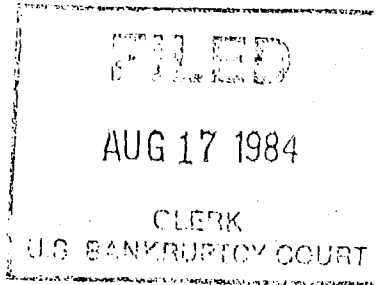


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

GEORGE JURIS IKMANIS
SANDRA EILEEN IKMANIS,

EF7-81-02214

Debtors.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDERS (1) FOR A HEARING ON OBJECTION TO SALES TAX CLAIM
(2) DISMISSING OBJECTION TO INCOME TAX CLAIM

Attorney Peter F. Herrell, Trustee of the above captioned bankruptcy proceeding, having filed Objections to the claims of the Wisconsin Department of Revenue (WDR); and a telephonic hearing having been held; and the Trustee appearing on his own behalf; and WDR appearing by Attorney Linda M. Mintener; and Debtors Sandra E. and George J. Ikmanis appearing by Attorney Michael P. Weiler; and briefs having been filed;¹ the Court having considered the complete record and file herein, and being fully advised in the premises, FINDS THAT:

1. On December 23, 1981, Debtors George J. and Sandra E. Ikmanis filed for relief under Chapter 7 of the Bankruptcy Code. On Schedule A-1 (Creditors having priority) the Debtors stated

¹ Attorney Weiler submitted an affidavit indicating that he had contacted his clients by mail and that they had not responded with their position on the matter at bar.

that an "estimated" \$900 was due to the State of Wisconsin for sales taxes.

2. January 5, 1983, was set as the last day to file claims. See Former Fed.R.Bank.P. 302(e)(4) (time for filing claim after dividend appears possible).

3. On December 27, 1982, the Wisconsin Department of Revenue (WDR) filed a claim in the sum of \$1,325.35 for Ms. Ikmanis' sales taxes, to-wit:

A. Secured Claims (Tax lien filed under Wisconsin law before petition date)

| Kind of Tax, Period | Tax Due | Interest to Petition Date | Date Tax Lien Filed |
|---------------------------------------|-----------|------------------------------|------------------------|
| Sales, Dec 1980 | \$ 187.55 | \$ 29.34 | 10-21-81 |
| Penalty to date of petition \$108.84 | | | |
| Interest accrues at \$14.55 per month | | | |

B. Unsecured Priority Claims under section 507(a)(6) of the Bankruptcy Code.

| Kind of Tax, Period | Tax Due | Interest to Petition Date | Date Tax Assessed |
|--|---------|------------------------------|----------------------|
| Sales, Aug 1980 | \$ | \$ 15.11 | 7-22-81 |
| Sales, Jan-Apr 1981 | 42.90 | 3.79 | 7-31-81 |
| Sales, Jul & Aug 1981 | 47.11 | | 12-8-81 |
| Sales, Sept 1981 (Estimate) | 440.00 | | 2-26-82 |
| Sales, Nov 1981 (Estimate) | 440.00 | | 4-20-82 |
| Penalty to date of petition \$108.84 | | | |
| Interest accrues at \$14.55 per month. | | | |

4. On June 18, 1984, WDR filed a claim in the sum of \$299 for Mr. Ikmanis' income taxes, to-wit:

B. Unsecured Priority Claims under section 507(a)(6) of the Bankruptcy Code.

| Kind of Tax, Period | Tax Due | Interest to Petition Date | Date Tax Assessed |
|-------------------------|-----------|------------------------------|----------------------|
| Income, 1981 (Estimate) | \$ 299.00 | | 01/17/83 |

5. Sales Taxes. The Trustee has objected to the September, 1981, and November, 1981, components of the WDR sales tax claim as unsupported estimates (1) which were assessed during this bankruptcy proceeding without notice to the Trustee and (2) which, in conjunction with the other components of the claim, exceed the amount reported by the Debtors. See generally 11 U.S.C. sec. 505 (Determination of tax liability).

6. WDR responded that the

. . . assessments against Sandra for the taxable periods of September and November 1981 result from Ms. Ikmanis' failure to file sales tax returns for those periods. Pursuant to Sec. 77.59(9), the Department of Revenue "determined the amount required to be paid to the state" by Ms. Ikmanis for the unfiled periods. The Department's determination of the said sales tax was necessarily made on the basis of "an estimate of the amount of gross receipts", since the debtor did not provide actual figures on which to base the assessment. Sec. 77.59(9). Ms. Ikmanis had the opportunity to contest the Department's assessments for September and November 1981 pursuant to Sec. 77.59(6), but did not avail herself of the administrative remedy within the statutorily required time period. Such assessments have now become "final" figures of the sales tax due for those periods and cannot be relitigated here. Sec. 77.59(6). . . .
Arkansas Corporation Commission v. Thompson, 313 U.S. 132, [61 S.Ct. 888,] 85 L.Ed. 1244 (1941).

WDR Letter Brief (filed July 16, 1984) (emphasis added).

7. The Thompson case, construing Section 64a(4) of the Bankruptcy Act of 1898, 11 U.S.C. sec. 104(a)(4) (1976) (repealed),

. . . seemed to have settled . . . that when a duly constituted quasi-judicial agency, whether state or federal, had passed upon a tax claim pursuant to a hearing held on such claim, the bankruptcy court did not have the power to redetermine that claim . . .

The Supreme Court did not decide . . . whether the bankruptcy trustee was concluded by the acts or omissions to act of the bankrupt when a quasi-judicial agency had not passed upon the tax claimed. Moreover, it was not entirely plain whether the Supreme Court placed assessments by tax assessors or similarly empowered officials in the same category as assessments made by a quasi-judicial taxing authority.

. . .

In 1966, efforts were made to resolve some of the problems remaining open following the decision by the Supreme Court. . . ., a new subdivision to Section 2(a) of the Bankruptcy Act was added. . . .

. . .

The jurisdictional grant under the first part of former Section 2a(2A) to hear and determine any question arising as to the amount or legality of any unpaid tax was limited by two factors. First, the tax itself must not have been paid . . . The second factor was that the disputed tax item must not have been contested and adjudicated prior to bankruptcy. . . .

3 L. King, Collier on Bankruptcy para. 505.01 (15th ed. 1984) (footnote omitted). Thus, where no court or quasi-judicial agency had held a hearing and made a determination of a tax claim, Section 2a(2A) of the Bankruptcy Act of 1898, 11 U.S.C. sec. 11(2A) (1976) (repealed), gave bankruptcy courts jurisdiction to examine the claim. In re Continental Credit Corp., 1 B.R. 680, 684-686 (Bankr.N.D.Ill. 1979) (in this case property taxes were assessed on estimated values without protest by debtor), In re New England High Carbon Wire Corp., 39 B.R. 886 (Bankr.D.Mass. 1984).

8.

The Bankruptcy Act, as thus amended, contemplates an actual contest upon hearing and prior to determination, so that the bankrupt's creditors will

not suffer for bankrupt's obvious lack of interest in contesting the tax.

In re Continental Credit Corp., supra, at 686 (citations omitted).

9. "Congress intended the final version of §505 to continue the bankruptcy court's authority to determine the amount and legality of a tax . . ." In re Tapp, 16 B.R. 315, 320 (Bankr.D.Alaska 1981) (excellent legislative history and analysis at 317-320).

10. The Debtors have demonstrated an obvious lack of interest in contesting the sales tax assessment. Footnote 1, supra; Paragraph 6, supra.

11. Although the challenged assessments were made during the pendency of this bankruptcy proceeding, the Trustee was given no notice of said assessments. Paragraphs 5 & 6, supra.

12. This Court has jurisdiction to hear the Trustee's objection to the allowance of the WDR sales tax claim. 11 U.S.C. sec. 505(a), Fed.R.Bankr.P. 3007.

13. Income Taxes. WDR recognizes that its June 18, 1984, claim was untimely and asserts that Mr. Ikmanis' debt for 1981 income taxes is not dischargeable. WDR Letter Briefs (filed July 16 & August 2, 1984).

14. Assuming its claim is allowable--and whether or not the underlying debt is dischargeable²--WDR may not share in the distribution of the Debtors' bankruptcy estate until timely, allowed, unsecured claims are satisfied. 11 U.S.C. sec. 726(a)(1)-(3).

15. The Trustee has filed a final account showing that he is holding \$2,005 for distribution. The claims register for the above captioned bankruptcy proceeding shows timely, allowed, unsecured claims in excess of \$20,000. Thus, as a practical matter, the validity of WDR's income tax claim is of no consequence.

CONCLUSIONS OF LAW

1. A hearing should be scheduled to determine the merits of the Trustee's objection to the WDR sales tax claim.

2. This Court need not determine whether the WDR income tax claim is allowable.

² Section 501(e) authorizes the debtor to file a proof of claim for a creditor who does not timely file. This provision is primarily intended to protect the debtor if the claim of the creditor is non-dischargeable. When no proof of claim is filed, there will be no bankruptcy distribution to the holder of the claim. If no bankruptcy distribution is made to the holder of a claim excepted from discharge, the debtor will have to pay the claim in full after the bankruptcy case is closed. If, however, the debtor files a proof of claim, the holder of the nondischargeable claim will participate in the bankruptcy distribution and the post-bankruptcy liability of the debtor to the creditor will be reduced by the amount of distribution.

D. Epstein, Debtor-Creditor Law 263 (1980).

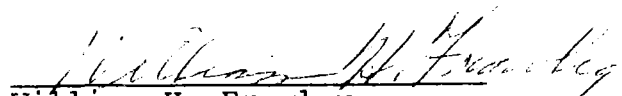
ORDERS

IT IS ORDERED THAT a hearing be held on the merits of the Trustee's objection to the December 27, 1982, claim filed in the above captioned bankruptcy proceeding by the Wisconsin Department of Revenue;

IT IS FURTHER ORDERED THAT the Trustee's objection to the June 18, 1984, claim filed in this proceeding by the Wisconsin Department of Revenue be, and the same hereby is, DISMISSED, without costs.

Dated: August 17, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge