

DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Chapter 13

James Leo Gillespie, Jr.

BKY 3-94-1805

Debtor.

ORDER

This matter came on for hearing April 2, 1996, on Debtor's objection to the priority of an IRS claim. Appearances were noted on the record. The Court, having reviewed and considered the moving papers, arguments of counsel, and otherwise being fully advised on the matter, now enters this ORDER in accordance with the Federal and Local Rules of Bankruptcy Procedure.

I.
FACTS

The Debtor's \$31,745.00 child support obligation, owed to the Department of Health and Human Services, was assigned to the Internal Revenue Service for collection pursuant to 26 U.S.C. Section 6305 on September 20, 1993.(FN1) The Debtor commenced his Chapter 13 case approximately seven months later on April 21, 1994. The Debtor's plan was confirmed by the Court on June 9, 1994. The child support obligation was not specifically mentioned in the plan, but it had been scheduled by the Debtor as a general unsecured claim owing to the Wayne County Child Support and Enforcement Division.(FN2) The IRS filed a proof of claim on July 27, 1994, on behalf of the United States, claiming priority for the child support obligation, as if it was a tax of the type described in 11 U.S.C. Section 507(a)(8) (C) and (D). The Debtor brought this motion on January 19, 1996, objecting to the priority status of the claim.

II.
ISSUE

Is the Debtor's obligation for child support a Section 507(a)(8) (C) and (D) priority claim in the hands of the Internal Revenue Service, as assignee pursuant to 26 U.S.C. Section 6305? It is.

III.
ANALYSIS

26 U.S.C. Section 6305(a)(1) provides:

(a) In general.- Upon receiving a certification from the Secretary of Health, Education, and Welfare, under section 452(b) of the Social Security Act with respect to any individual, the Secretary shall assess and collect the amount certified by the Secretary of Health, Education, and Welfare, in the same manner, with the same powers, and (except as provided in this section) subject to the same limitations as if such amount

were a tax imposed by subtitle C the collection of which would be jeopardized by delay, except that -

(1) no interest or penalties shall be assessed or collected.

1. The Arguments.

The Debtor argues that the obligation is not entitled to priority status in the bankruptcy case for two reasons. First, the Debtor asserts that 26 U.S.C. Section 6305 is a debt collection statute and does not describe an assigned child support claim as having priority status in bankruptcy. Second, the Debtor argues that the obligation is not entitled to priority because 11 U.S.C. Section 507(a), prior to the enactment of the Bankruptcy Reform Act of 1994, did not describe child support debts as priority claims; and, the new Section 507(a)(7) specifically excepts assigned child support arrearages from priority.

The IRS argues that consideration of 26 U.S.C. Section 6305 and 11 U.S.C. Section 507(a)(8) together, indicates that this type of child support obligation, when assigned to the IRS for collection, is entitled to priority status in a bankruptcy case. The IRS contends that Congress intended to elevate the status of obligations of this kind by giving the IRS enhanced powers to collect the assigned child support obligations "as if" they were taxes under Subtitle C of the Internal Revenue Code. The IRS argues that the 1994 amendment, Section 507(a)(7), does not apply to this case because the Debtor filed bankruptcy prior to the amendment.(FN3) The Court agrees with the IRS, and finds that the Debtor's child support obligation assigned to the IRS for collection is a priority claim in the Debtor's bankruptcy case.

2. Obligation Afforded Tax-like Treatment Under 26 U.S.C. Section 6305.

The Debtor and the IRS agree that the Debtor's assigned child support obligation is not a tax. However, 26 U.S.C. Section 6305 states that such assignments to the IRS are to be collected by the IRS as if the assignments were taxes under Subtitle C of the Internal Revenue Code.(FN4)

The Debtor argues that Section 6305 mentions nothing about priority status of the assigned obligation; and, therefore, the debt cannot be given such a status in a bankruptcy case. According to the Debtor, the extra collection powers given to the IRS apply only for collection purposes outside bankruptcy. However, Section 6305 cloaks the debt, in the charge of the IRS, with the attributes of a Subtitle C tax for collection purposes in whatever collection environment the IRS finds itself, including bankruptcy. The IRS is entitled to file its claim, and collect it, in the bankruptcy as if it were a Subtitle C tax. See: *In re Fullmer*, 962 F.2d 1463, 1470 (10th Cir. 1992) ("[The debtor] argues that...the assessment did not have priority as a tax claim pursuant to 11 U.S.C. Section 507(a)(7) [now Section 507(a)(8)]....Section 6305(a) provides, however, that the IRS is to collect the child support assessments in the same manner as if the amount were a tax imposed by Subtitle C of the Internal Revenue Code. Subtitle C deals with employment taxes, which are entitled to priority... under Section 507(a)(7) [now Section 507(a)(8)]....")

3. IRS Entitled To File The Claim And Be Paid As If The Debt Was A Tax.

11 U.S.C. Section 507(a)(8) (C) and (D) provide:

(a) The following expense and claims have priority in the following order:

(8) Eighth, allowed unsecured claims of governmental units,

only to the extent that such claims are for-

(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (3) of this subsection, whether the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

Notwithstanding *In re Fullmer*, the Debtor argues that 11 U.S.C. Section 507(a)(8) cannot apply to child support obligations to give them priority because they do not fit within either (C) or (D). According to the Debtor, the IRS cannot tie the claim to a particular provision of the Bankruptcy Code as required by *In re Suburban Motor Freight, Inc.*, 998 F.2d 338, 339 (6th Cir. 1993) ("creditors...must directly tie their priority claims to specific provisions of the statute.")

The child support obligation assigned to the IRS for collection can be tied to both Section 507(a)(8)(C) and (D). 26 U.S.C. Section 6305 states that the obligation is to be treated "as if it were a tax under Subtitle C." While the child support obligation is not a tax per se, it can be treated "as if it were a tax" described in Section 507(a)(8)(C).

The obligation can be treated "as if it were a tax" described in Section 507(a)(8)(D) as well. Reference in (D) to taxes for which a return is last due within three years before the filing of a petition, does not preclude application to the child support obligation. While it is true that a return is not due in connection with the assigned child support obligation, the principle event underlying the filing of a return is the triggering of an assessment. In the assigned child support context, the obligation is assessed by the IRS when it is assigned by the Department of Health and Human Services. See: 26 C.F.R. Section 301.6305-1, Apr. 1 (1996); and, 47 Fed. Reg. 5713 (1982). Here, the assessment was made on September 20, 1993, seven months before the Debtor filed his bankruptcy petition. This is well within the three year time limit required by the statute.

The child support obligation of the Debtor, assigned to the IRS by the Secretary of Health, Education, and Welfare, is entitled to be treated in the hands of the IRS as if it was a Subtitle C tax. The claim, when filed in Debtor's bankruptcy case by the IRS as assignee, retained its tax attributes, and is entitled to priority distribution under 11 U.S.C. Section 507(a)(8) (C) and (D).

IV.
DISPOSITION

Based on the foregoing, it is hereby ordered that the Debtor's objection to the IRS claim as a priority claim, pertaining to the child support obligation, assigned pursuant to 26 U.S.C. Section 6305, in the amount of \$31,745.65, is overruled. The claim is allowed as a priority claim under 11 U.S.C. Section 507(a)(8) (C) and (D), as if it was a tax claim of the type therein described.

Dated: June 3, 1996

By The Court:

Dennis D. O'Brien
Chief U.S. Bankruptcy Judge

(FN1) The obligation had been originally assigned to the Wayne County, Michigan, Child Support Enforcement Division, and later assigned to the U.S. Secretary of Health, Education and Welfare, pursuant to 42 U.S.C. Section 652(b).

(FN2) See footnote 1, supra.

(FN3) Section 507(a)(7), enacted in 1994, created a priority for child support; but, the provision specifically excepts from priority such a debt where it has been "assigned to another entity, voluntarily, by operation of law, or otherwise." See: 11 U.S.C. Section 507(a)(7)(A). The IRS does not concede that the amendment would preclude the determination of this order regarding the scope of Section 507(a)(7), as it relates to 26 U.S.C. Section 6305.

(FN4) Subtitle C deals with employment taxes.