

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of :  
 :  
PETER O. HOLL and : Case No. 89-463-C H  
JONETE J. HOLL, : Chapter 7  
 :  
Debtors. :  
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- - - - -

**ORDER--DEBTORS' OBJECTION TO TRUSTEE'S FINAL REPORT  
AND FINAL ACCOUNT BEFORE DISTRIBUTION  
AND DECLARATION UNDER RULE 2016**

On May 14, 1990, a hearing was held on Debtor's objection to Trustee's Final Report and Final Account Before Distribution and Declaration Under Rule 2016 ("Trustee's Final Report"). The following attorneys appeared on behalf of their respective clients: Jerrold Wanek for Debtors; Barbara Galloway for Iowa Department of Revenue; Terry L. Gibson for U.S. Trustee; and David D. Nelson for Chapter 7 Trustee. At the conclusion of said hearing, the Court took the matter under advisement upon a briefing deadline. Briefs were timely filed, and the Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). The Court, upon review of Trustee's Final Report, objection thereto, arguments of counsel and briefs submitted, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

**FINDINGS OF FACT**

1. On March 3, 1989, Debtors filed a voluntary Chapter 11 petition.

2. On March 30, 1989, the Court entered an order converting Debtors' Chapter 11 case to a case under Chapter 7.

3. On March 2, 1990, Trustee filed Trustee's Final Report. Trustee's Final Report sets forth the treatment of the following claims relevant to this proceeding:

Claim No. 6--IRS, \$19,595.00 allow as priority under 11 U.S.C. §507(a)(7).

Claim No. 8--Iowa Dept. of Revenue, \$5,740.88 allow as priority under 11 U.S.C. §507(a)(7).

Claim No. 10--Iowa Dept. of Revenue, \$14,673.00 allow as Chapter 11 administrative expense under 11 U.S.C. §503.

Claim No. 11--IRS, \$48,196.70. Allow \$46,271.00 as Chapter 11 administrative expense under 11 U.S.C. §503 and allow \$1,925.70 as priority under 11 U.S.C. §507(a)(7).

4. Debtors filed an objection to Trustee's Final Report which was amended. In the amended objection, Debtors asserted that Claims #6, 8, 10, and 11 should all be treated as administrative priority claims under 11 U.S.C. §507(a)(7).

5. Claim No. 10 of the Iowa Dept. of Revenue in the amount \$14,673.00 represents state income tax on income

received after the Chapter 11 filing, but before the Chapter 7 conversion.

6. Claim No. 11 of the Internal Revenue Service in the amount of \$46,271.00 represents federal income tax on income received after the Chapter 11 filing, but before the Chapter 7 conversion. The \$1,925.70 listed as a priority expense under 11 U.S.C. §507(a)(7) represents penalty and interest on the \$46,271.00 tax claim. There is no dispute concerning the treatment of the \$1,925.00 in penalty and interest.

#### **DISCUSSION**

Debtors assert that Claim No. 10 of the Iowa Dept. of Revenue and Claim No. 11 of the Internal Revenue Service should be treated as priority tax claims under 11 U.S.C. §507(a)(7)(A) rather than administrative expense priority under 11 U.S.C. §507(a)(1) and 11 U.S.C. §503(b)(1)(B)(i).

The statutes relevant to the outcome of this controversy are 11 U.S.C. §507(a)(1) and (a)(7)(A), 11 U.S.C. §503(b)(1)(B)(i) and 11 U.S.C. §502(i). 11 U.S.C. §507(a)(1) and (a)(7)(A) provide:

- (a) The following expenses and claims have priority in the following order:
  - (1) First, administrative expenses allowed under §503(b) of this title, and any fees and charges assessed against the estate under Chapter 123 of Title 28;

...

(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--

...

11 U.S.C. §503(b)(1)(B)(i) provides:

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

(1) ...

(B) any tax--

(i)incurred by the estate, except a tax of a kind specified in §507(a)(7) of this title...

11 U.S.C. §502(i) provides:

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under §507(a)(7) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

The majority of cases decided since the enactment of the Bankruptcy Code hold that 11 U.S.C. §503(b) includes taxes incurred by the estate post-petition and that the reference to 11 U.S.C. §507(a)(7) in 11 U.S.C. §503(b)(1)(B)(i) does not deny administrative priority to taxes incurred during the administration of the estate. See, e.g., United States v.

Friendship College, Inc., 737 F.2d 430, 431-432 (4th Cir. 1984); Matter of Lumara Foods of America, Inc., 50 B.R. 809, 811-816 (Bankr. N.D. Ohio 1985); In re Gould and Eberhardt Gear Machinery Corp., 69 B.R. 944 (Bankr. D. Mass. 1987), rev'd on other grounds, 80 B.R. 614 (Bankr. D. Mass. 1987), appeal dismissed 852 F.2d 26 (1st Cir. 1988); In re Carlisle Court, Inc., 36 B.R. 209, 214-218 (Bankr. D.C. 1983). The reference to 11 U.S.C. §507(a)(7) merely makes it clear that pre-petition taxes are not entitled to priority under 11 U.S.C. §503(b). Matter of Lumara Foods of America, Inc., 50 B.R. 809, 816. Interpretation of 11 U.S.C. §503(b)(1)(B)(i) should focus on the language "incurred by the estate" rather than the reference to 11 U.S.C. §507(a)(7). In re Gould and Eberhardt Gear Machinery Corp., 69 B.R. 944, 945.

In addition, persuasive case law indicates that §502(i) does not convert post-petition taxes incurred by the estate to pre-petition priority tax claims. See e.g., In re Carlisle Court, Inc., 36 B.R. 209; In re Gould and Eberhardt Gear Machinery Corp., 69 B.R. 944; In re Hotel Nevada Corp., 75 B.R. 174 (Bankr. D. Nev. 1987).

Finally, two cases specifically considered the appropriate treatment for income tax incurred by a bankruptcy estate and held that said income taxes were entitled to administrative expense priority under 11 U.S.C. §503(b)(1)(B). In re Lambdin, 33 B.R. 11 (Bankr. M.D. Tenn. 1983); In re

Duby 98 B.R. 126 (Bankr. D.R.I. 1989). See also 3 COLLIER ON BANKRUTPCY ¶503.04 n.56 (15th ed. 1989).

In the instant case, the Court finds the case law cited above persuasive and concludes that Claim No. 10 of the Iowa Dept. of Revenue in the amount of \$14,673.00 representing state income tax on income received after the Chapter 11 filing, but before the Chapter 7 conversion, is entitled to administrative expense priority under 11 U.S.C. §503(b)(1)(B)(i). Further, the Court concludes that Claim No. 11 of the Internal Revenue Service in the amount of \$46,271.00 representing federal income tax on income received after the Chapter 11 filing, but before the Chapter 7 conversion, is entitled to administrative expense priority under 11 U.S.C. §503(b)(1)(B)(i).

IT IS ACCORDINGLY ORDERED that Debtors' objection to Trustee's Final Report is overruled and Trustee's Final Report is approved.

Dated this 10th day of September, 1990.

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Russell J. Hill  
U.S. Bankruptcy Judge