

FILED

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

SEP 30 1986

CLERK, U.S.
BANKRUPTCY COURT
CASE NO.

In re:

Case Number:

DORANCE JOHN NASTVOLD
CECELIA L. NASTVOLD,

EF7-84-01966

Debtors.

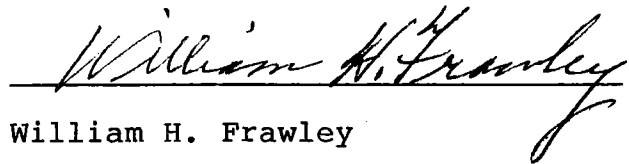
ORDER

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

NOW, THEREFORE, IT IS ORDERED that the trustee's objection to the proof of claim filed by the Internal Revenue Service is hereby denied.

Dated: September 30, 1986.

BY THE COURT:



William H. Frawley

U.S. Bankruptcy Judge

cc: Attorney Peter F. Herrell
Attorney Mary E. Bielefeld
Attorney Gene B. Radcliffe

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CLERK, U.S.
BANKRUPTCY COURT
CASE NO.

In re:

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DORANCE JOHN NASTVOLD
CECELIA L. NASTVOLD
d/b/a Nastvold Trucking
D. J. Nastvold & Sons,

Debtors.

EF7-84-01966

MEMORANDUM OPINION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The debtors filed for relief under Chapter 7 of the Bankruptcy Code on October 5, 1984. 11 U.S.C. Chapter 7. The United States Internal Revenue Service (IRS) filed a proof of claim on April 21, 1986, claiming that it is a secured creditor in all of the property of the debtor to the extent of \$3,987.42. The IRS appears in this matter by Mary E. Bielefeld. The trustee, Peter F. Herrell, filed an objection to the proof of claim on July 18, 1986. A telephonic hearing was held in this matter on August 18, 1986, and the issues have been submitted to the court through briefs.

The Proof of Claim filed by the IRS sets forth the following secured claims:

| <u>KIND OF TAX</u> | <u>TAX PERIOD ENDED</u> | <u>DATE TAX ASSESSED</u> | <u>TAX DUE</u> | <u>INTEREST TO PETITION DATE</u> | <u>TOTAL</u> |
|-------------------------|-------------------------|--------------------------|----------------|----------------------------------|---------------|
| 1040/ Income | 7712 | 6/16/80 | \$833.33 | \$1,874.84 | \$2,708.17 |
| 2290/Road Use Excise | 7907 | 10/26/81 | 195.00 | 196.22 | 391.22 |
| 2290 Road Use Excise | 8007 | 8/10/81 | 199.00 | 168.62 | <u>367.62</u> |
| | | | | Total: | \$3,467.01 |

The trustee does not contend that these are invalid claims. Instead he disputes whether they are secured. The relevant statutory provision provides:

Lien for taxes

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

26 U.S.C. § 6321. Such a lien becomes valid against purchasers, holders of security interests, and judgment lien creditors after notice is properly filed in the proper place designated by the laws of the State. 26 U.S.C. § 6323(a) and (f). Wisconsin has adopted the Uniform Federal Lien Registration Act with respect to filing such notices. Wis. Stat. § 779.97.

(c) Notices of liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

1. If the person against whose interest the lien applies is a corporation or a partnership, as defined in 26 USC 7701(a)(1) and (2) in force on May 18, 1980, whose prin-

cipal executive office is in this state, in the office of the secretary of state.

2. In all other cases in the office of the register of deeds of the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

Wis. Stat. 79.97(1)(c).

The debtors reside in Trempealeau County, Wisconsin. A notice of the federal tax lien regarding the 1977 income tax assessment against the debtors was filed on January 23, 1981. A notice of federal tax lien regarding the state highway use excise taxes was filed on September 24, 1982. These notices were filed in the office of the Register of Deeds for Trempealeau County. The trustee's argument that the debtors' business was a partnership within the meaning of 26 U.S.C. § 770(a)(2) and that the notice should have been filed in the office of the secretary of state is not persuasive.

The final issue presented is whether the liens of the IRS attached to the debtors' rights in a civil lawsuit. The lawsuit was already pending at the time in which the bankruptcy petition was filed. The debtors had an interest in the lawsuit; it was simply not yet liquidated. A federal tax lien can attach to a lawsuit even though it has not been reduced to a judgment. United States v. Hubbell, 323 F.2d 197 (5th Cir. 1963).

[3] Lewis' claim against Housing Authority was not contingent merely because it would take a lawsuit to reduce it to judgment or to collect it. It was, perhaps, uncertain, but not subject to any infirmity which would prevent the attachment of the lien. The real issue in this case, the unprecedented one, is whether the lien attaches

to an unliquidated claim sounding in tort. Neither party cites us to a case directly in point, and we have found none. We see no reason, however, why a tort claim is not "property" or "rights to property," just as, e.g., any unliquidated contract claim is so considered.

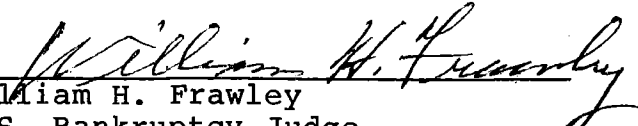
Id. at 200.

It is the conclusion of the court that the IRS has a secured claim. The IRS properly filed notices of federal tax assessments prior to the date the debtors filed their bankruptcy petition. The tax lien dates from the "time the assessment [was] made." 26 U.S.C. §§ 6321 and 6322. Thus the liens became valid against the trustee. 26 U.S.C. § 6323. This opinion does not address the issues of priority with respect to the distribution of the assets of the estate. It simply finds that the IRS holds a secured claim.

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

Dated: September 30, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge