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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: MILTON E. FUENTES,)	ED
)	Case No. CV 10-01419 DDP
Debtor,)	[Bankruptcy No. 6:10-bk-2091DS]
)	USBC Riverside
MILTON E. FUENTES,)	ORDER AFFIRMING DECISION OF THE
)	UNITED STATES BANKRUPTCY COURT
Appellant,)	Adversary number: N/A;
v.)	BAP case number CC-10-1329
)	
ROD DANIELSON, Chapter 12)	
Trustee,)	
)	
Appellee.)	

This matter is before the Court on an appeal from a decision by the United States Bankruptcy Court. After reviewing and considering the materials submitted by the parties, the court affirms the dismissal of the Chapter 12 petition.

cc: US Bankruptcy Court and US Trustee's Office

1 **I. Background**

2 On April 13, 2010, Milton Eduardo Fuentes ("Fuentes" or
3 "Debtor") filed a voluntary bankruptcy petition under Chapter 12 of
4 the Bankruptcy Code. (ER No. 1 at 3) Rod Danielson ("Danielson"
5 or "Trustee") was appointed as Trustee.

6 The Trustee determined that Fuentes received the following
7 income for the three years preceding the filing of the petition:

8	<u>Farming Income</u>	<u>Social Security & Military Benefits</u>
9	2009: \$32,837.56 ¹	\$59,128.80
10	2008: \$32,643.00	\$55,888.80
11	2007: \$54,753.00	\$53,526.00

12 Based on these figures, the Trustee concluded that (1) less
13 than one-half of Fuentes' income in the year preceding the filing
14 of the Chapter 12 petition was derived from farming operations; and
15 (2) Fuentes did not receive more than one-half of his income from
16 farming operations in each of the second and third years preceding
17 the petition date. Concluding that Fuentes did not meet the
18 definition of a "family farmer" under 11 U.S.C. § 101(18) and
19 thereby finding him ineligible for relief under Chapter 12, the
20 Trustee filed a motion to dismiss Fuentes' petition.

21 In his Response, Fuentes argued, in relevant part, that he did
22 meet the criteria of a "family farmer" because, for Chapter 12
23 purposes, social security benefits must be excluded from the
24 debtor's gross income. At oral argument before the bankruptcy
25 court, Fuentes contended that both his social security and military

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27 ¹ Fuentes claims that he earned \$47,059.00 from farming in
28 2009. Fuentes did not, however, provide any evidence to support
this claim. The bankruptcy court did not, therefore, clearly err
in its determination of Fuentes' 2009 farming income.

1 benefits should be excluded from his gross income for purposes of
2 determining whether he qualifies as a "family farmer."

3 On August 9, 2010, the bankruptcy court ruled in a memorandum
4 opinion that neither Fuentes' social security nor military benefits
5 were excludable from gross income. The court further stated that
6 Fuentes was not a "family farmer" for purposes of 11 U.S.C. §
7 101(18) because he did not receive more than 50 percent of his
8 gross income from farming operations for the taxable year preceding
9 the filing of the petition or each of the second and third years
10 preceding the petition date. Accordingly, the court declared
11 Fuentes ineligible to seek relief under Chapter 12 and granted
12 Danielson's motion to dismiss. Fuentes now appeals.

13 **II. Discussion**

14 A. Jurisdiction

15 This court has jurisdiction to review appeals from final
16 orders and judgments of bankruptcy courts under 28 U.S.C. § 158(a).

17 B. Standard of Review

18 The bankruptcy court's conclusions of law are reviewed de
19 novo, while its findings of fact are reviewed for clear error.
20 Blausey v. United States Trustee, 552 F.3d 1124, 1132 (9th Cir.
21 2009)(citing In re Salazar, 430 F.3d 992, 994 (9th Cir. 2005)). The
22 clear error standard is "significantly deferential, requiring a
23 definite and firm conviction that a mistake has been committed
24 before reversal is warranted." United States v. Bourseau, 531 F.3d
25 1159, 1164 (9th Cir. 2008)(internal quotation marks omitted). This
26 court may affirm on any ground supported by the record. Thrifty
27 Oil Co. v. Bank of America, Nat'l Trust and Sav. Ass'n, 322 F.3d
28 1039, 1046 (9th Cir. 2003).

1 C. Whether Security and/or Military Benefits Should Be
2 Excluded From The Calculation Of A Debtor's Gross Income
3 Under Chapter 12 Of The Bankruptcy Code.

4 "Only a family farmer . . . with regular annual income may be a
5 debtor under chapter 12" 11 U.S.C. § 109(f). The term
6 "family farmer" includes an "individual . . . engaged in a farming
7 operation . . . [who] receive[s] from such farming operation more
8 than 50 percent of such individual's . . . gross income for (i) the
9 taxable year preceding; or (ii) each of the 2d and 3d taxable years
10 preceding the taxable year in which the case concerning such
11 individual . . . was filed." 11 U.S.C. § 101(18)(A).

12 The Bankruptcy Code does not define the term "gross income."
13 Several courts have equated the Bankruptcy Code term "gross income"
14 with the tax code definition of the term. In re Lewis, 401 B.R.
15 431, 441 (Bankr.C.D.Cal. 2009) (citing In re Wagner, 808 F.2d 542,
16 549 (7th Cir. 1986) ("[T]he interpretation that will best carry out
17 Congress's purpose in the Bankruptcy Code is that gross income for
18 the purposes of the farmer's exemption has the same meaning as in
19 the Internal Revenue Code.")); In re Lamb, 209 B.R. 759, 760-61
20 (Bankr.M.D.Ga. 1997); In re Pratt, 78 B.R. 277, 279 (Bankr.D.Mont.
21 1987) (citing Wagner, 808 F.2d at 549).

