UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	**Case No. 98-00218-CH**
	:	
VERNON F., JR. AND JULIA STODDEN,	:	**Chapter 7**
	:	
Debtors.	:	

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ORDER – MOTION TO REOPEN BANKRUPTCY PROCEEDINGS TO DETERMINE DISCHARGEABILITY OF DEBT

On January 21, 1998 Debtors, Vernon F., Jr. and Julia Stodden, filed a Voluntary Petition for Chapter 7 relief under the U.S. Bankruptcy Code. On July 15, 1998, a telephonic hearing was held on the Debtors' Motion to Reopen Case, Objection thereto, and Response to the Objection. Debtors were represented by attorney Robert Wright, Jr.; Creditor, Iowa Workforce Development, was represented by attorney Joseph L. Bervid. At the conclusion of the hearing, the Court took the matter under advisement. Briefs have been filed and the Court now considers the matter fully submitted.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1) and § 1334. This is a core proceeding. 28 U.S.C. §§ 157(b)(2)(A), (I). The Court, upon review of the briefs, pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

FINDINGS OF FACT

1. The Debtors, Vernon F. Stodden, Jr. and Julia Stodden, filed their Chapter 7 bankruptcy petition on January 21, 1998. They received their discharge on April 28, 1998. The case was closed on May 13, 1998.

2. Mr. Stodden was an employer in the state of Iowa and paid wages to individuals as employees.

3. Employers in the state of Iowa are required to pay employment security contributions on all taxable wages paid by them pursuant to Iowa Code Chapter 96.

4. Mr. Stodden completed mandatory quarterly "Employer's Contribution & Payroll" reports and submitted them to the state of Iowa. Adjustments correcting the amount of wages were completed by Iowa Workforce Development for the period commencing on January 1, 1995 and continuing through April of 1996. These documents were used to determine the amount of contributions due under Chapter 96.

5. The employment security contributions at issue became due and owing within three years of the date of the Debtors' filing of their bankruptcy petition.

6. The employment security contributions due and owing the state of Iowa amount to $24,460.18 plus accruing interest, penalty and cost.

7. On May 28, 1998, the Debtors filed the instant "Motion to Reopen Bankruptcy Proceedings to Determine Dischargeability."

DISCUSSION

Debtors filed the Motion to Reopen their bankruptcy case to determine whether the debt they listed on Schedule E of their petition owing to Iowa Workforce Development ("IWD") was discharged with the rest of their dischargeable debts. Debtors contend that this debt is not a tax debt within the meaning of 11 U.S.C. § 523(a)(1) and thus is dischargeable. Iowa Workforce Development alleges that the debt *is* a tax debt and is nondischargeable.

Motion to Reopen

Under Bankruptcy Rule 4007, either the debtor or the creditor can move to reopen the bankruptcy case for the purpose of filing a complaint to determine dischargeability at any time. 11 U.S.C. § 350(b) provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." The burden of establishing grounds for reopening the case is on the moving party. In re Cochran, Ch. 7 Case No. 94-61243-KW (Bankr. N.D. Iowa Mar. 24, 1997). The decision whether or not to reopen a case lies within the sound discretion of the bankruptcy court. Id.; Arleaux v. Arleaux, 210 B.R. 148, 149 (8th Cir. BAP 1997), aff'd, 149 F.3d 1186, 1998 WL 199932 (8th Cir. 1998).

The Court will consider the dischargeability issues raised in the Debtors' Motion to Reopen.

> Ordinarily, when a request is made to reopen a case for the purpose of filing a dischargeability complaint, the court should reopen routinely and reach the merits of the underlying dispute only in the context of the adversary proceeding, not as part of the motion to reopen. However, where . . . the proposed dischargeability complaint is completely lacking in merit, it is not inappropriate for the court to examine the issues, nor is it an abuse of discretion to deny the motion to reopen.

Arleaux v. Arleaux, 210 B.R. 148 (8th Cir. BAP 1997); affirmed No. 97-3119 (8th Cir. 1998) ("reopening the case would not have afforded Mr. Arleaux any relief"). The Court will thus consider whether the underlying complaint has any merit. If it does, the case will be reopened and the plaintiff required to file an appropriate complaint to initiate an adversary proceeding. See Rule 4007(e) (A proceeding commenced by a complaint filed under this rule is governed by Part VII of these rules.").

