

ORDERED.



Dated: November 16, 2009

Eileen W. Hollowell

EILEEN W. HOLLOWELL
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re)	Chapter 7
)	
CHRISTOPHER GEORGE GIETL and)	No. 4-09-bk-08828-EWH
JENNIFER FAYE GIETL, aka Jennifer)	
Faye Judy,)	
)	MEMORANDUM DECISION
Debtors.)	

I. INTRODUCTION

Christopher George Gietl and Jennifer Faye Gietl (“Debtors”) claim grocery store gift cards with a face value of \$7,000 as exempt under ARIZ. REV. STAT. (“A.R.S.”) § 33-1124, Arizona’s Food and Fuel Exemption Law. Because the exemption is limited to the food and fuel the Debtors had on hand on their petition date, the exemption is denied. The reasons for the Court’s ruling are explained in the balance of this decision.

II. FACTUAL AND PROCEDURAL HISTORY

Debtors filed for Chapter 7 relief on April 7, 2009. Included in their list of exemption claims on Schedule C was a Fry’s gift certificate with a “face value of \$7,000.” The Debtors claim the Fry’s gift certificate (also referred to by the Debtors as

1 III. STATEMENT OF JURISDICTION

2 Jurisdiction is proper under 28 U.S.C. § 1334(a) and 157 (b)(2)(B).

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5 IV. ISSUE

6 Does A.R.S. § 33-1124 limit the food and fuel which can be claimed as exempt to
7 what a debtor has on hand as of the petition date?

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9 V. DISCUSSION

10 A.R.S. § 33-1124 provides as follows:

11 All food, fuel and provisions actually provided for the debtor's individual or
12 family use for six months are exempt from process.

13 Exemption statutes in Arizona are to be liberally construed. See In re Allman,
14 286 B.R. 402, 407 (Bankr. D. Ariz. 2002). Debtors argue, therefore, that the “actually
15 provided” language of A.R.S. § 33-1124 should be read broadly to permit the Debtors to
16 exempt the Gift Certificate so long as Debtors actually use the Gift Certificate to buy
17 food and fuel for the six months following the petition date. The Trustee counters that
18 “actually provided” language of the statute limits the exemption to the food and fuel
19 Debtors had on hand as of the petition date. The Trustee’s argument is supported by
20 both case law and treatise. See Anne E. Melley, Property & Rights Exempt, 31 Am.
21 Jur. 2nd Exemptions § 159 (May 2009). (“The exemptions for both food and fuel
22 available in some jurisdictions apply only to provisions and fuel in kind. Under such
23 provisions, a debtor may not exempt cash equal to the value of the exemption.”)
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1 (citations omitted). See also In re Hellman, 474 F. Supp. 348 (D. Colo. 1979); In re
2 Hogg, 76 B.R. 753 (Bankr. D. S.D. 1987).

3 However, unlike many other jurisdictions, A.R.S. § 33-1124 does not include
4 language specifying that the food and fuel exemption must be “in kind” or place a dollar
5 limit on the exemption. For example, N.D. Cent. Code § 28-22-02(6) (2009), “by its
6 terms, limits food and fuel exemptions to an “*in kind in specie* exemption.” In re Janz,
7 74 B.R. 32, 33 (Bankr. D. N.D. 1987). Similarly, S.D. Codified Laws § 43-45-2(6), the
8 statute at issue in In re Hogg, the principal case cited by the Trustee in support of her
9 argument, exempts “provisions . . . for one year’s supply, either provided or growing, or
10 both, and fuel necessary for one year.” The Hogg court found that the language of the
11 statute “clearly” suggested that the food and fuel had to be in hand and not just cash
12 earmarked to purchase the provisions. Id., at 745. See also, First Nat’l Bank of Wahoo
13 v. Plihal, 136 B.R. 810, 813 (D. Neb. 1989) (court interpreting an exemption statute
14 almost identical to the statute in In re Hogg and holding that the exemption was limited
15 to actual provisions on hand at the time of bankruptcy filing).

16 While the Debtors argue that cases from other bankruptcy jurisdictions are not
17 binding on this court and are wrongly decided, they have not cited a single case from
18 Arizona or elsewhere that supports their interpretation of Arizona’s food and fuel
19 exemption. To read the statute as broadly as Debtors urge would potentially require a
20 similarly broad interpretation of all the household furniture and appliance exemptions
21 contained in A.R.S. § 33-1123. If a debtor can earmark funds for future acquisition of
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1 food and fuel, then why not couches or refrigerators?¹ See, e.g., In re Janz, 74 B.R.
2 at 33 (“To recognize the Debtors’ position as to provisions and fuel would also require
3 that this court recognize similar arguments regarding pews, burial grounds, books, and
4 perhaps even crops in grain grown on 160 acres.”).

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7 VI. CONCLUSION

8 For the reasons set forth above, Debtors may not claim the Gift Certificate as
9 exempt and must promptly turn it over to the Trustee. A separate order consistent with
10 this decision will be entered this date.

11 Dated and signed above.

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14 Notice to be sent through the
15 Bankruptcy Noticing Center “BNC”
to the following:

16 Christopher George Gietl
17 8847 North Treasure Mountain Drive
18 Tucson, AZ 85742

19 Jennifer Faye Gietl
20 11693 North Mineral Park Way
Oro Valley, AZ 85737

21 Alan R. Solot, Esq.
22 Tilton & Solot
23 459 North Granada Avenue
Tucson, AZ 85701

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25 _____
26 ¹ Debtors argue that they are not trying to exempt cash, but the Gift Certificate is the
27 functional equivalent of cash when used at a Fry’s store. Furthermore, while it may not be
redeemable for cash, the Gift Certificate may be freely transferred and, therefore, the Trustee
could presumably sell the Gift Certificate for the benefit of creditors.

1 Gayle Eskay Mills
2 PO Box 36317
3 Tucson, AZ 85740

4 Office of the U.S. Trustee
5 230 North First Ave., Suite 204
6 Phoenix, AZ 85003

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