://www.brookings.edu/wp-content/uploads/2018/06/ES_20180608_tcja_summary_paper_final.pdf) [<https://perma.cc/4BKY-QFFK>].

66. Compare I.R.C. § 24(b)(2), (h)(3) (providing the phaseout level for the CTC), with Rev. Proc. 2022-38, 2022-45 I.R.B. 445 § 3.06 (providing the phaseout level for the EITC).

67. I.R.C. § 24(a). As of 2025, the amount of the CTC is \$2,200 per child. *Id.* § 24(h)(2). Starting in 2026, the amount of the credit will be indexed with inflation. *Id.* § 24(i)(2).

68. See *id.* § 24(a), (h)(2). The CTC is not limited to three children. It is available in full to unmarried individuals earning up to \$200,000 and to married couples filing jointly who earn up to \$400,000; the CTC phases out with a reduction of \$50 for every \$1,000 above these income levels. *Id.* § 24(b); MARGOT L. CRANDALL-HOLLOCK, CONG. RSCH. SERV., R41873, THE CHILD TAX CREDIT: HOW IT WORKS AND WHO RECEIVES IT 2 tbl.1 (2021) [hereinafter CRANDALL-HOLLOCK, CTC: HOW IT WORKS].

69. Rev. Proc. 2024-40, 2024-45 I.R.B. 1100, § 2.05. The refundable portion is indexed with inflation and thus will increase over time. I.R.C. § 24(h)(5)(B).

70. I.R.C. §§ 24(c)(1), 32(c)(3)(A). Or a disabled child of any age. *Id.* § 152(c)(3)(B).

71. Compare *id.* § 24(c)(1) (providing the age limit for the CTC), with *id.* § 32(c)(3)(A) (providing the age limit for the EITC).

While the EITC is fully refundable, the CTC is only refundable in part.<sup>72</sup> The refundable portion of the CTC is often referred to by the IRS and courts as the Additional Child Tax Credit (ACTC), though this term is not used in the IRC.<sup>73</sup> The refundability is phased in,<sup>74</sup> with the result that the poorest taxpayers do not receive the maximum ACTC. A taxpayer must have earned income of at least \$2,500 to qualify for the refundable portion of the CTC,<sup>75</sup> whereas a taxpayer earning even one dollar is eligible for the refundable EITC.<sup>76</sup> This design fuels the critique that the CTC is not designed to help the poor.<sup>77</sup> Additionally, there is no investment income limit on CTC eligibility, allowing for, in theory, households sustained by generational wealth or large investment portfolios to receive CTC benefits.<sup>78</sup> Thus, as Professor Brown describes it, “[a] trust fund beneficiary with a child who does not work is eligible for the CTC, but not the EITC.”<sup>79</sup>

### 3. Other Refundable Credits

Refundable credits can be earnings-based, like the EITC and the CTC, or expenditure-based.<sup>80</sup> The temporary and relatively modest Making Work Pay Credit, available in tax years 2009 and 2010, was an earnings-based refundable credit designed to stimulate the economy during the Great Recession.<sup>81</sup> Examples of expenditure-based credits include the refundable American Opportunity Tax Credit (AOTC) for higher education expenses, its nonrefundable predecessor credit, the Hope Credit, and the Adoption Tax Credit, which was refundable only in 2010 and 2011.<sup>82</sup>

This Article does not include an extensive discussion of these other tax credits, in part, because there are only a few examples of debtors trying to protect them under state exemption provisions.<sup>83</sup> However, these expenditure-based credits serve as examples of

72. CTC is not fully refundable. *Id.* § 24(h)(5). While the credit is currently \$2,200 per qualifying child, Section 24(h)(5) of the Internal Revenue Code (IRC) limits the refundability to \$1,400 per qualifying child; however, this number is adjusted for inflation, and in 2025 is \$1,700. *Id.* § 24(h)(5); Rev. Proc. 2024-40, 2024-45 I.R.B. 1100 § 2.05.

73. See I.R.C. § 24(d); I.R.S. Publication 501 (Dec. 16, 2024).

74. I.R.C. § 24(d)(1)(B), (d)(6).

75. *Id.* § 24(h)(6). In this context, the term “earned income” is as defined in Section 32(c)(2) of the IRC. See *id.* § 24(d)(1).

76. Compare *id.* § 24(d)(1)(B)(i), (h)(6) (providing phase-in income figures for refundability), with *id.* § 32 (not requiring a minimum income for refundability).

77. See, e.g., Brown, *Race and Class Matters*, *supra* note 55, at 803–04 (“The decision to exclude certain low-income taxpayers from receiving the benefits of the CTC was a conscious one.”).

78. I.R.C. § 24.

79. Brown, *Race and Class Matters*, *supra* note 55, at 803 n.71.

80. See generally CONG. BUDGET OFF., *supra* note 21 (describing the evolution of refundable tax credits and distinguishing between earnings-based and expenditure-based credits).

81. *Id.* at 11. Section 36A of the IRC, now repealed, was in effect from January 1, 2009, through December 31, 2010, and provided for a refundable credit, based on earned income, of up to \$400 for individuals or \$800 for married couples filing jointly. See *id.*

82. CONG. BUDGET OFF., *supra* note 21, at 7 fig.2.

83. See *infra* notes 361–66 and accompanying text for a discussion of *In re Gray*, which held that a debtor could not exempt the American Opportunity Tax Credit (AOTC) under the state’s public assistance benefit exemption.

the different types of social benefits distributed through the IRC and are an interesting comparison to the EITC and the CTC.

For example, the U.S. Bankruptcy Court for the Southern District of Iowa distinguished the Making Work Pay Credit and the Hope Credit from the EITC based on the credits' respective legislative histories, finding that only the EITC was targeted to help the poor.<sup>84</sup> In contrast, a debtor in Illinois sought to exempt the refundable Adoption Tax Credit<sup>85</sup> on the grounds that it was a public assistance benefit because it "both helps those in economic need *and* furthers desirable social action."<sup>86</sup> The trustee argued that "the Adoption Tax Credit is a credit designed to induce socially desirable behavior—not to provide financial relief—and, thus, cannot be construed as a 'public assistance benefit' under the Illinois Exemption Statute."<sup>87</sup> The U.S. Bankruptcy Court for the Northern District of Illinois provided an extensive analysis of the legislative intent of the Adoption Tax Credit in its decision to overrule the trustee's objection. Among other things, the court seemed persuaded by Congress's decision to amend the statute, which made refundable a credit that previously had been nonrefundable.<sup>88</sup> This is an exceptionally broad interpretation of a public assistance benefit.

#### 4. COVID-19-Era Payments (2020–2021)

Beginning in March 2020, Congress enacted a series of legislative acts designed to provide economic relief in the wake of the COVID-19 pandemic's disruption to the economy. Of greatest relevance to individuals were the three rounds of direct relief payments and the temporary expansion of the CTC.<sup>89</sup> In order to expedite the implementation of this swiftly enacted legislation, Congress called upon the IRS to automatically calculate these benefits and deliver them via direct deposit to individuals based upon 2019 tax filing information.<sup>90</sup>

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84. *In re Arthur*, Nos. 10–00463, 09–04332, 2010 WL 4674450, at \*4 (Bankr. S.D. Iowa Oct. 20, 2010) (finding that the Making Work Pay Credit was made available to stimulate the economy and spending rather than to provide government aid to low-income individuals, and that the Hope Credit was intended to encourage taxpayers' education generally, not to help the poor).

85. *See* Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 10909, 124 Stat. 119, 1020–24 (2010) (making the adoption credit refundable for taxable years beginning after December 31, 2009, and before January 1, 2012); *see also In re Smith*, No. 12–30711, 2012 WL 7006405, at \*2, 4 (Bankr. S.D. Ohio Dec. 18, 2012) (permitting a debtor to exclude a \$26,720 refundable adoption tax credit, the court found the credit was "a statutory grant intended to provide financial assistance to adoptive parents by defraying the costs associated with adoption," and thus qualified as an "allowance . . . to the extent reasonably necessary for the support of the person and any of the person's dependents" within the meaning of the Ohio exemption statute).

86. *In re Johnson*, 480 B.R. 305, 312 (Bankr. N.D. Ill. 2012).

87. *Id.*

88. *Id.* at 315 ("Congress clearly enabled lower-income adoptive families, previously unable to use the Credit, to receive, for the first time, a cash refund from the government for their adoption expense.").

89. *See* CTR. ON BUDGET & POL'Y PRIORITIES, ROBUST COVID RELIEF ACHIEVED HISTORIC GAINS AGAINST POVERTY AND HARDSHIP, BOLSTERED ECONOMY 6, 8–9 (2022), [https://www.cbpp.org/sites/default/files/2-24-2022pov\\_1.pdf](https://www.cbpp.org/sites/default/files/2-24-2022pov_1.pdf) [<https://perma.cc/E6VV-45XC>]; *How the American Rescue Plan Saved Lives and the U.S. Economy: Hearing Before the H. Comm. on the Budget*, 117th Cong. 43 (2022) (statement of Sharon Parrott, President, Ctr. on Budget and Pol'y Priorities).

90. For taxpayers who had not yet filed a 2019 income tax return (which was due April 15, 2020), the IRS used information from the 2018 income tax return. Other individuals, such as Social Security recipients, may not have a requirement to file a tax return, but the IRS was able to use tax information reporting from the

Questions quickly arose about these Economic Impact Payments, including whether they would be considered property of a bankruptcy estate and, if so, whether they would be exempt. A full discussion of these issues is outside the scope of this Article, but a few points bear touching upon briefly because they could serve as models for future consideration.

*a. Three Rounds of Economic Impact Payments*

Congress passed three separate acts authorizing differing amounts of Economic Impact Payments during the pandemic.<sup>91</sup> Upon enactment, the IRS issued payments based upon its existing database of household composition and income. Most eligible individuals received the correct amounts, but the IRS did not have information on file for all households.<sup>92</sup> Those eligible individuals who did not receive the Economic Impact Payments or did not receive the correct amount during the initial distribution could claim the missed payment as a Recovery Rebate Credit when they filed their 2020 or 2021 tax return.<sup>93</sup> Thus, yet another type of refundable tax credit was born.

In December 2020, Congress temporarily amended the Bankruptcy Code to add Section 541(b)(11), which provided that recovery rebates made under IRC Section 6428 would not constitute property of a bankruptcy estate.<sup>94</sup> Subsequent guidance issued by the Department of Justice U.S. Trustee Program (USTP) clarified that Chapter 7 trustees “should not consider recovery rebates or child tax credits in administering estate assets.”<sup>95</sup> While temporary in nature and contextually specific to COVID-19-era relief, this provision excluding these types of assistance from a debtor’s bankruptcy estate is notable. As Section II discusses in more detail, in bankruptcy law there is a significant difference between assets that are excluded from a bankruptcy estate, and those assets that are part of the bankruptcy estate but are protected as exempt.

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Social Security Administration to distribute the payments to those retirees. Press Release, U.S. Dept. of the Treas., Social Security Recipients Will Automatically Receive Economic Impact Payments (Apr. 1, 2020), <https://home.treasury.gov/news/press-releases/sm967> [<https://perma.cc/2AJ6-24ZU>].

91. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, § 2201(a), 134 Stat. 281, 335–40 (2020) (codified as amended in section 26 U.S.C. 6428); COVID-related Tax Relief Act of 2020, Pub. L. No. 116-260, § 272, 134 Stat. 1182, 1965–76 (codified as amended in section 26 U.S.C. 6428A); American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9601, 135 Stat. 4, 138–44 (codified as amended in 26 U.S.C. 6428B).

92. *Economic Impact Payments: What You Need To Know*, IRS (Apr. 1, 2020), <https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know> [<https://perma.cc/WM5Z-NNFT>]. For example, the IRS did not have accurate information about dependents in households that were not required to file tax returns. *Id.*

93. See I.R.C. §§ 6428, 6482A, 6428B.

94. 11 U.S.C. § 541(b)(11) (repealed Dec. 27, 2021). The Consolidated Appropriations Act of 2021, signed into law on December 27, 2020, provided for a sunset on December 27, 2021, one year after its enactment. Pub. L. No. 116-260, § 1001(a)(2)(C), 134 Stat. 1182, 3216–17 (2020).

95. U.S. TRUSTEE PROGRAM, NOTICE TO CHAPTER 7 AND 14 TRUSTEES REGARDING TREATMENT OF RECOVERY REBATES AND TAX CREDITS FOR CONSUMER BANKRUPTCY DEBTORS UNDER THE AMERICAN RESCUE PLAN ACT OF 2021, at 1 (2021), <https://www.justice.gov/ust/page/file/1379846/dl> [<https://perma.cc/2Z7B-4TYK>] (“The best reading of 11 U.S.C. § 541(b)(11) is that it applies to all three rounds of recovery rebates, including those made under the ARP, to exclude them from bankruptcy estates.”). As to the CTC, see *infra* note 102 for a discussion of *Carrion*.

*b. Temporary Expansion of Child Tax Credit and Advanced Payment Options (2021 Only)*

As an additional benefit to aid families during the pandemic, Congress expanded the CTC in very significant respects; these changes were in effect for tax year 2021 only and were not extended.<sup>96</sup> First, the amount of the CTC available per child was increased to \$3,000 per child and to \$3,600 for children under the age of six.<sup>97</sup> Second, it expanded the age for qualifying children to include seventeen-year-olds.<sup>98</sup> Third, the credit was made fully refundable to all individuals with qualifying children, even individuals with no earned income.<sup>99</sup> This third feature was the single greatest departure from the traditional CTC, which (like the EITC) had until this expansion always been tied to work. Fourth, individuals were provided the option to receive up to half of the CTC as advance payments from July through December 2021 on a monthly basis.<sup>100</sup> This is the only time in the history of the CTC that the payment was available in a form other than as a lump-sum refund after filing.

Unlike the Recovery Rebate Credits, the temporarily expanded CTC with its advance payment option was *not* explicitly exempted from the bankruptcy estate by the temporary amendment to the Bankruptcy Code.<sup>101</sup> While the USTP guidance could arguably be construed as advising trustees to exclude the advance payments from the assets of the estate, courts deciding on such claims have noted that the USTP guidance document is not controlling.<sup>102</sup>

While Congress chose not to continue the expanded CTC beyond 2021, since then economists and scholars have paid great attention to the anti-poverty benefits it provided

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96. See American Rescue Plan Act of 2021, Pub. L. No. 117-2, sec. 9611(a), § 24(i), 135 Stat. 4, 144–45 (amended 2025); I.R.C. § 7527A. Sections 24(i) and 7527A were enacted by the American Rescue Plan Act of 2021, Pub. L. No. 117-2, sec. 9611, 135 Stat. 4, 144–50 (codified as amended at I.R.C. §§ 24, 7527A). See generally CRANDALL-HOLICK, CTC LEGISLATIVE HISTORY, *supra* note 60 (describing how these temporary changes may have been modeled on proposals to transform the CTC into a more robust child allowance to combat child poverty).

97. § 24(i)(3), 135 Stat. at 145.

98. *Id.* § 24(i)(2), 135 Stat. at 144–45.

99. See *id.* § 24(i)(1), 135 Stat. at 144.

100. I.R.C. § 7527A(b)(1).

101. See 11 U.S.C. § 541(b)(11) (repealed 2020).

102. See, e.g., *In re Carrion*, No. 22-bk-01299, 2022 WL 16635671, at \*2 (Bankr. M.D. Fla. July 27, 2022) (finding that the Section 541(b)(11) exclusion only pertains to the recovery rebate credits, not the CTC). As to the USTP notice and the Advance CTC, the opinion stated:

The Court notes the notice is not entirely clear on this point. While the “In Summary” section states trustees should not *consider* child tax credits in administering estate assets, the specific section in the notice addressing the child tax credit does not echo this advice. Further, it is unclear if the notice only advises against considering/administering the expanded child tax credit wider the ARPA (*i.e.*, anything above the regular \$2,000 child tax credit) or if this advice applies to child tax credit more generally.

*Id.* at \*2 n.10.



to families.<sup>103</sup> In this regard, this temporary legislation may serve a blueprint for future social benefit proposals,<sup>104</sup> though at the time of writing, none have passed in Congress.

*B. Are Refundable Tax Credits a Tax Refund (Overpayment) or Public Assistance?*

As Section III demonstrates, bankruptcy courts have struggled with how to characterize refundable tax credits. Currently, both the EITC and the CTC are accessible only to taxpayers upon filing a tax return.<sup>105</sup> In the simplest terms, these credits can be construed as a tax refund. The CTC is more complicated: Part of it is nonrefundable, meaning taxpayers who do not have a tax liability miss out on that part of the benefit.

For some taxpayers, both credits may represent, in part, a reduction in tax that would have been owed; once the tax is reduced to zero, they receive the remaining EITC and/or additional CTC as their refund.

The EITC in particular can be construed as providing relief to those in need due to its legislative history and the income eligibility rules. It is undeniably an anti-poverty program. At the same time, it is designed to be distinct from traditional welfare. In the tax world, it is not characterized as public assistance. This semantic distinction may be academic to most recipients, but for bankruptcy courts attempting to discern whether the credits constitute public assistance under a state exemption law, the characterization is quite relevant.

Many of these bankruptcy courts have looked to the 1986 U.S. Supreme Court case, *Sorenson v. Secretary of the Treasury*.<sup>106</sup> But *Sorenson* had nothing to do with bankruptcy. The central question in *Sorenson* was whether the IRC provision providing that the EITC shall be considered an “overpayment” of tax<sup>107</sup> should be interpreted to

103. See, e.g., Andrew Hammond, Ariel Jurow Kleiman & Gabriel Scheffler, *The Future of Anti-Poverty Legislation*, 112 GEO. L.J. 349, 359–60, 383–88 (2023); Ariel Jurow Kleiman, *Revolutionizing Redistribution: Tax Credits and the American Rescue Plan*, 131 YALE L.J.F. 535, 546–54 (2021); Nicole C. McCann, Lorraine T. Dean, Allison Bovell-Ammon, Stephanie Ettinger de Cuba, Tiffany Green, Paul R. Shafer & Julia Raifman, *Association Between Child Tax Credit Advance Payments and Food Insufficiency in Households Experiencing Economic Shocks*, HEALTH AFFS. SCHOLAR 2024, at 1, 2.

104. See, e.g., Tax Relief for American Families and Workers Act of 2024, H.R. 7024, 118th Cong. (2024). House Bill 7024 would calculate refundability on a per-child basis, increase the maximum refundable amount per child to \$2,000 by 2025 and adjust it for inflation thereafter, and allow individuals the option of calculating the CTC based on their prior taxable year’s earned income if that would result in a higher CTC. For the legislative history to House Bill 7024, see H.R. REP. NO. 118-353 pt. 1, at 35–41 (2024). “The Committee believes that the child tax credit provides important support for families raising children and notes that the real value of this support has declined due to the rising cost of living.” *Id.* at 38.

105. See I.R.C. §§ 24, 32. This is to say that there is currently no election to receive an Advance EITC. However, to the extent that a wage earner has a tentative tax liability prior to the application of the refundable credits, that taxpayer may elect to reduce their income-tax withholding during the year, resulting in receiving greater take-home pay throughout the year and a smaller refundable credit upon filing. See *id.* § 31. Some taxpayers do the opposite; they intentionally overwithhold so that their tax refund will be higher. See, e.g., STEVE HOLT, THE BROOKINGS INSTITUTION, PERIODIC PAYMENT OF THE EARNED INCOME TAX CREDIT 12 (2008) (citing studies that explore “[i]ntentional refund generation . . . [as] a *de facto* savings account that enforces temporary fiscal discipline” or “a mental accounting device allocating household resources to distinctive uses”).

106. See 475 U.S. 851 (1986).

107. See I.R.C. § 6401(b)(1) (providing that the amount of a refundable credit that exceeds the tax imposed “shall be considered an overpayment”).

mean that such a refundable credit would be subject to the Code's offset provisions.<sup>108</sup> In *Sorenson*, a married couple with a child was entitled to receive the EITC, but most of their expected refund amount was offset by the IRS and sent to the state of Washington to pay Mr. Sorenson's past due child support obligation for a child from a previous marriage.<sup>109</sup> Marie Sorenson, his current wife, brought a class action suit on behalf of herself and all others similarly situated. Mrs. Sorenson relied on a circuit split to argue that the EITC did not correspond to any tax actually paid and therefore should not be construed as an overpayment for purposes of the offset provision.<sup>110</sup> She further argued that such an offset conflicted with Congress' intention to provide benefits to the poor through the EITC, and that it harmed needy children.<sup>111</sup>

As to the first argument, the Court applied rules of statutory construction to determine that the EITC is an overpayment within the meaning of the offset statute.<sup>112</sup> In its analysis, the Court remarked that the refund is the mechanism for paying the credit and that the statutory provisions interacted such that "the refundability of the earned-income credit is thus inseparable from its classification as an overpayment of tax."<sup>113</sup>

As to Mrs. Sorenson's claim that this interpretation frustrated the purpose of the EITC, the Court recognized that Congress intended three "undeniably important objective[s]" of the EITC: (1) "to reduce the disincentive to work caused by Social Security taxes on earned income," (2) "to stimulate the economy by funneling funds to persons likely to spend the money immediately," and (3) "to provide . . . relief for low-income families hurt by rising food and energy prices."<sup>114</sup> The Court, however, noted that the tax-intercept program served the goal of "securing child support from absent parents whenever possible and reducing the number of families on welfare."<sup>115</sup> The Court concluded its analysis of that point by remarking that "[t]he ordering of competing social policies is a quintessentially legislative function."<sup>116</sup>

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108. See *id.* § 6402(c). Section 6402(c) of the IRC was enacted in 1981, several years after the enactment of the EITC. *Id.*

109. *Sorenson*, 475 U.S. at 853–55.

110. See Reply Brief of Petitioner at 5–7, *Sorenson*, 475 U.S. 851 (1985) (No. 84-1686); see also *Rucker v. Sec'y of Treasury*, 751 F.2d 351, 357 (10th Cir. 1984), *abrogated by*, *Sorenson*, 475 U.S. at 860–61 (holding that the EITC is not an overpayment subject to offset); *Nelson v. Regan*, 731 F.2d 105, 111–12 (2d Cir. 1984), *abrogated by*, *Sorenson*, 475 U.S. 851, 860–61 (1986) (same). Ironically, in determining that the EITC was not an overpayment for purposes of the offset statute, the *Nelson* opinion cited an older bankruptcy case in which a U.S. district court held that the EITC was not property of a bankruptcy estate because the EITC "is not a tax refund. It is a payment made to low-income taxpayers to help them meet basic costs of life." *Nelson*, 731 F.2d at 112 (quoting *In re Searles*, 445 F. Supp. 749, 755 (D. Conn. 1978)). *In re Searles*, which has been superseded by Section 541(a)(1) of the U.S. Bankruptcy Code, noted that the purpose of the EITC is "to put money in the pockets of certain needy taxpayers after tax returns are filed, and not to reduce their tax burden during the tax year." *Searles*, 445 F. Supp. at 752.

111. Reply Brief of Petitioner, *supra* note 110, at 2–4; *Sorenson*, 475 U.S. at 858.

112. *Sorenson*, 475 U.S. at 863 ("[J]ust as eligibility for an earned-income credit does not depend upon an individual's actually having paid any tax, the Code's classification of the credit as an 'overpayment' to be refunded is similarly independent of the individual's actually having made any payment.").

113. *Id.* at 859.

114. *Id.* at 864.

115. *Id.* at 864–65.

116. *Id.* at 865.

*Sorenson* has been cited dozens of times by bankruptcy courts in different contexts. It is often cited due to its recitation of the legislative history of the EITC.<sup>117</sup> Sometimes it is cited for the proposition that tax credits are overpayments and thus subject to levy or offset.<sup>118</sup> Courts also cite it as a reminder that a court cannot substitute its judgment for the legislature's.<sup>119</sup>

### C. Refundable Tax Credits as Property of the Bankruptcy Estate

How, and when, does a taxpayer's property interest in a refundable tax credit, and right to receive it as a tax refund, intersect with bankruptcy?

From a tax perspective, timing issues are straightforward: Eligibility for refundable credits is determined when the return is filed. As discussed, the amount depends on income thresholds that vary according to marital status, with the amount of the credit depending in part on the number of children in the household.<sup>120</sup> In the case of a parent claiming either the CTC or the EITC, the qualifying child must live in the taxpayer's household for more than one-half of the tax year to be claimed.<sup>121</sup> Thus, from a tax standpoint, one is either eligible for the credits or not, and this is determined after the year has ended. The intersection of this timing with bankruptcy law is more complicated.

As a starting point, the Bankruptcy Code defines property of the estate as including all legal or equitable interests of the debtor in property as of the commencement of the case, as well as any interest in property that the estate acquires after the commencement of the case.<sup>122</sup> This includes certain future interests, such as debts owed to the debtor at the time a petition is filed.<sup>123</sup> In general, tax refunds received after the bankruptcy petition date may represent prepetition assets, meaning the portion of an income tax refund that is based upon the prepetition portion of a taxable year is part of the bankruptcy estate.<sup>124</sup>

Bankruptcy Code Section 541(b), (c), and other provisions provide that certain property is excluded from the estate.<sup>125</sup> There is no exclusion in the Bankruptcy Code for refundable tax credits.

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117. See, e.g., *In re Tomczyk*, 295 B.R. 894, 896 (Bankr. D. Minn. 2003). Immediately after citing *Sorenson*, the opinion states, "I find that such factors clearly indicate that the Earned Income Credit is relief based on financial need." *Id.*

118. See, e.g., *In re Westby*, 473 B.R. 392, 419 (Bankr. D. Kan. 2012), *aff'd*, 486 B.R. 509 (B.A.P. 10th Cir. 2013); *In re Egorov*, No. 13–02903, 2013 WL 6185401, at \*3 (Bankr. S.D. Cal. Nov. 22, 2013).

119. See, e.g., *Egorov*, 2013 WL 6185401, at \*5 ("[The debtor] stresses the policy reasons why he should be able to retain the Tax Credits as exempt property, citing *Sorenson* . . . . This Court wholeheartedly supports the public policy goals behind the Tax Credits, but this support does not permit it to override the clear statutory definition provided by California law.").

120. See *supra* Parts I.A.1, I.A.2.

121. See I.R.C. §§ 24(c)(1), 32(c)(3), 152(c)(1)(B). Special rules apply to a child born during the year, allowing that child to be claimed as a qualifying child even if they are born at the end of December. Treas. Reg. § 1.152-2(a)(2)(ii).

122. 11 U.S.C. § 541(a).

123. *Id.* § 541(a)(5).

124. *In re Barowsky*, 946 F.2d 1516, 1518 (10th Cir. 1991).

125. 1 COLLIER ON BANKRUPTCY ¶ 1.03 (16th ed. 2021).

### 1. Timing Issues: When Do Refundable Credits Accrue?

It is factually easy to determine when a tax refund is received. But for bankruptcy purposes, when is the refundable credit *accrued* such that it becomes a property interest to the debtor? Can a debtor argue that they lack property interest in the refundable credit if the tax year has not yet closed? In other words, if the debtor files a bankruptcy petition in the middle of year one, can the debtor argue that the refundable credits for year one are not property of the bankruptcy estate? Specific to the EITC, the majority of courts have answered no.<sup>126</sup> Many courts have taken a proration approach, meaning the amount of the EITC that is considered to be property of the estate is prorated to the date the petition was filed.<sup>127</sup> Often this is very straightforward.<sup>128</sup> However, this may require an examination of the specific factual circumstances that led to the refund. For example, where a taxpayer can establish that she had no earned income prior to the petition date, the court may find the estate has no claim on an EITC.<sup>129</sup>

In cases involving only the nonrefundable portion of the CTC, some courts have found that the portion is not property of the estate because the debtor has no interest in a payment from the federal government.<sup>130</sup> In a case involving both a nonrefundable and refundable portion of the CTC, the court in *In re Schwarz* distinguished between the EITC and the CTC with respect to accrual timing, finding that the latter does not come into existence until the end of the calendar year.<sup>131</sup> In doing so, the *Schwarz* court emphasized that a taxpayer entitled to the EITC could elect to receive advance payment of the credit in the taxpayer's paycheck<sup>132</sup> while the CTC did not have such a provision

126. See, e.g., *In re Johnston*, 222 B.R. 552, 555 (B.A.P. 6th Cir. 1998), *aff'd*, 209 F.3d 611 (6th Cir. 2000) (determining that the credit is property of a debtor's estate even when the bankruptcy petition was filed prior to the end of the tax year in which the credit is earned). But see *In re Meza*, 243 B.R. 538, 539 (Bankr. M.D. Fla. 1999) (finding that debtors who filed for bankruptcy on June 1, 1998, had no cognizable interest in the EITC at the time of the petition because on that date the child had not lived with them for 183 days of tax year 1998 as required by Section 32 of the IRC).

127. See, e.g., *In re Montgomery*, 224 F.3d 1193, 1195 (10th Cir. 2000).

128. See, e.g., *In re Moreno*, 629 B.R. 923, 927 (Bankr. W.D. Wash. 2021), *aff'd*, 2021 WL 6140115 (B.A.P. 9th Cir. 2021) (finding that 99.7% of the refund was property of the estate because the petition was filed on December 30 and holding that the refundable credits were exempt under the state's public assistance exemption). See *infra* notes 385–96 and accompanying text for further discussion of *In re Moreno*.

129. *In re Donnell*, 357 B.R. 386, 397 (Bankr. W.D. Tex. 2006) (“Instead of treating the tax refund as an allocable monolith, a court needs to examine each of the *components* of the tax refund to determine whether, on the petition date, the debtor possessed a legal or equitable interest in that component.”). But see *In re Krahn*, No. 08–41285, 2009 WL 4907034, at \*6 (Bankr. D. Kan. Dec. 11, 2009) (using a pro rata division based on the petition date despite debtor's argument that events that occurred postpetition resulted in disproportionately higher EITC and CTC).

130. See, e.g., *In re Ruhl*, No. 08–36030, 2009 WL 1617470, at \*4 (Bankr. N.D. Ohio Apr. 27, 2009) (“[A]lthough the non-refundable credit may facilitate a refund where prior payments or withholdings are in an amount greater than the tax liability net of the credit, the credit itself is never recoverable as a refund by taxpayers.”). See *infra* note 239 and accompanying text.

131. 314 B.R. 433, 435 (Bankr. D. Neb. 2004) (“While the end of the tax year is still the relevant date for determining the amount of credit to which the taxpayer is entitled, the refundable portion of the earned income credit may be apportioned throughout the year and added to the taxpayer's paycheck.”).

132. See I.R.C. § 3507. The option to elect an Advance EITC was eliminated in 2010. Pub. L. No. 111–226, § 219(a)(1), 124 Stat. 2389, 2403 (2010). Advance CTC payments were only available in 2021; this was a decade after the option had been eliminated for the EITC. See I.R.C. § 7527A.

and was only allowed against a taxpayer's total tax liability, "which cannot be calculated until the end of the tax year."<sup>133</sup> *In re Law* disagreed with *Schwarz*, finding that the "statutory differences between the EITC and CTC . . . are significant for tax purposes, but not for bankruptcy purposes" in holding that both credits are contingent interests that become property of the bankruptcy estate on the petition date.<sup>134</sup> Other courts have also declined to follow the *Schwarz* approach.<sup>135</sup> The refundable ACTC is akin to the EITC, meaning a proration approach is appropriate. Thus, for example, when a debtor files a bankruptcy petition on December 16, ninety-six percent of the refundable CTC is property of the estate.<sup>136</sup>

Though these timing issues are interesting and can be of great relevance to individual debtors, the crux of this Article is not about determining property interests but rather is the debtor's ability to exempt property or not. In that regard, whether the entire refundable credit is property of the estate (and thus exemptible) may hinge on state law. The next Section briefly addresses this timing issue.

## 2. Timing Issues: Prepetition Versus Postpetition Receipt of the Tax Refund

To the extent that a debtor may be able to protect refundable credits in bankruptcy, they do so by claiming a statutory exemption. As this Article discusses in Section III, the ability to do so and the scope of such an exemption varies from state to state. Depending on how the state exemption law is worded, the fact of whether the credit has been received by the debtor prior to filing for bankruptcy may be determinative. For example, the *right to receive* a payment may be treated differently than a payment that has been received prior to filing.<sup>137</sup> It is possible that even if the EITC is received mere hours before the bankruptcy filing, it is not exempt property, though it would be if it was received after filing the petition.<sup>138</sup> In other states, bankruptcy courts have confirmed that

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133. 314 B.R. at 435 (finding that the debtor's \$516 refundable portion of the CTC is after-acquired property that came into existence at the end of the tax year and therefore was not part of the bankruptcy estate despite the December 27 petition date).

134. 336 B.R. 780, 783 (B.A.P. 8th Cir. 2006).

135. See, e.g., *In re Griffin*, 339 B.R. 900, 902 (Bankr. E.D. Ky. 2006) ("[T]his court finds the Child Tax Credit is 'sufficiently rooted' in debtor's pre-petition earnings to be considered property of the estate despite the contingent nature of the credit on the date the petition was filed."); *In re Parisi*, No. 10-70021-478, 2010 WL 1849386, at \*3 (Bankr. E.D.N.Y. May 6, 2010).

136. *In re Matthews*, 380 B.R. 602, 607-08 (Bankr. M.D. Fla. 2007) (finding that the statutory requirements entitling debtors to the CTC existed through the year, such that a pro rata determination was appropriate). The prepetition period was 350 out of 365 days or 96% of the year. See *id.* Similarly, in *Griffin*, the debtor filed the petition on December 8, with the result that 93% of the nonexempt portion of the tax refund was determined to be an asset of the estate. See *In re Griffin*, 339 B.R. at 902-03.

137. See, e.g., *In re Austin*, No. 14-70299, 2014 WL 3695370, at \*4 (Bankr. C.D. Ill. July 24, 2014) (interpreting Illinois's exemption for a debtor's "right to receive . . . [a] public assistance benefit[]" to protect an expected EITC, while finding that EITC received prepetition and held in an account is not exempt). In dicta, the *Austin* court noted that the potentially unsatisfying result, though somewhat counterintuitive to the EITC's purpose of helping low-income families meet their needs, is mandated by an unambiguous statute. See *id.* at \*3.

138. See *In re Dittmaier*, 806 F.3d 987, 990 (8th Cir. 2015) (holding that the "right to receive" a benefit is deemed extinguished when the benefit has been received before filing for bankruptcy). It did not matter that the EITC was received on a prepaid debit card rather than as money in a bank account. See *id.* at 991.

the applicable state exemption laws may allow the debtor to use a tracing method to claim an exemption for EITC that was received prior to filing the petition.<sup>139</sup>

The next Section explains bankruptcy exemptions in greater detail, including the difference between federal and state exemptions and the purposes that such exemptions serve in bankruptcy.

## II. STATUTORY EXEMPTIONS UNDER THE BANKRUPTCY CODE

Generally, a debtor filing a Chapter 7 bankruptcy must turn over to the trustee any of the estate's *nonexempt* assets for liquidation.<sup>140</sup> However, a debtor has the right to retain assets that are property of the estate but are classified as exempt.<sup>141</sup> Thus, statutorily defined exemptions are a critical protection as the debtor seeks a fresh start.<sup>142</sup>

Bankruptcy exemption provisions are a nuanced intersection of federal and state law. All states have their own exemption laws. The Bankruptcy Code also provides a list of federal exemptions and provides that debtors may choose between the federal exemptions and the applicable state exemptions.<sup>143</sup> However, the Bankruptcy Code preserves the right of states to opt out of the federal exemptions.<sup>144</sup> The majority of states are opt-out states, meaning debtors in those states *cannot* elect the federal bankruptcy exemptions and are thus limited to the exemptions available under their state's laws as well as exemptions provided in federal nonbankruptcy law.<sup>145</sup>

Debtors who live in states that permit the option of using the federal exemptions may choose instead to apply the applicable state exemptions.<sup>146</sup> However, a debtor cannot cherry-pick different exemptions from each option—the debtor must choose between the set of exemptions set forth in the federal law or those exemptions set forth in the state's law.<sup>147</sup>

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139. See, e.g., *In re Wood*, 459 B.R. 263, 268–69 (Bankr. S.D. Ohio 2011); *In re Patterson*, No. 10–31791, 2010 WL 3606893, at \*3 (Bankr. N.D. Ohio Sep. 10, 2010); *In re Maine*, 461 B.R. 723, 730 (Bankr. S.D. Ohio 2011). But see *In re Fernandes*, 605 B.R. 733, 738 (Bankr. N.D. Miss. 2019) (holding that the EITC received prepetition and commingled with nonexempt property did not retain its exempt status).

140. 11 U.S.C. § 542(a).

141. *Id.* § 522(b).

142. See, e.g., Margaret Howard, *A Theory of Discharge in Consumer Bankruptcy*, 48 OHIO ST. L.J. 1047, 1077 (1987). Providing debtors the opportunity for a fresh start financially is a widely recognized purpose of consumer bankruptcy. *Id.* at 1047 n.1 (describing the 1934 Supreme Court case, *Local Loan Co. v. Hunt*, as “the usual citation for this proposition” while also tracing the sentiment to case law as far back as 1877). Professor Margaret Howard refers to the fresh start concept as an “elusive term.” *Id.* at 1059.

143. 11 U.S.C. § 522(b)(2), (d). The federal exemptions include the debtor's right to receive local public assistance benefits but not federal public assistance. See *id.* § 522(d)(10).

144. *Id.* § 522(b)(2) (“[U]nless the State law that is applicable to the debtor under paragraph 3(A) specifically does not so authorize.”).

145. See *infra* Section V for a discussion of the federal nonbankruptcy exemptions, including Social Security payments, veterans' benefits, and others.

146. See generally 4 COLLIER ON BANKRUPTCY ¶ 522.02 (16th ed. 2021) (discussing state exemptions under the Bankruptcy Code).

147. *Id.* (noting one exception relating to certain retirement funds).

The result of the varying exemption provisions across states is that bankruptcy outcomes may vary according to where the debtor resides.<sup>148</sup> While the U.S. Constitution provides that Congress has the power to enact uniform bankruptcy laws,<sup>149</sup> courts have found that this state-by-state exemption structure is not unconstitutional.<sup>150</sup>

The purpose of exemption laws is to ensure that a debtor retains certain property in order to maintain an “appropriate standard of living as he or she goes forward after the bankruptcy case.”<sup>151</sup> Over time, state exemption laws have evolved and been influenced by many factors, such as historical trends, regional attitudes, and lobbying efforts.<sup>152</sup> A number of courts have cited Professor Alan Resnick’s classification of five distinct social policies underlying exemption laws<sup>153</sup>: (1) providing the debtor with property necessary for physical survival, (2) protecting the debtor’s dignity and cultural and religious identity, (3) enabling the debtor to rehabilitate himself financially and earn income in the future, (4) protecting the debtor’s family from the adverse consequences of impoverishment, and (5) shifting the burden of providing the debtor and his family with minimal financial support from society to the debtor’s creditors.<sup>154</sup>

If an exemption provision is broadly written, the bankruptcy courts may weigh underlying policies in trying to ascertain the legislature’s intent.<sup>155</sup> For example, in those states that do not explicitly exempt refundable tax credits but do have a broad exemption for public assistance, some courts have weighed the extent to which the underlying policies of these statutes align with the intent of the EITC and the CTC.<sup>156</sup>

It is well settled in many jurisdictions that exemptions are to be liberally construed in favor of the debtor,<sup>157</sup> but in the words of one court, “the statutory language can’t be ‘tortured’ in the guise of liberal construction.”<sup>158</sup>

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148. See, e.g., Tristan G. Axelrod, *Defending State Exemptions in Bankruptcy*, 27 LOY. CONSUMER L. REV. 284, 285 (2015). Scholars and practitioners both defend and critique the resulting inconsistencies. See, e.g., *id.* at 331–33 (arguing in support of the Bankruptcy Code’s deference to state exemptions); Gary E. Sullivan, *A Fresh Start to Bankruptcy Exemptions*, 2018 BYU L. REV. 335, 356–60 (2018) (describing exemption policies and defending state bankruptcy-specific exemption schemes).

149. U.S. CONST. art. I, § 8, cl. 4 (the Bankruptcy Clause).

150. 3 NORTON BANKRUPTCY LAW & PRACTICE § 56:3 (3d ed. 2008) (citing several cases in which courts held that state opt-out schemes are not unconstitutional); see, e.g., *Rhodes v. Stewart*, 705 F.2d 159, 162 (6th Cir. 1983) (finding that Tennessee’s opt-out statute was not invalid even though a section of the state’s exemption was less beneficial to a debtor than those permitted in the federal exemption provision).

151. 4 COLLIER ON BANKRUPTCY ¶ 522.01 (16th ed. 2021) (“A fundamental component of an individual debtor’s fresh start in bankruptcy is the debtor’s ability to set aside certain property as exempt from the claims of creditors. Exemption of property, together with the discharge of claims, lets the debtor maintain an appropriate standard of living as he or she goes forward after the bankruptcy case.”).

152. Alan N. 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); see also Axelrod, *supra* note 148, at 292–96 (recounting the development of state exemptions in the premodern era).

153. See, e.g., *In re Hahn*, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980); *In re Davis*, 136 B.R. 203, 207 (Bankr. S.D. Iowa 1991).

154. Resnick, *supra* note 152, at 621.

155. See 2E BANKRUPTCY SERVICE, LAWYERS EDITION § 26:195, Westlaw (database updated Oct. 2025).

156. See, for example, *infra* Part III.B.7.b for a discussion of *In re Hardy* (*Hardy I*), 495 B.R. 440 (Bankr. W.D. Mo. 2013), *rev’d*, 787 F.3d 1189 (8th Cir. 2015).

157. 2E BANKRUPTCY SERVICE, LAWYERS EDITION § 26:191, Westlaw (database updated Oct. 2025).

158. *In re Deboer*, No. 98–20783, 1999 WL 33486710, at \*1 (Bankr. D. Idaho July 20, 1999).

The next Section explores various state exemption provisions, with Part A examining those that explicitly protect at least the EITC and Part B providing a window into how the bankruptcy courts in other jurisdictions have struggled to construe broader statutes without torturing them.

### III. TYPOLOGY OF OUTCOMES IN DIFFERENT STATES

The evident result of a state-by-state exemption approach is that a debtor's ability to protect refundable tax credits differs according to where the debtor resides. Different states also take different approaches with respect to different refundable tax credits. For example, a particular state may allow the debtor to protect the EITC, but not the CTC, as exempt.<sup>159</sup> The statutes and case law from these states provide a fascinating window through which to perceive these social benefits, and to consider how this perception has evolved over time.

#### A. State Law Explicitly Protects the EITC (and in Some States, the CTC)

A number of states have exemption laws explicitly protecting the EITC.<sup>160</sup> A smaller subset of these states also exempt the CTC.<sup>161</sup> Of that subset of states, most had an EITC exemption statute for a period of years prior to amending it to include the CTC.<sup>162</sup> The evolving nature of laws in these states perhaps suggests a degree of legislative momentum for the recognition that both credits play a role in the social safety net.

##### 1. Oklahoma

Oklahoma was the first state to enact an exemption for “[a]ny amount received pursuant to the federal earned income tax credit.”<sup>163</sup> It has not done so for the CTC.

159. See, e.g., *infra* note 161.

160. In addition to the fourteen states discussed here, a similar bill is pending in Michigan that would create a specific exemption for an “interest in or money held in a bank account that the debtor received within the previous [eighteen] months as payment of any means-tested public assistance benefits, unemployment compensation benefits, federal earned income tax credit” and other specified government benefits. See S.B. 409, 2024 Leg. 102d Sess. (Mich. 2024), <https://www.legislature.mi.gov/documents/2023-2024/billintroduced/Senate/pdf/2023-SIB-0409.pdf> [<https://perma.cc/LG2E-3SMS>].

161. See *infra* Parts III.A.2, 5, 9, 11, 13, and 14 for a discussion about how Colorado, Louisiana, Maine, Ohio, Virginia, and Arizona protect at least the refundable portion of the CTC, with some also protecting the nonrefundable portion.

162. See *infra* Parts III.A.11, 13, and 14 for a discussion about how, of those states, Ohio, Virginia, and Arizona included protection for both the EITC and CTC at the same time when amending their respective exemption statutes. Ohio did so in 2008, Virginia in 2015, and Arizona most recently in 2022. See *infra* Parts III.A.11, 13, and 14. Colorado, Maine, and Louisiana have a different history in that those states originally protected only the EITC and subsequently amended the provision to also protect the CTC. See *infra* Parts III.A.2, 5, 9. I believe this signals an evolving perception of the CTC in those states, and I anticipate this evolution will continue. For example, Nebraska has long protected the EITC; though the recent proposed legislation to add protection for the CTC did not pass, the legislative conversation may continue later. See *infra* Part III.A.6.

163. OKLA. STAT. ANN. tit. 31, § 1(A)(23) (West 2025).



a. *EITC*

Prior to the existence of the state exemption for the EITC, enacted in 1999,<sup>164</sup> one bankruptcy court case had recognized the EITC as being in the nature of “earnings from personal services” and therefore exempt to the extent that denial of that exemption would result in an undue hardship.<sup>165</sup> While no longer relevant today because of the Oklahoma legislature’s subsequent enactment of an EITC exemption, the *In re Barnett* decision is noteworthy. First, it is interesting that the *Barnett* court characterized the EITC as being in the nature of earnings from personal services.<sup>166</sup> Unlike wages, the EITC is not gross income. The court seemed to reach this characterization because of the court’s sympathy for the debtor’s situation, which is the second noteworthy thing about the decision.<sup>167</sup> The court’s language in the opinion is among the most sympathetic I encountered in the scores of cases I reviewed:

To put this case in perspective, one need only step back and note we are dealing here with “poor, but honest” debtors for whom the government has enacted laws intended to relieve their extreme poverty. These are not the “high flying” debtors with above-average incomes that this Court usually encounters. The debtors in this case are truly in need of a “fresh start” which the Bankruptcy Code was designed to provide. It is difficult to understand why more effort is not expended by other counsel, the trustees, and the courts to permit impoverished debtors to keep their earned income credit rather than expending time, effort and legal skills in trying to take the earned income credit away from such debtors.<sup>168</sup>

The following year, in 1998—one year before the statutory exemption for EITC was enacted in Oklahoma—the Tenth Circuit Bankruptcy Appellate Panel disagreed with the *Barnett* decision, finding that the EITC is not earnings from personal services.<sup>169</sup> In so finding, the panel relied on *Sorenson* and characterized the EITC as a tax overpayment rather than earnings.<sup>170</sup> The panel concluded with a deferential nod to the Oklahoma legislature: “Rather than contriving a tortured interpretation of the nature of earned income credits to force them into a definition of ‘earnings,’ we leave such action where it belongs—with the Oklahoma legislature.”<sup>171</sup> With its 1999 legislation incorporating protection of the EITC into its state exemption provisions, the Oklahoma legislature put the question to rest.<sup>172</sup>

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164. 1999 Okla. Sess. Law Serv. ch. 390 (West).

165. *In re Barnett*, 214 B.R. 632, 635 (Bankr. W.D. Okla. 1997) (holding that the EITC was exempt under title 31, section 1.1 of the Oklahoma Code, which provided an exemption, upon a showing of undue hardship, for any portion of earnings from personal services necessary for the maintenance of a family or other dependents).

166. *Id.* at 634.

167. *See id.*

168. *Id.*

169. *In re Dickerson*, 227 B.R. 742, 746 (B.A.P. 10th Cir. 1998).

170. *Id.*

171. *Id.* at 747.

172. *See* 1999 Okla. Sess. Law Serv. ch. 390 (West).

b. CTC

There is no statutory exemption in Oklahoma for the CTC or ACTC. In a 2011 case, *In re Reshetov*, a debtor unsuccessfully argued that the ACTC should be exempt.<sup>173</sup> In holding that “exemption of an ACTC refund is a decision for the Oklahoma legislature,” and not the judiciary, the court noted that a number of states expressly exempt the ACTC,<sup>174</sup> and that bankruptcy courts in a handful of states interpreted the applicable public assistance exemption to include the ACTC.<sup>175</sup>

A decade later, a bankruptcy court in a different district of Oklahoma followed the *Reshetov* holding with respect to the ACTC.<sup>176</sup> While expressing sympathy for the debtors’ need for the funds, the court in that case remarked that “[t]he child tax credit and the earned income credit are not one and the same for the exemption purposes” and noted that Oklahoma does not exempt child tax credits.<sup>177</sup>

2. Colorado

The law in Colorado provides an exemption for the “full amount of any federal or state income tax refund attributed to an earned income tax credit or any child tax credit, whether as a refundable tax credit or as a nonrefundable reduction in tax.”<sup>178</sup>

This exemption provision has been amended twice. As originally enacted in 2000, the provision only included an exemption for the EITC.<sup>179</sup> In 2007, the provision was amended to also include the ACTC.<sup>180</sup> The exemption provision’s reference to a nonrefundable reduction in tax was added most recently in 2022.<sup>181</sup>

In specifying that a nonrefundable reduction in tax is exempt, this most recent amendment resolves a question that has been considered by various courts, including the U.S. Bankruptcy Court for the District of Colorado and the Tenth Circuit Court of Appeals. Debtors in those cases had relied on the state exemption for the EITC and CTC

173. No. 10–14183, 2011 WL 4102770, at \*2, \*4 (Bankr. N.D. Okla. Sep. 14, 2011).

174. *Id.* at \*4 (referencing the state laws in Colorado, Maine, and Ohio).

175. *Id.*; see *In re Koch*, 299 B.R. 523, 528 (Bankr. C.D. Ill. 2003); *In re Beltz*, 263 B.R. 525, 530 (Bankr. W.D. Ky. 2001).

176. See *In re Lewis*, No. 21-13041, 2022 WL 4333755, at \*8 (Bankr. W.D. Okla. Sep. 15, 2022). In addition to the ACTC, the *Lewis* case also considered COVID-19-era Advance CTC payments and Economic Impact Payments. *Id.* at \*5–6. The opinion noted that the debtor and trustee in their stipulations conflated the ACTC and Economic Impact Payments, which were governed by different statutory provisions; the ACTC was included in the bankruptcy estate while the American Rescue Plan Act stimulus payments were statutorily excluded from the bankruptcy estate. *Id.* at \*1. Being excluded from the estate is distinct from being included in the estate but exempted. See 11 U.S.C. § 541(b)(11) (repealed 2020) (providing that “recovery rebates made under Section 6428 of the Internal Revenue Code of 1986” are not property of the estate).

177. *Lewis*, 2022 WL 4333755, at \*8 (“[T]his Court has no authority or jurisdiction to interpret the plain and unambiguous language . . . to satisfy policy issues or otherwise address welfare concerns. Such concerns must be addressed by the Oklahoma legislature.”).

178. COLO. REV. STAT. ANN. § 13-54-102(1)(o) (West 2025).

179. When debtors have tried to claim exemptions for other tax credits, courts have construed the provision narrowly. See, e.g., *In re Walsh*, 298 B.R. 894, 897 (Bankr. D. Colo. 2003) (distinguishing the EITC from the adoption expense credit and finding that the statute in effect at the time applied only to the EITC).

180. S.B. 07-158, 66th Gen. Assemb., Reg. Sess. (Colo. 2007).

181. The language specifying that it applies to a nonrefundable reduction in tax was added in 2022. S.B. 22-086, 73d Gen. Assemb., Reg. Sess. (Colo. 2022).

to claim that the nonrefundable portion of the CTC should also be exempt from the bankruptcy estate. In *In re Borgman*, the debtors argued that the federal tax refund that they had received was attributable in part to the reduction in tax resulting from the nonrefundable portion.<sup>182</sup> The debtors pointed to the language of the statute at the time that exempted the full amount of a tax refund “attributed to” a CTC.<sup>183</sup> The bankruptcy court in Colorado had rejected that argument previously, finding that unlike a refundable credit, the nonrefundable portion does not “eventually put funds into the hands of a debtor from which he may support himself and his family.”<sup>184</sup> On review, the Tenth Circuit Bankruptcy Appellate Panel disagreed with this logic, stating that “[a] tax refund is the difference between ‘payments’ minus tax liability as adjusted by various credits . . . . The child tax credit is part of the equation and its application will invariably cause the refund to increase.”<sup>185</sup> Mathematically, the panel was correct that the nonrefundable credit is part of the equation, but the Tenth Circuit Court of Appeals reversed due to the wording of the statute, finding that the nonrefundable portion of the CTC cannot give rise to a “refund” within the meaning of the statute as it was worded at the time.<sup>186</sup>

The Colorado General Assembly resolved this legislatively by amending the exemption provision to expressly include the words “whether as a refundable tax credit or as a nonrefundable reduction in tax.”<sup>187</sup>

### 3. Florida

Florida provides an explicit exemption for a debtor’s interest in an earned income tax credit refund or the traceable deposits in a bank account of a debtor’s EITC.<sup>188</sup> This state provision was enacted in 2001.<sup>189</sup> In interpreting the statute the year after its enactment, the Bankruptcy Court of the Middle District of Florida looked to the legislative history and found that there was “no doubt that SB 150 was intended to immunize earned income credit due to eligible low income workers from claims of creditors regardless whether the credit has been received or commingled with a debtor’s financial account, so long [as] it is traceable.”<sup>190</sup> The same court later emphasized that “the overwhelming policy and purpose of both the Florida exemption and the EI[T]C” is “to help low income workers and to encourage them to keep working rather than turn to public assistance.”<sup>191</sup>

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182. *In re Borgman*, 698 F.3d 1255, 1258–59 (10th Cir. 2012).

183. *Id.* at 1259. At the time of these cases, the statute provided an exemption for “[t]he full amount of any federal or state income tax refund attributed to an earned income tax credit or a child tax credit.” *Id.* at 1257 (alteration in original) (quoting § 13-54-102(1)(o)).

184. *In re Landgrebe*, No. 08–26271, 2009 WL 3253933, at \*3 (Bankr. D. Colo. Sep. 23, 2009).

185. *In re Dunckley*, 452 B.R. 241, 246 (B.A.P. 10th Cir. 2011), *rev’d sub nom.*, *In re Borgman*, 698 F.3d 1255 (10th Cir. 2012).

186. *Borgman*, 698 F.3d at 1262.

187. See S.B. 22-086, 73d Gen. Assemb., Reg. Sess. (Colo. 2022) (Westlaw).

188. See FLA. STAT. ANN. § 222.25(3) (West 2025).

189. *Id.*

190. *In re Sanderson*, 283 B.R. 595, 597 (Bankr. M.D. Fla. 2002).

191. *In re Gardiner*, No. 15-bk-11892, 2016 WL 11708148, at \*2 (Bankr. M.D. Fla. Nov. 10, 2016).

There is no such exemption for the CTC, and bankruptcy courts in Florida have declined to extend the exemption to the CTC.<sup>192</sup>

#### 4. Oregon

Prior to 2001, Oregon did not have a state exemption specifically addressing the EITC. In a 1997 case, *In re Rutter*, married debtors tried to exempt their EITC under the “general assistance” or “public assistance” benefit provisions or, alternatively, under the provisions exempting child support.<sup>193</sup> The *Rutter* opinion noted that courts in other states had found the EITC exempt under such general statutes.<sup>194</sup> However, the court distinguished Oregon’s statutes as more restrictive, finding that in Oregon, public assistance referred specifically to state aid and thus did not include the EITC.<sup>195</sup>

In 2001, Oregon passed a statute expressly exempting “[t]he debtor’s right to receive an earned income tax credit under the federal tax laws and any moneys that are traceable to a payment of an earned income tax credit under the federal tax laws.”<sup>196</sup>

The legislative history of this 2001 statute explicitly indicates that the bill was drafted in response to *Rutter*.<sup>197</sup> The minutes reflect that State Representative Vicki Walker testified in favor of the bill, remarking that “the average earned income tax credit is relatively small, but . . . meaningful for the working poor” and noting that “pension plans are exempted from bankruptcy collection, while the much-needed income assistance is not.”<sup>198</sup> Prior to her election to the legislative assembly, Representative Walker worked as a bankruptcy court reporter,<sup>199</sup> and it is thought that her work in that role may have led her to support the legislation.<sup>200</sup>

Oregon has not extended the statute to the federal CTC, though in 2023 it extended the exemption provisions to a state refundable tax credit known as the Oregon Kids Credit.<sup>201</sup>

192. See, e.g., *id.* (noting that other courts have recognized the ACTC as “public assistance” but finding that the Florida statute only exempts EITC and “local public assistance,” which does not include the ACTC). The Bankruptcy Court for the Middle District of Florida seemingly extended the exemption to the CTC in a 2020 case, but the judge in that case later receded from that ruling and clarified that the prior opinion was a mistake. See *In re Dupree*, 619 B.R. 516, 517–19 (Bankr. M.D. Fla. 2020) (receding from *In re Kokin*, No. 19-bk-02413, 2020 WL 5745944, at \*4 (Bankr. M.D. Fla. Jan. 17, 2020)).

193. 204 B.R. 57, 58 (Bankr. D. Or. 1997).

