

In the United States Bankruptcy Court

for the Northern District of Iowa

KHALID EL KHABBAZ
MICHELLE EL KHABBAZ

Debtor(s).

Bankruptcy No. 95-22466KD

Chapter 13

ORDER RE REQUEST FOR DETERMINATION OF IRS CLAIM

On March 6, 1996, the above-captioned matter came on for telephonic hearing pursuant to assignment on Debtors' Request for Determination of IRS Claim. Debtors Khalid and Michelle El Khabbaz appeared by Attorney Brian Peters. The United States on behalf of the Internal Revenue Service (IRS) appeared by Assistant U.S. Attorney Kristin Tolvstad. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K).

STATEMENT OF THE CASE

Debtors assert that the IRS is secured only to the extent of "the red-titled automobile [a 1987 Buick Century] owned by Mr. El Khabbaz, since that is the extent of his property upon filing." They argue that the IRS lien does not extend to property of Mrs. El Khabbaz and therefore the IRS secured claim is overstated on the proof of claim. Debtors request that they be excused from filing their amended plan until determination of the IRS claim is made. The IRS filed a Motion to Dismiss Debtors' Request for Determination of IRS Claim. In an order filed March 6, 1996, the Court denied this Motion to Dismiss.

At the hearing, the parties agreed that Debtors' evidentiary presentation could be done by affidavits. The IRS indicated that it would have no separate evidence to present. The Court allowed affidavits to be filed by March 18, 1996 and briefs to be filed by March 29, 1996, and excused Debtors from filing an amended plan until the Court made a final ruling in this matter.

The Affidavit of Debtor Michelle El Khabbaz filed March 18, 1996 states that, except the 1987 Buick Century, all property shown on Schedule B is her separate property, acquired prior to the parties' marriage. Debtors were married on January 26, 1990. They now live separately and this property is in Mrs. El Khabbaz's possession. No dissolution proceedings are pending. Debtors acknowledge that the 1987 Buick Century is the sole property of Debtor Khalid El Khabbaz.

Schedule B lists various items of personal property with a total value of \$2,425. The IRS Proof of Claim asserts a secured claim in this amount, secured by all the personal property listed in Schedule B, based on tax liens filed against Debtor Khalid El Khabbaz for 1989 income tax. This tax liability arose prior to the Debtors' marriage in 1990.

CONCLUSIONS OF LAW

The IRS argues that Mr. El Khabbaz has a property interest in Mrs. El Khabbaz's separate property by virtue of their marriage. It asserts that its lien attaches to this property interest under 26 U.S.C. § 6321. Debtors assert that Mr. El Khabbaz does not have an interest in Mrs. El Khabbaz's separate property to which the IRS lien could attach.

The IRS lien attaches to "all property and rights to property, whether real or personal, belonging to" the person liable to pay the tax. 26 U.S.C. § 6321. This statutory language is broad and reveals that Congress meant to reach every interest in property that a taxpayer might have. United States v. National Bank of Commerce, 472 U.S. 713, 719-20, 105 S. Ct.

2919, 2924 (1985). The definition of underlying property interests is left to state law and the consequences of federal tax collection that attach to those interests is a matter left to federal law. United States v. Rodgers, 461 U.S. 677, 683, 103 S. Ct. 2132, 2137 (1983); Thomson v. U.S., 66 F.3d 160, 161 (8th Cir. 1995).

A federal tax lien attaches only to the property interests of the delinquent taxpayer. Gardner v. United States, 34 F.3d 985, 987 (10th Cir. 1987). The IRS acquires by its lien no greater right to property than the taxpayer has at the time the tax lien arises. Thomson, 66 F.3d at 162. Where property is jointly owned, the lien attaches only to the extent of the delinquent taxpayer's interest. Schmit v. United States, 896 F.2d 352, 354 (9th Cir. 1990). The Eighth Circuit has considered whether, under § 6321, an IRS lien attaches to property held by spouses as tenants by the entirety in Missouri. Tony Thornton Auction Serv. v. United States, 791 F.2d 635, 637 (8th Cir. 1986). It concluded that the interest of one spouse in an estate by the entirety is not a "right to property" in any sense. Id. The court based this conclusion on the fact that, in Missouri, tenancies by the entirety provide each spouse's interest immunity from attachment of liens of creditors of only one of the tenants. Id.

In In re Cox, 156 B.R. 323, 327 (Bankr. M.D. Fla. 1993), aff'd, 189 B.R. 214, 216 (M.D. Fla. 1995), the court found that a husband's tax lien did not attach to real estate owned in his wife's sole name. The court stated that there cannot be a tax lien if there is no underlying obligation to pay taxes. Id. at 326-27. Another court found that a state law which decrees that the separate property of one spouse is not liable for the debts of the other spouse defines a property right for purposes of § 6321. Bice v. Campbell, 231 F. Supp. 948, 951 (N.D. Tex. 1964).

Iowa Code section 597.2 states that "[w]hen property is owned by the husband or wife, the other has no interest therein . . . as will make the same liable for the contracts or liabilities of the one not the owner of the property." The Iowa Supreme Court has stated that a husband or wife has no inchoate right in the other spouse's personal property during the other's lifetime. Nichols v. Nichols, 526 N.W.2d 346, 349 (Iowa App. 1994) (citing Samson v. Samson, 25 N.W. 233, 236 (1885)). As the IRS points out, the Iowa District Court does take each party's separate property into consideration when making equitable divisions of property in dissolutions under Iowa Code section 598.21(a). Nichols, 526 N.W.2d at 349. This, however, does not create an ownership interest in the spouse's separate property by virtue of the marital relationship, as might be the case in "community property" states. Id.

Thus, in Iowa, separate property owned by a wife is not liable for the separate debts of her husband. George Adams & Burke Co. v. James Cook & Son, 115 N.W. 478, 479 (Iowa 1908); Russel v. Long, 3 N.W. 75, 77 (Iowa 1879); Iowa Code § 597.2. This state law defines the extent of Mr. Khabbaz's interest in Mrs. Khabbaz's separate property. Mr. Khabbaz has no separate interest in Mrs. Khabbaz's property which can be subject to the IRS tax lien.

The Court concludes that, under Iowa law, the IRS lien can only attach to the 1987 Buick automobile which, under the record as presented, constitutes the only separate property owned by Mr. Khabbaz. Therefore, the IRS's claim is secured only to the extent of the value of the Buick, or \$500.00. Debtors should have a reasonable time within which to file an amended Chapter 13 plan which conforms with this ruling.

WHEREFORE, Debtors' Request for Determination of IRS Claim is GRANTED.

FURTHER, the IRS's tax lien arising from Debtor Khalid El Khabbaz's 1989 income tax liability does not attach to the separate property of Debtor Michelle El Khabbaz listed on Schedule B.

FURTHER, the IRS's claim is secured only to the extent of the value of the 1987 Buick, Debtor Khalid El Khabbaz's only property, or \$500.00.

FURTHER, Debtors shall file an amended plan in conformance with this ruling on or before April 30, 1996.

SO ORDERED this 12th day of April, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge