

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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ROBIN D. MARTIN and  
PATRICIA L. MARTIN

*Debtor(s).*

Bankruptcy No. 92-51995XS

Chapter 13

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### ORDER RE: MOTION FOR NEW TRIAL OR TO AMEND JUDGMENT

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The matter before the court is the motion filed April 30, 1993 by the Internal Revenue Service for a new trial or to amend the judgment confirming the Martins' chapter 13 plan. Hearing was held June 1, 1993 in Sioux City, Iowa.

The Martins filed their chapter 13 petition on January 19, 1993. Their chapter 13 plan provides for 36 monthly payments of \$248.46 for a total of \$8,944.56. The IRS is not listed as a creditor in the schedules. The plan provides that "[d]ebtors shall pay in full, in deferred cash payments, all allowed claims entitled to priority under 11 U.S.C. section 507, including" a 10 per cent trustee fee and \$340.00 for attorney's fees (Plan, page 1). The plan does not provide for specific treatment of an IRS claim.

The deadline set by the clerk for objecting to confirmation of the plan was March 31, 1993. No objection was filed by that date, and the plan was confirmed by order dated April 21, 1993.

Robin Martin is an officer, director and stockholder of Nitram, Inc. which is in chapter 11, Bankruptcy No. 92-51995XS. An IRS revenue officer assigned to the Nitram case conducted an interview with Robin Martin on December 14, 1992, and determine that Martin was the person responsible for unpaid withholding taxes of Nitram. The IRS officer learned at that time that Martin was considering filing bankruptcy. On January 19, 1993, the officer confirmed with the Martins' attorney that their petition had been filed. The officer sent a memo to the Special Procedures section advising it of the bankruptcy and of the amount of the 100 per cent penalty to be assessed against Robin Martin for Nitram's unpaid taxes. The Special Procedures office received the memo on January 25, 1993. On March 8, 1993, the Special Procedures office requested copies of the schedules and chapter 13 plan from the bankruptcy clerk's office and received them on March 16, 1993.

The deadline for filing proofs of claim was June 1, 1993. The IRS filed a timely proof of claim April 15, 1993 for \$14,865.10. The IRS claims an unsecured priority claim of \$5,400.48 for the 100 per cent penalty assessment for Nitram's unpaid withholding taxes. IRS also claims a priority claim for estimated taxes due for the tax years 1990, 1991, and 1992 for which the Martins did not file a return. The total priority claim is \$13,048.76.

The U. S. Attorney had notice of the bankruptcy filing on April 19, 1993 when he received a copy of the proof of claim. On April 26, 1993, the Special Procedures office requested the District Council office to object to the chapter 13 plan. On April 27, 1993, the U. S. Attorney's office received an objection to the plan from the District Council's office. The objection and motion for new trial were filed April 30, 1993.

The IRS claim is a timely, allowed claim. *See* 11 U.S.C. § 502(a). The Chapter 13 plan provides that all allowed priority claims will be paid in full in deferred cash payments as required by 11 U.S.C. § 1322(a) (2).

The IRS seeks to challenge the feasibility of the plan. Its priority claim of \$13,048.76 alone is more than the total of

payments proposed under the plan. The IRS argues that it should be allowed to object to the confirmed plan because it was not listed as a creditor in the schedules and did not have sufficient notice of the deadline for objections.

The Martins dispute the accuracy of the IRS claim and claim that their tax liability is potentially zero. The Martins allege that Nitram will pay its taxes which would eliminate the 100 per cent penalty, and that they may be entitled to refunds for the three years that returns were not filed.

Since the IRS was not listed as a creditor in the schedules, it did not receive notice of the confirmation process in the ordinary course. Fed. R. Bankr. P. 2002(b) requires that creditors receive 25 days notice of the deadline for filing objections to a Chapter 13 plan. No other creditor objected, so the Martins' plan was confirmed without further notice or hearing. See Fed. R. Bankr. P. 3020(b) (2), now at Rule 3015(f). The IRS had actual notice of the bankruptcy filing, which may have put it on inquiry notice to discover matters relating to all creditors. See Zidell Inc. v. Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428, 1431 (9th cir. 1990). The IRS did begin its own investigation of the case and learned shortly before the deadline for objections to the plan that it was not being dealt with specifically in the plan. While the IRS did not meet the objection deadline, the IRS acted promptly enough to file a proof of claim. The IRS motion for new trial also was timely under Fed.R.Civ. P. 59(b).

"The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan . . ." 11 U.S.C. § 1327(a). Some courts have found that the binding effect of confirmation under 11 U.S.C. § 1327(a) requires proper notice of the plan confirmation process. See Piedmont Trust Bank v. Linkous (In re Linkous), 141 B.R. 890, 898 (W.D. Va. 1992), *aff'd* 990 F.2d 160 (4th cir. 1993); Fireman's Fund Mortgage Corp v. Hobdy (In re Hobdy), 130 B.R. 318, 320 (9th cir. BAP 1991). In Linkous, the creditor filed a timely proof of claim but did not object to the plan. The plan was confirmed, and the time for appeal of the confirmation order expired. The district court found the confirmation notice and plan summary sent to the creditor were defective in several respects and vacated the confirmation order.

In the Martins' case, the IRS was not listed as a creditor and received none of the regular notices from the clerk. The IRS holds a timely filed, allowed priority claim. While the claim is "provided for" generically in the plan, the specific terms of the plan show that the Martins will not be able to pay the claim in full. The IRS motion for new trial was timely filed. The court finds that the motion should be granted for a new trial to determine whether the Martins' tax liability will defeat their ability to perform the plan.

## ORDER

IT IS ORDERED that the Internal Revenue Service's Motion for New Trial is granted. The April 21, 1993 order confirming the plan is vacated. The bankruptcy clerk shall set a new trial on plan confirmation.

SO ORDERED ON THIS 1<sup>st</sup> DAY OF SEPTEMBER, 1993.

William L. Edmonds  
Chief Bankruptcy Judge