

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
ROBERT & ELIZABETH PARMENTER, ) CASE NO. BK87-1000  
 ) CH. 11  
DEBTOR(S) )

MEMORANDUM

Before a United States Bankruptcy Judge for the District of Nebraska regarding application for administrative claim for real estate taxes and objection.

APPEARANCES

Arlan Wine, Attorney for debtor, P.O. Box 1245, Wauneta, NE 69045

David Eubanks, Attorney for County, Scotts Bluff County Courthouse, Gering, NE 69341

IT IS ORDERED:

Debtor has objected to the County's application for administrative expense. The County believes that the interest accruing on post-petition property taxes which have been levied and assessed, but which are not a lien, should be included along with the principal amount of the tax itself as an administrative expense under Section 503(b). Debtor has objected on the grounds that there is no statutory authority for interest to be paid on administrative expenses. The objection of the debtor is overruled.

On September 11, 1986, the United States District Court for the District of Nebraska ruled in In re Annett Ford, Inc., No. CV 86-0-30 (Sept. 11, 1986), that interest and penalties accruing on post-petition payroll taxes should be considered as part of the tax and be payable as a surcharge on the secured creditor's collateral. Although not directly on point concerning interest accruing on post-petition real estate property taxes, the Annett Ford, Inc., decision gives this Court some direction with which to analyze the rights of a governmental entity which has a claim for taxes and statutory interest.

A case much closer to the point and which this Court follows is In re F.A. Potts & Co., Inc., 114 B.R. 92 (Bankr. E.D. Pa. 1990). ~~That~~ <sup>in</sup> that case, the court specifically discussed whether or

DISTRICT OF NEBRASKA  
AT \_\_\_\_\_ M  
JUL 11 1990  
Judith M. Napier  
Clerk, U.S. Bankruptcy Court  
By \_\_\_\_\_ Deputy

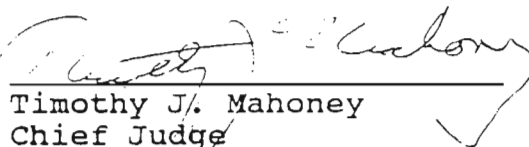
not interest accruing on a reclamation fee should be treated as an administrative expense. The court reviewed pre-Code bankruptcy decisions by the United States Supreme Court which had determined that interest on taxes which became due during the pendency of Chapter 11 proceedings but were never paid qualified for priority treatment. In Brunig v. United States, 376 U.S. 358, 361, 84 S.Ct. 906, 909, 11 L.Ed. 2d 772, 774-775 (1964), the court found that interest is generally considered an integral part of a continuing debt. The Ninth Circuit in the case of In re Mark Anthony Constr. Co., Inc., 886 F.2d 1101, 1107 (9th Cir. 1989) stated, "A rule which treats interest in the same manner as the underlying tax is consistent with the general treatment of taxes and interest under the Code, and in the tax laws."

Accordingly, this Court rules that the County is entitled to interest as an administrative expense under Section 503(b)(1) on the post-petition accrual of property taxes.

Separate journal entry to be entered.

DATED: July 30, 1990.

BY THE COURT:

  
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Timothy J. Mahoney  
Chief Judge