

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

DENNIS EDWARD DOUD,
CHERYL ANN DOUD,
Engaged in Farming,

Case No. 86-3396-C
Chapter 12

Debtors.

ORDER ON MOTION TO COMPEL COUNTY TREASURER TO
ACCEPT PARTIAL PAYMENTS

On October 28, 1987 a hearing was held in Des Moines, Iowa on confirmation of plan and the debtors' motion to compel the Appanoose County Treasurer (Treasurer) to accept partial payments. The plan was confirmed and is not the subject of this order. The debtors' motion was filed on October 13, 1987. The Treasurer's resistance was filed on October 14, 1987. Among the attorneys appearing at the hearing were Jerrold Wanek who appeared on behalf of the debtors and Michael K. Elliott, Appanoose County Attorney, who appeared on behalf of the Treasurer.

The sole issue before the court is whether the debtors must pay the priority claim of Appanoose County for delinquent real estate taxes in accordance with their plan or in accordance with Iowa law. The debtors propose to pay the claim over a three year period at a discount rate of 10.5%. The payments are to be made on an annual basis beginning

December 15, 1988.

The Treasurer contends that the planned dispersal violates Iowa law. The Treasurer points to Iowa Code section 445.36(2) which provides:

No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the office of the treasurer, at some time between the first Monday in August and September 1 following, and pay the person's taxes in full, or one-half thereof before September 1 succeeding the levy, and the remaining half before March 1 following.

Id. In short, the Treasurer maintains this provision compels the debtors to pay real estate tax claim in half or full year payments. Assuming this is a correct interpretation of this provision, the provision conflicts with the Bankruptcy Code.

11 U.S.C. section 1222(a)(2) states that a plan shall "provide full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim or interest agrees to a different treatment of such claim;..." To the extent that the tax claim may be a secured claim, 11 U.S.C. section 1222(b)(9) likewise permits debtors to pay such claims over time. There is no provision in the Code that requires debtors to pay priority or secured claims in half or full year payments as called for by Iowa section 445.36(2). This conflict between the federal scheme and state law must be resolved in favor of the federal law. It is a fundamental

precept that to the extent a conflict exists between state and federal law, state law must yield. U.S. Const., art. VI, cl. 2; Maryland v. Louisiana, 451 U.S. 725, 747, 101 S.Ct. 2114, 2129, 68 L.Ed.2d 576 (1981); Johnson v. First Nat. Bank of Montevideo, Minn., 719 F.2d 270 (8th Cir. 1983) cert. denied 465 U.S. 1012, 104 S.Ct. 1015, 79 L.Ed. 2d 245 (1984).

CONCLUSION AND ORDER

WHEREFORE, for the reasons expressed above, the Appanoose County Treasurer must accept payment of the tax claim in a manner consistent with the debtors' plan.

THEREFORE, the debtors' motion to compel County Treasurer to accept partial payments is granted.

Signed and filed this 30th day of October, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE