

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:) Chapter 13
)
JOHN B. SCHWARTZ,) Bankruptcy No. 04-44715
)
Debtor.)

OBJECTIONS OF THE UNITED STATES
OF AMERICA TO THE CONFIRMATION OF THE
DEBTOR'S 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 this debtor and Motion to Dismiss:

1. The confirmation hearing is scheduled for October 21, 2004, at 10:30 a.m. at U.S. Bankruptcy Court, U.S. Courthouse, Courtroom 8 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 August 24, 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)(5) 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 a secured claim of \$8,550.19, unsecured priority claim of \$2,869.60 and an unsecured general claim of \$8,812.01 against this debtor. The total claim is \$20,231.80, as set forth in the filed Proof of Claim of the IRS, a copy of which is attached hereto as Exhibit A.

5. This is the debtor's second Chapter 13 filing since December 2003. The debtor filed a Chapter 13 Petition, Bankruptcy No. 03-48608, on December 12, 2003 that was dismissed on April 15, 2004 on the motion of the IRS. The IRS filed a Proof of Claim in the amount of \$17,796.38 in this earlier bankruptcy. The IRS filed objections and a motion to dismiss in this bankruptcy because the Plan failed to properly provide for the IRS priority and secured claims and because the Plan was under funded. See Declaration of Roylene A. Champeaux, attached hereto as Exhibit B.

6. The debtor's Plan fails to provide for payments to fully pay the secured claim of the IRS. As the Plan fails to provide for the secured claim of the IRS and as the IRS has not accepted the Plan, the Plan cannot be confirmed under 11 U.S.C § 1325(a)(5).

7. The Plan is not feasible and does not comply with 11 U.S.C. § 1325(a)(6) in that the debtor does not have sufficient income to fund a Plan that properly provides for payments on the IRS secured and priority claims. The debtor's prior Chapter 13

case was dismissed on April 15, 2004 for exactly the same reasons this Plan should not be confirmed.

8. Failure of the debtor's Plan to provide for full payment of the allowed priority and secured tax claims 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 this debtor be denied confirmation and that the case be dismissed pursuant to 11 U.S.C. § 1307(c).

Dated: October 7, 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

VERIFICATION

I, Sandra Sullivan, Bankruptcy Specialist, Insolvency Unit Specialist of Area Nine (9) Small Business/Self Employed of the Internal Revenue Service, the movant named in the Chapter 13 Bankruptcy, number 04-44715, declares under penalty of perjury that the foregoing information regarding the bankruptcy of John B Schwartz is true and correct according to the best of my knowledge, information, and belief.

Signed: *Sandra Sullivan*
Sandra Sullivan
Bankruptcy Specialist
Insolvency Unit

Dated: *10/01/2004*

Proof of Claim for Internal Revenue Taxes

Form 10
Attachment

Department of the Treasury/Internal Revenue Service

In the Matter of: JOHN B SCHWARTZ
6000 GOLDEN LN N
PLYMOUTH, MN 55442

Docket Number	04-44715
Type of Bankruptcy Case	Chapter 13
Date of Petition	08/24/2004

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.

Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date	Office Location
XXX-XX-5406	INCOME	12/31/1996	09/21/1998	\$1,362.24	\$1,474.34	\$1,305.59	02/14/2003	HENNEPIN E
XXX-XX-5406	INCOME	12/31/1997	09/21/1998	\$2,314.68	\$830.91	\$1,262.43	02/14/2003	HENNEPIN E
				<u>\$3,676.92</u>	<u>\$2,305.25</u>	<u>\$2,568.02</u>		

Total Amount of Secured Claims: **\$8,550.19**

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-5406	INCOME	12/31/2002	04/21/2003	\$1,188.61	\$75.36
XXX-XX-5406	INCOME	12/31/2003	09/20/2004	\$1,578.00	\$27.63
				<u>\$2,766.61</u>	<u>\$102.99</u>

Total Amount of Unsecured Priority Claims: **\$2,869.60**

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-5406	INCOME	12/31/1998	04/28/2003	\$2,009.80	\$929.68
XXX-XX-5406	INCOME	12/31/1999	04/28/2003	\$1,793.77	\$572.97
XXX-XX-5406	INCOME	12/31/2000	04/28/2003	\$591.87	\$122.29
				<u>\$4,395.44</u>	<u>\$1,624.94</u>

Penalty to date of petition on unsecured priority claims (including interest thereon) \$154.00
 Penalty to date of petition on unsecured general claims (including interest thereon) \$2,637.63

Total Amount of Unsecured General Claims: **\$8,812.01**

9328

COURT RECORDING DATA

INTERNAL REVENUE SERVICE
FACSIMILE FEDERAL TAX LIEN DOCUMENT

Lien Recorded : 02/14/2003 - 17:00PM
Recording Number: 7951802
UCC Number :
Liber :
Page :

Area: SMALL BUSINESS/SELF EMPLOYED #9
Lien Unit Phone: (800) 829-3903

IRS Serial Number: 410350872

This Lien Has Been Filed in Accordance with
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer :
JOHN B SCHWARTZ

Residence :
5115 S 13TH AVE
MINNEAPOLIS, MN 55417-1838

With respect to each assessment below, unless notice of lien
is refiled by the date in column(e), this notice shall constitute
the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/1996	521-66-5406	09/21/1998	10/21/2008	2969.38
1040	12/31/1997	521-66-5406	09/21/1998	10/21/2008	2583.68

Filed at: COUNTY RECORDER
HENNEPIN E
MINNEAPOLIS, MN 55487-0083

Total \$ 5553.06

This notice was prepared and executed at ST PAUL, MN
on this, the 13th day of February, 2003.

Authorizing Official:
B STRUDEL

Title:
ACS 15-00-0000

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:)
) Case No. BKY 04-44715
JOHN B. SCHWARTZ,)
) Chapter 13
Debtor.)

DECLARATION OF ROYLENE A. CHAMPEAUX

1. This declaration and the attached exhibits are submitted pursuant to 28 U.S.C. § 1746 in connection with the Objections of the United States of America to the Confirmation of the Debtor's Chapter 13 Plan and the United States Motion to Dismiss. I am the Assistant United States Attorney to whom this case is assigned.

2. Attached are certified copies of the following:

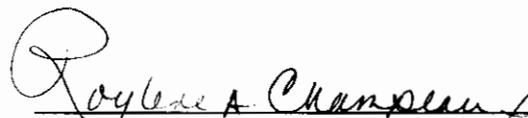
A. Docket - Bankruptcy No. 03-48608

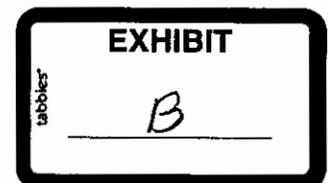
B. Claims Register - Bankruptcy No. 03-48608

C. Objections of the United States of America to the Confirmation of the Debtor's Chapter 13 Plan and Motion to Dismiss and Memorandum in Support of Objections and Motion to Dismiss - Bankruptcy No. 03-48608

3. Pursuant to 28 U.S.C. § 1746 I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 7, 2004 in Minneapolis, Minnesota.


ROYLENE A. CHAMPEAUX



Return to Search Results Page

U.S. Bankruptcy Court
District of Minnesota (Minneapolis)

Bankruptcy Petition #: 03-48608

Date filed: 12/12/03 Date terminated: 6/9/04
Assigned to: JUDGE ROBERT J KRESSEL
Chapter 13 voluntary individual asset

* Attorneys *

JOHN BRADFORD SCHWARTZ
6000 N GOLDENROD LANE
PLYMOUTH, MN 55442
SSN: XXX-XX-5406
* Debtor *

MALIN D GREENBERG
600 S HWY 169 STE 1525
ST LOUIS PARK, MN 55426
952-545-1621

U S TRUSTEE
1015 U S COURTHOUSE
300 S 4TH ST
MINNEAPOLIS, MN 55415
* U S Trustee *

JASMINE Z KELLER
12 S 6TH ST STE 310
MINNEAPOLIS, MN 55402
* Trustee *

Proceedings include all events.

