

THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

MAR 19 1996

J. BARON GROSHON

BY: RSS
Deputy Clerk

IN RE:

RAYMOND J. VANASEK,

Debtor.

CASE NO. 94-40318

CHAPTER 13

ORDER

JUDGEMENT ENTERED ON MAR 19 1996

THIS MATTER came on to be heard pursuant to the debtor's Objection to Claim of the Internal Revenue Service, wherein certain pre-petition federal income tax liabilities of the debtor were claimed as priority by the Internal Revenue Service (IRS) despite the liabilities arising more than three years prior to the date of petition. After a thorough review of the law, record and hearing argument of counsel, this Court finds that equity requires that the subject federal income tax liabilities be treated as priority claims within the debtor's current Chapter 13 proceeding. This Court now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The debtor filed petition for protection under Chapter 13 of the Federal Bankruptcy Code on December 13, 1994. The debtor filed a previous petition under Chapter 13 on March 3, 1988 (Case No. 88-40114) and received a discharge therein on November 8, 1993.

The IRS filed a proof of claim within the debtor's current proceeding for federal taxes in the total amount of \$106,434.07, of which the IRS claims \$86,213.92 is entitled to priority and

\$20,220.15 represents unsecured general claims. The actual amount of priority taxes claimed by the IRS, as set forth within its Proof of Claim, is as follows:

<u>Type</u>	<u>Tax Period</u>	<u>Date Assessed</u>	<u>Tax Due</u>	<u>Interest</u>
inc.	12/31/88	05/15/89	\$ 3,760.03	\$ 2,975.27
inc.	12/31/89	08/27/90	\$10,801.00	\$ 5,441.38
inc.	12/31/90	05/27/91	\$13,725.00	\$ 4,705.70
inc.	12/31/91	05/11/92	\$13,629.00	\$ 295.07
inc.	12/31/92	05/10/93	\$13,830.00	\$ 1,702.30
inc.	12/31/93	08/22/94	<u>\$14,655.00</u>	<u>\$ 694.17</u>
			\$70,400.03	\$15,813.89

TOTAL PRIORITY \$86,213.92.

The debtor has objected to the IRS priority claims for the tax years 1988, 1989 and 1990. The basis for the debtor's objection is that these tax liabilities do not fall within the immediate three year priority period, as required by § 507(a)(8) of the Bankruptcy Code.

The IRS claims that the § 362 stay provisions of the Bankruptcy Code, during the debtor's first Chapter 13 proceeding, prohibited collection of the debtor's post-petition tax liabilities for the tax years 1988, 1989 and 1990. Therefore, the IRS contends that from the date of petition of his first bankruptcy proceeding, March 3, 1988, until the debtor received his discharge, November 9, 1993, the three year period reflected in Section 507(a)(8)(A) of the Code was tolled.

CONCLUSIONS OF LAW

This Court has subject matter jurisdiction over the issues arising herein and said issues constitute a core proceeding as contemplated under the relevant bankruptcy law. The issues arising herein are of first impression before this Court.

During a Chapter 13 proceeding, except as relief granted by this court, the IRS is stayed and prohibited from instituting collection procedures to collect post-petition tax liabilities arising within the pendency of the proceeding. See, 11 U.S.C. § 362. The debtor has filed successive Chapter 13 bankruptcies, thirteen months apart. The debtor's successive bankruptcies, in conjunction with the stay provisions of § 362 of the Bankruptcy Code, have precluded the IRS from having a full three years, plus the 180 day extension found with 26 U.S.C. § 6503, within which to collect on the outstanding tax liabilities.

In creating the three year priority period, Congress intended through section 507(a)(8) to allow the Service adequate time in which to determine and collect tax debts. S. Rep. No. 989, 95th Cong., 2d Sess. 14 (1978). Though the IRS may file an administrative claim, seek relief from the stay or seek dismissal of a proceeding for a debtor's failure to comply with his or her post-petition tax obligations, despite these available code remedies, there exists an opportunity in which a debtor could manipulate the IRS's priority claim status through successive (serial) proceedings filed in good faith. This inequitable result impedes Congress' intent as expressed through its enactment of the § 507(a)(8) time periods.

No specific Code provision has been found by this Court which would prevent this anomaly from occurring. 11 U.S.C. § 108(c) incorporates only non-bankruptcy statutes of limitations and, therefore, is inapplicable to the internal Bankruptcy Code time periods at issue here. But, it is helpful to this Court in

reviewing the equitable intent of Congress in enacting the Bankruptcy Code.

It is inconsistent with the intent of § 507(a)(8) that § 362 protection afforded a debtor during the course of a proceeding should preclude a governmental unit, such as the IRS, from priority status on its claims in a debtor's successive filing when said claim arise post-petition in the earlier proceeding but beyond the contemplated time periods of § 507(a)(8) in the debtor's successive proceeding. Such an inequity should not occur.

WHEREFORE, it is ORDERED, ADJUDGED and DECREED, pursuant to 11 U.S.C. § 105(a), that the debtor's objection to the IRS' priority claim for the tax years 1988, 1989 and 1990 is overruled. The three year time period providing a governmental unit priority status contemplated within § 507(a)(8) of the Bankruptcy Code is tolled during the pendency of a debtor's proceeding.

This the 18th day of ^{March} ~~February~~, 1996.



MARVIN R. WOOTEN
UNITED STATES BANKRUPTCY JUDGE