

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

IN RE: :
: :
JOHN PATRICK NELSON & : Case No. 91-676-CH
JERRILEE ANN NELSON, : Chapter 13
: :
Debtors. :
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CORRECTED ORDER - OBJECTION TO CLAIM

The telephonic hearing on Debtors' objection to the claim filed by the Internal Revenue Service (IRS) came before the court on March 19, 1992. Michael L. Jankins appeared for the Debtors; Kevin R. Query for the IRS; and Joe W. Warford, Chapter 13 Trustee, also appeared. The matter was taken under advisement upon a briefing deadline. While no rebuttal brief was timely filed by the Debtors, both parties have filed briefs and the matter is now fully submitted. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Findings of fact and conclusions are now entered pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. The Debtors filed a Petition requesting relief under Chapter 13 on March 8, 1991.
2. The United States of America claims it held at the commencement of this case a claim for unpaid federal taxes in the total sum of \$6,306.87, which it claims is secured in part under a Notice of Lien filed with the Madison County Recorder on April 19, 1989.
3. Debtors object to the IRS claim alleging that there

are no assets from the bankruptcy estate upon which the IRS could claim a secured status. Therefore, argue Debtors, the penalty portion of the IRS claim must be classified as a general unsecured claim and the actual claim for tax and interest should be classified as an unsecured priority claim.

4. The Debtors claim property exempt as follows:

<u>Property</u>	<u>Exempt Amount</u>	<u>Pursuant To</u>
Household goods & furnishings	\$ 1,032.00	I.C. § 627.6(5)
Wardrobe	\$ 1,000.00	I.C. § 627.6(1)
Two vehicles	\$ 900.00	I.C. § 627.6(9)(b)
Laundry equipment	\$ 1,200.00	I.C. § 627.6(10)
Accrued wages	unknown	I.C. § 627.6(9)(c)
Misc. personalty	\$ 200.00	I.C. § 627.6(13)

5. The first meeting of creditors was held April 11, 1991. No objections to exemptions were filed. The deadline for filing proof of claims was July 10, 1991. On May 7, 1991 over the Chapter 13 Trustee's objection, the court confirmed Debtors' Chapter 13 plan. The plan provided, in part that priority claims would be paid in full; that the debt to Union State Bank cosigned by Debtors' relative and secured by her certificate of deposit would be paid in full; that unsecured claims would be paid to the extent of one cent on each dollar; and that Debtors would surrender their real estate in satisfaction of the mortgage indebtedness. No claims were accorded secured status by Debtors' plan.

6. The IRS timely filed its proof of claim on April 4,

1991. On October 10, 1991 the IRS filed an amendment to its proof of claim. Including penalties in an amount totaling \$1,530.97, the IRS listed a secured claim totaling \$4,736.87. The proof of claim indicates that a Notice of Tax Lien was filed in Madison County, Iowa on April 19, 1989.

DISCUSSION

The court must resolve three issues in this matter. First, whether the IRS claim may be secured by the property the Debtors claim as exempt. Secondly, whether the failure by the IRS to object to the plan, which does not provide for secured treatment of any claim, bars the IRS from now gaining secured status for a portion of its claim. Finally, the court must decide the proper treatment of the IRS claim.

11 U.S.C. § 541(a) provides that the bankruptcy estate consists of all legal and equitable interests of a debtor in property as of the commencement of a case. Section 541(a)(1) is a broad provision and even exempt property is initially included in the bankruptcy estate. In re Davis, 136 B.R. 203, 205 (Bankr. S.D. Iowa 1991). An allowed claim of a creditor secured by a lien on property in which the estate has an interest is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property and is an unsecured claim to the extent that the value of such creditor's interest is less than the amount of such allowed claim. 11 U.S.C. § 506(a). The extent to which a claim is secured

pursuant to § 506(a) is determined with reference to the estate's interest in exempt as well as nonexempt property. See In re Krahn, 124 B.R. 78, 81 (Bankr. D.Minn. 1990); In re Kostecky, 111 B.R. 823, 826 (Bankr. D.Minn. 1990); In re Driscoll, 57 B.R. 322, 327 (Bankr. W.D.Wis. 1986); In re Hall, 118 B.R. 671, 674 (Bankr. S.D.Ind. 1990). But see In re Lassiter, 104 B.R. 119, 123 (Bankr. S.D. Iowa 1989) (Jackwig, C.J.).

The claim of the IRS attached as a lien to all of the Debtors' real and personal property upon assessment and demand, 26 U.S.C. §§ 6321, 6322, and remains in effect until the taxes are paid or until the statute of limitations has run. 26 U.S.C. § 6322. IRS perfected this lien when it filed its notice of lien on April 19, 1989. See 26 U.S.C. § 6323(f). In accordance with the rationale recounted in Krahn, supra, the extent to which the IRS claim is secured is based upon all of the property of the estate, whether exempt under state law or not.

The tax lien survives the bankruptcy proceeding unaffected. The Plan does not provide for the lien of the IRS, nor does it make provision to avoid the lien. Generally, liens pass through bankruptcy unaffected unless challenged. See Junes v. United States (In re Junes), 99 B.R. 978, 980-81 (9th Cir. BAP 1989). Thus, the liability on Debtors' property remains enforceable and a discharge will not affect the right of the IRS to enforce its

lien against the Debtors' encumbered property (within the limits of 26 U.S.C. § 6334) once the automatic stay is terminated. See id.

The plan provides that priority claims will be paid in full and unsecured claims paid pro rata. The portion of the IRS claim constituting tax due and interest to the date of the petition shall be classified as an unsecured priority claim under the confirmed plan and by the operation of § 507(a)(7). The remainder of the IRS claim shall be secured to the extent of the value of the IRS's interest in the estate's interest in property including all property claimed exempt by Debtors.

ORDER

IT IS ACCORDINGLY ORDERED that the Debtors' objection to the claim filed by the Internal Revenue Service is overruled.

Dated this 2nd day of February, 1993.

RUSSELL J. HILL
U.S. Bankruptcy Judge