

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil No. 4-95-433
Bky. No. 94-1716-NCD

In re:

Pauline M. Carroll,

Debtor,

Pauline M. Carroll,

Appellant,

V.

ORDER

The United States,
Internal Revenue Service,

Appellee.

Pauline M. Carroll, 11700 98th Avenue North, Maple Grove,
MN 55369, pro se appellant.

David L. Lillehaug, United States Attorney, 234 U.S. Courthouse,
110 South Fourth Street, Minneapolis, MN 55401 and John A.
Marrella, Trial Attorney, Tax Division, U.S. Department of
Justice, P.O. Box 7328, Ben Franklin Station, Washington, D.C.
20044, counsel for appellee.

This matter is before the court on the appeal of Pauline M. Carroll. from the order of Bankruptcy Judge Nancy C. Dreher dated June 1, 1995. In Judge Dreher's order, she denied the appellant's confirmation plan and dismissed the case. Judge Dreher also denied a motion for a stay pending appeal. Based upon a review of the record, the file and the proceedings herein, and for the reasons stated below, the court affirms the order of the bankruptcy court in its entirety.

Carroll argues that the bankruptcy court erred in denying confirmation of her Chapter 13 plan and dismissing her case. She asserts that the IRS failed to provide notice of the claim it filed in her bankruptcy proceeding and argues that the claim should have been disallowed.(FN1) The IRS timely filed its proof of claim on May 3, 1995. The IRS argues that a creditor is not required to serve a debtor with its proof of claim. See 11 U.S.C. Sections 501 and 502. The IRS also contends that Carroll's reliance on 26 C.F.R. Section 601.109(a) (2) is misplaced. Section 601.109(a) (2) only requires notice to the taxpayer when the IRS makes an assessment after the commencement of a bankruptcy proceeding. Because no such postpetition assessment was made, the IRS argues that the regulation does not apply. The court agrees and concludes that IRS was not required to have given Carroll notice of its claim.

Carroll also contends that the IRS failed to present

proof of the taxing statute and particular tax being assessed. At the hearing before Judge Dreher, Karl Granse, Carroll's power of attorney, sought an evidentiary hearing to challenge the IRS's constitute an abuse of discretion. Accordingly, the court affirms Judge Dreher's order dated June 1, 1995, in its entirety.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 14, 1995

David S. Doty, Judge
United States District Court

(FN1) In her brief, Carroll cites to 26 C.F.R. Section 601.10.9
(a)(2) which provides in part:

(T]he district director will, promptly after ascertaining the existence of any outstanding Federal tax liability against a taxpayer in any proceeding under the Bankruptcy Act or receivership proceeding . . . file a proof of claim covering such liability in the court in which the proceeding is pending. Such a claim may be filed regardless of whether the unpaid taxes involved have been assessed. Whenever an immediate assessment is made of any income, estate, or gift tax after the commencement of a proceeding the district director will send to the taxpayer notice and demand for payment together with a copy of such claim.