CLOSED

- 12/12/03 1 Voluntary Petition missing documents: Schedules A through J due: 12/29/03 Chapter 13 Plan due on 12/29/03 Proof of Claim (gov) Deadline: 6/9/04 Electronically filed by Malin Greenberg on: Fri Dec 12 15:45:51 2003 (A363) [EOD 12/12/03]
- 12/12/03 2 Declaration of Original Signature Re: [1-1] Electronic Voluntary Partial Petition . (A363) [EOD 12/12/03]
- 12/12/03 -- Added U S TRUSTEE. (auto) [EOD 12/12/03]
- 12/12/03 3 Creditor list supplied by debtor. (A363) [EOD 12/12/03]
- 12/12/03 -- Filing Fee Paid in Full Re: [1-1] Electronic Voluntary Partial Petition (Filing Fee \$ 194.00 Receipt # 152264) (ddj) [EOD 12/15/03]

CERTIFIED COPY - Certified a true copy
4 pages on (date) 10/07/2004
 Lori Vosejka, Acting Clerk, United States
 Bankruptcy Court, District of Minnesota
 (SEAL) BY Wody Paul, Deputy Clerk

DECLARATION
EXHIBIT A

Docket as of October 7, 2004 8:42 am

Page 1

Proceedings include all events. CLOSED
 03-48608 In re: JOHN BRADFORD SCHWARTZ DISMSD 041504

12/15/03 4 Amendment to Petition re: Social Security Number of Debtor JOHN BRADFORD SCHWARTZ. Due to the private nature of the information contained in this document, it is not available for viewing by the public. (slw) [EOD 12/15/03]
 [Edit date 04/12/04]

12/15/03 5 Order Upon Partial Case Filing ; Incomplete Filings Due: 12/29/03 Certificate of Mailing. (ddj) [EOD 12/15/03]

12/26/03 6 Schedules (A363) [EOD 12/26/03]

12/26/03 7 Declaration of Original Signature Re: [6-1] Electronic Schedules . (A363) [EOD 12/26/03]

12/26/03 8 Amended creditor list supplied by Debtor. (A363)
 [EOD 12/26/03]

12/26/03 9 Chapter 13 Plan. (A363) [EOD 12/26/03]

12/26/03 10 Application for Compensation Filed by Attorney for Debtor. Fees: \$ 1250.00. Expenses: \$.00. Proposed Order. (A363)
 [EOD 12/26/03]

12/29/03 11 Notice of Meeting of Creditors under 11 USC 341(a) Scheduled For 9:45 1/28/04 At Ch. 13 Office Minneapolis Confirmation Hearing Set For 10:30 2/19/04 At Courtroom 8 West (Minneapolis) ;Last Day to File Proofs of Claim: 4/27/04 Certificate of Service. (smd) [EOD 12/29/03]

1/8/04 12 Court's Certificate of Mailing Re: [9-1] Chapter 13 Plan . (sd) [EOD 01/08/04]

2/5/04 13 Notice of appearance and request for notice by ROYLENE ANN CHAMPEAUX for IRS (intp) . (sd) [EOD 02/05/04]

2/5/04 15 Objection by Interested Party IRS to Confirmation of [9-1] Plan AND MOTION TO DISMISS. AFFIDAVIT. MEMORANDUM. CERTIFICATE OF SERVICE. PROPOSED ORDER.. (dbs)
 [EOD 02/10/04]

2/9/04 14 Objection by Creditor MINNESOTA DEPARTMENT OF REVENUE to Confirmation of [9-1] Plan AND MOTION TO DISMISS OR CONVERT . Affidavit, Memorandum of Law, Proof of Service, Proposed Order. (A320) [EOD 02/09/04] [Edit date 02/10/04]

2/19/04 -- Minutes Re: [14-1] confirmation of plan Objection by MINNESOTA DEPARTMENT OF REVENUE, [15-1] confirmation of plan Objection by IRS, [9-1] Chapter 13 Plan . HEARING CONTINUED. (dbs) [EOD 02/19/04]

2/19/04 -- Hearing Re: [9-1] Chapter 13 Plan ; CONTINUED Confirmation Hearing Set For 10:30 3/18/04 at Courtroom 8 West (Minneapolis) . (dbs) [EOD 02/19/04]

Docket as of October 7, 2004 8:42 am

Page 2

Proceedings include all events. CLOSED
 03-48608 In re: JOHN BRADFORD SCHWARTZ DISMSD 041504

3/12/04 16 Modified Chapter 13 Plan filed by Debtor JOHN BRADFORD SCHWARTZ. Notice of Preconfirmation modification of chapter 13 plan, Proof of Service, Signature declaration (if debtor is filer). (A363) [EOD 03/12/04]

3/18/04 -- Minutes Re: [14-1] confirmation of plan Objection by MINNESOTA DEPARTMENT OF REVENUE, [15-1] confirmation of plan Objection by IRS, [9-1] Chapter 13 Plan. HEARING CONTINUED TO 4/15/04. (rmg) [EOD 03/18/04]

3/18/04 -- Hearing Re: [16-1] Modified Plan by JOHN BRADFORD SCHWARTZ ; Continued Confirmation Hearing Set For 10:30 4/15/04 at Courtroom 8 West (Minneapolis) . (rmg) [EOD 03/18/04]

3/19/04 17 Modified Chapter 13 Plan filed by Debtor JOHN BRADFORD SCHWARTZ. Notice of Preconfirmation modification of chapter 13 plan, Proof of Service, Signature declaration (if debtor is filer). (A363) [EOD 03/19/04]

4/2/04 18 Letter by Interested Party IRS RENEWING ITS OBJECTION AND MOTION TO DISMISS Re: [17-1] Modified Plan . (dbs) [EOD 04/06/04]

4/15/04 -- Minutes Re: [17-1] Modified Plan by JOHN BRADFORD SCHWARTZ, [14-1] confirmation of plan Objection by MINNESOTA DEPARTMENT OF REVENUE, [15-1] confirmation of plan Objection by IRS . NO APPEARANCES. MATTER TO PROCEED BY DEFAULT. CONFIRMATION DENIED. CASE DISMISSED. (dbs) [EOD 04/15/04]

4/15/04 19 Order Denying [17-1] Modified Plan by JOHN BRADFORD SCHWARTZ AND CASE IS DISMISSED. Certificate of Mailing. (dbs) [EOD 04/15/04]

4/15/04 20 Notice of Dismissal. (dbs) [EOD 04/15/04]

4/20/04 21 Court's Certificate of Mailing Re: [20-1] To Dismiss Notice of . (D_S) [EOD 04/20/04]

5/13/04 22 Chapter 13 trustee's final report in dismissed case. (A324) [EOD 05/13/04]

6/9/04 23 Order Closing Case and Discharging Trustee. (cnn) [EOD 06/09/04]

6/9/04 -- Case Closed. (cnn) [EOD 06/09/04]

Docket as of October 7, 2004 8:42 am

Page 3

Claims Data for Case 3-48608

An 'underlined blue or purple' entry in the 'Creditor' column indicates that there is an image for the entry. The image can be accessed using either the Paperport viewer for MAX documents or the Adobe Acrobat Reader for PDF documents. These viewers may be downloaded free of charge by clicking on the Image Viewer Download hyperlink. Install help is available by clicking on the Viewer Install Help hyperlink. The buttons in the 'Link' column display text associated with the entry.

Return to Previous Page

Claim Date	Amount	Claim Number	Descriptive Text	Creditor	
01/02/04	137848.76	1		<u>WORLD SAVINGS</u> PO BOX 659588 SAN ANTONIO TX 78265-9558	Claim image exists
01/05/04	1053.96	2		<u>FDS BANK</u> TSYS DEBT MGMT INC PO BOX 6700 NORCROSS GA 30091	Claim image exists
01/08/04	19524.38	3		<u>UNIVERSAL ASSURORS</u> 12809 W DODGE ROAD STE 120 OMAHA NE 68154-2101	Claim image exists
01/12/04	1128.86	4		<u>RNB TARGET</u> C/O WEINSTEIN TREIGER & RILEY 2101 4TH AVE STE 900 SEATTLE WA 98121	Claim image exists
01/12/04	2099.68	5		<u>RNB MARSHALL FIELD'S</u> C/O WEINSTEIN TREIGER & RILEY 2101 4TH AVE STE 900 SEATTLE WA 98121	Claim image exists
01/20/04	2290.05	6		<u>GE CAPITAL CONSUMER CARD CO</u> OH3-4233 PO BOX 8726 DAYTON OH 45401-8726	Claim image exists

