

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

JOHN & MANDY ZALIAUSKAS, )

DEBTORS )

CASE NO. BK87-385

CH. 13

MEMORANDUM OPINION

Hearing was held on November 9, 1987, on debtors' objections to the IRS claims. The Court requested briefs and the parties filed two stipulations of fact and briefs by January 29, 1988. This Memorandum Opinion is filed pursuant to Bankruptcy Rule 7052.

Appearing for debtor was Mary Powers of Omaha, Nebraska. Appearing for the IRS was Daniel Morris of Omaha, Nebraska. Also appearing for the IRS was Loren Mark of Washington, D.C.

Facts

Debtors filed a Chapter 13 petition on February 11, 1987. By stipulation the parties agree that the IRS has some type of claim for personal income taxes for the years 1981, 1982, 1983 and 1984. The issues are: 1) Whether 26 U.S.C. Section 6334 provides debtors with an exemption from the IRS duly perfected lien. If debtors are correct, the secured claim is reduced from the value of debtors' assets, \$2,440 to \$1,140 by avoiding the lien on \$1,300 worth of personal property. 2) Whether the 1982 tax obligation enjoys priority status under 11 U.S.C. Section 507(a)(7)(A)(ii). Prior to the assessment for 1982 taxes, which occurred on May 19, 1986, debtors had submitted to the IRS a settlement offer. The offer was submitted on November 20, 1985. The IRS rejected the offer on January 22, 1987. Debtors filed their petition on February 11, 1987.

Conclusions of Law and Discussion

1. 26 U.S.C. § 6334 exemption.

The Internal Revenue Code, at 26 U.S.C. Section 6334 exempts certain personal property from "levy." That is, such property cannot be seized in IRS collection efforts. However, the section does not provide an exemption from a lien or permit avoidance of the lien. Debtors' objection to IRS claim is overruled. The allowed secured claim is \$2,440.

2) Priority status.

Debtors' objection to priority status of 1982 tax obligation is sustained. The Bankruptcy Code at 11 U.S.C. Section 507(a)(7)(A)(ii) gives seventh priority to income taxes which were assessed within 240 days of the bankruptcy petition plus any extension of time. If debtor makes an offer of compromise within the 240 days after the assessment date, then the time the offer was pending plus thirty days is added to the 240 day period for determining priority status.

There apparently have been no cases interpreting this statutory section, but the Colliers' commentator suggests that the extension is granted only if the offer in compromise was made within 240 days after the assessment. 3 Collier on Bankruptcy, ¶ 507.04. 15th Edition (1987).

The IRS argues that it should not matter at what time the offer in compromise was made, either before or after the assessment. The IRS alleges that once such an offer is made, all collection efforts cease and do not resume until the offer is rejected. To permit debtors to make such an offer prior to assessment, allow IRS review of the offer for more than 240 days before rejecting the offer and then let the debtor file bankruptcy and treat the tax obligation as unsecured and without priority is to give the debtors a loophole Congress did not intend.

The plain language of the statute grants to the IRS an extension of time to preserve its priority status only if such an offer of compromise was presented to the IRS after the assessment was made. Perhaps Congress believed 240 days from assessment date was sufficient for the IRS to accept or reject an offer of compromise made prior to the assessment date.

The statutory language is unequivocal.<sup>1</sup> The Court will not read the language to mean other than what it says. The 1982 tax claim is unsecured, not priority, because the bankruptcy petition was filed more than 240 days after assessment and no offer in compromise was made after the assessment date triggering the extension language of the Code.

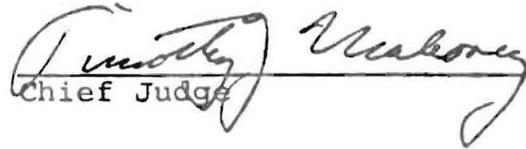
-----  
111 U.S.C. § 507(a)(7)(A)(ii): the following claims and expenses have priority in the following order ... allowed unsecured claims of governmental units, only to the extent that such claims are for--a tax on or measured by income or gross receipts--assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition. (emphasis added)

If this opinion requires an amendment to the plan, such amendment shall be filed within thirty days.

Separate Journal Entry shall be filed.

DATED: February 8, 1988.

BY THE COURT:

  
Chief Judge

Copies to:

Mary Powers, Attorney, 7000 W. Center Road, Omaha, NE 68106

Daniel Morris, Ass't. U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101

Loren B. Mark, Trial Atty., Tax Div., CTS, Western Region, U.S. Department of Justice, P.O. Box 683, Ben Franklin Sta., Washington, D.C. 20044