UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:	)	
	)	Chapter 13
WILLIAM J. GAJESKI and	)	
BETTY C. GAJESKI,	)	
	)	Case No. BKY 04-42285
Debtors.	)	

OBJECTIONS OF THE UNITED STATES
OF AMERICA TO THE CONFIRMATION OF THE
DEBTORS' CHAPTER 13 PLAN AND MOTION TO DISMISS

THE UNITED STATES OF AMERICA, Internal Revenue Service ("IRS"), by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota and Roylene A. Champeaux, Assistant United States Attorney, submits the following objections to the Confirmation of Chapter 13 Plan proposed by these debtors and Motion to Dismiss:

1. The confirmation hearing is scheduled for June 3, 2004 at 10:30 a.m. at U.S. Bankruptcy Court, U.S. Courthouse, Courtroom 7 West, 300 South Fourth Street, Minneapolis, Minnesota 55415.

2. The Court has jurisdiction over these objections and Motion to Dismiss pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Loc. R. Bankr. P. (D. Minn.) 1070-1. This is a core proceeding. The petition commencing this Chapter 13 case was filed April 22, 2004. This case is now pending in this court.

3. These objections and Motion to Dismiss arise under 11 U.S.C. §§ 1322(a)(2); 1325(a) and (6); and 1307(c) and Fed. R. Bankr. P. 3015. These objections and Motion to Dismiss are filed

under Fed. R. Bankr. P. 9013 and 9014 and Loc. R. Bankr. P. (D. Minn.) 3015-3, 3020-1 and 3020-3.

4. The United States, IRS, has an unsecured priority claim of $18,147.90 and an unsecured general claim of $19,487.59 against these debtors. The total claim is $37,635.49, as set forth in the filed Amended Proof of Claim of the IRS, a copy of which is attached hereto as Exhibit A.

5. The IRS may have additional priority and general claims due from these debtors, but they are undetermined because the debtors have not filed Federal income tax returns for the years 1998, 2001, 2002 and 2003 as explained in the Affidavit of Jean A. Krysinski, which is attached as Exhibit B.

6. The Plan provides for the full payment of claims entitled to priority under 11 U.S.C. § 507; however, the Plan merely estimates the amount owed to the IRS as $10,000.00. While the Plan provides that the trustee will pay the amounts actually owed as priority claims, the actual amount of the priority claim of the IRS cannot be determined until these debtors file their Federal income tax returns for the years 2001, 2002 and 2003.

7. Without a determination of the actual amount of the priority and general claims of the IRS, the feasibility of the debtors' Plan cannot be determined in accordance with 11 U.S.C. § 1325(a)(6).

8. Failure of the debtors' Plan to provide for full payment of the allowed priority tax claim of the IRS is grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(c).

WHEREFORE, for the foregoing reasons, the United States prays that the Chapter 13 Plan filed by these debtors be denied confirmation and that the case be dismissed pursuant to 11 U.S.C. § 1307(c).

Date: May 18, 2004

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
By: ROYLENE A. CHAMPEAUX
Assistant United States Attorney
Attorney ID Number 154805
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5685

Attorneys for the United States of America, IRS

FORM B10 (Official Form 10)(04/04)

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF MINNESOTA		**PROOF OF CLAIM**
Name of Debtor WILLIAM J & BETTY C GAJESKI	Case Number 04-42285	

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property):
Department of the Treasury - Internal Revenue Service

Name and address where notices should be sent:
Internal Revenue Service
Internal Revenue Service
316 North Robert Street
Stop 5700STP
St. Paul, MN 55101
Telephone number: (651) 312-7988 Creditor #:5843935

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if the address differs from the address on the envelope sent to you by the court.

6

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2004 MAY 14 PM 12: 0
US BANKRUPTCY COURT

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor:
see attachment

Check here ☐ replaces
if this claim ☒ amends a previously filed claim, dated: 05/10/2004

1. Basis for Claim

☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☒ Taxes
☐ Other _____

☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
☐ Wages, salaries, and compensation (fill out below)
Last four digits of SS #: _____
Unpaid compensation for services performed
from _____ (date) to _____ (date)

2. Date debt was incurred:
see attachment

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed: $

19,487.59		18,147.90	37,635.49
(unsecured)	(secured)	(priority)	(Total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.

☒ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.

☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

☐ Real Estate ☐ Motor Vehicle
☐ Other _____

Value of Collateral: $_____

Amount of arrearage and other charges at time case filed included in secured claim, if any: $_____

6. Unsecured Nonpriority Claim $ 19,487.59

☐ Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or part of your claim is entitled to priority.

7. Unsecured Priority Claim.

☒ Check this box if you have an unsecured priority claim

Amount entitled to priority $ 18,147.90

Specify the priority of the claim:

☐ Wages, salaries, or commissions (up to $4,925),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).

☐ Up to $2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).

☐ Alimony, maintenance, or support owed to spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).

☒ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

**Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

9. Supporting Documents: *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

10. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

EXHIBIT
A

Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):
05/13/2004	Jean A Krysinski 41-02562 Bankruptcy Specialist

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service

Form 10
Attachment

Docket Number
04-42285
Type of Bankruptcy Case
Chapter 13
Date of Petition
04/22/2004

In the Matter of: WILLIAM J & BETTY C GAJESKI
7045 CENTERVILLE ROAD
CENTERVILLE, MN 55038

Amendment No. 1 to Proof of Claim dated 05/10/2004

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

PRIOR BANKRUPTCY(S) AFFECT THE PRIORITY DETERMINATION.

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	*Kind of Tax*	*Tax Period*	*Date Tax Assessed*	*Tax Due*	*Interest to Petition Date*
XXX-XX-6311	INCOME	12/31/2000	03/22/2004	$562.00	$105.70
XXX-XX-1709	INCOME	12/31/2001	1 UNASSESSED LIABILITY	$503.00	$0.00
XXX-XX-6311	INCOME	12/31/2001	1 UNASSESSED LIABILITY	$1,901.80	$0.00
XXX-XX-1709	INCOME	12/31/2002	1 UNASSESSED LIABILITY	$1,400.20	$0.00
XXX-XX-6311	INCOME	12/31/2002	1 UNASSESSED LIABILITY	$3,362.00	$0.00
XXX-XX-1709	INCOME	12/31/2003	1 UNASSESSED LIABILITY	$2,321.20	$0.00
XXX-XX-6311	INCOME	12/31/2003	1 UNASSESSED LIABILITY	$7,992.00	$0.00
				$18,042.20	$105.70

Total Amount of Unsecured Priority Claims: **$18,147.90**

Unsecured General Claims

Taxpayer ID Number	*Kind of Tax*	*Tax Period*	*Date Tax Assessed*	*Tax Due*	*Interest to Petition Date*
XXX-XX-6311	INCOME	12/31/1992	07/22/1996	$1,349.00	$1,784.30
XXX-XX-6311	INCOME	12/31/1994	02/05/1996	$663.00	$657.54
XXX-XX-6311	INCOME	12/31/1995	12/16/1996	$344.00	$281.05
XXX-XX-6311	INCOME	12/31/1995	02/09/1998	$1,363.00	$1,113.49
XXX-XX-1709	INCOME	12/31/1996	10/12/1998	$340.00	$225.85
XXX-XX-6311	INCOME	12/31/1996	10/12/1998	$736.00	$488.93
XXX-XX-1709	INCOME	12/31/1998	1 UNASSESSED LIABILITY	$1,255.00	$0.00
XXX-XX-6311	INCOME	12/31/1998	1 UNASSESSED LIABILITY	$2,959.42	$0.00
XXX-XX-6311	INCOME	12/31/1999	03/15/2004	$1,510.00	$451.83
				$10,519.42	$5,002.99

Penalty to date of petition on unsecured priority claims (including interest thereon) $223.14
Penalty to date of petition on unsecured general claims (including interest thereon) $3,742.04

Total Amount of Unsecured General Claims: **$19,487.59**

1 UNASSESSED LIABILITY TAX CLAIMS HAVE BEEN FILED BECAUSE THE DEBTOR HAS FAILED TO FILE THE RETURN(S) FOR THE LISTED PERIODS. AS SOON AS THE DEBTOR FILES THE RETURN(S) WITH THE I.R.S. AS REQUIRED BY LAW, THIS CLAIM WILL BE ADJUSTED AS NECESSARY.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
BKY No.04-42285

WILLIAM J & BETTY C GAJESKI, Plaintiff,	)	)
v.	)	AFFIDAVIT
INTERNAL REVENUE SERVICE, Defendant.	)	

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jean A Krysinski,Bankruptcy Specialist,being first duly sworn, deposes and says:

1. I am employed by Area 9 of the Internal Revenue Service Small Business/Self-Employed Division.
2. One of my duties is to review Chapter 13 Bankruptcy petitions and the Government records regarding the petitioner.
3. I have determined William J. Gajeski has not filed Income tax returns for the years ending 12-31-1998, 2001, 2002 and 2003. Betty C.Gajeski has not filed income tax returns for the years ending 12-31-1998, 2001, 2002 and 2003.

FURTHER YOUR AFFIANT SAYETH NOT.

Jean A. Krysinski
Jean A Krysinski

Subscribed and Sworn to Before Me

This 11th Day of May, 2004.

