

FINDINGS OF FACT

1. The Debtors, Kenneth L. Israel and Dee Ann Israel, filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code on January 15, 1991.

2. The original Plan provided that monthly payments would be made to the Trustee in the sum of \$500.00 over a term of 47 months. The Plan also provided that unsecured creditors would be paid to the extent of two cents on the dollar and that priority tax claims were to be paid in full.

3. The Debtors schedules listed priority taxes owing for the years 1987 through 1989 to the Internal Revenue Service ("IRS") in the amount of \$10,739.00 and the IDRF in the amount of \$3,291.00.

4. The IRS filed an objection to the original Chapter 13 Plan. In May 1991, the Debtors' schedules were amended to add additional priority tax claims in favor of the IRS and the IDRF for 1990.

5. On June 27, 1991, the Chapter 13 Plan was modified extending the term from 47 months to 60 months and providing, in part, for the classification and treatment of the pre-petition tax claim of IDRF for the years 1983 through 1990.

6. The modified Chapter 13 Plan was confirmed by the Court on July 25, 1991.

7. On July 9, 1992, IDRF filed a proof of claim asserting an "Administrative Expense" claim in the amount of

\$2,816.35 for post-petition income taxes for 1991. The claim was further described as an unsecured priority tax claim pursuant to 11 U.S.C. § 507(a)(7). The IRS filed no such post-petition claim.

8. On December 10, 1992, the Debtors filed a Motion to Modify their Plan to include their 1991 post-petition tax obligations to the IRS and IDRF. The Trustee filed an objection to the modification on December 28, 1992 on the grounds that the original plan did not provide for payment of post-petition claims, that such claims were not entitled to priority, and that modification would unfairly discriminate against general unsecured creditors.

9. On December 28, 1992, the Trustee filed an objection to the proof of claim filed by IDRF which is now before this Court. IDRF resists Trustee's objection to the claim.

10. The Court denied Debtors' Motion to Modify their Plan on February 2, 1993.

DISCUSSION

The proof of claim for post-petition taxes filed by IDRF is termed as an "Administrative Expense". 11 U.S.C. § 503 provides in relevant part:

. . .

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including--

- . . . (1)(A) the actual, necessary costs and expenses of preserving the estate . . .
- (B) any tax--
 - (i) incurred by the estate, except a tax of a kind specified in section 507(a)(7) of this title;

However, 11 U.S.C. § 346 (d) provides:

In a case under Chapter 13 of this title, any income of the estate or the debtor may be taxed under a state or local law imposing a tax on or measured by income only to the debtor, and may not be taxed to the estate.

In In re Gyulafia, 65 B.R. 913 (Bankr.D.Kan. 1986), the court addressed the issue of whether administrative expense status under § 503 is available for post-petition tax claims. The court found that § 503 was inapplicable to any post-petition tax claim in a Chapter 13 case filed prior or subsequent to confirmation. Id. at 917. The court reasoned that because § 1327(b) and (c) provides that confirmation vests all the property in the debtor, taxes which accrue post-confirmation are not incurred by the estate, nor an actual, necessary cost of preserving the estate. Id.; see also In re Brilz, 96 B.R. 308, 309 (Bankr.D.Mont. 1989). Furthermore, the court held that the conclusion was the same for taxes which accrue post-petition but prior to confirmation as such post-petition claims fall within § 1305, which clearly indicates that the claim is against the debtor and not the estate. Gyulafia, 65

B.R. at 917. More importantly, § 346(d) mandates that in Chapter 13 cases any income of the estate or the debtor may be taxed only to the debtor. Id. Therefore, in a Chapter 13 case the taxes could not be incurred by the estate.

This Court hereby adopts the reasoning of the Gyulafia opinion. The claim filed by IDRF in this Chapter 13 case is clearly for post-petition taxes. The Court finds that such taxes were not incurred by the bankruptcy estate and, accordingly, the claim is not entitled to administrative expense status under § 503(b)(1).

Generally speaking, bankruptcy deals with debts that exist at the time of the filing of the petition. However, § 1305 provides for the filing of post-petition claims as follows:

(a) A proof of claim may be filed by any entity that holds a claim against the debtor--

(1) for taxes that become payable to a governmental unit while the case is pending;

. . .

(b) Except as provided in subsection (c) of this section, a claim filed under subsection (a) of this section shall be allowed or disallowed under section 502 of this title, but shall be determined as of the date such claim arises, and shall be allowed under section 502(a), 502(b), or 502(c) of this title, or disallowed under section 502(d) or 502(e) of this title, the same as if such claim had arisen before the date of the filing of the petition.

. . .

A post-petition claimant who elects to seek distribution under

the Chapter 13 plan may file a claim under § 1305(a)(1). The post-petition tax claim is then either allowed or disallowed pursuant to § 502 as though it were a prepetition claim.

Such claims have been found to be unsecured priority claims entitled to full payment under the plan. See In re Wright, 66 B.R. 125, 127 (Bankr.D.Kan. 1984). Section 507(a)(7) provides that certain claims have priority as follows:

(7) Seventh, allowed unsecured claims of governmental units; only to the extent that such claims are for--

(A) a tax on or measured by income or gross receipts--

(i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition.

The Court finds that this claim, although titled an "Administrative Expense" proof of claim is properly considered a claim filed for post-petition taxes pursuant to § 1305. The claim must, therefore, be treated as if it arose before the date of the filing of the petition. The Court finds that this claim is allowable pursuant to § 1305(b) and is entitled to the status of an unsecured priority claim as provided by § 507(a)(7).

Section 1322 provides for full payment under the Plan for all claims entitled to priority under § 507, unless the holder

agrees to a different treatment. At present, IDRFB has not consented to a different treatment. Additionally, the Chapter 13 Trustee maintains that absent a modification, there is no ability to pay this claim under the Plan. However, the Chapter 13 Plan makes no provision for payment of post-petition claims. Therefore, pursuant to § 1329(a) the Plan may not be modified to include payment of this claim.

ORDER

IT IS THEREFORE ORDERED that the claim filed by IDRFB is not entitled to administrative expense status pursuant to § 503.

IT IS FURTHER ORDERED that such claim is allowed pursuant to § 1305.

Dated this 25th day of January, 1994.

RUSSELL J. HILL
U.S. Bankruptcy Judge