

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

John Bradford Schwartz,

Chapter 13

Debtor.

Bky. Case No. 04-44715 RJK

**NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION OF
DEBTORS' CHAPTER 13 PLAN AND MOTION TO DISMISS OR CONVERT**

TO: The Debtor, Debtor's attorney, Chapter 13 Trustee, U.S. Trustee, and other parties in interest specified in Local Rules 3015-3, 3020-1.

1. The State of Minnesota Department of Revenue ("Department") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion and objection on October 21, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Robert J. Kressel, United States Bankruptcy Judge, in Courtroom 8 West, U.S. Courthouse, 300 South Fourth St., Minneapolis, MN 55415. The hearing may be continued by notice at the hearing without further written notice. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. This Court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on August 24, 2004. The case is now pending in this Court.

4. This objection and motion is filed under Bankruptcy Rules 9013, 9014 and Local Rules 3015-3, 3020-1 and 9013-1 through 9019-1(d). This proceeding arises under 11 U.S.C. §§ 1307 and 1324.

5. The Department objects to confirmation and requests dismissal or conversion for the following reasons:

Failure to comply with 11 U.S.C. § 1325(a)(5), dealing with secured claims.

On or about October 1, 2004, the Department filed claim number 5 in this case. That claim includes a priority unsecured claim in the amount of \$910.66 and a secured claim in the amount of \$3,218.11. Section 1325(a)(5) requires that holders of secured claims either accept the plan, or in the alternative, retain their lien and also receive payments that have a value as of the effective date of the plan in an amount not less than the allowed amount of their claim. The Department's secured claim is secured as follows:

STATE TAX LIEN				
Amount	Tax Year Ending	Date Assessed	Date Filed	Place Filed
\$ 814.68	12/1993	6/30/2000	4/25/2002	Hennepin
\$ 956.61	12/1994	6/30/2000	4/25/2002	Hennepin
\$1,818.91	12/1995	6/30/2000	4/25/2002	Hennepin
\$1,785.71	12/1996	6/30/2000	4/25/2002	Hennepin
\$ 553.64	12/1999	10/28/2002	10/31/2003	Hennepin
\$1,938.38	12/2000	3/17/2003	10/31/2003	Hennepin
\$1,904.60	12/2001	4/17/2003	10/31/2003	Hennepin
\$1,990.59	12/2002	3/24/2003	10/31/2003	Hennepin

Debtors' plan must provide for full payment of the Department's secured claim. If the claim is to be paid in installments, the plan must provide for interest at the statutory rate. However, in paragraph 3.c. of his plan, the Debtor proposes to treat the Department's claim only as an unsecured priority claim. The plan thus fails to comply with 11 U.S.C. § 1325(a)(5).

6. This Objection and Motion is based upon all the files and records filed herein.

WHEREFORE, the State of Minnesota Department of Revenue respectfully prays that Debtor's Chapter 13 Plan in this proceeding not be confirmed, that the case be dismissed or converted, whichever is in the best interests of the estate, and for such other and further relief as is just and equitable.

Dated: October 6, 2004.

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota

/e/ Craig R. Anderson
CRAIG R. ANDERSON
Assistant Attorney General
Atty. Reg. No. 1764

1100 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2128
(651) 296-3424
ATTORNEYS FOR STATE OF MINNESOTA
DEPARTMENT OF REVENUE

VERIFICATION

BRUCE W. VAIL, on behalf of the Minnesota Department of Revenue, respectfully declares to the Court under penalty of perjury that he has read the foregoing facts contained in the notice and memorandum and that they are true and correct to the best of his knowledge, information and belief.

Dated: 10/6/04

Bruce W. Vail
BRUCE W. VAIL

UNITED STATES BANKRUPTCY COURT
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FOURTH DIVISION

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**MEMORANDUM IN SUPPORT OF OBJECTION
TO CONFIRMATION AND MOTION TO DISMISS OR CONVERT**

The State of Minnesota Department of Revenue ("Department") submits this memorandum in support of its motion objecting to confirmation of Debtor's Chapter 13 Plan and motion to dismiss or convert Debtor's Chapter 13 petition to a petition under Chapter 7 of the Bankruptcy Code.

