

**U.S. Department of Justice**

*United States Attorney  
District of Minnesota*

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

**October 12, 2004**

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

In re: JAMES C. STITES  
Chapter 13  
BKY No. 04-34371  
Hearing Date: October 14, 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. 04-34371

JAMES C. STITES,

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 10/12/2004, 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

James C. Stites  
6945 MacBeth Circle  
Woodbury MN 55125

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

David D. Kingsbury, Attorney  
14827 Energy Way  
Apple Valley MN 55124

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

Executed: 10/12/2004 Signed: /e/ Elizabeth Meyer  
ELIZABETH MEYER

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re: Bankruptcy Case No. 04-34371  
JAMES C. STITES, Chapter 13  
Debtor.

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

To: The debtor 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 October 14, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien, United States Bankruptcy Judge, in Courtroom 228C, 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 28, 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>\$11,929.62</u>
Unsecured General Claim:	<u>\$ 6,890.43</u>
TOTAL CLAIM:	<u>\$18,820.05</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>\$ 6,565.00</u>
Unsecured General Claims:	<u>\$ 996.00</u>

9. The debtor has not filed an income tax return for 2002.

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 return is filed and the actual amount 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 an unfiled tax return, the IRS may be owed an additional amount, presently unknown, which may increase its unsecured priority and/or unsecured general claim.

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

Bankruptcy No. 04-34371

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: 10/12/04

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

UNITED STATES BANKRUPTCY COURT		DISTRICT OF MINNESOTA	<b>PROOF OF CLAIM</b>				
Name of Debtor <b>JAMES C STITES</b>		Case Number <b>04-34371</b>					
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): <b>Department of the Treasury - Internal Revenue Service</b>		<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: <b>Internal Revenue Service Internal Revenue Service 316 North Robert Street Stop 5700STP St. Paul, MN 55101 Telephone number: (605) 226-7216 Creditor #:5993266</b>		THIS SPACE IS FOR COURT USE ONLY					
Account or other number by which creditor identifies debtor: <b>see attachment</b>		Check here <input type="checkbox"/> replaces if this claim <input checked="" type="checkbox"/> amends a previously filed claim, dated: <b>08/18/2004</b>					
<b>1. Basis for Claim</b> <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)							
<b>2. Date debt was incurred:</b> <b>see attachment</b>		<b>3. If court judgment, date obtained:</b>					
<b>4. Total Amount of Claim at Time Case Filed: \$</b> <table style="width:100%; border: none;"> <tr> <td style="text-align: center;"><u>6,890.43</u> (unsecured)</td> <td style="text-align: center;"><u>11,929.62</u> (secured)</td> <td style="text-align: center;"><u>11,929.62</u> (priority)</td> <td style="text-align: center;"><u>18,820.05</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>6,890.43</u> (unsecured)	<u>11,929.62</u> (secured)	<u>11,929.62</u> (priority)	<u>18,820.05</u> (Total)
<u>6,890.43</u> (unsecured)	<u>11,929.62</u> (secured)	<u>11,929.62</u> (priority)	<u>18,820.05</u> (Total)				
<b>5. Secured Claim.</b> <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: \$ _____		<b>7. Unsecured Priority Claim.</b> <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>11,929.62</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.					
<b>6. Unsecured Nonpriority Claim \$</b> <u>6,890.43</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.							
<b>8. Credits:</b> 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					
<b>9. Supporting Documents:</b> 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.							
<b>10. Date-Stamped Copy:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.							
Date <b>09/21/2004</b>	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> _____ /s/ SANDRA SULLIVAN 46-00488, Bankruptcy Specialist						

**EXHIBIT** A

# Proof of Claim for Internal Revenue Taxes

Form 10  
Attachment

Department of the Treasury/Internal Revenue Service

In the Matter of: JAMES C STITES  
6945 MACBETH CIRCLE  
WOODBURY, MN 55125

Docket Number	04-34371
Type of Bankruptcy Case	Chapter 13
Date of Petition	07/28/2004

Amendment No. 1 to Proof of Claim dated 08/18/2004

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-9842	INCOME	12/31/2001	10/04/2004	\$6,217.00	\$762.20
XXX-XX-9842	INCOME	12/31/2002	1 UNASSESSED-NO RETURN	\$4,669.00	\$281.42
				<u>\$10,886.00</u>	<u>\$1,043.62</u>
<b>Total Amount of Unsecured Priority Claims:</b>					<b>\$11,929.62</b>

## Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-9842	INCOME	12/31/1997	06/01/1998	\$0.00	\$372.19
XXX-XX-9842	INCOME	12/31/2000	05/28/2001	\$1,751.00	\$322.36
				<u>\$1,751.00</u>	<u>\$694.55</u>
Penalty to date of petition on unsecured priority claims (including interest thereon) . . . . .				\$3,896.94	
Penalty to date of petition on unsecured general claims (including interest thereon) . . . . .				\$547.94	
<b>Total Amount of Unsecured General Claims:</b>					<b>\$6,890.43</b>

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.

**VERIFICATION**

I, Sandra Sullivan, an employee of the Internal Revenue Service, respectfully declare 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: 09/21/2004

Signed: *Sandra Sullivan*  
Sandra Sullivan  
Bankruptcy Specialist  
Internal Revenue Service  
115 4<sup>th</sup> Ave SE  
Aberdeen SD 57401

In re: JAMES C. STITES  
Chapter 13 BKY No. 04-34371

11. **OTHER PROVISIONS -**

The debtor 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. Debtor 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. 04-34371  
JAMES C. STITES, Chapter 13  
Debtor.

**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 James C. Stites 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. 04-34371

11 U.S.C. § 1325(a)(6) requires the debtor(s) 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 debtor has not filed an income tax return for 2002, the actual amount of his tax liability for that year is unknown. The IRS may be owed an additional amount, presently unknown, which increases its unsecured priority and unsecured general claims against the debtor. Any tax liability due to the IRS for 2002 is unsecured priority tax which must be paid in full.

The debtor should be required to file his 2002 tax return so that the Plan can be properly 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 debtor's unpaid tax liability is determined.

Feasibility - Post-Petition Tax Compliance. Under 11 U.S.C. § 1325(a)(6), for a plan to be confirmed, the debtor must be able to make all payments under the plan and comply with the plan. For a proposed plan to be feasible the debtor must be able to pay both the payments called for by the plan and his post-petition tax liabilities as they arise. Otherwise, either the debtor 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 debtor 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 debtor 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 debtor's 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).

Bankruptcy No. 04-34371

**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: 10/12/04

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

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

In re: Bankruptcy Case No. 04-34371  
James C. Stites Chapter 13  
Debtor.

ORDER

At St. Paul, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_,  
2004.

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

IT IS THEREFORE ORDERED:

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

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DENNIS D. O'BRIEN  
United States Bankruptcy Judge