

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
R & D MACHINE TOOL, INC., ) CASE NO. BK92-80612  
 )  
DEBTOR ) CH. 7

MEMORANDUM

Hearing was held on April 26, 1994, on the Objection to Claims filed by Richard Myers, Trustee, and on the Trustee's Motion for Interim Distribution. Appearing on behalf of The Iowa Department of Revenue and Finance was Denise Dengler. Appearing on behalf of Dale Nelson and Richard Walter was Charles Smith. Appearing as Trustee was Richard D. Myers. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A) and (B).

1. The Iowa Department of Revenue and Finance (Department) received no notice of a claims bar date in this Chapter 7 case, probably because it was not listed as a creditor in the case when it was originally filed under Chapter 11. The Chapter 11 case was converted to Chapter 7 in June of 1992. A notice of commencement with a claims bar date of October 13, 1992, was sent to creditors listed on the initial matrix. In July, 1992, the Trustee informed the Department in response to a request for payment of taxes that it might want to file a claim, but the Department still did not receive notice of the bar date.

2. The Department did eventually discover the bar date, signed two proofs of claim on October 12, 1992, and mailed the proofs of claim to the Clerk of the Bankruptcy Court. The proofs of claim were received by the Clerk of the Bankruptcy Court on October 15, 1992.

3. The Trustee objects to the late filed claims and two unsecured creditors also object. The objecting creditors suggest that they settled a dispute with the trustee and other parties based upon their understanding that the trustee would pay priority claims and claims of administration and then pay one half the balance to the objectors and one half to the remaining unsecured claims. The objectors suggest that it would be unfair to them if

priority claims which were not timely filed are to be paid ahead of their own claims.

4. The position of the objecting creditors is rejected. Their settlement acknowledged that priority claims would be paid first. On the settlement date, the claims of the Department, as priority claims, although filed late, were on file. Since, as of the settlement date, the late filed priority claims had not been objected to, the parties to the settlement were, at the time of the settlement, and pursuant to the terms of the settlement, subject to being paid after the late filed priority claims.

5. Based upon the legal analysis of the Second Circuit Court of Appeals in United States v. Vecchio, \_\_\_ F.3d \_\_\_, 1994 WL 113545 (2d Cir. April 7, 1994) and In re McLaughlin, 157 B.R. 873, 877 (Bankr. N.D. Iowa 1993), and the authorities relied upon by those courts, this Court holds that untimely filed priority claims do not lose their priority status.

6. Trustee shall include Iowa Department of Revenue and Finance priority claims in the interim distribution. They shall be treated as priority claims under 11 U.S.C. § 726(a)(1) and § 507(a)(7)(c).

Separate journal entry shall be filed.

DATED: April 26, 1994.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

CC: Movant, Debtor(s) Atty. and all parties appearing at hearing  
[ ] Chapter 13 Trustee [ ] Chapter 12 Trustee [ ] U.S.Trustee

Movant is responsible for giving notice of this journal entry to any parties in interest not listed above.

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FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
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R & D MACHINE TOOL, INC.,	)	CASE NO. BK92-80612
<u>DEBTOR(S)</u>	)	
	)	CH. 7
	)	Filing No. 266, 26, 310
	)	263, 295, 310
Plaintiff(s)	)	
vs.	)	<u>JOURNAL ENTRY</u>
	)	
	)	DATE: April 26, 1994
<u>Defendant(s)</u>	)	

Before a United States Bankruptcy Judge for the District of Nebraska regarding Objection to Claims filed by Richard Myers, Trustee; Resistance by the Iowa Department of Revenue and Finance; Resistance by Dale Nelson and Richard Walter to the Resistance of the Iowa Department of Revenue and Finance; and on the Trustee's Motion for Interim Distribution, Resistance by the Iowa Department of Revenue and Finance; Resistance by Dale Nelson and Richard Walter to the Resistance of the Iowa Department of Revenue and Finance.

APPEARANCES

Richard Myers, Trustee  
Denise Dengler, Attorney  
Charles Smith, Attorney

IT IS ORDERED:

Objection to claim denied. Resistance to motion for interim distribution granted. See memorandum this date.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

CC: Movant, Objector/Resistor (if any), Debtor(s) Atty. and all parties appearing at hearing  
[ ] Chapter 13 Trustee [ ] Chapter 12 Trustee [ ] U.S.Trustee

Movant is responsible for giving notice of this journal entry to all other parties if required by rule or statute.