

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS**

IN RE:)	In Proceedings
)	Under Chapter 7
STEVEN E. WEBB and)	
CHRISTINA M. WEBB,)	Case No. 05-32127
)	
Debtors.)	

OPINION

The Debtors, Steven E. and Christina M. Webb (Debtors), filed their voluntary petition pursuant to Chapter 7 of the Bankruptcy Code, on May 13, 2005. The Debtors claimed a \$500 exemption in a 2001 flatbed car trailer on their Schedule C, pursuant to the Illinois “tools of trade” exemption. *See* 735 ILL. COMP. STAT. 5/12-1001(d)(West 2005).¹ The Trustee filed a timely objection to the Debtors’ exemption claim on July 14, 2005, arguing the trailer is not a “tool of trade.” At a hearing on the Trustee’s objection, the Debtors testified that they repair automobiles to earn extra income and use the trailer to transport automobiles and large automobile parts. Neither the Debtors or the Trustee presented any authority in support of their positions. The issue before the Court is whether the Debtors’ flatbed car trailer is exempt under the Illinois “tools of trade” exemption.

As the Illinois legislature chose to opt out of the federal schedule of exemptions pursuant to 11 U.S.C. § 522(b), the Debtors must use the exemptions provided by Illinois law which provides that a debtor may exempt any “implements” or “tools of trade” *not to exceed \$750 in value*. 735 ILL. COMP. STAT. 5/12-1001(d)(West 2005)(emphasis added). Unfortunately, the terms “implements” and “tools of trade” are not defined by Illinois law or the Illinois legislature.

¹Although this provision of the Illinois exemption statute covers other types of property, it is commonly referred to as the “tools of trade” exemption and will be so referenced in this Opinion.

Basically, there are two approaches that courts use when deciding whether or not an item is exempt as a “tool of trade.” Some courts apply a “utilitarian” approach or a “use test” to determine whether or not an item is “reasonably necessary” for a debtor to continue his trade or business. *See e.g., In re Challinor*, 79 B.R. 19 (Bankr.D.Mont. 1987) and *In re Ackerman*, 1995 WL 916986 (Bankr.N.D.Iowa 1995). The second approach is an “augmentation” approach which has been adopted by the Seventh Circuit Court of Appeals. *See In Re Patterson*, 825 F.2d 1140 (7th Cir. 1987). The Seventh Circuit’s approach focuses on the monetary value of an item as opposed to merely its function.

The language of the Illinois “tools of trade” exemption is practically identical to the same exemption provided by the Bankruptcy Code.² Since the Illinois “tools of trade” exemption so closely resembles the Bankruptcy Code’s “tools of trade” exemption, it is proper to reference authority from the Seventh Circuit on the Bankruptcy Code’s “tools of trade” exemption. *See In Re Zias*, 202 B.R. 263, 265 (Bankr.N.D.Ill. 1996).

The Seventh Circuit Court of Appeals has interpreted the Bankruptcy Code’s “tools of trade” exemption, which at the time allowed a debtor to exempt his “aggregate interest, not to exceed \$750 in value” in any “implements” or “tools of trade.” *In Re Patterson*, 825 F.2d at 1147. The Court held that a debtor’s farm tractor, valued at \$4,300, and herd of cattle, valued at \$20,300, were not “tools of trade.” *Id.* at 1141, 1147. In reaching this conclusion, the Court rejected the “use” test suggested by the debtor that would focus on what the particular tool was being used for and if that use was reasonably necessary to the debtor’s trade. *Id.* at 1146. Such a

²Under the Illinois exemption statute, a debtor may exempt his “equity interest, not to exceed \$750 in value in any implements, professional books, or tools of the trade of the debtor.” 735 ILL. COMP. STAT. 5/12-1001(d)(West 2005). The Bankruptcy Code’s exemption statute currently allows a debtor to exempt his “aggregate interest, not to exceed \$750 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.” 11 U.S.C. § 522(d)(6), *amended by* 11 U.S.C. § 522(d)(6)(2000)(increasing exemption amount from \$750 to \$1,500).

broad approach the Court reasoned, would allow capital assets to be exempt as “tools of trade.” *Id.* Instead, the Court focused on the \$750 cap in the Bankruptcy Code’s “tools of trade” exemption which it asserted showed Congressional intent to exempt tools of only a limited value, namely those worth less than \$750. *See id.* at 1146-47.

Bankruptcy courts in Illinois have relied on the Seventh Circuit’s *Patterson* decision when interpreting the Illinois “tools of trade” exemption statute. *See In Re Pitts*, No. BK 87-40332, slip op. at 5 (Bankr.S.D.Ill. Jan. 4, 1988)(noting that the language of the Bankruptcy Code’s “tools of trade” exemption is “nearly identical” to that of the Illinois “tools of trade” exemption statute and holding that a debtor’s tractor, which had a fair market value of \$2,000, would not qualify as an “implement” or “tool of trade” for purpose of Illinois exemption since the tractor in *Patterson* did not qualify as a “tool of trade”); *see also In re Gentry*, 297 B.R. 553 (Bankr.C.D.Ill. 2003) (citing to *Patterson* to support a “narrow” reading of the phrase “tools of trade” and holding that a self-employed construction worker was not entitled to a \$750 exemption for light bulldozing equipment, specifically a “Bobcat” with a current market value of \$1,800.)

The Bankruptcy Court for the Northern District of Illinois also relied heavily on *Patterson* to interpret the Illinois “tools of trade” exemption. *In Re Zais*, 202 B.R. at 264. In *Zias*, the debtor, who was a commodities’ trader, sought a \$750 “tools of trade” exemption in his seat on the Mid-American Exchange that was valued at \$5,300. *Id.* at 264. The debtor argued that the Court should apply a “use test,” which would examine the purpose for which the seat was used. *Id.* at 264-65. The Court acknowledged that “philosophically,” an application of the “use test” would allow the seat to be considered a “tool of trade” since the seat was used by the debtor on a regular basis and reasonably necessary for the debtor to continue his trade. *Id.* at 265.

However, the Court refused to apply the Use test” because it felt the Illinois legislature did not contemplate such a far reaching application of the exemption statute. *Id.* The Court pointed to the Limited dollar amount of the exemption [which] sheds light on the Illinois' legislature's intent to the ascribed meaning of the phrase ‘tools of trade.’” *Id.* at 266. Thus, the Court held that the debtor was not entitled to an exemption in his seat. *Id.*

In the present case, the Debtors listed the current market value of their trailer as \$500 on their Schedule C. This market value remains undisputed by the Trustee. Most notably, this market value is \$250 *below* the Illinois “tools of trade” exemption cap of \$750. Following the approach adopted by the Seventh Circuit Court of Appeals in *Patterson* and at least three bankruptcy courts sitting in the Seventh Circuit, and comparing the current market value of the Debtors’ property to the \$750 cap of the Illinois “tools of trade” exemption, leads this Court to the conclusion that as the trailer is valued at less than the statutory amount, the trailer may be considered a “tool of trade.” Thus, the Debtors are entitled to an exemption in their trailer pursuant to the Illinois “tools of trade” exemption in the amount of \$500.

This Opinion constitutes this Court’s findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate Order will be entered.

ENTERED: October 18, 2005

/s/ William V. Altenberger
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons stated in an Opinion filed this day, IT IS HEREBY ORDERED that the Objection to Debtors' Claim of Exempt Property filed by the Trustee is DENIED.

ENTERED: October 18, 2005

/s/ William V. Altenberger
UNITED STATES BANKRUPTCY JUDGE