Background

The Iowa Employment Security Law, Iowa Code Chapter 96 (IESL), was enacted "under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own." Iowa Code § 96.2. Section 96.7(1) of the Iowa Code requires employers to pay contributions on all taxable wages paid by them. Contributions go into the state's unemployment compensation fund. See Iowa Code § 96.9(1).

Unemployment insurance is a joint federal-state endeavor. Employers that pay the Iowa contributions on time and in full receive an offset credit against the federal unemployment tax up to 90 per cent. 26 U.S.C. § 3302. Most states have unemployment insurance provisions similar to Iowa's. "The Unemployment Compensation Acts adopted in the several states were substantially contemporaneous. They were adopted pursuant to and in accord with the Social Security Act of the Federal Government." Woods Bros. Const. Co. v. Iowa Unemployment Compensation Commission, 296 N.W. 345, 348 (Iowa 1941).

Justice Cardozo described the interrelation between state and federal unemployment insurance laws in an early Supreme Court case:

> [Title IX of t]he Social Security Act (Act of August 14, 1935 . . .) [provides that] [e]very employer (with stated exceptions) is to pay for each calendar year 'an excise tax, with respect to having individuals in his employ,' the tax to be measured by prescribed percentages of the total wages payable by the employer during the calendar year with respect to such employment. Section 901, 42 U.S.C.A. §1101. . . . The proceeds, when collected, go into the Treasury of the United States like internal revenue collections generally. Section 905(a), 42 U.S.C.A. §1105(a). . . . If the taxpayer has made contributions to an unemployment fund under a state law, he may credit such contributions against the federal tax, provided, however, that . . . the state law shall have been certified to the Secretary of the Treasury by the Social Security Board as satisfying certain minimum criteria. Section 902. . . .

> Some of the conditions thus attached to the allowance of a credit are designed to give assurance that the state unemployment compensation law shall be one in substance as well as name. Others are designed to give assurance that the contributions shall be protected against loss after payment to the state. . . .

Chas. C. Steward Mach. Co. v. Davis, 301 U.S. 548 (1937). The Federal Unemployment Tax Act, 26 U.S.C.A. Int. Rev. Code § 1600 et seq. (FUTA), thus imposes a tax on covered employers, but allows them to offset their FUTA tax liability contributions into a federally-approved state unemployment fund. The IESL is just such a fund, and is similar to state unemployment funds across the country in its purpose and function.

11 U.S.C. § 523(a)(1)(A) excepts from a bankruptcy discharge debts for a tax "of the kind and for the periods specified in section . . . 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed; . . . ." Section 507(a)(8)(D) specifies

> an employment tax on a wage, salary, or commission of a kind specified in paragraph (3) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition. . . .

The issue relevant to a determination of whether this bankruptcy case should be reopened is whether "employment security contributions" under the Iowa Employment Security Law are considered "taxes" for purposes of 11 U.S.C. §§ 523(a)(1)(A) and 507(a)(8). More specifically, the question is whether employment security contributions are considered "employment taxes" under 11 U.S.C. § 507(a)(8)(D). These questions are definitively answered in the affirmative by a review of the relevant case law.

Analysis

The debtors claim that, since the Iowa Employment Security Law calls employment security payments "contributions," they are not taxes. According to Black's Law Dictionary, a "tax" is

> [a] pecuniary burden laid upon individuals or property to support the government, and is a payment exacted by legislative authority. (citation omitted) Essential characteristics of a tax are that it is not a voluntary payment or donation, but an enforced *contribution*, exacted pursuant to legislative authority. . . .
>
> An enforced *contribution* of money or other property, assessed in accordance with some reasonable rule or apportionment by authority of a sovereign state on persons or property within its jurisdiction for the purpose of defraying the public expenses.

BLACK'S LAW DICTIONARY 1307 (6th ed. 1990)(emphasis added). The word "contribution" appears, according to Black's at least, to be interchangeable with the word "tax."

More compellingly, each and every case considering whether state employment security contributions are taxes has found that they are, or has been overruled.[1] The Supreme Court in Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 508-509 (1937) considered whether the Alabama Unemployment Compensation Act, now codified at ALA. CODE §§ 25-4-1-7 (1998), was a tax by examining the characteristics of taxes:

> Taxes, which are but the means of distributing the burden of the cost of government, are commonly levied on property or its use, but they may likewise be laid on the exercise of personal rights and privileges. . . . As the present levy has all the indicia of a tax, and is of a type traditional in the history of Anglo-American

[1] In re Mosby Coal & Mining Co., 24 F.Supp. 1022 (W.D. Mo. 1938) (contributions under the Missouri Unemployment Compensation Act not meant to be treated as a tax) was overruled by State of Missouri v. Gleick, 135 F.2d 134 (8th Cir. 1943), holding that "contributions" required of employers subject to Missouri's Unemployment Compensation Law were "properly denominated taxes." Id. at 135. The following three cases were each overruled by In re Wm. Akers, Jr., Co., Inc., 121 F.2d 846 (3d Cir. 1941): In re Umans Bleachery, Inc., 34 F.Supp. 694 (D. N.J. 1940) (New Jersey unemployment compensation contributions were not a tax); In re Fidelity Fuel, 35 F.Supp. 919 (E.D. Pa. 1940) (a claim for employer's contributions under Pennsylvania Unemployment Compensation Act was not a claim for "taxes", but was merely a "debt"); In re Wm. Akers, Jr., Co., Inc., 31 F.Supp. 900 (E.D. Pa. 1940) (A claim for employer's contributions under Pennsylvania Unemployment Compensation Law which provided that contributions "shall be paid in full prior to all other claims except taxes" was not entitled to priority as a "tax").

> legislation, it is within state taxing power, and it is immaterial whether it is called an excise or by another name.

Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 508-509 (1937). The Alabama statute denominates its unemployment taxes "contributions," just as the IESL does. See ALA. CODE §§ 25-4-1-7 (1998).

The Eighth Circuit has also ruled on the question of whether "contributions" pursuant to a state's unemployment compensation law are considered taxes. State of Missouri v. Gleick, 135 F.2d 134 (8th Cir. 1943), held that "contributions" required of employers subject to Missouri's Unemployment Compensation Law were "properly denominated taxes." Id. at 135. The Missouri Unemployment Compensation Law, MO. REV. STAT. §§ 288.010-.500 (West 1998), is very similar to the Iowa Employment Security Law, with nearly identical wording in many provisions.

The Iowa Supreme Court likewise considers contributions pursuant to the IESL to be taxes. Moorman Mfg. Co. v. Iowa Unemployment Compensation Commission, 296 N.W. 791 (Iowa 1941) expressly held that "the provisions of the Iowa Unemployment Compensation law . . . are of a taxing nature." Id. at 794. In addition, many Iowa Supreme Court cases assume that IESL contributions are taxes. See, e.g., Overton v. Iowa Department of Job Service, 338 N.W.2d 130, 132 (Iowa 1983); Ames General Contractors, Inc. v. Iowa Employment Security Commission, 200 N.W.2d 538 (Iowa 1972); Merchants Supply Co. v. Iowa Employment Security Commission, 235 Iowa 372, 382, 16 N.W.2d 572, 578 (Iowa 1944); Meredith Pub. Co. v. Iowa Employment Security Commission, 232 Iowa 666, 676, 6 N.W.2d 6, 12 (Iowa 1942); Woods Bros. Const. Co. v. Iowa Unemployment Compensation Commission, 296 N.W. 345, 348 (Iowa 1941).

Other courts which are in accord are In re Hollytex Carpet Mills, Inc., 73 F.3d 1516, 1521 (10th Cir. 1996) ("unemployment compensation contributions are considered and treated as a "tax" relating to employment" under 11 U.S.C. §507(a)(7)(D), recodified October 22, 1994 as § 507(a)(8)(D)); Michigan Employment Security Commission v. Wolverine Radio Company, Inc. (In re Wolverine Radio Company), 930 F.2d 1132 , 1135, n.2 (6th Cir. 1991) (Contributions required under the Michigan Employment Security Act (MESA), MICH.COMP. LAWS ANN. §421.1 et seq., are taxes.); and In re Wm. Akers, Jr., Co., Inc., 121 F.2d 846 (3d Cir. 1941) (Both the New Jersey and the Pennsylvania unemployment compensation laws, which require "contributions," were held to exact "taxes" under the Bankruptcy Act.).

Based on the foregoing review of the case law, this Court finds the Debtors' claim that IESL contributions are not taxes utterly without merit. The Motion to Reopen will therefore be DENIED. The debt to Iowa Workforce Development is nondischargeable pursuant to 11 U.S.C. § 523(a)(1)(A).

ORDER

IT IS THEREFORE ORDERED that the Motion to Reopen be DENIED.

Dated this __________ day of February, 1999.

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RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT