

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

IN RE:)
)
DONALD D. ROGERS,) CHAPTER 13 BANKRUPTCY
CYNTHIA A. ROGERS,) CASE NO. 94-50094
)
DEBTORS)

ORDER

The Debtors' Objection to Claims #14 and #15 of the Internal Revenue Service ("IRS") was heard by the Court on September 7, 1994. The motion was filed on June 25, 1994. The objection preceded this Court's order dated July 20, 1994 adjusting the amount of Claim #14 filed by the IRS for Fifteen Thousand Dollars (\$15,000.00) to Two Thousand One Hundred Dollars (\$2,100.00). The Chapter 13 plan was confirmed on July 12, 1994 in accordance with the Court's oral announcement as to the adjustment. A notice of appeal from the July 20, 1994 order was filed by IRS on August 1, 1994.

The order of July 20, 1994 provided as follows:

A creditor is allowed to request reconsideration of an order allowing or disallowing a claim against the estate at any time pursuant to Fed.R.Bankr.P. 3008. If the creditor named above [IRS], or any other party at interest, disagrees with the classification of this claim, a written request for hearing should be promptly filed with the Court. Upon receipt of such request, the Court will schedule and conduct a hearing as to the classification of the claim. If a request for hearing is not filed within thirty (30) days of the date of the service of the order, this order shall have the same conclusive effect as if the order were entered after notice and hearing in response to

an objection to the claim filed by party at interest pursuant to Fed.R.Bankr.P. 3007.

At the hearing the IRS contended that the Court should not consider the Debtors' objection to its claim on the grounds that the matter of the status of the IRS claim was on appeal and, in such status, this Court had no jurisdiction to enter any order as to the status of the IRS claim.

It does not appear to this Court that the appeal should have the effect which has been proposed by the IRS. Instead, as a primary consideration, the Debtors' objection to the IRS claim was filed before confirmation and before the entry of the July 20, 1994 order. The July 20, 1994 order makes no provision for the disposition of the Debtors' objection to the IRS claim.

As a secondary consideration, the July 20, 1994 order, by its terms, was not a final order. It reserved to the Court the right to reconsider the status of the IRS claim at any time. Further, it advised the IRS and all other parties at interest that the matter would be expressly subject to reconsideration if such a request were filed within thirty (30) days of "service of the order...." The Debtors' objection to the IRS claim can certainly be construed as a request for reconsideration, even though it was filed prior to the entry of the order. It would be inconsistent to conclude that the Debtors' objection to the IRS claim filed before the July 20, 1994 order could be precluded by the entry of a subsequent order which expressly

provides for the kind of consideration the Debtors had proposed.

Except for the reservation by the IRS of the right to argue that the Court did not have the authority to adjust the treatment of its claim, the IRS and the Debtors are in agreement as to the actual liability of the Debtors to the IRS. They have agreed that claims #14 and #15 should be adjusted to provide for the following liability:

Secured - Twenty-seven Hundred Fifteen Dollars (\$2,715.00).
Unsecured priority - Forty-six Hundred Forty-five Dollars and Sixty-four Cents (\$4,645.64).
General Unsecured - Two Thousand Fifty-nine Dollars and Forty-six Cents (\$2,059.46).

The purpose for establishing the Court's willingness to reconsider the order following the entry of the order together with the Court's willingness to consider the Debtors' objection to the claim are steps which were taken to preserve the Court's right to consider the IRS claim rather than, as the IRS argues, having the effect of precluding such consideration. No one, except for the IRS, has argued to the Court that the claim of the IRS should not be adjusted in accordance with the agreement between the IRS and the Debtors as to the actual amount of taxes which are proven to be owing.

There is a problem in Chapter 13 cases when the debtors do not file timely tax returns. Upon being advised of the filing of a Chapter 13 case where, and when it cannot determine that the debtor has filed a tax return, the IRS routinely files an estimated amount for the tax year in question. The estimated

claim serves to alert the debtor, the trustee and the Court to the fact that the debtor may not have filed his or her tax returns.

At the confirmation hearing in this case, the Debtors showed the Court that they had filed their tax returns and, further, showed the Court that the returns indicated a liability in the amount of Two Thousand One Hundred Dollars (\$2,100.00). The case was otherwise ready for confirmation. The IRS had filed its estimated claim without any certainty as to the amount of the liability, or whether there was any liability at all. The Debtors' representations at the confirmation hearing showed that the IRS estimated claim was substantially larger than the Debtors' actual tax liability.

In the order of July 20, 1994, the Court adjusted the IRS claim to an amount in accordance with the Debtors' representations as to the actual tax liability. The order expressly reserved the right to the IRS and all other parties at interest to reconsider the amount to be allowed as a claim for the IRS. At the confirmation hearing it was apparent that the IRS claim was going to eventually be established in an amount which was different from the amount of the original IRS claim and likewise different from the amount which was established by the Court in its July 20, 1994 order. There was no prejudice to any party at interest, including the IRS, by the entry of the July 20, 1994 order.

The only alternative to the procedure which was followed in this case would have been to postpone confirmation of the case from July to September. The case was originally filed on February 11, 1994. The first disbursements were made in this case five (5) months following the filing of the case. That delay poses for creditors, especially secured creditors, a substantial and unfortunate disadvantage. If confirmation had been delayed pending resolution of the IRS matter, the disbursements would have been delayed an additional two (2) months. This would have made a bad situation worse.

If this Court were powerless to expressly reserve to itself the right to adjust certain claims following confirmation, then the additional two months of delay would be unavoidable. It does not appear, however, that such a conclusion is warranted. Furthermore, for the reasons expressed in this Court's opinion in the case of In re Taranovich, Chapter 13 Case No. 93-42152, I have concluded that the adjustment to the IRS claim in this case as detailed in the order of July 20, 1994, was made in accordance with the requirements of Title 11 and the Federal Rules of Bankruptcy Procedure with reasonable notice and opportunity for a hearing.

The objection by the IRS to the Court's reconsideration of its claim is overruled. The IRS claim is hereby established in this case in the classifications and amounts as set out above.

SO ORDERED this _____ day of September, 1994.

JAMES D. WALKER, JR., Judge
United States Bankruptcy Court