22 **1. Social Security Benefits**

23 The Internal Revenue Code states that gross income includes
24 Social Security benefits in an amount determinable by the formula
25 set out in 26 U.S.C. § 86.² In some cases, the Section 86 formula
26 excludes all Social Security benefits from gross income. See, e.g.

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28 ² Fuentes does not describe whether or how 26 U.S.C. § 86
applied to the social security benefits he received.

1 In re Koenegstein, 130 B.R. 281 (Bankr.S.D.Ill 1991); In re
2 Southard, 337 B.R. 416, 422 (Bankr.M.D.Fla. 2006). As the
3 bankruptcy court observed here, some courts, in applying the tax
4 code definition of "gross income" for purposes of determining
5 Chapter 12 eligibility, have refused to look beyond the tax return
6 itself.³ See, e.g. In re Bergman, 78 B.R. 911 (Bankr.S.D.Ill.
7 1987); In re Nelson, 73 B.R. 363, 365 (Bankr.D.Kan. 1987). The
8 bankruptcy court, citing In re Koenegstein, 130 B.R. at 286, went
9 on to hold that Social Security payments are included in "gross
10 income."

11 As the Seventh Circuit observed, the "language and background
12 of [the farmer's exemption] show that Congress wanted a mechanical,
13 which is to say an easily applicable, test for 'farmer'"
14 Wagner, 808 F.2d at 547. Koenegstein, however, diverged from the
15 principle that "gross income" under the Bankruptcy Code has the
16 same meaning as "gross income" under the tax code. Finding Chapter
17 12's definition of "family farmer" to be "arbitrary at best," the
18 Koenegstein court concluded that strict adherence to the tax code
19 meaning and exclusion of Social Security benefits bore no relation
20 to Chapter 12's purpose of providing relief to family farmers in
21 need of financial rehabilitation. Koenegstein, 130 B.R. at 286.

22 This court agrees with the principle that strict adherence to
23 the tax code is not required where such rigidity would lead to
24 absurd results. Koenegstein, 130 B.R. at 284-285. In Matter of
25 Armstrong, for example, the Seventh Circuit held that it would be

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27 ³ Though Fuentes argues that courts should look to the tax
28 return rather than conduct a "fairly complicated" § 86 analysis,
the tax return figure will necessarily reflect the product of the §
86 calculation.

1 contrary to legislative purpose and illogical to exclude proceeds
2 from the sale of farm equipment from farming income. Matter of
3 Armstrong, 812 F.2d 1024, 1026-1027 (7th Cir. 1987). Similarly,
4 the bankruptcy court in In re Way found that the logical
5 consideration of farm subsidy payments as farm income would further
6 congressional intent, and therefore applied a "narrow exception" to
7 the strict tax code approach. In re Way, 120 B.R. 81, 83
8 (Bankr.S.D.Tex. 1990).

9 Here, however, this court cannot conclude that the inclusion
10 of Social Security benefits in gross income would in any way
11 further Congress' intent "to prevent high income, low non-farm debt
12 tax shelter investors from qualifying for relief under Chapter 12."
13 In re Pratt, 278 B.R. at 278. Nor is the court aware of any case
14 within this circuit, or any other, that applies Koenegstein's
15 reasoning with respect to Social Security benefits. Accordingly,
16 for Chapter 12 eligibility purposes, Social Security benefits are
17 afforded their ordinary tax code meaning. See 26 U.S.C. § 86.

18 **2. Military Benefits**

19 According to the Internal Revenue Code, certain "qualified
20 military benefit[s]" are excluded from gross income. 26 U.S.C. §
21 134(a). A "qualified military benefit" is one which is (1)
22 "received by any member or former member of the uniformed services
23 of the United States or any dependent of such member by reason of
24 such member's status or service as a member of such uniformed
25 services" and (2) "was excludable from gross income on September 9,
26 1986" 26 U.S.C. § 134(b). The code is clear that "no other
27 benefit [is] excludable." 26 U.S.C. §§ 134(b)(2).

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1 Fuentes asserts that "the Military benefits are categorized
2 under 26 U.S.C. Part III § 134 [as] Items specifically excluded
3 from gross income, thus including military benefits as gross income
4 directly contradicts the Tax Code as it is written."
5 (Opening Brief at 10.) However, only qualified military benefits
6 are exempt from inclusion in the gross income calculation.
7 Fuentes' opposition below referred to the benefit as a "pension."
8 (ER 3.) The Internal Revenue Code includes pensions as a source of
9 gross income. 26 U.S.C. § 61(a)(11). Fuentes has not provided any
10 evidence that his military benefits are qualified military benefits
11 excludable from gross income.

12 **III. Conclusion**

13 For the reasons set forth above, Social Security benefits
14 constitute gross income for Chapter 12 eligibility purposes only to
15 the extent provided in the tax code. Only "qualified military
16 benefits" are excludable from gross income. Here, there is no
17 evidence that Fuentes has received excludable qualified military
18 benefits. Furthermore, it appears to the court that, even
19 excluding Fuentes' average monthly Social Security income of
20 \$1803.40 from gross income, Fuentes does not meet the definition of
21 a "family farmer" under 11 U.S.C. § 101(18).⁴ Consequently, the
22 bankruptcy court's dismissal of Fuentes' Chapter 12 petition is
23 AFFIRMED.

24 IT IS SO ORDERED.

25 Dated: December 16, 2011


DEAN D. PREGERSON
United States District Judge

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28 ⁴ See n.1, supra.