CERTIFIED COPY - Certified a true copy
2 pages on (date) 10/07/2004
 Lori Vosejka, Acting Clerk, United States
 Bankruptcy Court, District of Minnesota
 (SEAL) BY Woody, Deputy Clerk

DECLARATION
 EXHIBIT B

10/07/2004 8:44 AM

01/20/04	27196.78	7	Please refer to Claim Number 12	<u>IRS</u> 316 N ROBERT ST STOP 5700 ST PAUL MN 55101	Claim image exists
01/29/04	3705.07	8		<u>CITIFINANCIAL INVESTMENT RECOVERY</u> PO BOX 913 OWINGSMILLS MD 21117	Claim image exists
02/09/04	449.31	9		<u>WELLS FARGO BANK MN NA</u> 7000 VISTA DR MAC N8235-049 W DES MOINES IA 50266	Claim image exists
02/10/04	8335.43	10		<u>MN DEPT OF REVENUE BANKRUPTCY SECTION</u> PO BOX 64447 ST PAUL MN 55164	Claim image exists
02/13/04	6745.18	11		<u>WELLS FARGO BANK MN NA</u> 7000 VISTA DR MAC N8235-049 W DES MOINES IA 50266	Claim image exists
02/17/04	17796.38	12	Amendment of Claim Number 7	<u>IRS</u> 316 N ROBERT ST STOP 5700 ST PAUL MN 55101	Claim image exists

U S Bankruptcy Court - District of Minnesota
Last revised: October 24, 2000

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:) Chapter 13
)
JOHN B. SCHWARTZ,) Bankruptcy No. 03-48608
)
Debtor.)

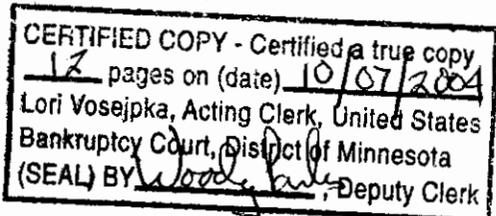
OBJECTIONS OF THE UNITED STATES
OF AMERICA TO THE CONFIRMATION OF THE
DEBTOR'S CHAPTER 13 PLAN AND MOTION TO DISMISS

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 this debtor and Motion to Dismiss:

1. The confirmation hearing is scheduled for February 19, 2004, at 10:30 a.m. at U.S. Bankruptcy Court, U.S. Courthouse, Courtroom 8 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 December 12, 2003. 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)(5) and (6); and § 1307(c)(5) and Fed. R. Bankr. P. 3015. These objections and Motion to Dismiss are



DECLARATION
EXHIBIT C

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 a secured claim of \$8,318.28, unsecured priority claim of \$9,021.39 and an unsecured general claim of \$9,857.11 against these debtors. The total claim is \$27,196.78, as set forth in the filed Proof of Claim of the IRS, a copy of which is attached hereto as Exhibit A.

5. The Plan provides for the full payment of claims entitled to priority under 11 U.S.C. § 507; however, the Plan merely proposes to pay \$6,000.00, rather than the amount of \$9,021.39 as provided by the IRS Proof of Claim. Further the Plan fails to specifically provide for payments on the IRS priority claim as the Plan in paragraph three provides payment will be made "as available" and "when available."

6. The debtor's Plan fails to provide for payments to fully pay the secured claim of the IRS. As the Plan fails to provide for the secured claim of the IRS and as the IRS has not accepted the Plan, the Plan cannot be confirmed under 11 U.S.C § 1325(a)(5).

7. The Plan is not feasible and does not comply with 11 U.S.C. § 1325(a)(6) in that the debtor does not have sufficient income to fund a Plan that provides for payments to the IRS of \$17,339.67 over five years. The debtor's Schedule J shows monthly

income of \$650.00 to fund a Plan. This amount is insufficient to fund a Plan that properly provides for the IRS priority and secured claims.

8. Failure of the debtor's Plan to provide for full payment of the allowed priority and secured tax claims of the IRS are, along with the lack of feasibility, grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(c)(5).

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

Dated: February 4, 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

VERIFICATION

I, Sandra Sullivan, Bankruptcy Specialist, Insolvency Unit of Area Nine (9) Small Business/Self Employed of the Internal Revenue Service, the movant named in the Chapter 13 Bankruptcy Number 03-48608, declares under penalty that the foregoing information regarding the bankruptcy of John B Schwartz is true and correct according to the best of my knowledge, information, and belief.

Signed: Sandra Sullivan
Sandra Sullivan
Bankruptcy Specialist
Insolvency Unit

Dated: January 29, 2004

UNITED STATES BANKRUPTCY COURT		DISTRICT OF MINNESOTA	PROOF OF CLAIM				
Name of Debtor JOHN BRADFORD SCHWARTZ		Case Number 03-48608					
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		<input type="checkbox"/> 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. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.					
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: (605) 226-7216 Creditor #:56665669		THIS SPACE IS FOR COURT USE ONLY					
Account or other number by which creditor identifies debtor: see attachment		Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____					
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____ <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)							
2. Date debt was incurred: see attachment		3. If court judgment, date obtained:					
4. Total Amount of Claim at Time Case Filed: \$ <table style="width:100%; border: none;"> <tr> <td style="text-align: center;"><u>9,857.11</u> (unsecured)</td> <td style="text-align: center;"><u>8,318.28</u> (secured)</td> <td style="text-align: center;"><u>9,021.39</u> (priority)</td> <td style="text-align: center;"><u>27,196.78</u> (Total)</td> </tr> </table> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input checked="" type="checkbox"/> 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.				<u>9,857.11</u> (unsecured)	<u>8,318.28</u> (secured)	<u>9,021.39</u> (priority)	<u>27,196.78</u> (Total)
<u>9,857.11</u> (unsecured)	<u>8,318.28</u> (secured)	<u>9,021.39</u> (priority)	<u>27,196.78</u> (Total)				
5. Secured Claim. <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <u>see below*</u> Value of Collateral: \$ <u>see below*</u> * All of debtor(s) right, title and interest to property - 26 U.S.C § 6321. Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ <u>8,318.28</u>		7. Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>9,021.39</u> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650),* 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). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). * Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.					
6. Unsecured Nonpriority Claim \$ <u>9,857.11</u> <input type="checkbox"/> 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.		THIS SPACE IS FOR COURT USE ONLY					
8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY <div style="border: 2px solid black; padding: 10px; width: fit-content; margin: auto;"> EXHIBIT A </div>					
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.							
Date 01/16/2004	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): <u>Sandra Sullivan</u> Bankruptcy Specialist						

Proof of Claim for Internal Revenue Taxes

Form 10
Attachment

Department of the Treasury/Internal Revenue Service

In the Matter of: JOHN BRADFORD SCHWARTZ
6000 N GOLDENROD LANE
PLYMOUTH, MN 55442

Docket Number	03-48608
Type of Bankruptcy Case	Chapter 13
Date of Petition	12/12/2003

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.

Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date	Office Location
XXX-XX-5406	INCOME	12/31/1996	09/21/1998	\$1,362.24	\$1,439.49	\$1,225.53	02/14/2003	HENNEPIN E
XXX-XX-5406	INCOME	12/31/1997	09/21/1998	\$2,314.68	\$821.26	\$1,155.08	02/14/2003	HENNEPIN E
				\$3,676.92	\$2,260.75	\$2,380.61		

Total Amount of Secured Claims: \$8,318.28

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-5406	INCOME	12/31/2000	04/28/2003	\$2,226.87	\$379.43
XXX-XX-5406	INCOME	12/31/2001	05/05/2003	\$2,176.66	\$200.53
XXX-XX-5406	INCOME	12/31/2002	04/21/2003	\$3,914.61	\$123.29
				\$8,318.14	\$703.25

Total Amount of Unsecured Priority Claims: \$9,021.39

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-5406	INCOME	12/31/1998	04/28/2003	\$2,224.14	\$861.20
XXX-XX-5406	INCOME	12/31/1999	04/28/2003	\$2,025.77	\$566.88
				\$4,249.91	\$1,428.08

Penalty to date of petition on unsecured priority claims (including interest thereon) \$1,908.19
 Penalty to date of petition on unsecured general claims (including interest thereon) \$2,270.93

Total Amount of Unsecured General Claims: \$9,857.11

5245

COURT RECORDING DATA

INTERNAL REVENUE SERVICE
FACSIMILE FEDERAL TAX LIEN DOCUMENT

Lien Recorded : 02/14/2003 - 17:00PM
Recording Number: 7951802
UCC Number :
Liber :
Page :

Area: SMALL BUSINESS/SELF EMPLOYED #9
Lien Unit Phone: (800) 829-3903

IRS Serial Number: 410350872

This Lien Has Been Filed in Accordance with
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer :
JOHN B SCHWARTZ

Residence :
5115 S 13TH AVE
MINNEAPOLIS, MN 55417-1838

With respect to each assessment below, unless notice of lien
is refiled by the date in column(e), this notice shall constitute
the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/1996	521-66-5406	09/21/1998	10/21/2008	2969.38
1040	12/31/1997	521-66-5406	09/21/1998	10/21/2008	2583.68

Filed at: COUNTY RECORDER
HENNEPIN E
MINNEAPOLIS, MN 55487-0083

Total \$ 5553.06

This notice was prepared and executed at ST PAUL, MN
on this, the 13th day of February, 2003.

Authorizing Official:
B STRUDEL
(800) 829-7650

Title:
ACS 15-00-0000

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:) Chapter 13
)
JOHN B. SCHWARTZ,) Case No. BKY 03-48608
)
Debtor.)

MEMORANDUM IN SUPPORT OF OBJECTIONS OF THE
UNITED STATES OF AMERICA TO THE CONFIRMATION
OF DEBTOR'S 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 Debtor's Chapter 13 Plan and Motion to Dismiss.

1. The United States, IRS, has an unsecured priority claim of \$8,318.28, an unsecured priority claim of \$9,021.39, and an unsecured general claim of \$9,857.11 against this debtor. The total claim is in the amount of \$27,196.78 as set forth in the filed 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. The debtor's 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 § 1322(a)(2).

4. The debtor's Plan fails to provide for payment to fully pay the secured claim of the IRS. As the Plan fails to provide for the secured claim of the IRS and as the IRS has not accepted the Plan, the Plan cannot be confirmed under 11 U.S.C. § 1325(a)(5).

5. The debtor's Plan does not comply with 11 U.S.C. § 1325(a)(6) in that the debtor will not be able to make all of the payments under the Plan and comply with the Plan as the debtor has insufficient income to fund his Plan.

6. As proponent to his Plan the debtor bears the burden of proving the factors set forth in 11 U.S.C. § 1325(a). In re Hogue, 78 B.R. 867, 872 (Bankr. S.D. Ohio 1987). In re Wagner, 259 B.R. 694, 700-701 (B.A.P. 8th Cir. 2001). The debtor is unable to establish that his Plan is feasible.

7. Failure of the debtor's Plan to provide for full payment of the allowed priority and secured tax claims of the IRS are, along with lack of feasibility, 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 this debtor be denied confirmation and that the case be dismissed pursuant to 11 U.S.C. § 1307(c).

Dated: February 4, 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:

Chapter 13

JOHN B. SCHWARTZ,

Case Number: 03-48608

Debtor.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

I, Muriel Holland, 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 February 4, 2004, I served the Objections of the United States of America to Confirmation of Debtor's 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:

Malin D. Greenberg, Esq.
600 South Hwy 169, Suite 1525
St. Louis Park, MN 55426

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

Jasmine Z. Keller, Esq.
Chapter 13 Trustee
12 South 6th Street
Suite 310
Minneapolis, MN 55402

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

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

Citifinancial
Investment Recovery
P. O. Box 913
Owingsmills, MD 21117

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

World Savings
P. O. Box 659588
San Antonio, TX 78265-9558

Universal Assurors
12809 W. Dodge Rd., Suite 120
Omaha, NE 681540-2101

RNB Target/Marshall Field's
c/o Weinstein Treiger & Riley
2101 4th Ave., Suite 900
Seattle, WA 98121

GE Capital Consumer Card Co.
OH3-4233
P. O. Box 8726
Dayton, OH 45401-8726

Wells Fargo
P.O. 9246
Des Moines, IA 50306

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

Executed: 2-4-04

Signed: Muriel Holland
Muriel Holland

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:) Chapter 13
)
JOHN B. SCHWARTZ,) Case No. BKY 03-48608
)
)
Debtor.)

ORDER

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

This matter came before the Court for hearing on Confirmation of the debtor's 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 debtor's Plan is not confirmable.

IT IS THEREFORE ORDERED:

1. Confirmation is denied.
2. The case is dismissed.

ROBERT J. KRESSEL
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:) Chapter 13
)
JOHN B. SCHWARTZ,) Case No. BKY 04-44715
)
Debtor.)

MEMORANDUM IN SUPPORT OF OBJECTIONS OF THE
UNITED STATES OF AMERICA TO THE CONFIRMATION
OF DEBTOR'S 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 Debtor's Chapter 13 Plan and Motion to Dismiss.

1. The United States, IRS, has a secured claim of \$8,550.19, unsecured priority claim of \$2,869.60 and an unsecured general claim of \$8,812.01 against this debtor. The total claim is in the amount of \$20,231.80 as set forth in the filed 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. This is the debtor's second Chapter 13 filing since December 2003. The first Chapter 13 case was dismissed on the motion of the IRS on the bases of Plan deficiencies with regard to the IRS claim and feasibility. Four months after the first case

was dismissed, the debtor filed the instant case without resolving the problems that led the first case to be dismissed.

4. The debtor's Plan fails to provide for payment to fully pay the secured claim of the IRS. As the Plan fails to provide for the secured claim of the IRS and as the IRS has not accepted the Plan, the Plan cannot be confirmed under 11 U.S.C. § 1325(a)(5).

5. The debtor's Plan does not comply with 11 U.S.C. § 1325(a)(6) in that the debtor will not be able to make all of the payments under the Plan and comply with the Plan as the debtor has insufficient income to fund a Plan that properly provides for the IRS secured and priority claims.

6. As proponent to his Plan the debtor bears the burden of proving the factors set forth in 11 U.S.C. § 1325(a). In re Hogue, 78 B.R. 867, 872 (Bankr. S.D. Ohio 1987). In re Wagner, 259 B.R. 694, 700-701 (B.A.P. 8th Cir. 2001). The debtor is unable to establish that his Plan is feasible.

7. Failure of the debtor's Plan to provide for full payment of the allowed priority and secured tax claims of the IRS are, along with lack of feasibility, 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 this debtor be denied confirmation and that the case be dismissed pursuant to 11 U.S.C. § 1307(c).

Dated: October 7, 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:

Chapter 13

JOHN B. SCHWARTZ,

Case Number: 04-44715

Debtor.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

I, Muriel Holland, 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 October 8, 2004, I served the Objections of the United States of America to Confirmation of Debtor's 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:

Ian Traquair Ball, Esq.
12 So. 6th Street, Suite 326
Minneapolis, MN 55402

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

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

World Savings Bank
P. O. Box 659558
San Antonio, TX 75265

Jasmine Z. Keller, Esq.
Chapter 13 Trustee
12 So. 6th Street, Suite 310
Minneapolis, MN 55402

Universal Assurors
12809 W. Dodge Rd., Suite 120
Omaha, NE 68154-2101

John B. Schwartz
6000 Goldenrod Lane North
Plymouth, MN 55442

Link Holdings LLC
3010 Hennepin Ave. So., Ste 551
Minneapolis, MN 55408

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

Wells Fargo
7000 Vista Drive
MCA# N8235 049
Des Moines, IA 50266

Citifinancial
Investment Recovery
P. O. Box 914
Owingsmills, MD 21117

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

Executed: October 8, 2004

Signed: /e/ Muriel Holland
Muriel Holland

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:) Chapter 13
)
JOHN B. SCHWARTZ,) Case No. BKY 04-44715
)
Debtor.)

ORDER

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

This matter came before the Court for hearing on Confirmation of the debtor's 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 debtor's Plan is not confirmable.

IT IS THEREFORE ORDERED:

1. Confirmation is denied.
2. The case is dismissed.

ROBERT J. KRESSEL
United States Bankruptcy Judge