

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

In re:)
) Chapter 13
DAVID ADAMS OPALINSKI and)
NORMA JEAN OPALINSKI,) Case No. BKY 04-50915
)
Debtors.)

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

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

1. The confirmation hearing is scheduled for November 29, 2004, at 10:00 a.m. at U.S. Bankruptcy Court, Courtroom 2, 416 U.S. Courthouse, 515 West 1st Street, Duluth, Minnesota 55802.

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 11, 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)(6); and 1307(c) and Fed. R. Bankr. P. 3015. These objections and Motion to Dismiss are filed under Fed.

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

4. The United States, IRS, has an unsecured priority claim of \$185,206.72 and an unsecured general claim of \$108,650.60 against these debtors. The total claim is \$293,857.32, as set forth in the filed Proof of Claim of the IRS, a copy of which is attached hereto as Exhibit A.

5. The IRS may have additional priority claims due from these debtors, but they are undetermined because the Debtor David Adams Opalinski has not filed federal tax returns for the years 1999, 2000, 2001, 2002 and 2003 and Debtor Norma Jean Opalinski has not filed federal tax returns for the years 1998, 2002 and 2003 as explained in the Affidavit of James L. Eliason, which is attached as Exhibit B.

6. The Plan provides for the full payment of claims entitled to priority under 11 U.S.C. § 507; however, the Plan merely estimates the amount owed to the IRS as \$20,000.00 and proposes to pay \$20,000.00. While the Plan provides that the trustee will pay the amounts actually owed as priority claims, the actual amount of the priority claim of the IRS cannot be determined until these debtors file their federal income tax returns for the years 2000, 2001, 2002 and 2003.

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

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

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

Date: October 28, 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	PROOF OF CLAIM			
Name of Debtor DAVID ADAMS & NORMA JEAN OPALINSKI		Case Number 04-50915	2004 OCT 25 AM 11:23 U.S. BANKRUPTCY COURT DISTRICT OF MINNESOTA <div style="font-size: 2em; border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; display: flex; align-items: center; justify-content: center; margin: 20px auto;">4</div> THIS SPACE IS FOR COURT USE ONLY			
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 316 North Robert Street Stop 5700STP St. Paul, MN 55101		Telephone number: (651) 312-7995 Creditor #: 6040352				
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 _____ <div style="text-align: center;">(date) (date)</div>				
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; width: 33%;"><u>108,650.60</u> <small>(unsecured)</small></td> <td style="text-align: center; width: 33%;"><u>185,206.72</u> <small>(priority)</small></td> <td style="text-align: center; width: 33%;"><u>293,857.32</u> <small>(Total)</small></td> </tr> </table> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input 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>108,650.60</u> <small>(unsecured)</small>	<u>185,206.72</u> <small>(priority)</small>	<u>293,857.32</u> <small>(Total)</small>
<u>108,650.60</u> <small>(unsecured)</small>	<u>185,206.72</u> <small>(priority)</small>	<u>293,857.32</u> <small>(Total)</small>				
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>185,206.72</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)(____): _____ <small>* 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.</small>				
6. Unsecured Nonpriority Claim \$ <u>108,650.60</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.						
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: 0 auto;"> EXHIBIT <div style="border: 1px solid black; padding: 5px; display: inline-block;">A</div> </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 10/22/2004	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): <div style="text-align: center;"> _____ /s/ JAMES ELIASON 41-02577, Bankruptcy Specialist </div>					

Proof of Claim for Internal Revenue Taxes

Form 10
Attachment

Department of the Treasury/Internal Revenue Service

In the Matter of: DAVID ADAMS & NORMA JEAN OPALINSKI
230 2 ST SE
CROSBY, MN 56441

Docket Number	04-50915
Type of Bankruptcy Case	Chapter 13
Date of Petition	08/11/2004

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-7026	INCOME	12/31/2000	1 UNASSESSED-NO RETURN	\$103,441.80	\$0.00
XXX-XX-7026	INCOME	12/31/2001	1 UNASSESSED-NO RETURN	\$25,161.00	\$0.00
XXX-XX-7026	INCOME	12/31/2002	1 UNASSESSED-NO RETURN	\$26,419.00	\$0.00
XXX-XX-7784*	INCOME	12/31/2002	1 UNASSESSED-NO RETURN	\$1,192.32	\$0.00
XXX-XX-7026	INCOME	12/31/2003	1 UNASSESSED-NO RETURN	\$27,740.66	\$0.00
XXX-XX-7784*	INCOME	12/31/2003	1 UNASSESSED-NO RETURN	\$1,251.94	\$0.00
				<u>\$185,206.72</u>	<u>\$0.00</u>

Total Amount of Unsecured Priority Claims: **\$185,206.72**

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-7784*	INCOME	12/31/1998	1 UNASSESSED-NO RETURN	\$993.60	\$0.00
XXX-XX-7026	INCOME	12/31/1999	1 UNASSESSED-NO RETURN	\$107,657.00	\$0.00
				<u>\$108,650.60</u>	<u>\$0.00</u>

Total Amount of Unsecured General Claims: **\$108,650.60**

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.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION
BKY No. 04-50915

DAVID ADAMS OPALINSKI and)
NORMA JEAN OPALINSKI,)
Plaintiffs,)
v.)
INTERNAL REVENUE SERVICE,)
Defendant.)

AFFIDAVIT

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, James L. Eliason, Bankruptcy Specialist, being first duly sworn,
deposes and says:

1. I am employed by Territory 9 of the Internal Revenue Service Small Business/Self-Employed Division.
2. One of my duties is to review Chapter 13 Bankruptcy petitions and the Government records regarding the petitioner.
3. I have determined that David Adams Opalinski has not filed the income tax returns for the calendar years ending December 31, 1999, December 31, 2000, December 31, 2001, December 31, 2002 and December 31, 2003 and Norman Jean Opalinski not filed the income tax returns for the calendar years ending December 31, 1998, December 31, 2002 and December 31, 2003.

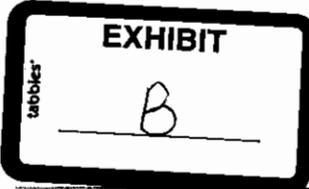
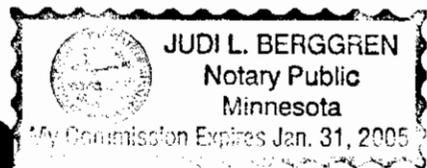
FURTHER YOUR AFFIANT SAYETH NOT


James L. Eliason

Subscribed and Sworn to Before Me

This 25th Day of October, 2004.


NOTARY



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

In re:)
) Chapter 13
DAVID ADAMS OPALINSKI and)
NORMA JEAN OPALINSKI,) Case No. BKY 04-50915
)
Debtors.)

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

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

1. The United States, IRS, has an unsecured priority claim of \$185,206.72 and an unsecured general claim of \$108,650.60 against these debtors. The total claim is in the amount of \$293,857.32 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. As David Adams Opalinski has not filed federal tax returns for the years 1999, 2000, 2001, 2002 and 2003 and Norma

Jean Opalinski has not filed federal tax returns for the years 1998, 2002 and 2003 the actual tax liabilities are unknown. Any tax liabilities due for years 2000, 2001, 2002 and 2003 would be priority taxes, which must be paid in full. These debtors should be required to file these returns so that the tax liabilities can be fully determined and properly treated by the Plan.

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

5. The debtors' Plan is not feasible because the debtors cannot establish that they can make all the payments under the Plan and comply with the Plan. As proponents of their Plan, the debtors bear 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) and In re Wagner, 259 B.R. 694, 700-701 (B.A.P. 8th Cir. 2001).

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

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

Date: October 28, 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

DAVID ADAMS OPALINSKI and
NORMA JEAN OPALINSKI,

Case Number: 04-50915

Debtors.

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 28, 2004, I served the Objections of the United States of America to Confirmation of Debtors' Chapter 13 Plan and Motion To Dismiss, Memorandum in Support of Objections and Motion to Dismiss 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:

Stephen L. Heller, Esq.
Heller Law Firm
606 25th Ave. So., Ste. 110
St. Cloud, MN 56301

Shapiro & Nordmeyer
% Ameriquest Mortgage
7300 Metro Blvd., Ste. 390
Edina, MN 55439-2306

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

Weinstein Treiger & Riley
% B-Line LLC
2101 Fourth Ave., Ste 900
Seattle, WA 98121

Michael Farrell
Chapter 13 Trustee
P. O. Box 519
Barnesville, MN 56514

Adam J. Bass, Esq.
Buchalter, Nemer, Fields
& Younger
18400 Von Karman Ave., Ste 800
Irvine, CA 92612

David Adams Opalinski and
Norma Jean Opalinski
230 2nd Street SE
Crosby, MN 56441

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

Ameriquest Mortgage Company
Attn: John McKoy
P. O. Box 51382
Los Angeles, CA 90051-5682

UNSWORN DECLARATION FOR PROOF OF SERVICE - Cont.

Re: DAVID ADAMS OPALINSKI and
NORMA JEAN OPALINSKI
Bky No. 04-50915

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

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

Executed: October 28, 2004 Signed: /e/ Muriel Holland
Muriel Holland

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

In re:)
) Chapter 13
DAVID ADAMS OPALINSKI and)
NORMA JEAN OPALINSKI,) Case No. BKY 04-50915
)
Debtors.)

ORDER

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

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

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

IT IS THEREFORE ORDERED:

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

ROBERT J. KRESSEL
United States Bankruptcy Judge