

# In the United States Bankruptcy Court

## for the Northern District of Iowa

CEDAR VALLEY FEEDS, INC.  
Debtors.

Bankruptcy No. L-91-00266C  
Chapter 7

### ORDER RE TRUSTEE'S FINAL REPORT AND PROPOSED DISTRIBUTION

On May 4, 1995, the above-captioned matter came on for hearing pursuant to assignment. Present at the hearing were Jeffrey Taylor on behalf of Chapter 7 Trustee Thomas McCuskey and Martin McLaughlin on behalf of the Internal Revenue Service (the "IRS") and Commodity Credit Corp. ("CCC"). The matter before the Court is the Trustee's Final Report and Proposed Distribution with Objection thereto filed by the IRS and CCC. This is a core proceeding pursuant to 28 U.S.C. 157(b) (2)(B).

#### STATEMENT OF THE CASE

The parties have agreed that CCC's claim should be reduced from \$76,947.41, allowed as unsecured in the final report, to \$3,700.31 as set out in CCC's amended claim filed April 7, 1995. Therefore, CCC's objection need not be further addressed.

Of the IRS's total claim of \$8,389.10, the Trustee allowed \$443.92 as an unsecured claim. The Final Report indicates that the remainder is disallowed for lack of documentation. The items disallowed by the Trustee appear on the IRS's Proof of Claim as follows:

Kind of Tax	Tax Period	Date Tax Assessed	Tax Due
W/H & FICA	03/31/91	ASMT PROHIBTD B/C	\$6,378.82
FUTA	12/31/91	2 UNLIQUIDATED **	\$1,555.65

The following footnote also appears on the Proof of Claim: "2\* ESTIMATED LIABILITY - RETURN NOT FILED". The Proof of Claim is on a single, one-sided sheet of paper. Neither party offered evidence at the hearing although the IRS provided the Court a copy of its Proof of Claim.

At the hearing, Attorney McLaughlin stated that the FUTA tax for the period ending 12/31/91 was based on estimated liability because Debtor failed to file a return for that period. He further asserted that the W/H & FICA tax for the period ending 03/31/91 is based on a tax return filed by Debtor but that Debtor made no deposits to pay the amounts due. Assessment of this amount was prohibited by the filing of this bankruptcy case. The IRS maintains that its claim should be allowed in the full amount as filed.

The Trustee argues that the entire claim lacks documentation and should be disallowed on that basis. He further asserts that the IRS has no basis in fact for its assumption of liability for the 12/31/91

FUTA tax. Attorney Taylor stated at the hearing that Debtor had no employees for at least a portion of that quarter and thus any tax liability based on the IRS's estimates is necessarily invalid.

### CONCLUSIONS OF LAW

Under 11 U.S.C. 502(a), a proof of claim filed in a bankruptcy proceeding is deemed allowed unless a party in interest objects. Under Rule 3001(f), a proof of claim correctly filed "shall constitute prima facie evidence of the validity and amount of the claim." An objecting party must produce evidence rebutting the claim or the claimant will prevail. In re Gran, 964 F.2d 822, 827 (8th Cir. 1992).

One court has noted that in order for a proof of claim to be legally sufficient and prima facie valid, it must 1) be in writing, 2) make a demand on the debtor's estate, 3) express an intent to hold the debtor liable, 4) be properly filed and 5) be based on facts allowing the document to be accepted as proof of a claim, i.e., set forth the necessary facts to establish the claim. In re Circle J Dairy, Inc., 112 B.R. 297, 299-300 (W.D. Ark. 1989). In order to rebut a facially valid claim, the objecting party must produce evidence that the claim is not correct of probative force at least equal to that of the proof of claim itself. In re White, 168 B.R. 825, 829 (Bankr. D. Conn. 1994). Legal memoranda and oral argument are insufficient to overcome the presumption of validity. Id.; In re All Am. of Ashburn, Inc., 156 B.R. 696, 703 (Bankr. N.D. Ga. 1993) (holding that statement in a brief denying liability unsupported by evidence is insufficient to rebut presumption); In re Unimet Corp., 74 B.R. 156, 167 (Bankr. N.D. Ohio 1987) (stating that bare allegation of corporate officer is insufficient to rebut prima facie validity of claim).

Generally, if evidence rebutting the claim is brought forth, the claimant must produce additional evidence to prove the validity of the claim by a preponderance of evidence. Gran, 964 F.2d at 827; In re Corey, No. X88-01902S, slip op. at 9 (Bankr. N.D. Iowa Oct. 27, 1989). However, there is a split of authority regarding whether this shifting of the ultimate burden of persuasion applies to the IRS. Compare In re Placid Oil Co., 988 F.2d 554, 556 (5th Cir. 1993), (holding that evidence rebutting the prima facie case shifts the burden back to the IRS to show liability by a preponderance of the evidence) and In re Dakota Indus., Inc., 131 B.R. 437, 445 (Bankr. D.S.D. 1991) (holding that the burden of persuasion shifts back to the IRS after the debtor produces sufficient credible evidence to establish error) with In re Landbank Equity Corp., 973 F.2d 265, 271 (4th Cir. 1992) (holding that a dispute between the debtor and the IRS should be decided in the same manner as it would outside the bankruptcy context, i.e. with the ultimate burden of persuasion on the taxpayer) and In re Cobb, 135 B.R. 640, 641 (Bankr. D. Neb. 1992) (disagreeing with the growing weight of authority to conclude that the burden of proof is allocated by nonbankruptcy law); see also Elmer Dean Martin III, Burden of Persuasion: The Overlooked Defense to Tax Claims, 21 Cal. Bankr. J. 117 (1993).

The Eighth Circuit expressly declined to address the issue in Gran. It found that the question of whether the burden of proof is ultimately on the government was wholly academic in that case because the government had established the validity of its claim. Gran, 964 F.2d at 829. The District Court in the Southern District of Iowa has directly addressed the issue. In re Brown, 169 B.R. 59 (S.D. Iowa 1994). It held that the better rule is that the IRS bears the ultimate burden of proof as to the legal liability of the debtors and the amount of liability where the taxes have not been assessed. Id. at 61.

Neither party produced evidence regarding the IRS's claim other than the Proof of Claim. The IRS did not file supporting documentation with the claim. Arguments and assertions by counsel during the hearing are not accorded evidentiary weight. Thus, the Court must make its determination regarding the validity of the claim based solely on the Proof of Claim, in light of the burdens and presumptions accorded by law as set out above.

The Trustee objects to the IRS's claim because of lack of documentation. Rule 3001 requires that a claim based on a writing or a perfected security interest must be accompanied by the writing or evidence of the security interest. Courts have stated that the IRS is not required to file any other document with its proof of claim because its claims are based not on a writing, but on federal statutes. White, 168 B.R. at 834; In re Gingery, 48 B.R. 1000, 1004 (D. Colo. 1985) (holding that additional documentation to support IRS claim is not required). Therefore, the Trustee's assertion is without merit.

In order for a proof of claim to be afforded prima facie validity under Rule 3001(f), it must be timely filed and contain the necessary facts to establish the claim. Circle J Dairy, 112 B.R. at 300. In White, the court allowed an IRS claim similar to the one filed herein. 168 B.R. at 834. Some of the taxes claimed were estimated and a footnote explained that Debtor had failed to file returns which required the IRS to estimate the claim. Id. at 827. The court concluded that the IRS's proof of claim established a prima facie case. Id. at 830.

The IRS's Proof of Claim herein was timely filed and contains the necessary facts to support the claim. It is legally sufficient and should be accorded prima facie validity pursuant to Rule 3001(f). Therefore, the Trustee is required to produce probative evidence to rebut the claim. As there is no rebuttal evidence, the claim must be allowed. As the Trustee has not met its initial burden of rebutting the IRS's prima facie case, the Court need not rule on whether the ultimate burden of persuasion would thereafter shift to the IRS. See Gran, 964 F.2d at 829.

**WHEREFORE**, the Objection to the Final Report filed by the Internal Revenue Services is SUSTAINED.

**FURTHER**, the Trustee is directed to resubmit a Final Report in compliance with the foregoing.

**SO ORDERED** this 19th day of May, 1995.

Paul J. Kilburg  
U.S. Bankruptcy Judge