194. *Id.* at 60. See *infra* Part III.B for analysis of cases cited by the opinion in their respective state discussions including *In re Brown*, 186 B.R. 224 (Bankr. W.D. Ky. 1995), *In re Jones*, 107 B.R. 751 (Bankr. D. Idaho 1989), and *In re Davis*, 136 B.R. 203 (Bankr. S.D. Iowa 1991).

195. See *In re Rutter*, 204 B.R. at 61.

196. OR. REV. STAT. ANN. § 18.345(1)(n) (West 2025).

197. H.B. 2175, 2001 Gen. Assemb., 71st Sess. (Or. 2001).

198. *Hearing on H.B. 2175A Before the S. Comm. on Judiciary*, 71st Leg., Reg. Sess. (Or. 2001) (statement of Rep. Vicki Walker, Member, S. Comm. on Judiciary).

199. See Vicki L. Walker, LINKEDIN, <https://www.linkedin.com/in/vicki-l-walker-88492215/> (on file with the Temple Law Review).

200. See *Earned Income Credit Fully Exempt in Oregon*, KENT ANDERSON L. OFF., <https://www.kentandersonlaw.com/2007/11/earned-income-credit-fully-exempt-in-oregon/> [<https://perma.cc/KW4Z-K59Y>] (last visited Oct. 17, 2025).

201. OR. REV. STAT. ANN. § 18.345(1)(q) (West 2025) (protecting the debtor’s right to receive a tax credit under Section 315.273, the Oregon Kids Credit).

## 5. Louisiana

In 2004, the Louisiana legislature passed a provision providing an exemption for the federal EITC.<sup>202</sup> Prior to that time, the state's statutory exemptions did not specifically address the EITC and had only a broad exemption for public welfare assistance. The Fifth Circuit Court of Appeals found that the EITC was not exempt under that broadly worded exemption.<sup>203</sup>

In 2019, Louisiana passed a law amending the exemption to extend to the refundable portion of the CTC (that is, the ACTC).<sup>204</sup> This is the current version of the statute.<sup>205</sup>

## 6. Nebraska

Nebraska enacted an amendment in 2004 providing an exemption for the full amount of any federal or state earned income tax credit refund.<sup>206</sup> There is no statutory exemption for the CTC.<sup>207</sup>

## 7. Indiana

Indiana amended its state exemption provision in 2005 to include protection for a debtor's interest in an EITC refund.<sup>208</sup> In 2010 it amended the provision to further include a similar exemption for Indiana's Earned Income Tax Credit.<sup>209</sup> Indiana does not provide for a similar exemption for the CTC.

Indiana debtors have been unsuccessful in arguing that the exemption law should apply to refundable tax credits other than the EITC. *In re Jackson* deferred to the Indiana legislature, emphasizing that the state exemption law specifically references the EITC but not other IRC sections.<sup>210</sup> The *Jackson* opinion reasoned that the EITC and the CTC, while both refundable credits, "serve very different purposes" with only the EITC targeted to assist lower income families.<sup>211</sup>

202. 2004 La. Sess. Law Serv. 1741–42 (West).

203. *In re Collins*, 170 F.3d 512, 513 (5th Cir. 1999) (finding that the state exemption statute was limited to state welfare and assistance); see *In re Legier*, No. 03–19115, 2004 WL 4945987, at \*2 (Bankr. E.D. La. July 12, 2004) (finding the CTC to not be exempt).

204. S.B. 217, 2019 Leg., Reg. Sess. (La. 2019), 2019 La. Sess. Law Serv. Act 197 (West).

205. LA. STAT. ANN. § 13:3881(A)(6) (2024).

206. NEB. REV. STAT. ANN. § 25-1553 (West 2025).

207. In 2023, Nebraska State Senator Danielle Conrad introduced Legislative Bill 294, Adopt the Child Tax Credit Act, which proposed a refundable state child tax credit and to amend section 25-1553 to include an exemption from bankruptcy for the state child tax credit. On April 18, 2024, the bill was indefinitely postponed. See *NE LB294*, BILL TRACK 50, <https://www.billtrack50.com/billdetail/1516660> [<https://perma.cc/SZ8N-UV2M>] (last visited Oct. 17, 2025).

208. 2005 Ind. Legis. Serv. P.L. 179-2005 (West) (codified at IND. CODE § 34-55-10-2(c)(11) (2024)).

209. 2010 Ind. Legis. Serv. P.L. 44-2010 (West).

210. *In re Jackson*, No. 12–9635–RLM–7A, 2013 WL 3155595, at \*1 (Bankr. S.D. Ind. June 20, 2013) (“Presumably, had the Indiana legislature wished to exempt either the CTC or the ACTC under Section 24 of the IRC, it knew how to do so. It declined.”).

211. *Id.* at \*2 (“Even if Ind. Code § 34-55-10-2(c)(11)(A) remotely could be interpreted as a ‘public assistance’ exemption which is not limited to the EIC, the refund attributable to the ACTC here would not qualify as it was not enacted solely to assist lower income families, but applies to middle income families.”).

## 8. Mississippi

Mississippi's state exemption law provides protection for "an amount not to exceed . . . [\$5,000] of earned income tax credit proceeds,"<sup>212</sup> and, separately, "an amount not to exceed . . . [\$5,000] of federal tax refund proceeds,"<sup>213</sup> and "an amount not to exceed [\$5,000] of state tax refund proceeds."<sup>214</sup> As a point of reference, for tax year 2023, the maximum available EITC for a family with three or more children is \$7,430.<sup>215</sup> These provisions were enacted in 2006; the relevant portions have not been modified since.<sup>216</sup>

In contrast to cases in other states,<sup>217</sup> *In re Fernandes* provides an illustration of how the timing of receipt and commingling of funds may weaken a debtor's otherwise valid exemption claim.<sup>218</sup> In *Fernandes*, the debtor received his EITC and CTC via direct deposit into his bank account and filed his bankruptcy petition thirteen days later.<sup>219</sup> In the intervening days, he made a number of withdrawals and deposits.<sup>220</sup> The bankruptcy court followed the Fifth Circuit's "snapshot rule" in determining the tax refunds were not readily traceable by the time of the petition, with the result that the "refund proceeds had become so commingled with other funds that they lost their identity as tax refunds and had become fungible cash."<sup>221</sup>

## 9. Maine

Maine provides a state exemption for both the EITC and the CTC, with its statute naming those two refundable credits among other types of social benefits.<sup>222</sup> The current version of the provision protects the debtor's right to receive "[a] social security benefit, unemployment compensation or a federal, state, or local public assistance benefit, including, but not limited to, all tax refunds attributable to the federal earned income tax credit and any child tax credit."<sup>223</sup>

Prior to 2007, this exemption provision expressly applied only to local public assistance. In a 2006 case, *In re Connors*, the bankruptcy court ruled against debtors who argued for an expansive reading that would protect their EITC and CTC:

The fundamental argument supporting the Connors' exemption claim is that the EITC and the CTC "constitute 'public assistance' and 'aid to needy persons' sufficient to qualify those Credits as exempt under Maine law." They make the case that both programs, especially the EITC, are programs designed

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212. MISS. CODE ANN. § 85-3-1(i) (West 2025).

213. *Id.* § 85-3-1(j).

214. *Id.* § 85-3-1(k).

215. Rev. Proc. 2022-38, 2022-45 I.R.B. 445 § 3.06(1).

216. Debtor-Creditor Relationship, ch. 595, sec. 1, § 85-3-1, 2006 Miss. Laws (S.B. 2963).

217. *See, e.g., In re Maine*, 461 B.R. 723, 730 (Bankr. S.D. Ohio 2011).

218. 605 B.R. 733, 738 (Bankr. N.D. Miss. 2019).

219. *Id.* at 735.

220. *Id.*

221. *Id.* at 738.

222. ME. REV. STAT. ANN. tit. 14, § 4422(13)(A) (2025).

223. *Id.*

to “help” people. I am sympathetic to their cause, but I am not a legislator—policy determinations are not my bailiwick.<sup>224</sup>

The next year, in 2007, the Maine legislature amended the statute to include federal and state public assistance, specifically including reference to the EITC and the ACTC (the refundable portion of the CTC).<sup>225</sup> As this amendment protected only the refundable portion, it left open the issue that courts in other states have similarly had to address—whether the nonrefundable portion of the Child Tax Credit should be protected.<sup>226</sup> In a 2013 case, the bankruptcy court in Maine held that the nonrefundable portion of the CTC was not exempt, noting that the CTC reduces the debtor’s federal tax liability and “merely figured in the calculation that resulted in a refund of excess tax withheld.”<sup>227</sup>

In 2021, the Maine legislature amended the statute to its present version, which specifies that all tax refunds attributable to the EITC and *any* CTC are exempt.<sup>228</sup>

#### 10. Nevada

In 2007, Nevada enacted a provision protecting “[a]ny tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code . . . or a similar credit provided pursuant to a state law.”<sup>229</sup> Nevada’s exemption statute does not protect the CTC or ACTC.

Nevada has an exemption protecting various types of public assistance administered by the state.<sup>230</sup> Two years prior to Nevada’s legislative change, a bankruptcy court decision, *In re Thompson*, concluded that the EITC was not public assistance within the meaning of the statute as was then in effect.<sup>231</sup> The *Thompson* opinion expressed sympathy for the debtor’s situation and noted that other states had enacted statutes protecting the EITC, while emphasizing that the court was obligated to interpret the Nevada statute as written.<sup>232</sup>

The legislative history to the 2007 Act provides the following context for the enactment of this provision:

Bankruptcy is America’s answer to feudal debtor prisons. The underlying purpose of the Bankruptcy Act and exemptions in general, is to give an honest debtor a fresh start in life by relieving the debtor of some debts, and repaying the creditors in an orderly manner to the extent that the debtor has available means for payment. If the point of bankruptcy is a fresh start, then it is only

224. *In re Connors*, 348 B.R. 1, 5 (Bankr. D. Me. 2006).

225. S.P. 119, 123d Leg., 1st Reg. Sess. (Me. 2007), 2007 Me. Laws Ch. 261 (codified as amended at ME. REV. STAT. ANN. tit. 14, § 4422(13)(A) (2025)).

226. See, for example, *supra* notes 183–86 and accompanying text for a discussion of Colorado.

227. *In re Tetrault*, No. 12–21373, 2013 WL 3479656, at \*2 (Bankr. D. Me. July 10, 2013).

228. 2021 Me. Legis. Serv. ch. 382 (West).

229. NEV. REV. STAT. ANN. § 21.090(1)(aa) (West 2025).

230. *Id.* § 422.291; *id.* § 422A.065 (defining public assistance).

231. 336 B.R. 800, 803 (Bankr. D. Nev. 2005).

232. *Id.* at 802–03 (“This Court is not without sympathy for the debtor’s circumstances. . . . Bankruptcy courts are not empowered to rewrite state statutes when they imagine that if the legislature were to examine them, it would do so.”).

possible if the debtor is left with something that they can start fresh with. Therefore, state and federal laws make certain property exempt.

....

... The EITC is for lower income working citizens and it reduces their tax liability. Essentially, it returns to taxpayers a portion of their federal income taxes due to their income level. The federal government does not count the EITC as income when determining whether a taxpayer is eligible for all federal benefits. Nevada's exemption law already exempts from the definition of income any state public assistance received by the debtor. Should a federal government tax benefit—only available to lower income households, which the federal government does not treat as income—be treated any differently under Nevada law? At least seven other states have answered this question in the negative and have made this credit an exemption. . . . Nevadans who are overwhelmed by debts and who need fresh starts should be entitled to the opportunity.<sup>233</sup>

The legislative history shows that the *Thompson* opinion may have prompted the legislative change. In their testimony in favor of an exemption for the EITC, both Nevada Assemblywoman Barbara Buckley<sup>234</sup> and bankruptcy attorney Thomas Fell<sup>235</sup> made reference to the *Thompson* case.

#### 11. Ohio

Ohio state law provides an exemption for a debtor's interest in "[p]ayments under Section 24 or 32 of the Internal Revenue Code of 1986 . . . as amended."<sup>236</sup> Section 24

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233. *Revises Provisions Concerning the Enforcement of Judgments: Hearing on A.B. 483 Before the Assemb. Comm. on Judiciary*, 2007 Leg., 74th Sess. 2–3 (Nev. 2007) [hereinafter *Hearing Before the Assemb. Comm.*] (statement of Barbara Buckley, Assemb., Nevada Assembly Dist. No. 8).

234. *Revises Provisions Concerning the Enforcement of Judgments: Hearing on A.B. 483 Before the S. Comm. on Judiciary*, 2007 Leg., 74th Sess. 11–12 (Nev. 2007) (statement of Barbara Buckley, Assemb., Nevada Assembly Dist. No. 8). Though she did not refer to the case by name, Assemblywoman Barbara Buckley spoke about a bankruptcy case that was the impetus for the legislative change:

Earned income tax credits is an important anti-poverty program run by the federal government for the working poor. At the present time, Nevada's statute exempts assistance programs run by the state; because the federal government shifted this program and does the administration, our bankruptcy courts found earned income tax credits are not subject to the public assistance credit. The Honorable Linda B. Riegler of the United States Bankruptcy Court for the District of Nevada, issued that decision last year. One of our pro bono bankruptcy attorneys discovered it, pointed it out to me and thought the Legislature should take a look at it.

*Id.* at 12.

235. *Hearing Before the Assemb. Comm.*, *supra* note 233, at 3–4 (statement of Thomas Fell, Att'y, Gordon & Silver). Fell mentioned the *Thompson* case by name and referred to how Judge Riegler expressed sympathy for the debtor.

It would be a simple correction to the Nevada laws to deal with federally administered public assistance and exempt it from both executions by creditors and collection by trustees. Frankly, when you are dealing with \$100 or \$200, it makes no difference in a bankruptcy estate of an individual. It is not going to make it to the creditors. However, that \$100 or \$200 makes a huge difference to the individual who is affected; it determines whether he will pay his rent or be evicted.

*Id.* at 4.

236. OHIO REV. CODE ANN. § 2329.66(A)(9)(f) (West 2025) (internal quotation marks omitted).



includes both the CTC and the ACTC, and Section 32 describes the EITC.<sup>237</sup> This provision was added to the state exemptions in 2008.<sup>238</sup> Ohio stands out as the first state to have added protection for the EITC and the CTC in one simultaneous amendment to the exemption statute.

Not long after the exemption was enacted, the question about refundability arose with respect to the CTC. In 2009, debtors in the Northern District of Ohio claimed an exemption for the nonrefundable CTC, arguing that because the statute did not distinguish between the nonrefundable CTC and the refundable ACTC, both should be exempt.<sup>239</sup> The court's analysis turned on the word "payment" in the statute, finding that the nonrefundable portion is not a payment that is property of the estate but is "simply a reduction against the amount of tax liability."<sup>240</sup> In finding that the debtor had no legal or equitable interest in any payment, the court reasoned that the debtors "have already obtained the benefit of the non-refundable portion of the child tax credit when they used the credit to reduce their total tax liability. They cannot also use the credit to insulate part of the tax refund . . . from collection . . . for the benefit of their unsecured creditors."<sup>241</sup>

In a departure from other courts, this line of cases in the Northern District of Ohio held that the nonrefundable CTC was not property of the bankruptcy estate. The Sixth Circuit later expressly determined that, regardless of whether it was property of the estate, the nonrefundable CTC was not a "payment" within the meaning of the Ohio exemption statute.<sup>242</sup> Among other reasoning,<sup>243</sup> the Sixth Circuit noted that part of the IRS form on which taxpayers claim the nonrefundable CTC is entitled "Tax and Credits," while the part of the form on which taxpayers claim the refundable ACTC is entitled "Payments."<sup>244</sup>

Bankruptcy courts in Ohio have also ruled on what is meant, temporally, with respect to the term "payments": Does it refer to payments owed at the time of the petition or payments already received prior to the petition? The bankruptcy courts in Ohio

237. I.R.C. §§ 24, 32.

238. 2008 Ohio Laws File 122. Prior to enactment, debtors tried unsuccessfully to claim an EITC and CTC exemption under Ohio's exemption for "spousal support, child support, an allowance, or other maintenance" on the public policy grounds that "both credits provide maintenance to the extent reasonably necessary for support." *In re Parker*, 352 B.R. 447, 449 (Bankr. N.D. Ohio 2006); see, e.g., *In re Beagle*, 200 B.R. 595, 597 (Bankr. N.D. Ohio 1996).

239. *In re Luke*, No. 08-35623, 2009 WL 1617468, at \*1 (Bankr. N.D. Ohio Apr. 27, 2009); *In re Ruhl*, No. 08-36030, 2009 WL 1617470, at \*1 (Bankr. N.D. Ohio Apr. 27, 2009) (appearing before Judge Whipple and decided the same day as *Luke*); *In re Klostermeier*, No. 08-36700, 2009 WL 1617090, at \*3 (Bankr. N.D. Ohio May 29, 2009) (following *Luke* and *Ruhl* and decided by Judge Whipple); *In re Molina*, Nos. 09-30143, 08-35543, 09-30215, 2009 WL 1587292, at \*1 (Bankr. N.D. Ohio May 29, 2009) (adopting the analysis in *Klostermeier*).

240. *In re Luke*, 2009 WL 1617468, at \*3 (following *Matthews* in finding that the nonrefundable portion is not property of the bankruptcy estate, therefore not subject to collection and liquidation, with the result that it cannot be claimed as an exemption).

241. *Id.* at \*4 (citing *In re Dever*, 250 B.R. 701, 706 (Bankr. D. Idaho 2000)).

242. *In re Zingale*, 693 F.3d 704, 709 (6th Cir. 2012).

243. The *Zingale* court contrasted the Ohio legislature's use of "payment" in the exemption statute with Colorado's statute exempting "the full amount of a refund that is attributed to the credit." *Id.* at 708 (quoting *In re Dunkley*, 452 B.R. 241, 246 (B.A.P. 10th Cir. 2011)). As discussed *supra* Part III.A.2, the Colorado statute has since been amended to explicitly exempt the nonrefundable portion.

244. *Id.* at 708-09.

considered the legislative intent in holding that refundable credit payments received prior to the petition retain their exempt status if reasonably traceable.<sup>245</sup>

## 12. Kansas

In 2011, Kansas passed a state law specific to individual bankruptcy debtors providing an exemption for both the federal and state EITC, not to exceed the maximum EITC allowed to the debtor for one tax year.<sup>246</sup> There is no explicit state exemption for the CTC.<sup>247</sup>

Legislative history in support of the Kansas state exemption underscored the importance of the EITC as a social safety net, referring to it as “a critical tool for low income Kansans as they struggle to maintain and improve their lives” and noting that forfeiture of the EITC “is counterproductive and further inhibits the debtor’s ability to recover, making it more likely that the debtor will come to require state services.”<sup>248</sup>

The Kansas statute was written specifically to apply only in the bankruptcy context, not as a general creditor exemption.<sup>249</sup> In other words, a general debtor who is *not* in bankruptcy is not entitled to the protection of the exemption.<sup>250</sup> This led to multiple trustee challenges in Kansas.<sup>251</sup> The trustees argued that the Kansas exemption statute

245. *In re Wood*, 459 B.R. 263, 266 (Bankr. S.D. Ohio 2011) (finding that “the Trustee’s narrow interpretation of [the exemption provision] is not supported by the language of the statute nor is it consonant with the remedial nature of exemption statutes in affording debtors such basic necessities as are essential for a fresh start.”). *In re Maine* provides:

This court does not believe that the intention of the Ohio Legislature . . . was to exempt such funds while held by the United States, but as soon as they are released by the United States and received by a taxpayer to be attachable by a creditor simply because the debtor deposited those funds into a bank account. As recognized by the bankruptcy court decisions discussed, such a conclusion would gut the exemption and defeat the purpose of the statute—to provide debtors with sufficient property and funds to maintain a minimum existence. The exemption would be worthless if creditors and bankruptcy trustees could attach such funds as soon as the debtor received them because the debtor would have no means to protect those funds once they are received and prior to needing to expend those funds for her bare necessities.

461 B.R. 723, 729 (Bankr. S.D. Ohio 2011).

246. KAN. STAT. ANN. § 60-2315 (West 2025). Prior to the enactment of this statute, a debtor’s only avenue in Kansas to protect refundable tax credits was through a proration calculation as discussed in Section I.

247. Courts have rejected Kansas debtors’ attempts to claim the CTC as exempt under the federal “public assistance benefit” provision of 11 U.S.C. § 522(d)(10) on the grounds that such statute is limited to local benefits, and the CTC is a federal benefit. *See, e.g., In re Lee*, 415 B.R. 518, 525 (Bankr. D. Kan. 2009).

248. *Bankruptcy Proceedings; Earned Income Tax Credit: Hearing on S.B. 12 Before the S. Judiciary Comm.*, 2011 Leg., 84th Sess. (Kan. 2011) (statement of John Vratil, Kansas State Sen.). Senator John Vratil was the sponsor of Senate Bill 12. *See also* Andréa Horvath, *Giving Credit Where This Credit’s Due: Kansas’ Bankruptcy-Specific Exemption of the Earned Income Tax Credit Passes the Constitutional Test*, 24 KAN. J.L. & PUB. POL’Y 462, 463–64 (2015) (citing minutes of the House Judiciary Committee).

249. For a fuller discussion of this distinction and the resulting constitutional challenges in Kansas, see generally Horvath, *supra* note 248, at 478–80. For discussion of other states that have adopted bankruptcy-specific exemptions, see Sullivan, *supra* note 148, at 358–60.

250. *See, e.g., In re Beach*, No. 12–40906, 2013 WL 1795598, at \*1 (Bankr. D. Kan. 2013), *aff’d sub nom., In re Murray*, 506 B.R. 129 (B.A.P. 10th Cir. 2014), *aff’d*, 586 F. App’x 477 (10th Cir. 2014).

251. *See* Horvath, *supra* note 248, at 478. Similar challenges have arisen in other states that have similar bankruptcy-specific exemption statutes. *See id.* at 464 n.20 (describing how most, but not all, courts have found bankruptcy-specific exemptions constitutional, with a current trend among appellate courts toward finding them

violates federal law—specifically, the Bankruptcy Clause<sup>252</sup> and the Supremacy Clause<sup>253</sup>—because Kansas residents who do not file a bankruptcy claim cannot claim such an exemption.<sup>254</sup> In each of these cases, including one that ultimately went to the Panel, the courts held that the Kansas exemption statute in question was constitutional.<sup>255</sup> In the case, *In re Lea*, the district court highlighted that “the Kansas statute . . . furthers federal policy by ensuring that the [earned income tax] credit remains with the low-income families it was intended to reach, rather than being seized by their creditors.”<sup>256</sup>

### 13. Virginia

Virginia provides a state exemption for “[t]hose portions of a tax refund or governmental payment attributable to” the CTC, ACTC, or the EITC.<sup>257</sup> This provision was enacted in 2015 and includes both the refundable and nonrefundable portion of the CTC.<sup>258</sup>

This amendment, which passed with overwhelming support, was sponsored by a state delegate who introduced those protections after other attorneys brought it to his attention that these refundable credits were not protected in the state’s exemption law.<sup>259</sup>

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constitutional); see also Lawrence Ponoroff, *Constitutional Limitations on State-Enacted Bankruptcy Exemption Legislation and the Long Overdue Case for Uniformity*, 88 AM. BANKR. L.J. 353, 360–61 (2014) (criticizing bankruptcy-specific exemption laws and arguing in favor of federal uniformity in bankruptcy exemption laws).

252. See U.S. CONST. art. I, § 8, cl. 4.

253. See *id.* art. IV, cl. 2.

254. See, e.g., *In re Earned Income Tax Credit Exemption Const. Challenge Cases*, 477 B.R. 791, 794 (Bankr. D. Kan. 2012), *aff’d sub nom.*, *In re Lea*, Nos. 11–11131, 12–1298, 11–12855, 12–1297, 2013 WL 4431267 (D. Kan. Aug. 16, 2013); *In re Murray*, 506 B.R. 129, 131 (B.A.P. 10th Cir. 2014), *aff’d*, 586 F. App’x 477 (10th Cir. 2014); *In re Westby*, 473 B.R. 392, 396 (Bankr. D. Kan. 2012), *aff’d*, 486 B.R. 509 (B.A.P. 10th Cir. 2013).

255. *In re Murray*, 506 B.R. at 142.

256. *In re Lea*, 2013 WL 4431267, at \*4 (citing *Williams v. U.S. Fidelity & Guaranty*, 236 U.S. 549, 554 (1915)) (stating that bankruptcy law serves to “relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh”).

257. VA. CODE ANN. § 34-26(9) (West 2025).

258. 2015 Va. Acts. ch. 656.

259. Scott Surovell, who was then a state delegate (later a state senator) and an attorney himself, stated: “several attorney’s [sic] advised me that U.S. Bankruptcy Trustees were seizing child support and spousal support arrearages along with refunds of low income families’ tax refunds attributable to the Earned Income Tax Credit and Child Tax Credit. None of these assets should be available to creditors so I introduced legislation adding them to the list of assets that could be exempt from creditor collections.” Scott A. Surovell, *Bills on Protecting Child Support, SOL Flexibility Pass*, CONNECTION NEWSPAPERS (Feb. 11, 2015), <https://www.connectionnewspapers.com/news/2015/feb/11/bills-protecting-child-support-sol-flexibility-pas/> [<https://perma.cc/U3K4-8GSB>]. The National Association of Consumer Bankruptcy Attorneys recognized Surovell as the 2015 Champion of Consumer Rights “for his fight against predatory lenders and for expanding the rights of consumer debtors to retain property during bankruptcy proceedings.” *Awards and Honors*, ONLINE OFF. OF SCOTT SUROVELL, <https://scottsurovell.org/awards-and-honors-2/> [<https://perma.cc/J5QF-U6PR>] (last visited Oct. 17, 2025).

#### 14. Arizona

Until recently, Arizona did not have an explicit exemption for the EITC or the CTC. Appropriately, while the bankruptcy court in Arizona previously recognized that the EITC is “a form of welfare to benefit low-income workers,” the court interpreted the state’s public assistance exemption to include only assistance granted pursuant to Title 46 of the Arizona Revised Statutes.<sup>260</sup>

In 2022, the Arizona legislature amended its bankruptcy exemption statute to protect “[t]he refundable portion of any federal or state personal income tax credits from any federal or state earned income tax credits and any additional refundable portion of any federal or state child tax credits.”<sup>261</sup> The amendment was signed into law by the Arizona governor on July 6, 2022.<sup>262</sup>

On the same day that the law was signed, an initiative petition was filed with the Arizona secretary of state introducing Proposition 209 for inclusion on the November 2022 ballot.<sup>263</sup> Proposition 209, known as the Predatory Debt Collection Act, was approved by the voters with overwhelming support in the November 8, 2022, general election.<sup>264</sup> Among other things, Proposition 209 amended the same bankruptcy exemption statute to increase the dollar amounts for certain types of personal property. Unlike the amendments passed by the legislature, Proposition 209 did not provide an exemption for the EITC or the CTC.<sup>265</sup> Thus, the two amended versions of the applicable statute differ, leading to confusion for debtors wishing to protect their refundable tax credits.<sup>266</sup> After a trustee in one such case argued that Proposition 209 repealed the July 2022 amendment protecting the tax credits, the U.S. Bankruptcy Court in Arizona certified a question to the Arizona Supreme Court to decide “whether a voter initiative can repeal or affect a statutory provision that became effective after the submission of the initiative to the Arizona Secretary of State.”<sup>267</sup>

The Arizona Supreme Court found that the voter initiative neither expressly nor implicitly repealed subsection (A)(11) of Arizona Revised Statute section 33-1126, with the result that it remains operable. In its opinion, the court noted that Proposition 209’s “context, language, subject matter, historical background, effects and consequences, and

260. *In re Builder*, 368 B.R. 10, 11 (Bankr. D. Ariz. 2007) (interpreting ARIZ. REV. STAT. ANN. § 46-208 (West 2025)).

261. ARIZ. REV. STAT. ANN. § 33-1126(A)(11) (West 2025). The amendment further provided that “[t]he amount of the exemption shall be the lesser of the total combined amount of federal and state tax refunds or the total combined amount of any federal or state earned income tax credits and any federal or state child tax credits claimed on the return.” *Id.*

262. S.B. 1222, 2022 Ariz. Sess. Laws ch. 346, § 1.

263. See *In re Riggins*, 544 P.3d 64, 66 (Ariz. 2024).

264. See *Arizona Proposition 209 Election Results: Reduce Medical Debt*, N.Y. TIMES (Dec. 5, 2022), <https://www.nytimes.com/interactive/2022/11/08/us/elections/results-arizona-proposition-209-reduce-medical-debt.html> (on file with the Temple Law Review) (reporting that Proposition 209 passed with 72% of the vote).

265. See *Proposition 209 Information Sheet*, AZCOURTS.GOV, <https://www.azcourts.gov/selfservicecenter/Garnishment/Proposition-209> [<https://perma.cc/7JXN-ME3K>] (last visited Oct. 17, 2025).

266. This was a timing issue. *In re Riggins*, 544 P.3d at 66 (“[S]ubsection (A)(11) did not legally exist at any point during Prop. 209’s qualification process, and it did not become operative until well after Prop. 209’s filing deadline.”).

267. *Id.* at 67.

spirit and purpose . . . demonstrate an enhancement of debtor protections through limited revisions to [section] 33-1126,” thus to conclude “that the electorate intended to repeal subsection (A)(11), which also enhances debtor protections, would be wholly inconsistent with Prop. 209’s explicit purpose.”<sup>268</sup>

#### B. State Law Explicitly Protects Public Assistance

Several states have exemption laws that broadly protect public assistance, but do not explicitly protect the EITC or the CTC. These states serve as interesting case studies, with bankruptcy decisions in these jurisdictions providing rich and illuminating case law as to the extent to which refundable tax credits constitute public assistance. While there is no uniform outcome, many courts have explicitly recognized the EITC as a form of public assistance; a case decided more than twenty years ago, in 2003, referred to such recognition as “the modern trend among courts.”<sup>269</sup> The interpretations of the CTC are more varied, with some courts recently recognizing that over time the refundable portion of the CTC benefits more low-income families. As Section IV discusses, this recognition of the EITC as *public assistance* is notably distinct from the congressional characterization of the EITC.

##### 1. Idaho

Idaho’s state exemption provision includes an exemption for “[b]enefits the individual is entitled to receive under federal, state, or local public assistance legislation.”<sup>270</sup> Case law from the U.S. Bankruptcy Court for the District of Idaho provides an example of an evolving perception of refundable tax credits as public assistance.

##### a. EITC

It is well established that the EITC is exempt under Idaho’s broad public assistance provision. *In re Jones* considered the question in 1989.<sup>271</sup> In its analysis, the court emphasized that the EITC’s primary purpose is “to afford economic relief to low income heads of household who work for a living” and to “put money in the pockets of certain needy taxpayers.”<sup>272</sup> The court found that the EITC is public assistance within the meaning of the exemption provision “due to its nature as social welfare relief” and its intention “to provide low income families with ‘the very means by which to live.’”<sup>273</sup>

A decade later, when a debtor claimed an exemption for the Hope Credit, the court found that the public assistance exemption did not apply to the nonrefundable education credit. *In re Crampton* relied on *Jones* as it described the “fundamental differences” between the EITC and the education credit.<sup>274</sup> The court’s opinion

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268. *Id.* at 69.

269. *Flanery v. Mathison*, 289 B.R. 624, 628 (W.D. Ky. 2003) (collecting cases).

270. IDAHO CODE ANN. § 11-603(4) (West 2025).

271. 107 B.R. 751, 751 (Bankr. D. Idaho 1989).

272. *Id.* at 752 (quoting *In re Searles*, 445 F. Supp. 749, 752 (Bankr. D. Conn. 1978)).

273. *Id.* (quoting *Goldberg v. Kelley*, 397 U.S. 254, 264 (1970)). *Goldberg* predates the enactment of the EITC and was a case about traditional welfare. See *Goldberg*, 397 U.S. at 264.

274. *In re Crampton*, 249 B.R. 215, 217 (Bankr. D. Idaho 2000).

distinguished the EITC based upon its purpose of helping the working poor, its refundable nature, and its relatively lower income threshold.

*b. CTC*

The next month, in *In re Dever*, the court considered as a matter of first impression whether the nonrefundable portion of the CTC constituted public assistance.<sup>275</sup> *Dever* relied on the same three distinctions described in *Crampton* in finding that the CTC was not public assistance.<sup>276</sup> *Dever* emphasized the CTC's legislative history, including statements by legislators that the CTC would "provide relief for hardworking middle-income families and . . . allow these families to invest their own money into their children's education, housing, nutrition, nurturing, and care."<sup>277</sup> The court additionally noted that the pro-family policy of the CTC was already effectuated when the debtors used the nonrefundable credit to reduce their tax liability.<sup>278</sup> The very next year, in *In re Steinmetz*,<sup>279</sup> a debtor claimed the exemption to protect the refundable portion of the CTC. Judge Pappas, who decided *Crampton*, applied the same three-part inquiry. In finding that the ACTC was meant to assist large families at a variety of income levels and was not targeted to assist only lower-income families, Judge Pappas lamented the lack of legislative history specific to the refundable portion of the CTC.<sup>280</sup>

Fifteen years later, Judge Pappas had the chance to reconsider the issue. In *In re Farnsworth*, he found that the amendments made to the ACTC in 2001, 2004, 2008, and 2010 supported a conclusion that the expansion of the refundable portion was designed to help low-income, working families.<sup>281</sup> The *Farnsworth* opinion highlighted the statutory changes that expanded refundability to the lowest earners as well as signing statements by Presidents George W. Bush and Barack Obama emphasizing the benefits to the low-income families.<sup>282</sup> In light of the statutory amendments and the primary impact of benefiting low-income families, "where even a minimal refund may play an important role in addressing living costs," Judge Pappas found that the three-part *Crampton* inquiry now tipped in favor of recognizing the ACTC as public assistance.<sup>283</sup>

2. Kentucky

Among its state exemptions, Kentucky has a general public assistance provision, which provides "[p]ublic assistance benefits, as long as they are not mingled with other funds of the recipient, shall be exempt from any remedy for the collection of all debts,

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275. *In re Dever*, 250 B.R. 701, 704 (Bankr. D. Idaho 2000).

276. *Id.* at 705–06.

277. *Id.* at 705.

278. *Id.* at 706.

279. 261 B.R. 32, 33 (Bankr. D. Idaho 2001).

280. *Id.* at 35 ("To be sure, the Court would prefer to resolve the issue presented by resort to the clear instructions of Congress. However, there is almost no information available disclosing the intent of the legislators in enacting the additional child tax credit.").

281. 558 B.R. 375, 378–80 (Bankr. D. Idaho 2016).

282. *Id.* at 378–79.

283. *Id.* at 381. Though not binding in Idaho, Judge Pappas also quoted from *Hardy v. Fink (Hardy II)*, 503 B.R. 722 (B.A.P. 8th Cir. 2013), *rev'd*, 787 F.3d 1189 (8th Cir. 2015) at length and seemed persuaded by its discussion of the more recent legislative history. *Id.* at 378–80.

liens and encumbrances.”<sup>284</sup> Courts have interpreted the Kentucky statute to include the EITC, but not the CTC.

*a. EITC*

In the 1995 case *In re Brown*, the bankruptcy court in the Western District of Kentucky analyzed the purpose of the EITC legislation, noting how other courts have described it: “though it is given effect through the income tax laws, the earned income credit is in substance an item of social welfare legislation intended to provide low-income families with ‘the very means by which to live.’”<sup>285</sup> Distinguishing the EITC from a tax refund, the court in *Brown* recognized three primary goals of the credit: (1) to provide a bonus or incentive for low-income individuals to work, (2) to offset the disincentive to work created by the regressivity of payroll taxes, and (3) to stimulate the economy “by funneling funds to persons likely to spend the money immediately.”<sup>286</sup> The *Brown* decision expressly recognized the EITC as an entitlement program and deemed it “an item of social welfare legislation intended to provide low income families with the means by which to live.”<sup>287</sup> *Brown* refers to the EITC as a “grant given [to the debtor] by the federal government.”<sup>288</sup> In holding that the EITC met the Kentucky public assistance exemption, the court found it relevant that the EITC in that particular case was paid to a person “with whom a needy child lives.”<sup>289</sup>

*In re Duvall*, a 2002 case that was subsequently reversed, seemingly changed course.<sup>290</sup> In announcing it would no longer follow *Brown*, the *Duvall* court noted that debtors without qualifying children may be eligible for the EITC and characterized the EITC as “a refunded tax credit.”<sup>291</sup> In concluding that the EITC was not public assistance, *Duvall* followed the analysis of the Tenth Circuit Bankruptcy Appellate Panel, which was persuaded that the EITC “is not a welfare grant but an incentive to work.”<sup>292</sup>

*Flanery v. Mathison*, the U.S. district court case that reversed *Duvall*, referred to the “modern trend among courts” of classifying the EITC as public assistance.<sup>293</sup> *Flanery* highlighted the nuance of the EITC’s hybrid role in the social safety net: “The bankruptcy

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284. KY. REV. STAT. ANN. § 205.220(3) (West 2025). In relevant part, public assistance is defined to include “money grants, assistance in kind, or services to or for the benefit of needy aged, needy blind, needy permanently and totally disabled persons, needy children, or persons with whom a needy child lives or a family containing a combination of these categories.” *Id.* § 205.010(3).

285. 186 B.R. 224, 226 (Bankr. W.D. Ky. 1995) (quoting *In re Searles*, 445 F. Supp. 749, 753 (D. Conn. 1978)) (collecting cases).

286. *Id.* (citing the EITC’s 1975 legislative history and *Sorenson*).

287. *Id.* at 226–27 (citing *In re Jones*, 107 B.R. 751, 751 (Bankr. D. Idaho 1989)).

288. *Id.* at 227.

289. *Id.* at 226. As noted in the opinion, “needy child” is defined in the Kentucky Revised Statutes and includes a child who is (1) experiencing deprivation of parental support and (2) not provided with a level of subsistence that is compatible with decency and health. § 205.010(4).

290. 281 B.R. 646, 647–48 (Bankr. W.D. Ky. 2002), *rev’d sub nom.*, *Flanery v. Mathison*, 289 B.R. 624 (W.D. Ky. 2003).

291. *Id.* at 648.

292. *In re Trudeau*, 237 B.R. 803, 806–07 (B.A.P. 10th Cir. 1999) (citing *Sorenson* in holding that the EITC portion of the tax refund is not exempt under the Wyoming exemption statute concerning public assistance).

293. *Flanery*, 289 B.R. at 628.

court's insistence that if the EITC is a tax refund it cannot also be public assistance ignores the reality of the statutory scheme and the purposes of the EITC."<sup>294</sup> In its conclusion, the *Flanery* court refers to the EITC as "an essential and significant component of the work support system which has replaced the old welfare system."<sup>295</sup>

*b. CTC*

The courts have not extended Kentucky's public assistance exemption to the CTC.<sup>296</sup> In the 2001 *In re Beltz* case, in which a Chapter 13 debtor claimed an exemption for the ACTC, the Bankruptcy Court for the Western District of Kentucky noted that the intent of the CTC "is primarily to benefit middle[-]class Americans," and the debtors were not needy within the meaning of the statute.<sup>297</sup> While noting that "in today's [2001] economy, a gross income of \$35,000 is inadequate to meet the full needs of a growing family of four," the court distinguished that from the statutory standard for needy children that required "a level of subsistence compatible with decency and health."<sup>298</sup>

3. Alabama

Alabama law provides for an exemption for "public assistance to needy persons."<sup>299</sup> Two cases provide insights, both involving the EITC.

In a case of first impression in Alabama, *In re Brasher* involved a debtor who claimed an exemption for her EITC.<sup>300</sup> As a matter of persuasive authority, the court reviewed case law from other states with similarly worded state statutes<sup>301</sup> and distinguished Alabama's statute from other, more narrowly written public assistance statutes.<sup>302</sup> The bankruptcy court in *Brasher* interpreted "public assistance" as including only the state benefits given by Alabama as enumerated in Title 38.<sup>303</sup> However, on

294. *Id.*

295. *Id.* at 628–29.

296. *See, e.g., In re Soward*, No. 00–22025, 2001 WL 1338506, at \*2 (Bankr. E.D. Ky. June 19, 2001) (finding that the CTC was not intended to be a form of public assistance).

297. 263 B.R. 525, 529–30 (Bankr. W.D. Ky. 2001). While only ruling on the case before it, the court expressed in dicta its view that it would be unlikely to allow interpreting the public assistance provision as exempting the CTC:

From the many mathematical computations engaged in by the Court, it appears unlikely that the [CTC] will ever be available for any size family at or below the Federal Poverty Guideline. This Court is not inclined to allow any Debtor above the poverty level to exempt the [CTC] pursuant to [KY. REV. STAT. ANN. §] 205.220(3) [(West 2025)].

*Id.* at 531.

298. *Id.*

299. ALA. CODE § 38-4-8 (West 2025) ("All amounts paid or payable as public assistance to needy persons . . . in the case of bankruptcy, shall not pass to the trustee or other person acting on behalf of the creditors of the recipient of public assistance.").

300. 253 B.R. 484, 486 (M.D. Ala. 2000).

301. *Id.* at 486–87 (collecting cases).

302. *Id.* at 487. The court distinguished *In re Collins*, 170 F.3d 512, 513 (5th Cir. 1999), because the Louisiana statute defined exempted assistance more restrictively. *In re Brasher*, 253 B.R. at 487. It similarly distinguished *In re Trudeau*, 237 B.R. 803, 807 (B.A.P. 10th Cir. 1999), due to Wyoming's restrictively written statute. *In re Brasher*, 253 B.R. at 487.

303. *In re Brasher*, 253 B.R. at 487 (discussing the bankruptcy court's reasoning).



appeal, the district court found that, when read within the context of the overall statutory scheme, the broad language of the public assistance provision should be read to include federal public assistance.<sup>304</sup> In response to the trustee's argument that the EITC is not within the definition of public assistance because beneficiaries received it by claiming an overpayment of federal income taxes, the court disagreed, reasoning: "Congress's choice to use the Internal Revenue Service Code [sic] as the administrative mechanism for the earned-income credit does nothing to gainsay the fact that the clear purpose and effect of the earned-income credit is public assistance."<sup>305</sup> The court's opinion goes on to discuss the legislative intent of the EITC as "a subsidy to certain low-income families."<sup>306</sup>

In a 2005 case, *Hamm v. James (In re James)*, the Eleventh Circuit considered a consolidated appeal in which the trustee for several debtors argued that the EITC does not qualify as public assistance under the exemption statute<sup>307</sup> and that even if the EITC does qualify as public assistance, such payments become refunds rather than public assistance when a debtor elects to receive the EITC as a lump-sum tax refund.<sup>308</sup> As to the first argument, the court looked to the Merriam-Webster Online Dictionary's definition of public assistance as "government aid to needy, blind, aged, or disabled persons and to dependent children."<sup>309</sup> Comparing that definition to language from the legislative history stating that one purpose of the EITC was "to provide relief for low-income families hurt by rising food and energy prices," the court found the EITC is public assistance within the plain meaning of the language of the state's statute.<sup>310</sup> As to the lump-sum payment issue, the trustee argued that the taxpayer had the option to elect a ratable portion of the EITC in each payroll check<sup>311</sup> and choose not to do so.<sup>312</sup> This, according to the trustee's logic, meant that the EITC was an overpayment just like any other tax refund rather than a tax credit.<sup>313</sup> The court held that the EITC is public assistance for purposes of Alabama's exemption statute regardless of whether it is received as a credit, a refund, or an overpayment and regardless of whether it is received in monthly payments or as a lump sum.<sup>314</sup>

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304. *Id.* at 488–89.

305. *Id.* at 489 (citing MARK KELMAN, STRATEGY OR PRINCIPLE? THE CHOICE BETWEEN REGULATION AND TAXATION (1999)).

306. *Id.* (first citing *Sorenson v. Sec'y of Treasury*, 475 U.S. 851, 854 (1986); and then citing S. REP. NO. 94-36 (1975), as reprinted in 1975 U.S.C.C.A.N. 54).

307. *Hamm v. James (In re James)*, 406 F.3d 1340, 1343 (11th Cir. 2005) (referring to ALA. CODE § 38-4-8 (West 2025)).

308. *Id.* at 1346.

309. *Id.* at 1343–44.

310. *Id.* at 1344 (emphasis omitted) (internal quotation mark omitted) (quoting *Sorenson*, 475 U.S. at 864). The trustee also argued that the state statute exempted only state public assistance. *Id.* The *James* court cited *Brasher* in concluding that the statute extended to all public assistance, including federal. *Id.* at 1344–45.

311. See *supra* notes 45–48 and accompanying text for a discussion of the Advance EITC.

312. *In re James*, 406 F.3d at 1346.

313. *Id.* at 1345–46.

314. *Id.* at 1346.

#### 4. Iowa

Iowa provides a state exemption for the debtor's rights to a public assistance benefit. Prior to 1999, the exemption was limited to local public assistance,<sup>315</sup> but in that year the legislature amended the statute to read "any public assistance benefit."<sup>316</sup> This change has been interpreted broadly in favor of debtors, as the cases discussed herein demonstrate.

##### a. EITC

In 2000, *In re Longstreet* was a case of first impression under Iowa's newly broadened public assistance statute.<sup>317</sup> The court described the EITC as going "beyond mere tax relief to become, in essence, a grant."<sup>318</sup> It cited the legislative history of the EITC<sup>319</sup> and referred to it as a "government aid payment."<sup>320</sup> It found that the EITC helps fulfill the exemption statute's objective of protecting families from impoverishment.<sup>321</sup> In determining that it was a public assistance benefit within the meaning of the state statute, the court referred to the Merriam-Webster Dictionary's definition of public assistance, which explicitly referenced government aid.<sup>322</sup> The court found that in amending the statute to remove the word "local," the state legislature seemingly responded to the invitation of other courts to expand the scope of public assistance to include federal benefits.<sup>323</sup>

*Wilson v. Sergeant (In re Wilson)*, decided several years later, involved a different type of debtor claim under the public assistance law but provides a very interesting agricultural analogy to consider.<sup>324</sup> In *Wilson*, the debtor, a farmer, sought to exempt direct government payments from the Farm Service Agency as a public assistance benefit.<sup>325</sup> The farm payments were quite generous compared to the EITC or the CTC: They were paid at a rate of twenty-eight cents per bushel for corn and forty-four cents per bushel for soybeans, and an individual could receive up to \$40,000 in total payments per year.<sup>326</sup> The income threshold starkly contrasts with thresholds for the EITC and the CTC: An individual was ineligible for payments if their adjusted gross income exceeded

315. *But see In re Davis*, 136 B.R. 203, 207 (Bankr. S.D. Iowa 1991). Though *Davis* was decided before the word "local" was removed from the statute, the judge in that case allowed the EITC exemption because the trustee failed to argue that the EITC was not a local benefit. *Id.* In doing so, the judge also noted the precedent for liberally interpreting exemption statutes in favor of the debtor. *Id.*

316. IOWA CODE ANN. § 627.6(8)(a) (West 2025).

317. 246 B.R. 611, 614 (Bankr. S.D. Iowa 2000).

318. *Id.*

319. *Id.* at 614 (citing *Sorenson v. Sec'y of Treasury*, 475 U.S. 851, 864 (1986)).

320. *Id.*

321. *Id.* at 616 (citing *In re Davis*, 136 B.R. 203, 207 (Bankr. S.D. Iowa 1991)).

322. *Id.* at 615.

323. *Id.* ("By removing the disqualifying modifier 'local' and replacing it with the general adjective 'any,' the Iowa legislature seemingly acted on *Goertz*' drafting suggestion to address the *Davis*' observation and to overcome the explicit rulings in *Crouch* and *Peckham*.").

324. 305 B.R. 4, 7 (N.D. Iowa 2004).

325. *Id.* The payments at issue were made pursuant to the Farm Security and Rural Investment Act of 2002. *Id.*

326. *Id.* at 8 (citing 7 U.S.C. § 7913(b)).

\$2.5 million for the three tax years immediately preceding the program year.<sup>327</sup> The Wilsons relied on *In re Gibbs*<sup>328</sup> and *Longstreet*<sup>329</sup> to argue that the phrase “public assistance” encompasses any government payment that is not consideration for goods or services.<sup>330</sup> The bankruptcy court was unpersuaded, finding that the farm program payments were of “an entirely different character” than the EITC and that the applicable farm bill was not tailored to provide assistance to needy individuals.<sup>331</sup> But on appeal, the district court reversed, describing how a variety of congressmen as well as then-President George W. Bush all referred to the Farm Bill as a safety net for farmers.<sup>332</sup> The district court found it “clear that the underlying purposes of both EI[T]C and Farm Bill payments are the same—both federal programs seek to assist those who are historically disadvantaged a/k/a ‘needy.’”<sup>333</sup>

*b. CTC*

Years after *Longstreet* established the EITC as public assistance, an Iowa debtor brought a case involving the refundable portion of the ACTC in *In re Hatch*.<sup>334</sup> While acknowledging that the CTC as originally enacted was a nonrefundable credit that did not benefit low-income families,<sup>335</sup> the *Hatch* opinion emphasized the subsequent amendments that made the credit partially refundable and available to lower-income taxpayers.<sup>336</sup> The debtor in *Hatch* persuaded the court by offering evidence that “the proportionate share of individuals that qualify for the EITC is almost identical to those that qualify for and receive the ACTC.”<sup>337</sup> The court concluded that it would be inconsistent to allow the EITC to be claimed as exempt while denying an ACTC exemption to the same individual.<sup>338</sup>

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327. *Id.*

328. Order Re: Trustee’s Objection to Exemptions at 2, *In re Gibbs*, No. 99-02769S (Bankr. N.D. Iowa May 12, 2000).

329. *In re Longstreet*, 246 B.R. 611, 614 (Bankr. S.D. Iowa 2000).

330. *In re Wilson*, 296 B.R. 810, 812 (Bankr. N.D. Iowa 2003), *rev’d*, 305 B.R. 4 (N.D. Iowa 2004).

331. *Id.* at 813.

332. *In re Wilson*, 305 B.R. at 17.

333. *Id.* at 20. The court rejected the idea of a means test despite the Farm Bill’s high-income threshold for eligibility. *See id.* at 20 n.7. The next year, when the debtors argued that *Wilson* supported their claim that conservation reserve program contracts should be exempt by the same logic, the bankruptcy court rejected that argument, finding that Farm Bill payments were distinguishable. *In re Schrandt*, No. 04-04172, 2005 WL 1629798, at \*1 (Bankr. N.D. Iowa July 11, 2005) (“[I]t is obvious the purpose of CRP payments is conservation of the land, not assistance for the needy.”).

334. 519 B.R. 783, 785 (Bankr. S.D. Iowa 2014). The trustee relied on *Hardy II*, 503 B.R. 722, 725 (B.A.P. 8th Cir. 2013), *rev’d*, 787 F.3d 1189 (8th Cir. 2015). *See infra* notes 363–84 and accompanying text.

335. *See In re Hatch*, 519 B.R. at 788.

336. *See id.* at 789. The court also noted that “[a]lthough the EITC is now recognized as a public assistance benefit, its original purpose was not strictly limited to that goal.” *Id.* at 790.

337. *Id.* From this evidence the court concluded that “the number of high income individuals that might possibly obtain the benefit of the ACTC in comparison to the substantial number of individuals of modest and low income levels that do benefit from the ACTC is sufficient.” *Id.* at 791.

338. *Id.*

## 5. Illinois

Illinois provides a state exemption for a debtor's right to receive a public assistance benefit.<sup>339</sup> While the bankruptcy courts in Illinois have well established the EITC as within the state's public assistance exemption,<sup>340</sup> a split has developed among the districts within Illinois's bankruptcy courts with respect to the CTC.

In a 2003 case of first impression in Illinois, *In re Koch* considered a debtor's request to exempt the CTC under the state's public assistance statute.<sup>341</sup> The court in that case made a distinction between the nonrefundable portion (the CTC) that reduced the taxpayer's liability to zero and the refundable portion (the ACTC). In doing so, it found that "the key factor is the refundability of the credit"<sup>342</sup> and was persuaded by the amendments to the credit over time that increased the refundability and made it available to all taxpayers with a qualifying child (whereas it had been previously refundable only if a taxpayer had three or more qualifying children). The court took a nuanced approach to the high-income level of the phaseout, recognizing that the CTC would be available to reduce the tax liability "of affluent taxpayers who could never be classified as needy or in need of public assistance" but that "[r]arely will a middle or upper-income level taxpayer receive a refund of the child tax credit."<sup>343</sup> Recognizing the mathematical possibility that a relatively affluent taxpayer could receive the ACTC, the court emphasized that the "exceptions, if any, should not dictate the result" and held that the ACTC could be claimed as an exempt public assistance benefit because it served to meet the basic needs of dependent children for taxpayers with limited means.<sup>344</sup> In a footnote, the court also acknowledged and was not troubled by "the other extreme," which is the income phase-in that meant the lowest-earning taxpayers were not eligible for the tax credit: "Their inability to qualify for such a refund . . . does not, in this Court's view, change the nature of the refund in the hands of the taxpayers entitled to receive it."<sup>345</sup>

Since *Koch*, a split has developed within the bankruptcy court districts in Illinois, with the Northern District in *In re Vazquez* holding that a debtor can claim an exemption for both the CTC and the ACTC,<sup>346</sup> while in subsequent cases the Central District and

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339. 735 ILL. COMP. ST. ANN. 5/12-1001(g)(1) (West 2025).

340. *In re Brockhouse*, 220 B.R. 623, 625 (Bankr. C.D. Ill. 1998) (finding the EITC exempt as a public assistance benefit, the court held this outcome was "consistent with the fresh start policy of the Bankruptcy Code, the purpose of the earned income credit of providing a payment to low income families to help them meet the basic costs of life, and the purpose of the Illinois exemption statutes of protecting debtors and their families"); see also *In re Fish*, 224 B.R. 82, 85 (Bankr. S.D. Ill. 1998) (finding that EITCs are exempt under Illinois law as a public assistance benefit).

341. 299 B.R. 523, 524 (Bankr. C.D. Ill. 2003). The debtor, whose income for the year in question was \$24,060, also claimed her EITC as exempt; that was not at issue in the case because the trustee conceded the exemption. *Id.* at 524–25.

342. *Id.* at 527.

343. *Id.* at 528.

344. *Id.*

345. *Id.* at 528 n.11.

346. 516 B.R. 523, 528 (Bankr. N.D. Ill. 2014).

the Southern District have declined to follow *Vazquez* and have continued to follow *Koch* in limiting the exemption to only the refundable ACTC portion.<sup>347</sup>

The *Vazquez* court emphasized the legislative changes to the CTC in the decade following *Koch*, including the expanded refundability.<sup>348</sup> Though the court may have been influenced in part by the trustee's failure to clearly distinguish the way in which the CTC was nonrefundable, the decision declined to read the Illinois legislation as only intending to help those of limited means: "Courts should not assume that exemptions, or any other form of public assistance, should benefit lower income individuals only."<sup>349</sup> The court noted that some tax and wealth transfer policies are intended to prevent those who are more well off "from sliding into a lower income bracket," citing as an example "the grants and loans extended to the financial services industry in an effort to avoid a deep recession."<sup>350</sup>

## 6. Minnesota

Minnesota's state exemption law provides that all relief "based on need" can be claimed as exempt.<sup>351</sup> The United States Bankruptcy Court for the District of Minnesota has interpreted that statute liberally in favor of the debtor as including the EITC: "[T]he Earned Income Credit is based on need, provides a payment to low income families to help them meet the basic costs of life."<sup>352</sup>

In a subsequent case decided in 2014, *Christians v. Dmitruk (Dmitruk II)*,<sup>353</sup> the bankruptcy court followed the United States Bankruptcy Appellate Panel of the Eighth Circuit's decision in *Hardy v. Fink (Hardy II)* disallowing an exemption for the refundable ACTC.<sup>354</sup> However, Mr. Dmitruk did receive an exemption for the state's refundable K-12 Education Credit, which the court found to be intended to assist low-income families and therefore within the scope of the state exemption law based on need.<sup>355</sup>

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347. *In re Woodside*, 538 B.R. 518, 525 (Bankr. C.D. Ill. 2015) (finding that *Vazquez* disregarded the dictionary definition of public assistance); *In re Manuel*, No. 17-60450, 2018 WL 4801963, at \*3 (Bankr. S.D. Ill. Oct. 2, 2018) (adopting the reasoning of *Woodside* that "[r]efundability is the key distinction" in determining whether a tax credit amounts to public assistance (alteration in original) (quoting *In re Woodside*, 538 B.R. at 526)).

348. *In re Vazquez*, 516 B.R. at 526–27.

349. *Id.* at 527.

350. *Id.* at 528 ("Public assistance comes in many forms, often to persons and institutions of substantial means. . . . Until the Illinois legislature says otherwise, this Court declines to hold that a debtor cannot exempt any portion, refundable or nonrefundable, of his or her child tax credit.").

351. MINN. STAT. ANN. § 550.37(14) (West 2025).

352. *In re Tomczyk*, 295 B.R. 894, 897 (Bankr. D. Minn. 2003). For the same reason, the court held that Minnesota's Working Family Credit (a state tax credit with the same eligibility as the EITC) was exempt. *Id.*

353. *Christians v. Dmitruk (Dmitruk II)*, 517 B.R. 921, 925 (B.A.P. 8th Cir. 2014).

354. *Hardy II*, 503 B.R. 722, 726 (B.A.P. 8th Cir. 2013), *rev'd*, 787 F.3d 1189 (8th Cir. 2015). *Hardy's* reversal by the Eighth Circuit was too late to help Mr. Dmitruk.

355. *In re Dmitruk (Dmitruk I)*, No. 13–42112, 2014 WL 2600280, at \*3–4 (Bankr. Minn. June 10, 2014), *aff'd in part*, 517 B.R. 921 (B.A.P. 8th Cir. 2014). In finding that the Education Credit was different than the ACTC, *inter alia*, the courts noted that the Education Credit was available only to individuals with relatively low income. *Id.* at \*4; *Dmitruk II*, 517 B.R. at 927.

## 7. Missouri

Missouri provides a state exemption for the debtor's right to receive "a public assistance benefit."<sup>356</sup> Prior to 2012, the exemption only protected local public assistance benefits.<sup>357</sup> In 2012, the Missouri legislature amended the statute to remove the word "local."<sup>358</sup>

### a. EITC

Following this 2012 amendment, a debtor named Paula Corbett successfully claimed that the EITC portion of her income tax refund was exempt.<sup>359</sup> The *In re Corbett* court revisited the cases that had denied the exemption based on the word "local" having been previously in the statute and concluded that, as in other states with a general public assistance exemption, the Missouri statute should be construed to include the earned income tax credit as a public assistance benefit.<sup>360</sup>

In *In re Gray*, a case that followed soon after *Corbett*, the same court heard a case in which the debtor claimed an exemption for the EITC, the ACTC, and the AOTC.<sup>361</sup> The *Gray* court followed *Corbett* with respect to the EITC but followed the recently issued consolidated cases of *Hardy I* and *In re Lovelace* with respect to the ACTC and the AOTC.<sup>362</sup> As discussed in the next part, the *Hardy I* case would ultimately be reversed as to the ACTC.<sup>363</sup>

The AOTC discussion in *Gray* is interesting, as it is uncommon to see a debtor argue that this particular refundable tax credit is a public assistance benefit.<sup>364</sup> The AOTC is a partially refundable tax credit for qualified higher education expenses, and as the *Gray* court notes, it is intended to provide financial assistance for students to attend college.<sup>365</sup> Its purpose is sharply distinguishable from that of the EITC or the ACTC. In denying the exemption, the *Gray* court reasoned that "[t]he AOTC has a primary purpose of encouraging college attendance, not helping the working poor," and it seemed further

356. MO. ANN. STAT. § 513.430.1(10)(a) (West 2025).

357. 2004 Mo. Legis. Serv. S.B. 1211 § 513.430.1(10)(a) (West) (enacted). Accordingly, older cases brought before the statute was amended held that the EITC was not exempt. *See, e.g., In re Demars*, 279 B.R. 548, 552 (Bankr. W.D. Mo. 2002) (holding that a federal tax refund is not a form of local public assistance and therefore not exempt); *In re Goertz*, 202 B.R. 614, 618 (Bankr. W.D. Mo. 1996) (holding that "[a]n earned income credit is not a creation of local or even state government" and thus not exempt under the statute).

358. 2012 Mo. Legis. Serv. H.B. 1527 § 513.430.1(10)(a) (West) (enacted).

359. *In re Corbett*, No. 13–60042, 2013 WL 1344717, at \*3 (Bankr. W.D. Mo. Apr. 2, 2013).

360. *Id.* at \*2 ("Courts have characterized the earned income credit as 'an item of social welfare legislation' effectuated through income tax laws." (quoting *In re Goertz*, 202 B.R. at 616)).

361. *In re Gray*, No. 12–21362–DRD–7, 2013 WL 2452693, at \*1 (Bankr. W.D. Mo. June 5, 2013), *abrogated by, In re Hardy (Hardy III)*, 787 F.3d 1189 (8th Cir. 2015).

362. *Id.* at \*1–2; *see also Hardy I*, 495 B.R. 440, 447 (Bankr. W.D. Mo. 2013), *rev'd*, 787 F.3d 1189 (8th Cir. 2015) (holding that additional child tax credits are not an exempt public assistance benefit).

363. *Hardy III*, 787 F.3d at 1197.

364. *In re Gray*, 2013 WL 2452693, at \*2. The *Gray* opinion presents the issue as one of first impression, and I could not find any other bankruptcy cases in which a debtor claimed the AOTC as a public assistance exemption. *Gray* cites cases in which debtors claimed and were denied an exemption for the nonrefundable Hope Credit, the predecessor to the AOTC. *Id.*

365. *See* 26 U.S.C. § 25A; *In re Gray*, 2013 WL 2452693, at \*2.

persuaded by the fact that it reached a broader range of incomes than the EITC.<sup>366</sup> The latter point foreshadowed the arguments that would be made in various stages of the *Hardy* case as it worked its way through to the Eighth Circuit.

*b. CTC*

The *Hardy I* decision included two consolidated Chapter 13 cases in which the trustee objected to ACTC exemption claims.<sup>367</sup> Debtor Pepper Hardy's income was low enough that she was eligible for the EITC as well as ACTC. In contrast, debtors Larry and Tara Lovelace's adjusted gross income was high enough that they were not eligible to claim the EITC; they were only claiming the ACTC exemption.<sup>368</sup> This led to a series of litigation in which courts considered the intended policies behind the two credits, and in a significant victory for debtors, the Eighth Circuit ultimately found that the ACTC was "public assistance" within the meaning of the Missouri statute.<sup>369</sup>

The bankruptcy court in *Hardy I* distinguished between Ms. Hardy and the Lovelaces based upon the nature of their refunds.<sup>370</sup> Ms. Hardy's tax liability was zero and her refund included withholdings, EITC, AOTC, and \$2,000 of ACTC.<sup>371</sup> The Lovelaces' federal income tax liability was reduced by \$3,000 in CTC (to \$262), and their tax refund was solely attributable to withholdings, meaning there was no refundable ACTC component to their tax return.<sup>372</sup> On that basis, the bankruptcy court concluded that the Lovelaces had not received ACTC, making the exemption question moot.<sup>373</sup> In contrast, the court acknowledged that Ms. Hardy did receive \$2,000 in ACTC but concluded that it was not within the meaning of public assistance because the full \$1,000 per child ACTC at that time was available to joint taxpayers with up to \$110,000 of adjusted gross income.<sup>374</sup> In concluding that the Missouri legislature did not intend for the ACTC to be a "public assistance benefit," the bankruptcy court distinguished between the legislative purpose of the EITC ("to provide economic relief to those defined as 'low-income workers'") and that of the CTC ("to give parents of dependent children a 'financial break'").<sup>375</sup>

Ms. Hardy appealed the outcome to the Eighth Circuit Bankruptcy Appellate Panel, which affirmed the bankruptcy court's decision on the basis that the ACTC was not

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366. *In re Gray*, 2013 WL 2452693, at \*2.

367. *Hardy I*, 495 B.R. at 442–43.

368. *See id.* at 442.

369. *See generally* Rebekah Keller, *The Eighth Circuit Allows a Child Tax Credit Exemption in Bankruptcy Proceedings: A Minty Fresh Start or Abuse of the System?*, 81 MO. L. REV. 561, 582 (2016) (discussing the implication of *Hardy*, including "the uncertainty revolving around the definition of public assistance benefits in exemption statutes across the country").

370. *Hardy I*, 495 B.R. at 446.

371. *Id.* at 442.

372. *Id.* at 446.

373. *Id.*

374. *Id.* at 446–47 (noting that a reduced ACTC amount was available to taxpayers with even higher incomes than \$110,000).

375. *Id.* at 447. The debtors cited *In re Koch*, which held the ACTC to be exempt under a similarly worded public assistance statute in Illinois. *Id.* (citing *In re Koch*, 299 B.R. 523, 528 (Bankr. C.D. Ill. 2003)). The *Hardy* court was unpersuaded. *Id.* ("The Missouri legislature was obviously aware of the different types of tax credits when it amended § 513.430.1(10)(a), and could have specified Additional CTCs had it so intended.").

limited in scope to taxpayers who could be considered needy.<sup>376</sup> The panel noted that the debtor did not present evidence that only needy individuals could ever receive the refundable portion of the CTC.<sup>377</sup> It further noted that the scope of the ACTC specifically excluded the *neediest* individuals, insofar as a taxpayer must have at least \$10,350 of earned income to be eligible for the refundable portion of the CTC: “We fail to comprehend how a benefit that may not be available to the most needy can be considered a ‘public assistance benefit.’”<sup>378</sup>

Ultimately, Ms. Hardy prevailed when the Eighth Circuit Court of Appeals reversed the panel’s decision.<sup>379</sup> The Eighth Circuit considered the arguments about the extent to which all ACTC recipients are needy and found “neither argument overwhelmingly persuasive,”<sup>380</sup> choosing instead to focus on the amendments to the ACTC over time. The court recited the history of these amendments, tracing how the ACTC has been modified over time to better benefit low-income families.<sup>381</sup> These changes over a period of nearly two decades included increases to the amount of the credit, expansion of refundability to all families with children (not just families with three or more children), an accelerated increase in the refundability percentage, and multiple reductions in the threshold for refund eligibility.<sup>382</sup> The court cited different statements over time from senators, President Bush, and President Obama explicitly lauding the benefits of these changes to low-income families and in lifting children out of poverty.<sup>383</sup> The court found that the Bankruptcy Appellate Panel and other courts in the Eighth Circuit and elsewhere had “focused too narrowly on the CTC as originally enacted” without considering all of the subsequent amendments that demonstrated congressional intent to benefit the needy.<sup>384</sup>

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376. *Hardy II*, 503 B.R. 722, 725–26 (B.A.P. 8th Cir. 2013), *rev’d*, 787 F.3d 1189 (8th Cir. 2015). The Lovelaces did not appeal.

377. *See id.* at 726.

378. *Id.* (emphasis omitted). The court acknowledged in a footnote, without further comment, that the \$10,350 figure was from 2002 and that the phase-in amount had been lowered to \$3,000 in 2009. *Id.* at 726 n.8. The \$10,350 figure had come from the court’s cite to *In re Koch*, 299 B.R. 523, n.11 (Bankr. C.D. Ill. 2003). *Hardy II*, 503 B.R. at 726.

379. *Hardy III*, 787 F.3d 1189, 1197 (8th Cir. 2015).

380. *Id.* at 1193–94.

381. *Id.* at 1193–97. *Hardy* predated the COVID-19-era expansion of the ACTC, which would further bolster this analysis.

382. CRANDALL-HOLICK, CTC LEGISLATIVE HISTORY, *supra* note 60, at 1. The CTC was originally enacted in 1997; the amendments described in *Hardy* were passed in 2001, 2003, 2004, 2008, 2009, 2010, and 2013. *Id.* The 2013 amendment extended the reduced threshold through 2017. *Id.* at 6–9.

383. *Hardy III*, 787 F.3d at 1194–96.

384. *Id.* at 1196–97 (collecting cases). The *Hardy* court also pointed to cases within the Eighth Circuit that had rejected the ACTC as public assistance, citing *Dmitruk I*, No. 13–42112, 2014 WL 2600280, at \*2–3 (Bankr. D. Minn. June 10, 2014), *aff’d in part*, 517 B.R. 921 (B.A.P. 8th Cir. 2014), and *In re Gray*, No. 12–21362–DRD–7, 2013 WL 2452693, at \*1 (Bankr. W.D. Mo. June 5, 2013), *abrogated by*, *Hardy III*, 787 F.3d 1189 (8th Cir. 2015). *Id.* at 1197.



## 8. Washington

In a recent case with a lengthy analysis, *In re Moreno*,<sup>385</sup> a bankruptcy court in Washington held that both the EITC and the ACTC are exempt within the meaning of state statutes<sup>386</sup> granting protection for “assistance”<sup>387</sup> or “public assistance.”<sup>388</sup> As a matter of statutory interpretation,<sup>389</sup> the court had to consider whether the two refundable tax credits were “federally administered needs-based programs.”<sup>390</sup>

With respect to the ACTC, the bankruptcy court in *Moreno* relied on the analysis from the *Farnsworth*<sup>391</sup> case from Idaho. While acknowledging the two states’ exemption statutes were worded differently, it was similarly persuaded by the amendments to the ACTC over time that resulted in it being “largely aimed at lifting lower-income families out of poverty.”<sup>392</sup> The *Moreno* court was apparently unfazed by the fact that the TCJA significantly increased the income phaseout threshold for taxpayers who were eligible to claim the CTC<sup>393</sup>: “The fact that the ACTC may also benefit higher-income taxpayers does not undermine its primary purpose and effect of benefitting lower-income households.”<sup>394</sup> This finding is notable, as a common critique of the TCJA is that it lifted wealthier families and left poorer families behind.<sup>395</sup>

With regard to the EITC, *Moreno* noted that courts have found it to be an easier case than the CTC due to its original legislative purpose, which was to provide relief to

385. *In re Moreno*, 629 B.R. 923 (Bankr. W.D. Wash. 2021), *aff’d*, No. 20-42855, 2021 WL 6140115 (B.A.P. 9th Cir. Dec. 23, 2021).

386. While these statutes are distinct from the state’s general exemption provisions found in WASH. REV. CODE ANN. § 6.15.010 (West 2025), the court followed Washington Supreme Court precedent that recognized the public assistance protection as an exemption statute for purposes of bankruptcy. *In re Moreno*, 629 B.R. at 929. The court rejected the debtor’s alternative argument that the credits were within the meaning of the “child support” exemption statute, WASH. REV. CODE ANN. § 6.15.010(1)(d)(v) (West 2025). *In re Moreno*, 629 B.R. at 928. It also rejected the debtor’s alternative characterization of the EITC and ACTC as “grants” under WASH. REV. CODE ANN. § 74.08.210 (West 2025). *In re Moreno*, 629 B.R. at 929.

387. WASH. REV. CODE ANN. § 74.04.280 (West 2025).

388. *Id.* § 74.04.005(11) (defining “[p]ublic assistance” or “assistance” as “public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, benefits under the [Revised Code of Washington] 74.62.030 and 43.185C.220, and federal aid assistance”); *id.* § 74.04.005(8) (defining “[f]ederal aid assistance” as “a federally administered needs-based program”).

389. Somewhat surprisingly, given that it was 2021, this was a case of first impression in Washington. *In re Moreno*, 629 B.R. at 926.

390. *Id.* at 930. “Federal aid assistance,” as defined, refers to specific categories of assistance provided for in any existing or future federal law through which “payments are made from the federal government to the state in aid [of.] or in respect to[,] payment[s] by the state for public assistance rendered to any category of needy persons for which provision for federal [funding] may [be authorized] from time to time.” WASH. REV. CODE ANN. § 74.04.005(8) (West 2025). The term also refers to a “federally administered needs-based program.” *Id.*

391. *In re Farnsworth*, 558 B.R. 375, 381 (Bankr. D. Idaho 2016).

392. *In re Moreno*, 629 B.R. at 931.

393. *Id.* at 932. The TCJA doubled the amount of the CTC, increased the income eligibility threshold to \$400,000 for married taxpayers (\$200,000 for single parents), and limited refundability. I.R.C. § 24(h)(3).

394. *In re Moreno*, 629 B.R. at 932.

395. See, e.g., Chye-Ching Huang, *Fundamentally Flawed 2017 Tax Law Largely Leaves Low- and Moderate-Income Americans Behind*, CTR. ON BUDGET & POL’Y PRIORITIES (Feb. 27, 2019), <https://www.cbpp.org/research/federal-tax/fundamentally-flawed-2017-tax-law-largely-leaves-low-and-moderate-income> [https://perma.cc/BX83-K54Q].

lower-income families.<sup>396</sup> The *Moreno* court found that for the same reason, the EITC should also be protected from bankruptcy administration as a federally administered needs-based program.<sup>397</sup>

C. *State Exemption Provision Protects Only State or Local Public Assistance*

As discussed, in many states the exemption laws are narrowly crafted to include only state or local public assistance. When debtors have brought exemption claims in these states, bankruptcy courts have highlighted the limited scope of the statute.<sup>398</sup>

For example, the New Mexico exemption only covers public assistance paid under the State's Public Assistance Act. This statute was the subject of *In re Medina*, discussed in the Introduction.<sup>399</sup> While acknowledging the anti-poverty purpose of the federal and state EITC, expressing general agreement with the case law from other states construing the EITC to be public assistance grants broadly speaking, and expressing sympathy for the debtor's circumstances,<sup>400</sup> the court found the applicable state exemption did not protect the EITC.<sup>401</sup>

Similarly, bankruptcy courts in California,<sup>402</sup> New York,<sup>403</sup> North Carolina,<sup>404</sup> South Carolina,<sup>405</sup> and Wyoming<sup>406</sup> have each rejected debtors' claims that refundable tax credits are protected public assistance benefits on the grounds that the applicable exemption provisions narrowly refer only to state or local public assistance, not to federal

396. *In re Moreno*, 629 B.R. at 932 ("Courts more quickly recognized the EITC as a form of social welfare than they did the ACTC because the EITC was targeted at assisting lower-income individuals from its inception." (citing *In re Jones*, 107 B.R. 751, 752 (Bankr. D. Idaho 1989); *In re Tomeczyk*, 295 B.R. 894, 896 (Bankr. D. Minn. 2003))).

397. *See id.* at 934.

398. Several states not mentioned in this Section—including Georgia, Maryland, Montana, Tennessee, and West Virginia—provide a bankruptcy exemption for local public assistance, but I could not locate any bankruptcy cases where a debtor invoked that provision to protect the EITC or CTC.

399. *In re Medina*, No. 22-10233-j7, 2022 WL 17742527, at \*4 (Bankr. D.N.M. Dec. 16, 2022) (citing N.M. STAT. ANN. § 27-2-21 (West 2025)).

400. *Id.* at \*6. The court expressed sympathy for the fact that the debtor spent her refunds to fix her air conditioner and water heater:

The Court agrees that these are important home repairs. However, the decision whether to permit a debtor in bankruptcy to protect a sufficient amount of her tax refunds/EITC to make such home repairs is a decision for the legislature.

*Id.*

401. *Id.* The debtor was able to protect \$500 using the state's wildcard exemption. *Id.*

402. *In re Egorov*, No. 13-02903, 2013 WL 6185401, at \*4-5 (Bankr. S.D. Cal. Nov. 22, 2013).

403. *In re Garrett*, 225 BR. 301, 303 (Bankr. W.D.N.Y. 1998); *In re Fasarakis*, 423 B.R. 34, 39-40 (Bankr. E.D.N.Y. 2010).

404. *In re Quevedo*, No. 23-80195, 2024 WL 3754885, at \*9 (Bankr. M.D.N.C. Aug. 9, 2024).

405. *In re Moir*, No. 04-01098-B, 2004 Bankr. LEXIS 2448, at \*10 (Bankr. D.S.C. July 13, 2004) ("Examining the express language of the South Carolina exemption statute, this Court concludes that an earned income credit is not exempt, because the language of the statute is very clear and narrow in scope."); *In re Horne*, No. 05-13069, 2006 Bankr. LEXIS 1141, at \*9-10 (Bankr. D.S.C. June 19, 2006).

406. *In re Trudeau*, 237 B.R. 803, 807 (10th Cir. B.A.P. 1999) ("Obviously, the Wyoming legislature could have included earned income credits in the definition of public assistance and has chosen not to do so.").

benefits. In many of these cases, as in *Medina*, the court has expressed sympathy to the debtor but has emphasized that it is up to the legislature to provide relief.<sup>407</sup>

#### D. *No Protection for Public Assistance of Any Kind*

Approximately one-third of states neither expressly provide an exemption for the EITC nor provide a broad exemption for public assistance.<sup>408</sup> In some states, debtors may rely on a wildcard exemption as one way to protect a limited amount of assets.<sup>409</sup>

### IV. SHOULD REFUNDABLE TAX CREDITS BE EXCEPTIONAL?

The current federal and state framework reveals a lack of consensus as to whether refundable tax credits warrant special protection in bankruptcy. This Section makes a normative argument for such protection while also acknowledging the existing tension.<sup>410</sup>

Another tension arises from the characterization of the EITC as public assistance, namely, the fact that Congress and the IRS have avoided characterizing it as such.<sup>411</sup> Refundable tax credits have always been lauded as distinct from traditional public assistance because work is a prerequisite for receiving the credits. To the extent that the EITC's political popularity is attributed to the fact that it is *not* public assistance, it could endanger the future of the EITC if it is framed as such.<sup>412</sup> In the world of social benefits, the EITC is distinct from traditional welfare<sup>413</sup> and in some ways more akin to Social Security retirement benefits, which are paid based on work history. Yet, as Section III shows, state legislatures and courts are drawn to public assistance as the basis for exempting refundable credits in bankruptcy.

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407. See, e.g., *In re Quevedo*, 2024 WL 3754885, at \*9 (“While the Court is sympathetic to the Debtors’ broader policy arguments regarding the importance of the EIC or ACTC to low-income workers and their children, such concerns must be addressed by the North Carolina General Assembly.”); *In re Egorov*, 2013 WL 6185401, at \*5 (“This Court wholeheartedly supports the public policy goals behind the Tax Credits, but this support does not permit it to override the clear statutory definition provided by California law.”).

408. These states include Alaska, Arkansas, Delaware, Hawaii, Michigan, Pennsylvania, Rhode Island, Texas, Vermont, and Wisconsin. Of these states, all but Delaware allow debtors the option to elect the federal exemption scheme. 4 COLLIER ON BANKRUPTCY ¶ 522.02 n.5 (16th ed. 2025). Delaware is an opt-out state. DEL. CODE ANN. tit. 10, § 4914(a) (West 2025).

409. JEFFREY T. FERRIELL & EDWARD J. JANGER, UNDERSTANDING BANKRUPTCY 98 (2d ed. 2007).

410. Professor Margaret Howard wrote: “Normative justifications for particular bankruptcy provisions ultimately reflect the value preferences of particular decisionmakers.” Howard, *supra* note 142, at 1088.

411. I have written elsewhere about legislative signaling and the ambiguity surrounding the EITC. See DRUMBL, *supra* note 26, at 112–21 (describing the messaging around the EITC and the social science of signaling); see also Lawrence Zelenak, *Redesigning the Earned Income Tax Credit as a Family-Size Adjustment to the Minimum Wage*, 57 TAX L. REV. 301, 301 (2004) (describing the EITC as a “political success” that “remains severely undertheorized”).

412. See Brown, *Tax Treatment of Children*, *supra* note 55, at 793–801 (discussing the rhetoric around EITC and the word “welfare”).

413. CRANDALL-HOLLOCK, EITC LEGISLATIVE HISTORY, *supra* note 26 (describing the EITC’s origins in welfare reform, with the objective of moving taxpayers off welfare rolls).

A. *The Normative Argument for Protecting Refundable Tax Credits in Bankruptcy*

If a primary goal of bankruptcy is to provide a fresh start, then it seems reasonable to permit the social safety net to function as intended. EITC recipients are working, low-income individuals struggling to support their families. The eligibility guidelines serve as a proxy for those who are economically vulnerable (low income, and without significant passive income), while still contributing to the labor force and economy.

Broadly defined, the EITC is a means-tested program, in that eligibility and amount are determined on the basis of income.<sup>414</sup> However, the EITC does not have the same levels of protection as certain other social benefits in bankruptcy or elsewhere. For example, refundable tax credits are subject to offset against outstanding tax liabilities, outstanding child support, and outstanding federal student loan debt.<sup>415</sup> This was the issue at the heart of *Sorenson*, and as the Court noted, “[t]he ordering of competing social policies is a quintessentially legislative function.”<sup>416</sup> Similarly, because the EITC is not defined as a means-tested program by the Debt Collection Improvement Act of 1996,<sup>417</sup> it is not protected from offset against outstanding nontax debts.

The failure by Congress to reorder competing social policies to prioritize the EITC suggests that Congress does not believe that refundable tax credits are exceptional, or that it has not recognized the EITC as a social welfare entitlement at the same level as Social Security benefits or veterans’ benefits. Yet a growing number of states have recognized the EITC and even the CTC at this level.<sup>418</sup> For example, Maine’s statute expressly elevated the EITC and the CTC to the same level as other public assistance benefits.<sup>419</sup>

Returning to Professor Resnick’s five distinct policies underlying bankruptcy exemptions for a normative analysis,<sup>420</sup> two of these policies offer a compelling justification for exemptions for refundable tax credits: the goal of protecting the debtor’s family, and the goal of shifting the burden of welfare from society to creditors.

414. See, e.g., U.S. GOV’T ACCOUNTABILITY OFF., GAO 17-558, FEDERAL LOW-INCOME PROGRAMS: ELIGIBILITY AND BENEFITS DIFFER FOR SELECTED PROGRAMS DUE TO COMPLEX AND VARIED RULES 4–5 (2017) (identifying the EITC as one of six key federally funded, means-tested programs; the other five are Medicaid, the Housing Choice Voucher program, Supplemental Nutrition Assistance Program, Supplemental Security Income, and Temporary Assistance for Needy Families).

415. See I.R.C. § 6402. I have written elsewhere making the case that Congress should enact some level of protection for refundable credits against tax liability offsets. See DRUMBL, *supra* note 26, at 176–202. The National Taxpayer Advocate has proposed similar legislative recommendations several times in her annual report, including as recently as 2025. See NATIONAL TAXPAYER ADVOCATE, 2025 PURPLE BOOK 41–42 (2024); see also Keith Fogg, *The Role of Offset in the Collection of Federal Taxes*, 25 FLA. TAX. REV. 1, 52 (2021) (arguing that the EITC is a benefit payment that “should not serve to repay general tax obligations of the taxpayer”).

416. *Sorenson v. Sec’y of Treasury*, 475 U.S. 851, 865 (1986).

417. See 31 C.F.R. § 285.5(e)(7)(i) (2025) (defining means-tested program to include only those “which base eligibility on a determination that the income and/or assets of the beneficiary are inadequate to provide the beneficiary with an adequate standard of living without program assistance”).

418. See *supra* Parts III.A. 2, 5, 8–9, 11, 13–14.

419. ME. REV. STAT. ANN. tit. 14, § 4422(13)(A) (2025) (protecting a debtor’s right to receive “[a] social security benefit, unemployment compensation or a federal, state or local public assistance benefit, including, but not limited to, all tax refunds attributable to the federal earned income tax credit and any child tax credit”).

420. See Resnick, *supra* note 152, at 621.

As to the first, both the EITC and the CTC have come to serve an anti-poverty function for families with children. Bankruptcy courts clearly recognize the credits as such, particularly the EITC, as described through the many examples provided in Section III from those states with broad public assistance exemptions.

As to the second, allowing a debtor to retain the EITC (or the ACTC) that they earned through work is an appropriate way to prevent debtors from becoming a public charge. Put differently, it is welfare earned instead of welfare given. Kansas cited this logic when it enacted its EITC exemption, calling it counterproductive for a debtor to forfeit the EITC, as requiring this would “[make] it more likely that the debtor will come to require state services.”<sup>421</sup> In the words of the *Flanery* court, the EITC is “an essential and significant component of the work support system which has replaced the old welfare system,”<sup>422</sup> meaning it is a justifiable exemption in bankruptcy.

A primary goal of the EITC is to incentivize and reward work. Just as wages are protected in bankruptcy, it makes sense to protect the associated EITC that is determined by those wages for a low-income taxpayer.

#### B. *The Argument Against Expanding Bankruptcy Exemptions*

The competing policy considerations are creditors’ rights, given that creditors bear the risk of collectability. This tension is succinctly captured by the Consumer Bankruptcy Project researchers: “The fresh start for debtors, a chance for a person in financial collapse to begin anew, is an appealing idea—until one confronts the inevitable fact that it permits people to walk away from their obligations and to break their promises.”<sup>423</sup>

As a practical matter, such a risk determination may ultimately be borne by the vulnerable population that is EITC eligible, in the sense that it could impact creditworthiness.<sup>424</sup> In other words, if creditors view this population as too risky for lending, it may impact access to credit. Indeed, this argument was raised by the Michigan Credit Union League and Affiliates in opposition to the Michigan legislature’s proposal to exempt the EITC from garnishment and bankruptcy.<sup>425</sup> In a letter opposing the legislation, the trade association expressed its commitment to providing accessible financial services to low- and moderate-income individuals and a concern that the legislation could have the unintended consequence of negatively impacting access to capital for underserved communities.<sup>426</sup>

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421. See Ponoroff, *supra* note 251, at 369 (quoting *In re Westby*, 473 B.R. 392, 399 (Bankr. D. Kan. 2012)).

422. *Flanery v. Mathison*, 289 B.R. 624, 628–29 (W.D. Ky. 2003).

423. SULLIVAN ET AL., *supra* note 12, at 20.

424. Professor Spreng acknowledges that “[e]xempting [the] EITC could be a blow to creditors, who may have relied on the greater creditworthiness that these still poor, but now higher-income working people have. These are competing meritorious concerns, but that they exist at all underscores the need for clarity as to the benefit’s exemption eligibility.” Spreng, *supra* note 4, at 311.

425. S.B. 409, 2024 Leg., Reg. Sess. (Mich. 2024).

426. Letter from Patty Corkery, President & Chief Exec. Officer, Mich. Credit Union League & Affiliates, to Mich. State Sens. Mary Cavanagh and Jeff Irwin (May 6, 2024), <https://www.mcul.org/files/michleague/1/file/Advocacy/Issue-Briefs/2021-05-06-Letter-re-SB-408-409-Cavanagh-and-Irwin.pdf> (on file with the Temple Law Review). The proposed legislation was much broader than just

Another argument against exempting refundable tax credits might be that they are too far outside the scope of what exemption laws are intended to protect. Wages, wage substitutes, and retirement assets are typically protected by exemption laws.<sup>427</sup> Protected wage substitutes often include payments under a life insurance policy or wrongful death claim relating to a person on whom the debtor was dependent, spousal support, disability payments, awards for lost earnings, unemployment, and Social Security payments.<sup>428</sup> Refundable tax credits are not wage substitutes; rather, they are wage supplements designed as an incentive for work. While legislatures have the latitude to decide exemptions as a matter of policy, courts have observed a distinction between the EITC and wages or earnings.<sup>429</sup> Just as one state legislature may find it sound policy to exempt the EITC and perhaps also the CTC, another state legislature may find it sound policy not to exempt these credits.

#### CONCLUSION: LEGISLATIVE PROPOSALS TO PROTECT THE EITC

This Article provides an informative glimpse at how bankruptcy courts view refundable credits and, in particular, how the courts are recognizing the evolution of the CTC. The case law is a mirror offering a view of what judicial observers perceive that Congress has accomplished with these credits over time. Among other things, it reveals a perception of these credits as public assistance, which does not align with the congressional signaling of these credits.

As stated by the Court in *Sorenson*, and as echoed by a number of bankruptcy court decisions,<sup>430</sup> the decision to protect refundable credits in bankruptcy is a matter for the legislature, not the courts. While the bankruptcy courts have effectively granted such protection to the EITC and/or the ACTC in a number of states that have a broad public assistance exemption statute, an explicit statutory protection provides greater transparency to debtors and creditors alike. A statutory protection is also an express recognition that these credits are an important part of the country's social safety net, despite their being situated in the tax system.

##### A. Federal Solutions

Federal legislation would provide uniform clarity on this issue, especially if Congress were to amend the IRC to protect these refundable credits from creditors or other types of offsets. It would be a radical change in approach for Congress to adopt such protection for the EITC and perhaps the CTC as well. Yet there are numerous

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an EITC exemption, and the letter expressed a concern that the combined effect would be to "make significant swathes of our population completely, functionally uncollectable." *Id.*

427. JEFFREY T. FERRIELL & EDWARD J. JANGER, UNDERSTANDING BANKRUPTCY 436–40 (2d ed. 2007). The authors note that wages are exempted primarily because of the Consumer Credit Protection Act, and that retirement assets are essentially a form of deferred wages. *Id.* at 436.

428. *Id.* at 438 (citing federal and state exemption provisions as examples).

429. See, e.g., *In re Trudeau*, 237 B.R. 803, 806 (B.A.P. 10th Cir. 1999); *In re Dickerson*, 227 B.R. 742, 743 (B.A.P. 10th Cir. 1998). But see *In re Barnett*, 214 B.R. 632, 634 (Bankr. W.D. Okla. 1997).

430. See *supra* notes 117–19 and accompanying text for a discussion of *Sorenson* and bankruptcy court decisions echoing *Sorenson*'s stance on legislative deference.

federal nonbankruptcy exemption provisions that protect other types of social benefits.<sup>431</sup> These protections apply to debtors in all states, regardless of opt-out status, and regardless of whether a debtor elects state exemptions in lieu of federal ones.<sup>432</sup> Among others, examples of these protected federal benefits include Social Security payments,<sup>433</sup> veterans' benefits,<sup>434</sup> and longshore and harbor workers' benefits.<sup>435</sup> This sort of federal protection seems normatively desirable, given that these are federal tax credits. Yet it seems unlikely that Congress might grant this priority to the EITC and/or the CTC. After all, it has thus far failed to protect the EITC from other types of offsets despite the *Sorenson* court's invitation to do so and repeated legislative recommendations from the National Taxpayer Advocate.<sup>436</sup>

Alternatively, Congress could amend Section 541(b) of the Bankruptcy Code to provide that the EITC and/or the CTC are excluded from the bankruptcy estate. Recall that the COVID-19-era stimulus payments were statutorily excluded from the bankruptcy estate, rendering the application of state exemption provisions irrelevant.<sup>437</sup> This too seems unlikely, given both the unique and extraordinary circumstances surrounding the pandemic relief and the long history of the EITC's inclusion in the bankruptcy estate.

A third federal option, though less desirable for debtors, would be for Congress to amend Section 522(d) of the Bankruptcy Code to explicitly include an exemption for the EITC. Short of that, it could amend Section 522(d)(10)(A) by striking the "local" modifier to "public assistance."<sup>438</sup> That approach would still require bankruptcy courts to determine whether the EITC and/or the CTC constitute a public assistance benefit, with the result of uncertainty for debtors in different jurisdictions. As an expressive matter, it seems inconsistent with past practice for Congress to categorize refundable tax

431. These examples are cited as distinctions from the EITC in *In re Thompson*, 336 B.R. 800, 803 (Bankr. D. Nev. 2005), and *In re Medina*, No. 22-10233-j7, 2022 WL 17742527, at \*3 (Bankr. D.N.M. Dec. 16, 2022).

432. See WILLIAM L. NORTON III, NORTON BANKRUPTCY LAW AND PRACTICE § 56:5 (3d ed. 2023) (citing H.R. Rep. 95-595, 95th Cong., 1st Sess. 360 (1977)).

433. 42 U.S.C. § 407.

434. 38 U.S.C. § 5301(a).

435. 33 U.S.C. § 916.

436. 1 NAT'L TAXPAYER ADVOC., 2009 ANNUAL REPORT TO CONGRESS 369 (2009), [https://www.irs.gov/pub/tas/1\\_09\\_tas\\_arc\\_vol\\_1\\_preface\\_toc\\_msp.pdf](https://www.irs.gov/pub/tas/1_09_tas_arc_vol_1_preface_toc_msp.pdf) [<https://perma.cc/4U3T-WDF7>] (proposing to limit the offset to 15% of the portion attributable to the EITC); 1 NAT'L TAXPAYER ADVOC., 2016 ANNUAL REPORT TO CONGRESS 329 (2016), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC16\\_Volume1.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC16_Volume1.pdf) [<https://perma.cc/MD38-DA83>].

437. See *supra* notes 94–95 and accompanying text for a discussion of 11 U.S.C. § 541(b)(11) (repealed 2020), which excluded COVID-19-era payments from the bankruptcy estate. Also note that the Advance CTC had special protections when it was in effect. American Rescue Plan Act of 2021, Pub. L. No. 117–2, § 9611(b), 135 Stat. 4, 146–47, <https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf> [<https://perma.cc/95PR-V9WC>].

438. *In re Woodside* provides some context here, describing how, in 1979, the National Conference of Commissioners on Uniform State Laws promulgated a Uniform Exemption Act that changed "local public assistance benefit" to "federal, state, or local public assistance legislation." 538 B.R. 518, 521 n.2 (Bankr. C.D. Ill. 2015). Though this Uniform Exemption Act was not adopted as law, *Woodside* suggests that this is why Illinois and other state legislatures removed the word "local" from their state exemption provisions. *Id.* ("[P]erhaps it is the Bankruptcy Code version that is behind the times.").

credits as public assistance.<sup>439</sup> No matter how it might be worded, however, protecting refundable tax credits under Section 522(d) of the Bankruptcy Code would not help debtors in opt-out states, nor would it help debtors in non-opt-out states unless they choose the federal exemptions over the applicable state ones.

*B. State-by-State Approach*

In the absence of congressional action to exempt refundable credits, what has evolved over the last quarter century is a state-by-state piecemeal approach. States have paved the way for these credits to be recognized as an essential part of the social safety net, in many cases having enacted legislation in response to persuasive nudges from the bankruptcy courts.

A federal approach would be preferable, both for uniformity and for the expressive sake of signaling the EITC's dual function as an incentive to work and an anti-poverty program. However, a state-by-state approach is consistent with the historical deference given to states to set their exemption priorities.

The existing state exemption provisions could serve as a model for other states. While it is not necessary for there to be uniformity, it would be helpful to state legislatures if there were a model in place. A proposal from the National Conference of Commissioners on Uniform State Laws could provide such a model and raise awareness in state legislatures about the support that the EITC in particular provides to vulnerable families seeking a fresh start.

A compromise might be to create a federal exemption for the EITC, acknowledging it as a protected wage supplement that incentivizes work rather than a form of public assistance, while leaving it to individual states to determine whether the CTC should be protected at all.

After fifty years, the EITC is well established as an essential anti-poverty supplement for working families. Debtors would benefit from protection in bankruptcy, and this would also be consistent with the historic policy rationales for allowing a fresh start.

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439. As a political matter, characterizing the EITC as a public assistance benefit might jeopardize its popularity and undermine its hybrid design. *See supra* note 50 and accompanying text.