In the United States Bankruptcy Court

for the Northern District of Iowa

OLGA M. OUVERSON	Bankruptcy No. X87-00842M
Debtor.	Chapter 12
FRANCIS JOHN OUVERSON	Bankruptcy No. X87-01546M
Debtor.	Chapter 12

MEMORANDUM AND ORDER RE: MOTION FOR DECLARATORY RELIEF

The matters before the court are motions for declaratory relief filed by the debtors. The debtors request the court to declare what delinquent real estate taxes, drainage assessments, penalties, and interest they are required to pay under their confirmed chapter 12 plans. A hearing was held in Mason City, Iowa on July 11, 1989. The court now issues its findings of fact and conclusions of law as required by Bankr. R.7052. This is a core proceeding under 28 U.S.C. §157(b)(2)(0).

FINDINGS OF FACT

The debtor, Olga M. Ouverson, filed a chapter 12 petition on April 10, 1987. The debtor, Francis M. Ouverson, filed a chapter 12 petition on July 15, 1987. Olga Ouverson filed her schedules on April 20, 1987. On schedule A-1, Olga listed the Worth County treasurer as a priority creditor having two claims. The first claim was listed in the amount of $5,103.10 for real estate taxes on farmland incurred in 1984 and 1985. The nature of the priority was "real est. tax." Olga also listed the Worth County Treasurer as having a claim for $4,390.12 for drainage taxes on farm real estate incurred in 1984 and 1985. The nature of the priority was "drainage tax for improvements."

On schedule A-2, Olga listed Federal Land Bank of Omaha (FLB) as a secured creditor. The FLB debt was listed at $210,000.00 plus interest. FLB had a first real estate mortgage on 245 acres in Worth County. The market value of the security was listed as $98,000,00. On her schedules, Olga listed an interest in the following real property:

"Undivided one-half interest in Southeast Quarter of Section 23 and Northeast Quarter of Northwest Quarter and Northwest Quarter of Northeast Quarter of Sec. 26, T96N, R22W, Worth County, Iowa."

(Schedule, B-1.)

Bankruptcy schedules were filed by debtor Francis Ouverson on July 29, 1987. Francis also listed Worth County Treasurer as a priority creditor. The amounts and nature of priority were identical to that of Olga's schedules. Francis listed Federal Land Bank as a secured creditor. The FLB debt was the same as that listed on the schedules of Olga. However, on Francis' schedules, the market value of FLB's security is listed at $122,500.00. On schedule B-1, Francis listed the following interest in real property:

> Joint tenant owner with wife, Olga M. Ouverson, of the Southeast Quarter of Sec. 23 and the Northeast Quarter Northwest Quarter and Northwest Quarter Northeast Quarter of Sec. 26, all in Township 96 North, Range 22 West, 5th P.M. Worth County, Iowa consisting of 245 acres, more or less.

Olga filed her initial chapter 12 plan on July 6; 1987.

Part V of the plan stated:

> With respect to tax claims of a kind specified in 11 U.S.C. §507(a)(6)[(1)] "secured claims of governmental units," the following shall be paid
>
> (1) Worth County Treasurer (real estate taxes and drainage taxes--delinquent) $10,607

In part VI, under Class 3, the plan states:

> Worth County Treasurer -- Debtor is liable for payment of delinquent real estate taxes and drainage taxes which are a prior lien on the real estate. (Estimated at $10,607). Debtor's 1986 taxes are now due and payable in the approximate amount of $3006. Debtor intends to pay all delinquent taxes as provided in attached Exhibit B out of CRP Bonus Payments and maintain the taxes on a current basis thereafter.

A modified chapter 12 plan was filed by Olga on November 17,

1987. Part VI of the modified plan stated:

> With respect to tax claims of a kind specified in 11 U.S.C. Section 507(a)(6), "secured claims of governmental units", the following shall be paid:
>
> (1) Worth County Treasurer (real estate taxes drainage taxes - delinquent) $10,607

In Part VII of Olga's plan, Worth County Treasurer is classified as Class IV. Class IV is treated as follows:

> Debtor is liable for payment of delinquent real estate taxes and drainage taxes, which are a prior lien on the real estate; which are estimated to be in the approximate sum of $10,607 plus accrued penalty and interest.
>
> Debtor will pay such delinquent taxes as above provided within 30 days of date of confirmation, such payment to be made thru the Trustee and be subject to trustee's fees. Such taxes shall be paid out of the CRP payments received by Debtor pursuant to attached Stipulation "B."

A second modified chapter 12 plan was filed by Olga on March 16, 1988. Part VI of the plan states:

> With respect to tax claims of a kind specified in 11 U.S.C. Section 507(a)(6), "secured claims of governmental units", the following shall be paid:
>
> (1) Worth County Treasurer (real estate taxes & drainage taxes - delinquent) $10,607 plus penalty & interest*

* Does not include the Trustee's Fee of 5%.

The language regarding classification of Worth County Treasurer's claim and interest (class 4) is identical to that language in the amended plan filed on November 17, 1987.

An order confirming Olga's chapter 12 modified plan was filed on June 21, 1988.

Francis' initial chapter 12 plan was filed on October 8, 1987. Part VI of the plan states:

> With respect to tax claims of a kind specified in 11 U.S.C. §507(a)(6), "secured claims of governmental units," the following shall be paid: NONE.

On March 16, 1988, Francis filed a modified chapter 12 plan. The language in Part VI regarding governmental tax claims was identical to the language in the initial plan. An order confirming Francis' chapter 12 modified plan was filed on June 21, 1988.

FLB and the debtors entered into a settlement regarding the claims and the chapter 12 plan treatment of FLB (exhibit B-2 Ouversons' chapter 12 modified plan filed March 16, 1988). FLB had commenced a foreclosure action against debtors' farm property and obtained a decree of foreclosure on December 16, 1984. Subsequently, debtors commenced various bankruptcy filings. FLB did foreclose on debtor Francis' undivided one-half ownership interest and a sheriff's sale was held on April 7, 1987. At the sheriff's sale, FLB became the purchasers of the foreclosed interest. Part II of the settlement agreement states in part:

> The parties hereto agree that the Debtor Olga M. Ouverson, Craig Ouverson (son of the Debtors), or their duly authorized assigns, shall have the right to purchase and acquire from the Federal Land Bank of Omaha in full settlement of any and all monies owed to FLB all of its right, title and interest in either or both of the two parcels described in I. above, by performance of the following:
>
> A. A. Olga M. Ouverson, out of the GRP funds received from the CRP programs signup in 1987, will pay the following:
>
> 1. (1) All delinquent taxes and assessments owing against the property to the Worth County Treasurer which are believed to be in excess of $10,600 with penalty and interest. Such taxes shall be paid on or before 30 days from the date of Confirmation of her Chapter 12 plan.

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The stipulation of settlement required the debtors to pay all delinquent taxes and assessments owing against the property to the Worth County Treasurer within thirty days from the date of the confirmation of the plan. The stipulation was not timely performed. However, FLB waived any objection to timely performance. A closing with FLB was held on April 26, 1989. Prior to the closing, the debtors' attorney contacted the Worth County Treasurer to determine what taxes, assessments, penalties and interest must be paid to remove liens from the title as of April 27, 1989. The debtors' attorney was advised as follows:

	taxes	tax penalty	assessment	assessment interest	assessment penalty
1984	$3,462.00	$1,385.00	$775.40	$162.82	$403.00
1985	3,128.00	876.00	974.40	126.92	341.50
1986	3,006.00	480.00	775.40	54.26	158.00
1987	2,966.00	119.00			

See Motion for Declaratory Relief filed 6-19-89, page 3.

At the Ouversons' request, the debtors attorney, Mark Soldat, paid the Worth County Treasurer the amounts indicated above by tendering checks in the amount of $15,422 and $3,771.20 for a total of $19,193.20. The check for $15,442 was for all delinquent real estate taxes and penalties. The check for $3,771.20 was for payment of all delinquent drainage assessments, interest and penalties.

Mr. Soldat sent a letter along with the checks to the Worth County Treasurer on April 26, 1989. At the bottom of the letter, it states:

> P.S. The amount of the checks were derived from the figures your office gave me by telephone today. I was advised thereafter that certain of the penalty and interest may have been eliminated in the Ouversons' confirmed chapter 12 plan. However, given the need to process today the escrow transaction in which I have been placed in charge, I tender the amounts your office recited, reserving to the Ouversons the right to seek a refund of any interest and penalty eliminated.

One June 2, 1989, Mr. Soldat sent a letter to the Worth County Treasurer and Worth County Board of Supervisors on behalf of the debtors. In the letter, Soldat stated that the confirmed plans provided that the payment of delinquent real estate taxes and drainage assessments, plus penalties and interest, was reduced to the sum of $10,607.00. Therefore, Soldat demanded that a refund in the amount of $5,501.20 be made to the debtors.

On June 9, 1989, the Worth County Treasurer responded to Soldat's letter of June 2, 1989. The county treasurer, James Hanson, stated in the letter that it was his position that Worth County owed no refund to the debtors. His position was that the taxes were a non-dischargeable item and since they were listed as priority claims, they were not reduced by the bankruptcy court.

A motion for declaratory relief was filed in each case on June 19, 1989. Debtors are requesting the court to declare what delinquent real estate taxes, drainage assessments, penalties and interest they must pay under their confirmed chapter 12 plans.

James Hanson, Worth County Treasurer, testified at the hearing held on July 11, 1989. He stated that the taxes for 1984 were assessed on January 1, 1984 and were payable in 1985-86. The 1984 taxes became delinquent by halves. The first half was delinquent on October 1, 1985. The second half was delinquent on April 1, 1986. The total real estate taxes for 1984 was $1,544.00. A penalty of $618.00 was paid for the 1984 taxes on April 26, 1989.

The debtors' property was also subject to a drainage assessment by Worth County, Iowa. Hanson stated that the property owner agrees to not object to any of the drainage assessment payments and takes a ten-year period to pay the interest and principal. The payments are due annually and are due on September 30 of each year. After September 30, the interest for the assessment stops and a penalty goes into effect.

The assessment certificates for the drainage assessments were sold to the Hawkeye Bank & Trust in Lake Mills, Iowa. Worth County continues to receive the payments and the payments are then mailed directly to the bank. A certificate was sold to the bank around June 21, 1979.

The rate of interest for this bond certificate was 7%. If the interest is not paid by October 1 of each year, there is a 1% a month penalty. The 1% per month penalty remains in effect until the assessment is paid. Hanson testified that penalties accrued on each assessment certificate until the debtors paid the taxes on April 27, 1989. Hanson further testified that Worth County retained no interest in the assessment certificates. Rather, Worth County only acted as a collection agency.

Hanson stated that his office received copies of the debtors' chapter 12 plans. Further, Hanson testified that the $10,607.00 figure used in the debtors' plans was the amount of taxes which was owed before the filing of the petition. The amount sent by the debtors on April 26, 1989 covered the tax years 1984, 1985, 1986 and 1987.

DISCUSSION

I.

The debtors argue that the 1984 property taxes had no §507 priority and therefore should not have been paid by the debtors. The debtors also argue that the plan did not provide for the continued accrual of interest and penalties on the real estate taxes. Therefore the debtors are requesting Worth County to refund the amount that was mistakenly paid for the 1984 taxes and the post-petition penalties and interest.

As part of a stipulation between the debtors and Federal Land Bank, a real estate closing with FLB was held on April 26, 1989. Prior to that closing, the debtors' attorney contacted the Worth County Treasurer to determine what taxes, assessments, penalties and interest must be paid to remove the liens from the title as of that date. The Worth County Treasurer advised the debtors' attorney that the amount of real estate taxes due as of April 27, 1989 was $19,193.20. On April 26, 1989, the debtors' attorney sent the Worth County Treasurer two checks totaling $19,193.20. However, at the bottom of the letter, which was sent with the checks, it was indicated that the checks were being tendered with the debtors reserving the right to seek a refund of any interest and penalty which was eliminated under the confirmed chapter 12 plan.

The debtors are requesting the court to interpret the provisions of the chapter 12 plan regarding the treatment of the Worth County Treasurer's tax claims. This court has the jurisdiction to examine and interpret the terms of the confirmed plan. In re St. Louis Freight Lines, Inc., 45 B.P. 546, 551 (Bankr. F.D. Mich. 1984).

The confirmed plan of Francis provided that no tax claims would be paid through his plan. All of the tax claims of Worth County were to be provided for in Olga's confirmed plan. Worth County did not object to the confirmed plans. Therefore, the court believes it is only necessary to interpret the plan of Olga.

The provisions of her confirmed chapter 12 plan are somewhat confusing. The real estate taxes of the Worth County Treasurer are provided in two parts of the debtors' modified plan. The modified plan was filed on March 16, 1988 and confirmed by this court on June 21, 1988. Part IV of the plan states:

> With respect to tax claims of a kind specified in 11 U.S.C. section 507(a)(6), "secured claims of governmental units", the following shall be paid:
>
> (1) Worth County Treasurer (real estate taxes and drainage taxes--delinquent) $10,607.00 plus penalty and interest."

In Part VII of Olga's plan, Worth County Treasurer is classified as Class 4. Class 4 is treated as follows:

> Debtor is liable for payment of delinquent real estate taxes and drainage taxes, which are a prior lien on the real estate, which are estimated to be in the approximate sum of $10,607.00 plus accrued penalty and interest.
>
> Debtor will pay such delinquent taxes as above provided within thirty days of date of confirmation, such payment to be made through the trustee and be subject to the trustee's fees. Such taxes shall be paid out of the CRP payments received by debtor pursuant to attached stipulation "B".

The plan does not state which property taxes the debtors intend to pay. The debtors argue that the plan provides for the payment of real estate taxes for 1985, 1986 and 1987 and not the 1984 taxes. The 1985, 1986 and 1987 real estate taxes and assessments (without penalty and interest) total $10,849.40. The plan, however, provides that the taxes to be paid total $10,607.00. The debtors appear to be arguing that the figure of $10,607.00 is close to the actual tax liability for 1985, 1986 and 1987 and therefore the debtors must have intended to pay only the 1985, 1986 and 1987 taxes. This court finds the debtors' argument difficult to accept. There are many variations upon which the court could calculate the tax, some of which come much closer to the $10,607.00 figure.

In Iowa, taxes upon real estate are a lien on the real estate. Iowa Code §445.28. That section provides:

> Taxes upon real estate shall be a lien on the real estate against all persons except the state. However, taxes upon real estate shall be a lien on the real estate against the state and any political subdivision of the state which is liable for payment of property taxes as a purchaser under the provisions of section 427.18.

Real estate taxes are first liens superior to all other encumbrances. Merv E. Hilpipre Auction Co. v. Solon State Bank, 343 N.W.2d 452, 455 (Iowa 1984). The 1984 real estate taxes were assessed on January 1, 1984. Although the 1984 taxes (fiscal '84-'85) were not delinquent until October 1, 1985 and April 1, 1986, Worth County did have a lien on the real estate from June 30, 1985. Iowa Code §445.30. See also Merv. E. Hilpipre Auction Co. v. Solon State Bank, 343 N.W.2d at 454-55. Additionally, Worth County had a lien on the debtors' real estate for the 1985 taxes prior to the filing of the chapter 12 petition. The value of the debtors' real estate was listed at $98,000.00. Therefore, it is clear that the real estate taxes levied pre-petition were less than the value of the property.

The trustee may avoid a statutory lien on the debtor's property if the lien is not perfected or enforceable at the time of commencement of the case against a bona fide purchaser. 11 U.S.C. §545

(2). Worth County's statutory tax lien is enforceable against all persons except the state. Iowa Code §445.28. Therefore, the trustee may not avoid the county's lien. In re Stanford, 826 F.2d 353 (5th Cir. 1987).

Since Iowa's tax lien statute (Iowa Code §445.28) provides that it is enforceable against all persons, including bona fide purchasers, "[S]ection 545 incorporates that state's standard and accords secured status to the lien." Stanford at 355. See also 11 U.S.C. §506(a). "[T]here is nothing in the Code that suggests state tax liens should not continue to be regarded as statutory liens if they meet the conditions of section 545." Id. at 357. The enactment of 11 U.S.C. §507(a)(7) did not eliminate the secured status of perfected state tax liens. Id. at 356. Since Worth County was not an unsecured tax claimant, the provisions of 11 U.S.C. §507(a)(7) would not apply. That section applies only to allowed unsecured claims of governmental units.

"Plan treatment of the secured tax claim is the same as secured claims generally and is governed by section 1225(a)(5)." In re Krump, 89 B.R. 821, 825 (Bankr. D. S.D. 1988). That section provides that a chapter 12 plan can be confirmed if, regarding secured claims:

> (B)(I) the plan provides that the holder of such claim retain the lien securing such claim; and
>
> (ii) the value, as of the effective date of the plan, property be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim.

11 U.S.C. §1225(a)(5)(B)(I) and (ii).

In order for the plan to be confirmed, the debtors were required to provide in the plan that Worth County would retain its lien securing the claim for real estate taxes and the debtors must provide that Worth County receive deferred payments including interest at the prevailing market rate. See U.S. v. Doud, 869 F.2d 1144 (8th Cir. 1989).

The difficult part of this case is that Worth County never objected to its treatment under the plan. Therefore, even if Worth County was legally entitled to be treated as a fully secured creditor under the chapter 12 plan, their failure to object could bind it to the plan. Case law has established that a reorganization plan is a binding contract. In re St. Louis Freight Lines, Inc. 45 B.R. 546; 551 (Bankr. E.D. Mich. 1984). An order confirming a plan has a res judicata effect on all issues that could have been raised regarding the claim. Stoll v. Gottlieb, 305 U.S. 165, 59 S.Ct. 134, 83 L.Ed. 104 (1938). A party-in-interest is bound by the terms of the confirmed plan even if the plan provides the party with less than that to which it is otherwise legally entitled. In re St. Louis Freight Lines, 45 B.R. at 552. See also 11 U.S.C. §1227(a).

The language in part VI of Olga's confirmed plan would appear to indicate that the debtors only intended to pay the Worth County Treasurer $10,607.00 plus penalty and interest. However, the language in part VI refers to tax claims of a kind specified in 11 U.S.C. §507(a). The provisions of 11 U.S.C. §507(a) are not applicable to Worth County's taxes since they are secured claims. Therefore, this court considers Worth County's secured claim to be treated in part VII of Olga's plan. In part VII of the plan, the Worth County Treasurer is classified as class 4. That class is treated as follows: "Debtor is liable for payment of delinquent real estate taxes and drainage taxes, which are a prior lien on the real estate, which are estimated to be in the approximate sum of $10,607.00 plus accrued penalty and interest." The taxes which were delinquent on the date of the second modified chapter 12

plan of March 16, 1988 included the 1984 taxes and assessment, the 1985 taxes and assessment and the 1986 taxes and assessment. The total of the taxes and assessments for these years was $12,895.80. The 1987 taxes would not have been delinquent until October 1, 1988 and April 1, 1989. Therefore, these taxes were not delinquent when the confirmed plan was filed. The court finds it difficult to accept the debtors' argument that the delinquent taxes as set forth in part VI and part VII of Olga's plan include the 1987 taxes. It makes much more sense to conclude that the taxes included in the estimated $10,607.00 figure were the 1984 and 1985 taxes. Worth County had a secured tax lien on these taxes and the plan could not have been confirmed without meeting the requirements of 11 U.S.C. §1225.

This court believes that the parties intended to pay all of the delinquent real estate taxes and assessments, including the 1984 taxes. That is a requirement set forth in the confirmation standards of 11 U.S.C. §1225. The court sees no reason to conclude that the debtors intended any differently.

II.

The debtors also argue that the Worth County Treasurer was not entitled to continue accruing interest or penalties under the debtors' plan. The tax claims of Worth County were fully secured claims. Therefore, as previously indicated, the secured tax claimant is entitled to receive interest payments at the market rate during the term of the plan. 11 U.S.C. §1225(a)(5)(B)(I) and (ii). See also U.S. vs. Doud, 869 F.2d 1144 (8th Cir. 1989). The provisions of the debtors' plan specifically provide that the debtors will be liable for the payment of all delinquent real estate taxes including accrued penalty and interest. Therefore, the court believes it was appropriate for the Worth County Treasurer to continue to accrue penalties and interest after the filing of the chapter 12 petition.

The post-petition interest which accrues on the secured tax claim will continue as long as there is sufficient collateral value to pay the interest or until the effective date of the confirmed plan. In re Snider Farms, 83 B.R. 977 (Bankr. N.D. Ind. 1988). Section 506(b) of Title 11 provides:

> To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

In this case, Worth County's lien is less than the value of the secured property. Therefore, Worth County is entitled to receive post-petition interest on its claim until the effective date of the confirmed plan. The Supreme Court has recently held that §506(b) entitles a creditor to receive post-petition interest on an oversecured claim allowed in the bankruptcy proceeding even if the lien on the claim was nonconsensual in nature. U.S. vs. Ron Pair Enterprises, Inc., 109 S.Ct. 1026 (1989). Once the plan is confirmed, the rate of interest on any deferred payments to Worth County under the plan would be governed by 11 U.S.C. §1225(a)(5)(B)(ii). In re Lenz, 74 B.R. 413, 416-17 (Bankr. C.D. Ill. 1987).

III.

The drainage district certificate was sold to the Lake Mills bank at the time of its issuance, which was approximately June 21, 1979. At that time, the assessment was a lien upon all premises against which they were assessed. Iowa Code §455.58. All assessments are levied as a tax. Iowa Code §455.57. That section provides:

> When the board has finally determined the matter of assessments of benefits and apportionment, it shall levy the assessments as fixed by it upon the lands within the district, but an assessment on a tract, parcel or lot within a district which is computed at less than two dollars shall be fixed at the sum of two dollars. All assessments shall be levied at that time as a tax and shall bear interest at not to exceed the rate permitted by chapter 74A from that date, payable annually, except as provided as to cash payments within a specified time.

Iowa Code §455.57. Section 455.58 states:

> Such taxes shall be a lien upon all premises against which they are assessed as fully as taxes levied for state and county purposes.

Iowa Code §455.58. The drainage assessments were levied prior to the debtors filing of their bankruptcy petitions resulting in a secured tax lien on the debtors' property. Therefore, even if the court accepts the debtors' argument that the Worth County Treasurer does not actually own the drainage certificates, Hawkeye Bank & Trust of Lake Mills would still have a secured tax lien upon the debtors' property. As stated in the previous section, a secured tax claimant must be provided for in the plan under 11 U.S.C. §1225(a)(5).

This court believes that the plan provides for the payment of the drainage district assessments in the same manner as the real estate taxes. This court's interpretation of the plan is that the debtors intended to pay the drainage assessment certificates in full, including the 1984 tax year assessment and any interest and penalties on those drainage assessments.

IV.

An order confirming a chapter 12 plan is res judicata as to any issues which could have been and should have been raised prior to or in connection with the confirmation. In re Grogg Farms, Inc., 91 B.R. 482, 485 (Bankr. N.D. Ind. 1988). The issue of which real estate taxes were to be paid under the plan should have been determined prior to confirmation. Once the plan was confirmed, the provisions regarding the real estate taxes are binding upon the debtor and all creditors. 11 U.S.C. §1227(a). The Code does provide for the modification of a chapter 12 plan after confirmation. Section 1229(a) provides:

> a. At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, on request of the debtor, trustee, or the holder of an allowed unsecured claim, to--
>
> 1. increase or reduce the amount of payments on claims of a particular class provided for by the plan;
>
> 2. extend or reduce the time for such payment; or
>
> 3. alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim othe than under the plan.

11 U.S.C. §1229(a).

If the court accepted the debtors' position, it would in effect be modifying the plan post-confirmation. The debtors have not requested the court to modify the plan. However, even if the debtors did request the modification of the plan, the court does not believe that modification would be justified in this case. "Post-confirmation modification under chapter 12, as under chapter 13, is intended as a method of addressing unforeseen difficulties that arise during plan administration, and such modification is warranted only when an unanticipated change in circumstances affects implementation of the plan as confirmed." In re Cooper, 94 B.R. 550, 551-52 (Bankr. S.D. 111. 1989) citing In re Grogg Farms, Inc., 91 B.R. 452 (Bankr. N.D. Ind. 1988); In re Dittmer, 82 B.R. 1019 (Bankr. D. N.D. 1988). The debtors have provided no evidence that there were any unanticipated changes in circumstances which would affect the implementation of the plan as confirmed.

Additionally, the debtor who is seeking to modify a confirmed chapter 12 plan has the burden of proving that the modification would meet the confirmation requirements. In re Hart, 90 B.R. 150, 154 (Bankr. E.D. N.C. 1988). The debtors' proposal to eliminate the 1984 real estate taxes and all of the post-confirmation interest and penalties would not meet the confirmation requirements as set forth in 11 U.S.C. §1225(a)(5) since the claims of Worth County are secured tax claims.

V.

The trustee, Carol Dunbar, has requested the court to clarify whether the real estate tax payments are to be paid to the trustee or directly to the Worth County Treasurer. Olga's confirmed plan states that the $10,607.00 figure contained in part VI does not include the trustee's fee of 5%. This language indicates that the debtor intended to make the real estate tax payments through the trustee. The debtors or Worth County introduced no evidence to the contrary. Therefore, the court concludes that all real estate tax payments were to be made through the trustee.

ORDER

IT IS ORDERED that the chapter 12 plan of Olga Ouverson provides for the payment of all delinquent real estate taxes and assessments of Worth County including any penalties and interest. Worth County is a secured tax claimant and must be provided for under the plan pursuant to 11 U.S.C. §1225(a)(5). The debtors are not entitled to a refund of real estate taxes.

SO ORDERED THIS 8th DAY OF AUGUST, 1989.

William L. Edmonds
Bankruptcy Judge

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1. The court assumes that the debtor intended to refer to 11 U.S.C. §507(a)(7).