James L. Elason
NOTARY

JAMES L. ELIASON
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 31, 2005

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:	)	
	)	Chapter 13
WILLIAM J. GAJESKI and	)	
BETTY C. GAJESKI,	)	
	)	Case No. BKY 04-42285
Debtors.	)	

MEMORANDUM IN SUPPORT OF OBJECTIONS OF THE UNITED STATES OF AMERICA TO THE CONFIRMATION OF DEBTORS' CHAPTER 13 PLAN AND MOTION TO DISMISS

THE UNITED STATES OF AMERICA, Internal Revenue Service ("IRS"), by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota and Roylene A. Champeaux, Assistant United States Attorney, submits the following Memorandum in Support of its Objections to Confirmation of Debtors' Chapter 13 Plan and Motion to Dismiss.

1. The United States, IRS, hasan unsecured priority claim of $18,147.90, and an unsecured general claim of $19,487.59 against these debtors. The total claim is in the amount of $37,635.49 as set forth in the filed Amended Proof of Claim of the IRS.

2. Since no objections to the tax claims of the IRS have been filed, the claims are deemed allowed, pursuant to 11 U.S.C. § 502(a).

3. As the debtors have not filed federal income tax returns for the years 1998, 2001, 2002 and 2003, the actual tax liabilities are unknown. Any tax liabilities due for the years 2001, 2002 and 2003 would be priority taxes, which must be paid in full. These debtors should be required to file these Federal income tax returns

so that the tax liabilities can be fully determined and properly treated by the Plan.

4. The debtors' Plan fails to provide for adequate payments to fully pay the priority claim of the IRS under 11 U.S.C. § 507 as required under 11 U.S.C. § 1322(a)(2).

5. Failure of the debtors' Plan to provide for full payment of the allowed priority tax claim of the IRS is grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(c).

WHEREFORE, for the foregoing reasons, the United States prays that the Chapter 13 Plan filed by these debtors be denied confirmation and that the case be dismissed pursuant to 11 U.S.C. § 1307(c).

Date: May 18, 2004

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
By: ROYLENE A. CHAMPEAUX
Assistant United States Attorney
Attorney ID Number 154805
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5685

Attorneys for the United States of America, IRS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

WILLIAM J. GAJESKI and
BETTY C. GAJESKI,

Debtors.

Chapter 13

Case Number: 04-42285

UNSWORN DECLARATION
FOR PROOF OF SERVICE

I, John Kokkinen, employed by the Office of the United States Attorney, with office address 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, declares that on May 18, 2004, I served the Objections of the United States of America to Confirmation of Debtors' Chapter 13 Plan and Motion To Dismiss, Memorandum in Support of Objections and proposed Order on the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Robert Everhart, Esq.
P.O. Box 120534
New Brighton, MN 55112

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Jasmine Z. Keller, Esq.
Chapter 13 Trustee
12 S. 6th St. #310
Minneapolis, MN 55402

William J. Gajeski
Betty C. Gajeski
7045 Centerville Road
Centerville, MN 55038

Americredit
c/o Alice Whitten, Esq.
P.O. Box 183853
Arlington, TX 76096

Washington Mutual
P.O. Box 23990
Oakland, CA 94623

Wells Fargo Financial
3101 West 69th Street
Edina, MN 55435

JNR Adjustment
P.O. Box 27070
Minneapolis, MN 55427

Ross Law Firm
P.O. Box 5560
Hopkins, MN 55343

Wexler & Wexler
Suite 2910
500 West Madison Street
Chicago, IL 60661-2587

Washington County Treasurer
14900 61st Street North
Stillwater, MN 55082

Minnesota Department of Revenue
Collection Enforcement Unit
551 Bankruptcy Section
P.O. Box 64447
St. Paul, MN 55164

UNSWORN DECLARATION FOR PROOF OF SERVICE - CONTINUED

In re: **WILLIAM J. GAJESKI and BETTY C. GAJESKI**
Bankruptcy Case No. 04-42285

Craig Anderson
Assistant Attorney General
Office of MN Attorney General
Tax Litigation Division
1100 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2128

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: May 18, 2004 Signed: John Kokkinen
JOHN KOKKINEN

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:	)	
	)	Chapter 13
WILLIAM J. GAJESKI and	)	
BETTY C. GAJESKI,	)	
	)	Case No. BKY 04-42285
Debtors.	)	

ORDER

At Minneapolis, Minnesota, this _____ day of _____, 2004.

This matter came before the Court for hearing on Confirmation of the debtors' Plan. The United States of America, on behalf of the Internal Revenue Service, filed objections to confirmation and requested an Order denying confirmation and for an Order dismissing this case. Roylene A. Champeaux, Assistant United States Attorney, appeared on behalf of the United States. Other appearances were noted on the record.

It appears to the satisfaction of the Court that the debtors' Plan is not confirmable.

IT IS THEREFORE ORDERED:

1. Confirmation is denied.

2. The case is dismissed.

_____
Nancy C. Dreher
United States Bankruptcy Judge