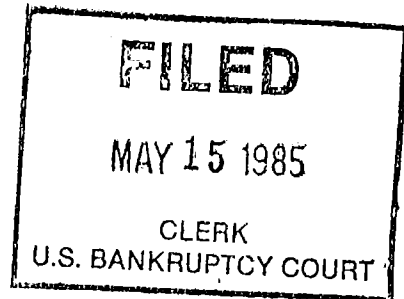


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

GERALD M. DRENDEL,

LM7-83-00633

Debtor.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND  
ORDER FOR PAYMENT

Attorney James J. Bannen, appearing on his own behalf, having applied for payment and satisfaction of mortgage; and Attorney Peter F. Herrell, appearing as Trustee and counsel for Trustee, having filed a motion to avoid and preserve a lien or to order distribution; and hearings having been held from time to time; and Attorneys Bannen and Herrell appearing on their own behalf; and the United States Internal Revenue Service appearing by Assistant United States Attorney Sheree L. Gowey; and briefs having been filed; the Court, being fully advised in the premises, FINDS THAT:

1. Background. There remains \$46,153 from the sale of a certain parcel of real estate by the Trustee.

2. Of this amount, the IRS claims \$15,704 plus 12% interest from July 16, 1981 (approximately \$23,000) and Attorney Bannen claims \$17,150.14. (There appears to be no dispute that the Trustee is entitled to receive 7.76% of these claims as administrative costs and fees. See 11 U.S.C. secs. 326(a) & 506(c).)

3. The only objection to payment of Attorney Bannen's claim was raised before it was clear that any prior claim of the IRS could also be satisfied from the proceeds of the sale.

4. IRS Claim. In July of 1981, Debtor Gerald M. Drendel entered into an installment agreement with the IRS on account of "\$14,119.60 [tax owed] plus accrued penalties & interest." The agreement provided "that the Federal taxes shown above, plus any interest and penalties provided by law, will be paid as follows: \$16,421.11 to be paid on October 26, 1981, and \$ N/A to be paid on the N/A of each N/A thereafter until the liability is paid in full and also agrees that the above tax installments will be increased as follows: [blank]".<sup>1</sup>

5. To secure this obligation, the Debtor granted the IRS a \$15,704.16 mortgage on the parcel of real estate subsequently sold by the Trustee.

6. On October 7, 1982, the IRS filed an Answer in a Wisconsin state court foreclosure action describing its mortgage as "liens . . . filed and obtained . . . pursuant to [26 U.S.C.] 6321, 6322, and 6323". The state court subsequently found that the IRS "mortgage was intended to cover federal tax liabilities due from the defendant, George Drendel".

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<sup>1</sup> At the bottom of the "IRS Office Copy" of the agreement (the Debtor received a "Taxpayer's Copy")--after the signatures--is a "General Information" section which includes a subsection entitled "Notice of federal tax lien filing determination (check one)" containing a checked notation that "Notice of tax lien [had been] filed".

7. The IRS installment agreement is the product of the resolution of a dispute between the Debtor and the IRS. Accordingly, the IRS claim in this matter is not for "taxes" under 11 U.S.C. sec. 724(b), nor is it "for any fine, penalty, or forfeiture . . . or punitive damages" under 11 U.S.C. secs. 724(a) & 726(a)(4); rather, it is for the compromise of a controversy and not subject to the special priority rules of 11 U.S.C. sec. 724.

8. Interest. On October 26, 1981, the Debtor became obligated to pay \$16,421.11 to IRS.

9. Although the IRS installment agreement does not require interest in the event of default, "the law raises an implied promise to pay interest on the sum due". Georgiades v. Glickman, 272 Wis. 257, 274, 75 N.W.2d 573, 582 (Sup. 1956).

#### CONCLUSIONS OF LAW

1. The allowable claims of the IRS and Attorney Bannen should be satisfied from the remaining proceeds of the real estate sold by the Trustee.

2. The IRS claim is allowed in the amount of \$16,421.11 plus 5% interest from October 26, 1981. See Wis.Stats.sec. 138.04 (legal rate of interest upon forbearance of money).

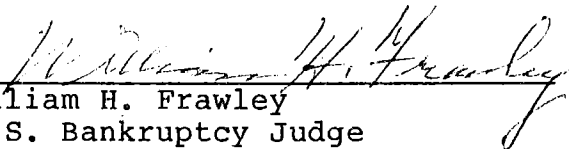
#### ORDER

IT IS ORDERED THAT the Trustee pay the allowable secured

claims of the Internal Revenue Service and of Attorney James J. Bannen from the proceeds of the sale of the secured real estate.

Dated: May 15, 1985.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney James J. Bannen  
Attorney Peter F. Herrell  
Assistant U. S. Attorney Sheree L. Gowey *col*