UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

ZELDA WILSON YOUNG, CASE NO. 96-14717-WSS

Debtor. Chapter 13

ORDER GRANTING RELIEF FROM STAY FOR UNITED STATES OF AMERICA (IRS)

This matter came on for hearing on the motion of the United States of America (hereinafter "IRS") for relief from the automatic stay. Appearances were as noted in the record. The Debtor, Zelda Wilson Young (hereinafter "Young"), filed the present Chapter 13 proceeding on December 20, 1996. The court confirmed her Chapter 13 plan, which provides for a 5 % distribution to unsecured creditors, on February 27, 1997. Young owes the Internal Revenue Service (hereinafter "the IRS") $15,967.46 for her 1990 federal income taxes. The debt is secured by a tax lien filed with the Judge of Probate for Mobile County, Alabama. Young filed her 1995 federal income tax return in August 1997, and is due a refund of $12,974.00. The IRS filed the present motion for relief from the automatic stay in order to set off Young's 1995 refund against her 1990 tax liability pursuant to 11 U.S.C. § 553(a). Young asserts that the 1995 tax refund is an asset of the estate because she did not file her return and become eligible for the refund until August 1997, after the filing of her petition. Therefore, the refund should be applied toward the Chapter 13 plan.

Section 553(a) of the Bankruptcy Code maintains a creditor's right to setoff where it exists under non-applicable bankruptcy law. To make a claim for setoff, a creditor must show that: 1) the debt owed by the creditor to the debtor arose prior to the filing of the debtor's petition; 2) the creditor's claim against the debtor arose prior to the filing of the debtor's petition; and 3) the debt and the claim are mutual or reciprocal obligations. In re Okwukwu, 210 B.R. 194, 196 (Bankr. N.D. Ala.

1997). The parties do not dispute that Young's debt to the IRS arose prior to her bankruptcy filing or that the debt and the claim are mutual or reciprocal obligations. Young's argument that the refund is part of the estate actually goes to the issue of whether the debt owed to Young by the IRS is pre-petition or post-petition. The United States District Court for the Eastern District of Pennsylvania recently addressed the issue of when a tax refund accrues for purposes of setoff under 11 U.S.C. §553(a) in In re Glenn, 207 B.R. 418 (E.D. Pa. 1997). The court held that "a tax refund arises at the end of the taxable year to which it relates, and not when the right of refund is claimed by the debtor/taxpayer." Id. at 422. The Glenn court noted that "the vast majority" of courts that have ruled on this issue follow the same guideline. Glenn, 207 B.R. at 420; see also In re Okwukwu, 210 B.R. at 196 ("the substantive right to a tax refund arises at the end of the tax year to which the refund relates.") (citations omitted); In re Orlinski, 140 B.R. 600, 602 (Bankr. S.D. Ga. 1991) (finding that the IRS's debt to the debtor for a tax refund accrued at the end of the year for which overpayment was made.); In re Eggemyer, 75 B.R. 20, 22 (Bankr. S.D. Ill. 1987) ("The date the return is actually filed is not relevant in determining when the debt arose."). This court finds that Young's 1995 refund was a debt owed to Young by the IRS as of December 31, 1995, a date prior to the filing of her bankruptcy petition, and is therefore eligible for setoff. Accordingly, the IRS's motion for relief is due to be granted. It is hereby

ORDERED that the motion of the United States of America (IRS) for relief from the automatic stay is **GRANTED**.

Dated: February ___, 1998

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE