

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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RONALD S. TRUELOVE

Bankruptcy No. 93-11170KC

SHEILA G. TRUELOVE

*Debtor(s).*

Chapter 13

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### ORDER RE: CONFIRMATION OF PLAN

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The above-captioned matter came on for hearing on March 29, 1994 on confirmation of Debtors' Chapter 13 plan. Jeffrey Taylor appeared for Debtors Ronald and Sheila Truelove. Carol Dunbar appeared as the case trustee. Martin McLaughlin represented the IRS. After considering arguments of counsel, the Court took the matter under advisement. The time for filing briefs has now expired and the matter is ready for determination.

#### STATEMENT OF THE CASE

Debtors commenced their first Chapter 13 case in 1985. They completed the plan and received a discharge on November 19, 1992. Debtors commenced their current Chapter 13 case on July 7, 1993.

The present Chapter 13 plan proposes to pay the IRS for 1991 and 1992 taxes which constitute a priority claim. The IRS also asserts a secured claim in the approximate amount of \$60,615 arising from tax years 1987 through 1990. It filed a notice of lien covering those taxes on November 13, 1992, six days before Debtors received their discharge in their original Chapter 13 case. This is a post-petition claim with regard to the first Chapter 13 case.

The IRS objects to confirmation because Debtors do not provide for payment of its "secured claim" in their Chapter 13 plan. Debtors claim that the IRS lien is invalid because it was filed in violation of the automatic stay which did not expire until discharge was entered. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

#### CONCLUSIONS OF LAW

The IRS claim for the 1987 through 1990 taxes is secured if the lien was perfected prior to commencement of Debtors' current Chapter 13 case. *In re Gran*, 964 F.2d 822, 828 (8th Cir. 1992). Debtors argue that the IRS's lien is invalid because it was perfected when the IRS recorded its notice of lien in violation of the automatic stay in effect in their first Chapter 13 case. The IRS argues that it did not violate the automatic stay because the lien did not operate against property of the bankruptcy estate. The Court must determine the extent to which the automatic stay remained in effect after confirmation of Debtors' Chapter 13 plan but prior to discharge.

Generally, § 362(a) operates to stay actions against a debtor, a debtor's property or property of the estate arising from prepetition claims. Subsection (4) provides that the stay applies to "any act to

create, perfect, or enforce any lien against property of the estate." This section prohibits the perfection of liens against property of the estate which arise from postpetition claims, including postpetition taxes such as those asserted by the IRS against Debtors herein. In re Thompson, 142 B.R. 961, 963 (Bankr. D. Colo. 1992).

Section 1306(a) states that property of the estate in Chapter 13 cases includes, in addition to property specified in § 541, all property the debtor acquires and earnings from services performed by the debtor after the commencement of the case but before the case is closed. After confirmation of a Chapter 13 plan, however, "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." 11 U.S.C. § 1327 (b).

Cases have recognized the tension between § 1306(a) and § 1327(b). Under § 1306, property acquired and wages earned postpetition are property of the estate. However, § 1327(b) provides that confirmation of the Chapter 13 plan vests all property of the estate in the debtor. A recent Eighth Circuit case considered the interplay between these sections and held that the Chapter 13 bankruptcy estate continues to exist after confirmation of the plan. Security Bank v. Neiman, 1 F.3d 687, 690 (8th Cir. 1993). The issue presented was the treatment of postpetition debts as Chapter 13 administrative expenses as necessary for preservation of the estate after conversion to Chapter 7. Id. at 689. The court noted that the issues of what the estate included and what was protected by the stay were not present in the case. Id. at 690.

Cases cited in Security Bank provide insight on this issue. The dissenter in Laughlin v. United States IRS, 912 F.2d 197, 202 (8th Cir. 1990), cert. denied, 498 U.S. 1120 (1991), was persuaded by cases which held that after confirmation the Chapter 13 estate consists of property and wages necessary for execution of the Chapter 13 plan. See Security Bank, 1 F.3d at 690 (agreeing with reasoning of Laughlin dissent). In re Clarke, 71 B.R. 747, 750 (Bankr. E.D. Pa. 1987), held that the stay remains in effect to protect property of the estate which revested in the debtor. It agreed with reasoning of In re Root, 61 B.R. 984, 985 (Bankr. D. Colo. 1986), that postpetition wages, up to the amount of the plan payments, remain property of the estate protected by the automatic stay. The court in Root stated that if the IRS sought to levy on the debtor's property which was not property of the estate, there was no violation of the stay. Id.

In re Adams, 12 B.R. 540 (Bankr. D. Utah 1981) (Mabey, J.), was also cited in Security Bank. Judge Mabey stated:

[T]he expansive definition of "property of the estate" found in Section 1306 is pruned dramatically at confirmation. Any property which has not been designated in the plan or order of confirmation as necessary for the execution of the plan revests in the debtor, under Section 1327(b), to become "property of the debtor." Thus, all wages over and above those paid to the trustee or creditors under a plan, and any property which the debtor does not propose to use in funding his plan returns to the debtor and becomes subject to the reach of [creditors] under Section 362(b)(2).

Adams, 12 B.R. at 542.

Recent cases have considered whether the IRS may "create, perfect or enforce" a lien for postpetition taxes in a Chapter 13 case. Using a definition of the postconfirmation estate similar to that described in Adams, these cases have concluded that IRS action against a debtor's property to perfect or levy on liens arising from postpetition tax liability did not violate the automatic stay. In re Markowicz, 150

B.R. 461, 462 (Bankr. D. Nev. 1993) (holding levy did not violate automatic stay); In re Thompson, 142 B.R. 961, 964 (Bankr. D. Colo. 1992) (drawing bright line to hold that property of estate consists only of those funds actually paid to Chapter 13 trustee; IRS may levy on property of debtor for post-petition taxes).

In light of the foregoing, the IRS was barred by the automatic stay from perfecting its lien against property of Debtors' Chapter 13 estate. Such property consisted of Debtors' property and wages necessary to fund their Chapter 13 plan. The Court finds that on November 13, 1992, when the IRS filed its notice of lien, Debtors Chapter 13 plan was completely funded and the IRS lien could not have attached to any property of the estate at that time. Filing the notice of lien on that date did not violate the automatic stay.

Debtors have no grounds to have the lien declared invalid. The IRS claim for 1987 through 1990 taxes is a secured claim by virtue of the filing of the notice of lien prior to commencement of this case. Debtors' plan may not be confirmed because it does not provide for this secured claim as required by § 1325(a)(5).

**WHEREFORE**, the Objection to Confirmation of Chapter 13 Plan filed by the IRS is SUSTAINED.

**FURTHER**, Confirmation of Debtor's Chapter 13 Plan is DENIED.

**SO ORDERED** this 26th day of May, 1994.

Paul J. Kilburg  
U.S. Bankruptcy Judge