

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In Re:

Jeffrey R. Wright
Debtor.

CHAPTER 13

Bky. 99-33244

ORDER

This matter came on for hearing on the 13th day of January, 2000. Appearances were as noted in the record of the proceedings. Debtor seeks confirmation of his Modified Chapter 13 Plan. The Internal Revenue Service objects to confirmation on grounds that payment of its priority claim is not fully provided for in the Plan. The Court, having heard the evidence and arguments presented at the hearing, having reviewed the briefs submitted, and, being fully advised in the matter; now makes this **ORDER** pursuant to the Federal and Local rules of Bankruptcy Procedure.

I.

The IRS filed a priority claim in this Chapter 13 case in the amount of \$50,908.22, representing assessed, but unpaid, unsecured income taxes owing by Debtor for 1991 and later years. The priority is claimed under 11 U. S. C. § 507(a)(8)(A)(i), which grants a priority for certain income taxes last due within three years before the date of the filing of a petition. The 1991 taxes, interest and penalty are \$4531.95 of the total IRS claim, and are the subject

of this dispute. Debtor's Modified Plan recognizes only \$46,376.27 of the filed claim as priority, treating the 1991 tax liability as a general unsecured claim.

Debtor had two previous Chapter 13 bankruptcies between the assessment of the 1991 tax and this Chapter 13 bankruptcy. The first was filed on March 9, 1994, and was dismissed on December 11, 1996; the second was filed on March 11, 1997, and was dismissed on April 3, 1998. The present case was filed on June 23, 1999. The parties agree that 11 U. S. C. § 108(c) and 26 U. S. C. §§ 6503(b) and (h) tolled the running of the three year reach back priority of 11 U. S. C. § 507(a)(8)(A)(i) regarding the 1991 taxes during the pendency of the two prior cases. See: *Waugh v. Internal Revenue Service*, 109 F.3d 489 (8th Cir. 1997). But, they disagree on application of the tolling statutes for the periods between the cases and for any period following dismissal of the last case.

IRS argues that the statutes tolled the running of the reach back period during pendency of the earlier cases and for six months thereafter. Debtor claims that the statutes tolled the running of the period for only pendency of the earlier cases while the 11 U. S. C. § 362 stay was in effect. The parties agree that the priority of the 1991 taxes is determined by resolution of this single legal issue regarding scope of the tolling statutes.

II.

11 U. S. C. § 507(a)(8)(A)(i) provides:

(a) The following expenses 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--

(A) a tax on or measured by income or gross receipts--

(i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;....

11 U.S.C. s 507(a)(8)(A)(i) (1994).

11 U. S. C. § 108(c) provides:

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the terminate on or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

11 U.S.C. s 108(c) (1994).

26 U. S. C. §§ 5603(b) and (h) provide:

§ 6503. Suspension of running of period of limitation

* * *

(b) Assets of taxpayer in control or custody of court

The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any State or of the District of Columbia, and for 6 months thereafter.

* * *

(h) Cases under title 11 of the United States Code

The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or collection shall, in a case under title 11 of the United States Code, be suspended for the period during which the Secretary is prohibited by reason of such case from making the assessment or from collecting and--

(1) for assessment, 60 days thereafter, and

(2) for collection, 6 months thereafter.

26 U.S.C. s 6503(b), (h) (1994).

Debtor argues that 11 U. S. C. § 108(c) and 26 U. S. C. §§ 6503(b) and (h) should be applied to suspend running of the three year reach back of 11 U. S. C. § 507(a)(8)(A)(i) only while a bankruptcy case is pending with the 11 U. S. C. § 362 stay in effect. Debtor cites *Waugh v. Internal Revenue Service*, 109 F.3d 489, 493 (8th Cir. 1997) [“we conclude that the three-year priority period of section 507(a)(8)(A)(i) is suspended by 11 U.S.C. s 108(c) and 26 U.S.C. s 6503(b) and (h), for the time that the automatic stay prevents the IRS from collecting outstanding tax debts.”] However, Debtor’s interpretation of the holding of *Waugh* is an unsustainably narrow reading of the case.

Immediately following the language quoted above, the *Waugh* court, citing legislative history, said:

The legislative history of 11 U.S.C. s 108(c) supports the conclusion that Congress intended for section 108(c) and 26 U.S.C. s 6503(b) and (h) to suspend the priority period of section 507(a)(8)(A)(i):

In the case of Federal tax liabilities, the Internal Revenue Code suspends the statute of limitations on a tax liability of a taxpayer from running while his assets are in the control or custody of a court and for 6 months thereafter (sec.6503(b) of the Code). The amendment applies this rule in a title 11 proceeding. Accordingly, the statute of limitations on collection of a nondischargeable Federal tax liability of a debtor will resume running after 6 months following the end of the period during which the debtor's assets are in the control or custody of the bankruptcy court. This rule will provide the Internal Revenue Service adequate time to collect nondischargeable taxes following the end of the title 11 proceedings. S.Rep. No. 95-989, at 31 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5816- 17.

Although the plain language of section 108(c) states that it tolls priority periods only in nonbankruptcy cases, we conclude that Congress intended 11 U.S.C. s 108(c) and 26 U.S.C. s 6503(b) and (h) to toll the three-year priority period of 11 U.S.C. s 507(a)(8)(A)(i).

Waugh v. Internal Revenue Service, at 493.

The six month period post bankruptcy was not at issue in *Waugh*. But, it is clear from the quoted language above that the *Waugh* court recognized application of all of the tolling provisions of 26 U. S. C. § 6503(b) and (h), including the post case six month period, as suspending the calculation of the priority reach back of 11 U. S. C. § 507(a)(8)(A)(i).

Accordingly, calculation in this case results in the 1991 taxes being within the 11 U. S. C. § 507(a)(8)(A)(i) priority period by application of 11 U. S. C. § 108(c) and 26 U. S. C. §§ 6503(b) and (h). The objection by IRS to confirmation must be sustained because Debtors Plan does not provide for payment of the IRS priority claim in full as required by 11 U. S. C. § 1322(a)(2).

III.

Based on the forgoing, it is hereby **ORDERED** that confirmation of Debtor's Modified Chapter 13 Plan dated December 7, 1999, is denied.

Dated: January 19, 2000

By The Court:

/s/ Dennis D. O'Brien
DENNIS D. O'BRIEN
CHIEF U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

I, Shelley Stevens, hereby certify: that I am a deputy clerk in the office of the U. S. Bankruptcy Court for the District of Minnesota; that on January 19, 2000, true and correct copies of the annexed:

ORDER

were placed by me in individual postage metered envelopes; that said envelopes were addressed individually to each of the persons, corporations and firms at their last known addresses appearing hereinafter; that said envelopes were sealed and on the day aforesaid and were placed in the United States mail at St. Paul, Minnesota:

SEE ATTACHED MATRIX

and this certificate was made by me.

/s/Shelley Stevens
Deputy Clerk

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