I. FACTS

Following the Department's tax assessment, the Department filed Notices of State Tax Liens in Hennepin County, Minnesota against the Debtor on April 25, 2002 and October 31, 2003. These State Tax Liens secure an income tax liability owed by the Debtor for the years 1993-1996 and 1999-2002. Debtor's Schedule A indicates that there is equity in his real property located in Hennepin County, Minnesota. The Department asserts, through its Proof of Claim, that it has a secured claim in the amount of \$3,218.11, plus statutory interest.

Debtor filed his petition and schedules under Chapter 13 of the Bankruptcy Code on August 24, 2003. The Department filed its Proof of Claim with the Court on or about October 1, 2004, comprised of a priority unsecured claim in the amount of \$910.66 for 2003 income taxes and a secured claim in the amount of \$3,218.11 for income taxes for the years 1995, 1996, and

2000-2002. However, the Debtor's plan improperly proposes to treat the Department's claim only as an unsecured priority claim.

Accordingly, the Department objects to confirmation and requests the dismissal or conversion of this case to a case under Chapter 7.

II. OBJECTION TO CONFIRMATION

THE PLAN FAILS TO COMPLY WITH 11 U.S.C. § 1325(a)(5).

The Debtor's plan fails to comply with 11 U.S.C. § 1325(a)(5) which provides as follows:

(5) with respect to each allowed secured claim provided for by the plan--

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder.

The Debtor's proposed plan does not comply with Section 1325(a)(5), because the plan does not provide for full payment of the Department's secured claim.

Additionally, the plan must provide for interest on secured claims under this statute, unless the claim is paid in full at confirmation. *See In re Haas*, 203 B.R. 573 (Bankr. E.D. PA 1996). Pursuant to Minn. Stat. § 270.75, subds. 1 and 5, the Department's claim accrues interest at a prescribed rate. The Debtor's proposed plan does not provide for the payment of interest on the Department's secured claim. Thus, the Court should deny confirmation of the Debtor's Chapter 13 plan.

III. DISMISSAL OR CONVERSION

The facts that exist in this case are cause for conversion or dismissal under 11 U.S.C. § 1307(c). Pursuant to the provisions of 11 U.S.C. § 1325(a)(5), the Debtor's Chapter 13 plan must provide for full payment of all secured claims. Because Debtor's plan fails properly to provide for the Department's claim, the Department has grounds for dismissal or conversion of the case pursuant to 11 U.S.C. § 1307(c).

WHEREFORE, the State of Minnesota Department of Revenue respectfully moves the Court for an order denying confirmation and/or dismissing this case pursuant to 11 U.S.C. § 1307(c), and for such other and further relief as may be just and equitable.

Dated: October 6, 2004.

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota

/s/ Craig R. Anderson
CRAIG R. ANDERSON
Assistant Attorney General
Atty. Reg. No. 1764

1100 NCL Tower
445 Minnesota Street
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ATTORNEYS FOR STATE OF MINNESOTA
DEPARTMENT OF REVENUE

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CERTIFICATE OF SERVICE

Jane F. Jarvinen, certifies that: I am an employee of the Minnesota Attorney General's Office, Tax Litigation Division; that on October 7, 2004, I served the NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN AND MOTION TO DISMISS OR CONVERT, MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION AND MOTION TO DISMISS OR CONVERT AND ORDER upon each of the following entities, by mailing a copy thereof in envelopes with first class postage prepaid and depositing the same in the United States mail and addressed to each entity as follows:

United States Trustee
1015 U.S. Court House
300 South Fourth Street
Mpls. MN 55415

Ian Traquair Ball
12 South Sixth Street, Suite 326
Minneapolis, MN 55402

Roylene A. Champeaux
Assistant U.S. Attorney
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

John Bradford Schwartz
6000 N. Goldenrod Lane
Plymouth, MN 55442

Jasmine Z. Keller
Attn: Thomas E. Johnson
Chapter 13 Trustee
310 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402

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

/s/ Jane F. Jarvinen
JANE F. JARVINEN

UNITED STATES BANKRUPTCY COURT
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FOURTH DIVISION

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ORDER

At Minneapolis, Minnesota this _____ day of _____ 2004.

This matter came before the court for hearing on the motion of the Minnesota Department of Revenue objecting to confirmation of Debtor's Chapter 13 Plan and Motion to Dismiss or Convert. Appearances were noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure 7052.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Confirmation is denied.
2. The above-captioned Chapter 13 case is dismissed.

BY THE COURT

Dated: _____

UNITED STATES BANKRUPTCY JUDGE