UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:

Bk. No. 02-11808-JMD
Chapter 13

Kevin F. MacMillan and
Joan L. MacMillan,
Debtors

Kevin F. MacMillan and
Joan L. MacMillan,
Movants

v.

Objection to Claim Nos. 3 and 5

United States of America,
on behalf of its agency,
the Internal Revenue Service,
Respondent

Kevin F. MacMillan and
Joan L. MacMillan
North Conway, New Hampshire
Pro Se Debtors/Movants

Thomas P. Cole, Esq.
U.S. Department of Justice–Tax Division
Washington, D.C.
Attorney for Respondent

MEMORANDUM OPINION

I. INTRODUCTION

Kevin F. MacMillan and Joan L. MacMillan (the “Debtors”) object to the proofs of claim of the Internal Revenue Service (the “IRS”) in the Debtors’ Chapter 13 case, with respect both to the validity and to the amount of the IRS’s claim. The Court held a preliminary hearing on the

Debtors' objections on February 14, 2003, and an evidentiary hearing on May 16, 2003, June 16, 2003, and August 21, 2003. At the conclusion of the last day of the hearing the Court took the matter under advisement and gave the parties an opportunity to file closing memoranda.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. FACTS AND PROCEDURAL BACKGROUND

On June 7, 2002, the Debtors filed a Chapter 13 bankruptcy petition. The IRS filed its first proof of claim on October 21, 2002, in the total amount of $27,365.04, which represented amounts owed for income taxes, interest, and penalties related to tax years 1988, 1989, 1998, 1999, 2000, and 2001. See POC 3. The claim consisted of a secured portion in the amount of $13,759.81, a priority unsecured portion in the amount of $7,595.63, and a general unsecured portion in the amount of $6,009.60. The Debtors filed an objection to this proof of claim on January 22, 2003, on the grounds that the claim by the IRS had been "arbitrarily charged, penalized, and grown with interest." The Debtors stated that the tax shown as owing by the IRS did not appear on the Debtors' tax returns. The IRS filed a response to the Debtors' objection in which it indicated that the outstanding tax liabilities for tax years 1988, 1998, and 1999 were the result of the income tax returns filed by the Debtors and the outstanding liability for tax year 1989 was the result of an additional tax assessment in 1993.

The IRS amended its claim downward on January 31, 2003, to $22,533.33, after receiving and reviewing the Debtors' 2000 and 2001 income tax returns. See POC 5. The IRS eliminated all liability for tax year 2001. The IRS's amended claim contains the following elements:

Tax Year	**Tax Due**	**Penalty Due**	**Interest Due**	**Status**
1988	$612.00	$0	$0	Secured/Right of Setoff
1988	$717.86	$332.47	$2,843.89	General Unsecured
1989	$4,425.53	$1,164.50	$8,169.78	Secured
1998	$870.00		$244.70	Priority Unsecured
1999	$179.00		$32.60	Priority Unsecured
2000	$1,843.00		$149.32	Priority Unsecured
1998, 1999, and 2000		$948.68		General Unsecured
Totals	$8,647.39	$2,445.65	$11,440.29	$22,533.33

See POC 5.

The Debtors objected to the IRS's amended claim on the grounds that the IRS "amended their returns unilaterally, and caused arbitrary late filing fees, penalties and interest to be applied to these erroneous numbers for the years 1988 and 1989." The Debtors also objected to the calculations for tax years 1998 and 1999 because "they are not based on the debtors tax forms prepared by their accountants but as amended by the IRS." The Debtors further argued that the IRS improperly applied a payment of $11,704.00 to taxes not claimed by the Debtors and the IRS continues to apply payments to liens already released.

The IRS denied that it amended the Debtors' income tax returns for tax years 1988, 1989, 1999, 2000, or 2001 and indicated that, with the exception of tax year 1989, the tax liability assessments are the result of the income tax returns filed by the Debtors and accepted by the IRS, as filed. The IRS stated further that the Debtors' 1989 income tax return was the subject of an examination by the IRS which resulted in the issuance of a statutory notice of deficiency. The Debtors challenged that deficiency in the United States Tax Court and their petition was ultimately dismissed by that court. According to the IRS, following the tax court's dismissal, the deficiency, plus statutory additions, were assessed by the IRS as provided by law for tax year 1989. The IRS continues to assert that the amounts set forth in its amended proof of claim remain due and owing.

III. DISCUSSION

Section 502(a) of the Bankruptcy Code provides that "[a] claim . . . , proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a); see United States v. Braunstein (In re Pan), 209 B.R. 152, 155 (D. Mass. 1997). Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). "[A] claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward." Pan, 209 B.R. at 155 (quoting in In re Allegheny Intern., Inc., 954 F.2d 167, 173 (3d Cir. 1992)). The prima facie validity of a proof of claim can be overcome by an objection that is supported by "substantial evidence." Id. (citing In re Hemingway Transp., Inc., 993 F.2d 915, 925 (1st Cir. 1993), and others). Thus, a claimant establishes a prima facie case against a debtor upon the execution and filing of a proof of claim in accordance with the bankruptcy rules; the objecting party is then required to produce evidence to rebut the claimant's prima facie case; once the objecting party produces such rebuttal evidence, the burden shifts back to the claimant to produce additional evidence to prove the validity of the claim by a preponderance of the evidence. In re Colonial Bakery, Inc., 108 B.R. 13, 15 (Bankr. D.R.I. 1989) (cited in In re Pontarelli, 169 B.R. 499, 501 (Bankr. D.R.I. 1994)). See also In re Narragansett Clothing Co., 143 B.R. 582, 583 (Bankr. D.R.I. 1992). The ultimate burden of proof always rests upon the claimant. Colonial Bakery, 108 B.R. at 15.

The United States Supreme Court has ruled that when the substantive law creating a tax obligation puts the burden of proof on a taxpayer, the burden of proof on the tax claim remains where the substantive law puts it even in a bankruptcy proceeding. Raleigh v. Illinois Dep't of Revenue, 530 U.S. 15, 26 (2000). "It is settled law that taxpayers bear the burden of proving that a tax deficiency assessment is erroneous." Delaney v. Commissioner, 99 F.3d 20, 23 (1st Cir. 1996). Accordingly, in cases where the debtor is challenging a claim by the IRS based on its assessment of a tax deficiency, the burden is on the debtor to establish that the IRS's assessment and thus its proof of claim is not valid.[1]

With these precepts in mind the Court must review the pleadings and evidentiary record before it. The IRS filed its first proof of claim on October 21, 2002, which it subsequently amended by filing a second proof of claim on January 31, 2003. The IRS's amended proof of claim constitutes prima facie evidence of both the validity and the amount of the IRS's claim. The IRS's claim has attached to it a detailed breakdown of each element of its claim and a facsimile copy of the IRS's federal tax lien. The Court finds that the IRS has alleged facts sufficient to support its claim and it has satisfied its initial obligation to go forward.

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[1] At the commencement of the evidentiary hearing the Court reviewed the burden of proof with the Debtors, who are pro se, and they indicated they understood their burden in this proceeding.

The Debtors have the burden of producing evidence to rebut the IRS's prima facie case. In their closing argument, the Debtors assert that the IRS's collection activity was "extreme" and "micromanaged, harmful, and intentional." Even if that were true, it does not support the Debtors' position that the IRS's claim should be disallowed. The Debtors have not cited any legal authority for their position nor have they clearly articulated why the amounts on the IRS's amended proof of claim are not correct. Rather, the Debtors simply claim that the amounts are "unsupported" without intelligibly explaining why and without demonstrating how the evidence presented to the Court at the evidentiary hearing would warrant such a finding.

In its closing argument, the IRS demonstrated that, contrary to the Debtors' assertions, it gave the Debtors proper credit for the payment of $11,704.00, made by attorneys for a relative's estate in 1999 on account of an inheritance to be received by the Debtors, when the IRS applied the money to the Debtors' tax liabilities for tax years 1986 and 1987. The Debtors failed to present any evidence that would support a finding by the Court that the IRS's claim should be reduced by that or any other amount. The IRS also demonstrated in its closing argument that the liability for tax year 1989 is valid due to the evidence it presented regarding the need for additional tax assessment based on an increase in pension or annuity income and the disallowance of a mortgage interest deduction. The Debtors failed to offer any evidence why the additional assessment made by the IRS for tax year 1989 was not valid. The IRS further showed that its application of an overpayment of $1,276.00 from tax year 1997 to unpaid liability for tax year 1987 was proper under the United States Tax Code.

The Court finds that the Debtors have failed to produce sufficient evidence to rebut the IRS's prima facie case, and therefore, the Debtors have not met their burden of demonstrating the invalidity of the IRS's claim. For that reason, the Debtors' objections to the IRS's proofs of claim shall be denied.[2] This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

ENTERED at Manchester, New Hampshire.

Date: October 20, 2003

/s/ J. Michael Deasy
J. Michael Deasy
Bankruptcy Judge

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[2] In their closing argument, the Debtors have sought relief that is outside the scope of the claims objection process, namely, they request that the Court order a refund for "all . . . payments applied to the disputed tax years that were appealed and then derailed by IRS actions" and award the Debtors fees "for the economic costs to the debtors for the time and money lost in this collection process as it violated taxpayer and constitutional rights." The Debtors' request is procedurally and substantively defective and therefore such request is denied.