

U.S. Department of Justice

*United States Attorney
District of Minnesota*

*600 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415*

August 31, 2004

TO: The Parties Listed On The Attached Unsworn Declaration For
Proof of Service

In re: JUSTIN V. BAERTHEL,
JOANN R. BAERTHEL,
Chapter 13
BKY No. 04-34151
Hearing Date: September 9, 2004, 10:30 a.m.

Enclosed and served upon you is the Objection to
Confirmation of Chapter 13 Plan and Motion to Dismiss of the
United States, on behalf of the Internal Revenue Service,
supporting Memorandum, and proposed Order in the above entitled
proceeding.

Sincerely,

THOMAS B. HEFFELFINGER
United States Attorney

By: /E/David L. Zoss
DAVID L. ZOSS
Special Assistant
United States Attorney
Attorney No. 1501-64
Galtier Plaza, Suite 650
380 Jackson Street
St. Paul, Minnesota 55101
Tel. No. (651) 726-7375

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bankruptcy Case No. 04-34151

JUSTIN V. BAERTHEL,
JOANN R. BAERTHEL,

UNSWORN DECLARATION FOR
FOR PROOF OF SERVICE

The undersigned, an employee of the Office of Chief Counsel, Internal Revenue Service, with office address of Galtier Plaza, Suite 650, 380 Jackson Street, St. Paul, Minnesota, declares that on August 31, 2004, she served the following:

1. Objection to Confirmation of Chapter 13 Plan and Motion to Dismiss of the United States, on behalf of the Internal Revenue Service,
2. Supporting Memorandum
3. Unsworn Declaration for Proof of Service

on each of the entities named below, by U.S. mail (unless otherwise indicated) 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 St. Paul, Minnesota, addressed to each of them as follows:

Jasmine Z. Keller
Chapter 13 Trustee
12 S. Sixth Street, #310
Minneapolis, MN 55402

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

Thomas B. Heffelfinger
United States Attorney
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Justin V. and Joann R. Baerthel
1122 Rose Avenue East
St. Paul, MN 55106

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

Robert J. Everhart
PO Box 120534
New Brighton, MN 55112

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

Executed: August 31, 2004 Signed: /e/Suzanne B. Boerbon

SUZANNE B. BOERBON

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Bankruptcy Case No. 04-34151

JUSTIN B. BAERTHEL,
JOANN R. BAERTHEL,

Chapter 13

Debtors.

**NOTICE OF HEARING, OBJECTION TO CONFIRMATION
OF CHAPTER 13 PLAN AND MOTION TO DISMISS**

To: The debtor(s) and other entities specified in Local Rule
9013-3.

1. The United States of America (USA), on behalf of its
agency, the Internal Revenue Service (IRS), moves the Court for
the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection and
motion on September 9, 2004, at 10:30 a.m. or as soon
thereafter as counsel can be heard, before the Honorable Judge
Dennis D. O'Brien, United States Bankruptcy Judge, in Courtroom
228A, U.S. Courthouse, 316 North Robert Street, St. Paul,
Minnesota 55101.

3. Any response to this motion must be delivered and filed
not later than 24 hours before the time set for the hearing
(excluding Saturdays, Sundays and holidays), or mailed and
filed not later than three days before the hearing date
(excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE
OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE
MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this matter 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 July 15, 2004. The case is now pending in this Court.

5. This objection and motion arises under 11 U.S.C. §§ 1307, 1324 and 1325, Fed. R. Bankr. P. 1017, 3015 and 9014, and Local Rules 1017-2, 3015-3, 9013-1 through 9013-3, and 9017-1. The USA objects to confirmation of the proposed Chapter 13 plan (the "Plan") and moves for dismissal of this case for the reasons stated below.

FACTS

6. The IRS has filed a Proof of Claim in this case, a copy of which is attached hereto as Exhibit A, which reflects the following components and amounts:

Secured Claim:	<u>\$0.00</u>
Unsecured Priority Claim:	<u>\$13,801.40</u>
Unsecured General Claim:	<u>\$ 9,266.08</u>
TOTAL CLAIM:	<u>\$23,067.48</u>

7. No objection to the IRS claim has been filed.

8. The Plan pending confirmation provides for the following payment totals:

IRS Secured Claim:	<u>\$ 0.00</u>
IRS Unsecured Priority Claim:	<u>\$5,201.00</u>
Unsecured General Claims:	<u>\$3,984.00</u>

9. The debtor has not filed income tax returns for 2000, 2001, 2002 and 2003

10. The Plan contains no provisions indicating the debtor will file post-petition tax returns when they are due, or that the debtor will pay post-petition taxes when they are due, during the period in which the Plan is to be performed.

11. The IRS has not accepted the Plan.

OBJECTION TO CONFIRMATION

12. The plan does not meet the requirements of 11 U.S.C. §§ 1322(a)(2) and 1325(a)(1) because it fails to properly provide for the unsecured priority claim of the IRS.

13. The sufficiency and feasibility of the proposed plan cannot be evaluated until the unfiled tax returns are filed and the actual amount(s) of the claim of the IRS can be determined. The Plan may not meet the requirements of 11 U.S.C. §§ 1325(a)(4) and 1325(a)(6) because, as a result of unfiled tax returns, the IRS may be owed additional amounts, presently unknown, which may increase its unsecured priority and unsecured general claims.

Bankruptcy No. 04-34151

14. The Plan does not meet the requirements of 11 U.S.C. § 1325(a)(6) because it fails to provide that during the period in which the Plan is to be performed the debtor will file his tax returns, and pay his tax liabilities, as and when they become due. As submitted, the Plan is not feasible. In this regard, Exhibit B hereto contains appropriate provisions to be added to any modified plan submitted for confirmation.

15. As proposed, the Plan does not meet the requirements for confirmation established by 11 U.S.C. § 1325 and, therefore, confirmation should be denied. Accordingly, the case should be dismissed pursuant to 11 U.S.C. § 1307(c)(5).

WHEREFORE, for the foregoing reasons, the United States prays that the plan of reorganization filed by the debtor not be approved or confirmed and that the case be dismissed or converted pursuant to Bankruptcy Code Section 1307(c)(5).

THOMAS B. HEFFELFINGER
United States Attorney

Date: August 31, 2004

By: /e/David L. Zoss
DAVID L. ZOSS
Special Assistant
United States Attorney
Attorney No. 1502-64
Galtier Plaza, Suite 650
380 Jackson Street
St. Paul, Minnesota 55101
Tele: (651) 726-7375

VERIFICATION

Jane E. Pearson, an employee of the Internal Revenue Service, respectfully declares to the Court under penalty of perjury that the foregoing facts are true and correct according to the best of my knowledge, information and belief.

Executed on : August 26, 2004

Signed:



Jane E. Pearson
Bankruptcy Specialist
316 North Robert Street
St. Paul, MN 55101

UNITED STATES BANKRUPTCY COURT		DISTRICT OF MINNESOTA	PROOF OF CLAIM
Name of Debtor JUSTIN V & JOANN R BAERTHEL		Case Number 04-34151	
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: (651) 312-7987 Creditor #:5977447		<i>THIS SPACE IS FOR COURT USE ONLY</i>	
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: \$ <u>9,266.08</u> (unsecured) <u>13,801.40</u> (secured) <u>23,067.48</u> (Total) 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.			
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		7. Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>13,801.40</u> Specify the priority of the claim: <input type="checkbox"/> 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). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> 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). <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 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
6. Unsecured Nonpriority Claim \$ <u>9,266.08</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.		<i>THIS SPACE IS FOR COURT USE ONLY</i>	
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.			
Date 08/19/2004	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): _____ /s/ LINDA GANYO 41-02872, 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

Form 10
Attachment

Department of the Treasury/Internal Revenue Service

In the Matter of: JUSTIN V & JOANN R BAERTHEL
1122 ROSE AVENUE EAST
ST PAUL, MN 55106

Docket Number	04-34151
Type of Bankruptcy Case	Chapter 13
Date of Petition	07/15/2004

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.

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-5121	INCOME	12/31/2001	1 UNASSESSED-NO RETURN	\$5,512.80	\$0.00
XXX-XX-0292	INCOME	12/31/2002	3 UNASSESSED LIABILITY	\$2,001.00	\$117.60
XXX-XX-5121	INCOME	12/31/2002	1 UNASSESSED-NO RETURN	\$3,839.60	\$0.00
XXX-XX-5121	INCOME	12/31/2003	1 UNASSESSED-NO RETURN	\$2,330.40	\$0.00
				<u>\$13,683.80</u>	<u>\$117.60</u>

Total Amount of Unsecured Priority Claims: **\$13,801.40**

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-5121	INCOME	12/31/1996	11/08/1999	\$395.70	\$522.55
XXX-XX-5121	INCOME	12/31/1997	11/08/1999	\$2,401.00	\$1,293.10
XXX-XX-5121	INCOME	12/31/2000	1 UNASSESSED-NO RETURN	\$2,443.60	\$0.00
				<u>\$5,240.30</u>	<u>\$1,815.65</u>

Penalty to date of petition on unsecured general claims (including interest thereon) \$2,210.13

Total Amount of Unsecured General Claims: **\$9,266.08**

1 UNASSESSED TAX LIABILITIES(S) HAVE BEEN LISTED ON THIS CLAIM BECAUSE OUR RECORDS SHOW NO RETURN(S) FILED. WHEN THE DEBTOR(S) FILES THE RETURN OR PROVIDES OTHER INFORMATION AS REQUIRED BY LAW THE CLAIM WILL BE AMENDED.
3 UNASSESSED LIABILITY TAX CLAIM HAS BEEN FILED BECAUSE OF A PROPOSED ADDITIONAL ASSESSMENT TO THE TAX MADE BY AN EXAMINATION OF THE DEBTORS TAX RETURN FOR THE PERIOD STATED.

In re: JUSTIN V. BAERTHEL,
JOANN R. BAERTHEL
Chapter 13 BKY No. 04-34151

11. **OTHER PROVISIONS -**

The debtors will file as and when due any and all post-petition federal tax returns of any kind; and will timely pay as and when due, any and all post-petition federal tax liabilities of any kind. Debtors' failure to file as and when due any and all post-petition federal tax returns of any kind; or fail to timely pay as and when due any and all post-petition federal tax liabilities of any kind, will constitute grounds for dismissal.

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: Bankruptcy Case No. 04-34151

JUSTIN V. BAERTHEL,
JOANN R. BAERTHEL,

Chapter 13

Debtors.

**MEMORANDUM IN SUPPORT OF
OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN
AND MOTION TO DISMISS**

THE UNITED STATES OF AMERICA, by its attorney, Honorable Thomas B. Heffelfinger, United States Attorney for the District of Minnesota, submits this memorandum in support of its Objection to Confirmation of Debtors Chapter 13 Plan and Motion to Dismiss.

FACTS

The relevant facts are set forth in the Objection to Confirmation and Motion to Dismiss and, to avoid duplication, are incorporated by reference as if fully set forth in this memorandum.

OBJECTION TO CONFIRMATION

Allowance of Claim. Since no objection to the claim of the IRS has been filed, the claim is deemed allowed, pursuant to section 502(a) of the Bankruptcy Code.

IRS Unsecured Priority Claim. Pursuant to 11 U.S.C. § 1322(a)(2) all claims entitled to priority under 11 U.S.C. § 507 must be paid in full. Under 11 U.S.C. § 1325(a)(1), to be confirmed, a plan must comply with the provisions of Chapter 13 and other applicable provisions of the Bankruptcy Code. Further,

Bankruptcy No. 04-34151

11 U.S.C. § 1325(a)(6) requires the debtors to comply with the provisions of a plan. In light of these provisions, to be confirmable, a plan must provide that all claims entitled to priority under 11 U.S.C. § 507 will be paid in full and, further, must require the payment of sufficient funds into the plan so as to fully pay the claims entitled to priority. Although the Plan specifies that all priority claims will be paid in full, it fails to require payments specifically designated for the IRS priority claim to fully pay that claim. Nor does the plan otherwise provide for the payment of sufficient funds into the Plan from which the IRS priority claim could be fully paid. Consequently, this plan is not confirmable under 11 U.S.C. §§ 1325(a)(1) and (6).

Feasibility - Unfiled Tax Returns. Because the debtors have not filed income tax returns for 2000, 2001, 2002 and 2003, the actual amount of their tax liabilities for those years is unknown. The IRS may be owed an additional amount, presently unknown, which increase its unsecured priority and unsecured general claims against the debtors. Any tax liabilities due to the IRS for 2001, 2002 and 2003 are unsecured priority taxes which must be paid in full; while any tax liabilities due the IRS for 2000 are unsecured general taxes.

The debtors should be required to file their 2000, 2001, 2002 and 2003 tax returns so that the Plan can be properly

Bankruptcy No. 04-34151

evaluated. Whether the Plan complies with 11 U.S.C. § 1325(a)(1), (4) and (6) cannot be determined until the actual amount and classification of the debtors' unpaid tax liabilities is determined.

Feasibility - Post-Petition Tax Compliance. Under 11 U.S.C. § 1325(a)(6), for a plan to be confirmed, the debtors must be able to make all payments under the plan and comply with the plan. For a proposed plan to be feasible the debtors must be able to pay both the payments called for by the plan and their post-petition tax liabilities as they arise. Otherwise, either the debtors might default on the plan in order to pay or, perform the plan and not pay the post-petition taxes as they come due. In the latter case the tax debts paid under the plan will simply be replaced with new, unpaid tax debts incurred while plan is being performed. But, in either case, the fresh start contemplated by the bankruptcy process will not occur. Consequently, a proposed plan that does not provide for post-petition tax compliance by the debtors is not feasible and, therefore, not confirmable under 11 U.S.C. § 1325(a)(6).

This proposed plan fails to provide that during the life of the plan the debtors will file post-petition tax returns, and pay post-petition tax liabilities, as and when they become due. To be confirmable, the proposed plan should be modified to contain provisions providing for post-petition tax compliance.

MOTION TO DISMISS

The failure of the debtors' plan to meet the requirements of 11 U.S.C. §§ 1325(a)(1), (4), and (6) is grounds for dismissal of this case pursuant to 11 U.S.C. § 1307(c).

CONCLUSION

For the foregoing reasons confirmation of the Plan should be denied and this case should be dismissed.

THOMAS B. HEFFELFINGER
United States Attorney

Date: August 31, 2004

/e/David L. Zoss
DAVID L. ZOSS
Special Assistant
United States Attorney
Attorney No. 1502-64
Galtier Plaza, Suite 650
380 Jackson Street
St. Paul, Minnesota 55101
Tele: (651) 726-7375

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: Bankruptcy Case No. 04-34151

JUSTIN V. BAERTHEL,
JOANN R. BAERTHEL,

Chapter 13

Debtors.

ORDER

At St. Paul, Minnesota, this _____ day of _____,
2004.

This matter came before the Court for hearing on Confirmation of Debtors' Plan. The United States on behalf of the Internal Revenue Service filed an Objection to Confirmation and Motion to Dismiss and requested an Order denying confirmation and for an Order dismissing this case. David L. Zoss 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.

Dennis D. O'Brien
United States Bankruptcy Judge