

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

FILED

JUN 27 1986

CLERK  
U.S. BANKRUPTCY COURT

In re:

Case Number:

ARTHUR R. CHRIST  
PATRICIA J. CHRIST  
d/b/a La Crosse Color TV,

LF7-83-01664

Debtors.

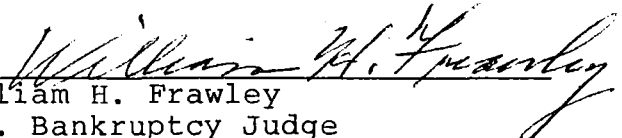
ORDER

The court having this day entered its memorandum opinion,  
findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS HEREBY ORDERED that the City of  
La Crosse claim for water utility charges is hereby denied the  
priority classification of 11 U.S.C. § 507(a)(7)(B).

Dated: June 27, 1986.

BY THE COURT:

  
William H. Frawley  
U.S. Bankruptcy Judge

cc: Attorney Peter F. Herrell  
Attorney Kenneth R. Kratz

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

FILED

JUN 27 1986

CLERK  
U.S. BANKRUPTCY COURT

In re:

Case Number:

ARTHUR R. CHRIST  
PATRICIA J. CHRIST  
d/b/a La Crosse Color TV,

LF7-83-01664

Debtors.

MEMORANDUM OPINION,  
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The trustee, Peter F. Herrell, has brought this objection to the proofs of claim filed by the City of La Crosse (La Crosse). La Crosse appears by Kenneth R. Kratz and contests the objection. A hearing was held on this matter on April 29, 1986. The issues have been submitted to this court for determination by briefs.

The debtors filed for relief under Chapter 7 of the Bankruptcy Code on October 13, 1983. La Crosse filed proofs of claim for this case on December 1, 1983. Said claims consist of personal property taxes for 1982 and 1983 in the amount of \$84.43 and water utility charges in the amount of \$542.02, for a total claim of \$626.45. La Crosse filed these claims as priority claims, and still contends that these claims are entitled to such priority treatment. On April 29, 1986, the trustee filed an objection to the claimed priority nature of the water utility charges. The trustee does not object to priority classification with respect to the personal property tax claim in the amount of

\$84.43. However, the trustee strenuously maintains his objection to attributing such priority status to the water utility bill of \$542.02.

The trustee argues two reasons why the water utility charges should not be allowed as a priority claim. First, the trustee argues that the water utility charges become a lien on the real estate. The trustee has not sold the real estate and, therefore, the lien does not attach to any proceeds in the custody of the trustee. The relevant statutory authority is found at § 507 of the Bankruptcy Code.

a) The following expenses and claims have priority in the following order.

7) Seventh, allowed unsecured claims of governmental units, only to the extent that such claims are for--

(B) a property tax assessed before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition.

11 U.S.C. § 507(a)(7)(B) (emphasis added). The relevant Wisconsin Statute provides:

(b) On October 15 in each year notice shall be given to the owner or occupant of all lots or parcels of real estate to which water has been furnished prior to October 1 by a water utility operated by any town, city or village and payment for which is owing and in arrears at the time of giving such notice. The department in charge of the utility shall furnish the treasurer with a list of all such lots or parcels of real estate, and the notice shall be given by the treasurer, unless the governing body of the city, village or town shall authorize such notice to be given directly by the department. Such notice shall be in writing and shall state the amount of such arrears, including any penalty assessed pursuant to the rules of such utility; that unless the same is paid by

November 1 thereafter a penalty of 10 per cent of the amount of such arrears will be added thereto; and that unless such arrears, with any such added penalty, shall be paid by November 15 thereafter, the same will be levied as a tax against the lot or parcel of real estate to which water was furnished and for which payment is delinquent as above specified. Such notice may be served by delivery to either such owner or occupant personally, or by letter addressed to such owner or occupant at the post-office address of such lot or parcel of real estate. On November 16 the officer or department issuing the notice shall certify and file with the clerk a list of all lots or parcels of real estate, giving the legal description thereof, to the owners or occupants of which notice of arrears in payment were given as above specified and which arrears still remain unpaid, and stating the amount of such arrears together with the added penalty thereon as herein provided. Each such delinquent amount, including such penalty, shall thereupon become a lien upon the lot or parcel of real estate to which the water was furnished and payment for which is delinquent, and the clerk shall insert the same as a tax against such lot or parcel of real estate. All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes shall apply to said tax if the same is not paid within the time required by law for payment of taxes upon real estate.

Wis. Stat. § 66.069(1)(b) (emphasis added).

The trustee argues that the water utility charges will be a lien on the real estate and, therefore, the claim is more like a secured claim than an unsecured claim. The trustee asserts that 11 U.S.C. § 507 provides priority for unsecured claims only. When the real estate is ultimately sold, La Crosse will realize payment for the full amount of the obligation due and owing for the water utility services.

Next, the trustee argues that La Crosse's claim for water utility charges does not constitute a "property tax" within the meaning of the Bankruptcy Code. 11 U.S.C. § 507(a)(7)(B). The trustee alleges that La Crosse measures and bills for water services based on the actual amount of water used. La Crosse does not dispute this allegation. La Crosse argues that the state statute quite clearly states that the water utility charges "will be levied as a tax against the lot or parcel of real estate to which water was furnished." However, this language does not mean that these charges constitute a "property tax" within the meaning of § 507(a)(7)(B) of the Bankruptcy Code.

Initially, the court notes that "the bankruptcy [code] is a federal statute, the ultimate interpretation of which is the federal courts." New Jersey v. Anderson, 203 U.S. 483 (1906). A state's determination that something is a tax is not binding on this court. Id. at 491.

Under federal law, a tax has certain characteristics which distinguish it from a mere debt or charge. The major distinction lies in whether it is an involuntary charge assessed on all or a charge for services rendered in the nature of a contractual or quasi-contractual obligation.

In re Adams, 40 B.R. 545 (E.D. Pa. 1984).

Taxes are not debts .... Debts are obligations for the payment of money founded upon contract, express or implied. Taxes are imposts levied for the support of the Government, or for some special purpose authorized by it. The consent of the taxpayer is not necessary to their enforcement. They operate in invitum. Nor is their nature affected by the fact that in some States ... an action of debt may be instituted for their

recovery. The form of the procedure cannot change their character.

New Jersey v. Anderson, 203 U.S. 483 (1906).

It has been expressly held that water utility charges that are based upon usage are charges for services rendered and do not constitute a property tax within the meaning of 11 U.S.C.

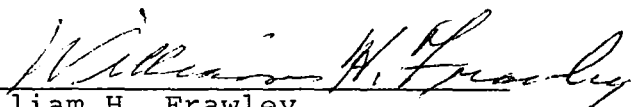
§ 507(a)(7)(B). In re Adams, 40 B.R. 545, 548 (E.D. Pa. 1984).

It is the conclusion of the court that the water utility charges are not a priority claim under 11 U.S.C. § 507(a)(7)(B). It is undisputed that these claims are for services rendered rather than an actual property tax and that these charges will be paid in full when the property is ultimately sold.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

Dated: June 27, 1986.

BY THE COURT:

  
\_\_\_\_\_  
William H. Frawley  
U.S. Bankruptcy Judge

cc: Attorney Peter F. Herrell  
Attorney Kenneth R. Kratz