

In the United States Bankruptcy Court

for the Northern District of Iowa

RALPH A. RATHBUN, SHIRLEY M. RATHBUN
Debtors.

Bankruptcy No. L-91-01555D
Chapter 13

ORDER RE TRUSTEE'S FINAL REPORT

On December 11, 1996, the above-captioned matter came on for hearing on Trustee's Final Report and objection thereto filed by the IRS. Debtors appeared by Attorney Brian Peters. The Chapter 13 Trustee Carol Dunbar was also present. The IRS appeared by Assistant U.S. Attorney Kristin Tolvstad. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(A).

The facts are not in dispute. Debtors filed their Chapter 13 Petition on August 19, 1991. Their Plan envisioned the IRS would be paid \$2,403 during the course of the Plan on its priority claim for taxes. The Plan was confirmed without objection on November 22, 1991. On November 27, 1991, subsequent to Plan confirmation but during the allowable claims period, the IRS filed a claim for taxes with \$7,986.50 as a priority claim and \$2,192.09 as an unsecured claim.

The Chapter 13 Trustee filed her Report on Claims on April 6, 1992. No objections having been filed, the Court approved the Claims Report on May 20, 1992. No action was taken during the life of the Plan on the discrepancy between the Plan provisions for payment of the IRS priority claim and the amount claimed and allowed in the Claims Report.

Debtors made all payments in a timely manner and complied with the provisions of the confirmed Plan. On October 21, 1996, Trustee Dunbar filed a Final Report reflecting that Debtors had complied with the confirmed Plan and had paid \$4,711.50 to the IRS toward its priority claim. The Final Report was noticed to all creditors. The IRS filed the only objection to the Final Report which came on for hearing on this date.

The IRS objection states that "The Trustee's Final Report, filed October 21, 1996, shows that payments totaling \$4,711.50 were made to the IRS. The IRS confirms this amount of payments received. The full amount of the IRS priority claim was not paid in full." Based on the failure to pay the IRS priority claim in full as required by the Bankruptcy Code, the IRS objects to approval of the Final Report and entry of discharge.

After discussion, the Court granted Debtors time to make an election whether they would agree that any funds owed the IRS on its priority claim, the difference between the amount paid and the actual amount claimed, would be excepted from their discharge. If Debtors made such an election, the discharge would enter with the exception of the amount still remaining to the IRS on its priority claim. If Debtors chose not to make such an election, the parties had until January 6, 1997 within which to submit briefs and the Court would enter its ruling accordingly.

Debtors have now filed their "Election Regarding Non-Dischargeability of Tax Debt". They agree that the remaining IRS priority claim is nondischargeable. This claim consists of the difference between the IRS priority claim of \$7,986.50 and the amount paid by Debtors during the plan of \$4,711.50, and does not carry penalties and interest for the term of the Plan.

This election resolves the objection of the IRS to Trustee's Final Report. The Court approves this election by Debtors. The Final Report may now be approved.

WHEREFORE, Chapter 13 Trustee's Final Report and Account and Notice of Completion is APPROVED.

FURTHER, Debtor's Election Regarding Non-Dischargeability of Tax Debt filed December 31, 1996 is APPROVED.

FURTHER, discharge may now be entered with the exception as set out in Debtor's Election.

SO ORDERED this 3rd day of January, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge