UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

DALE EDWARD KUMBIER, Case No. 86-2386-C J

Debtor. Chapter 11

ORDER ON OBJECTION TO CLAIM

This matter comes before the court on the Chapter 11 debtor's objection to the claim of the Internal Revenue Service (IRS). Gail E. Boliver represents the debtor. Kevin R. Query, Assistant U.S. Attorney, represents the IRS. The parties submitted the matter on briefs and a stipulation of facts.

FACTS

The parties stipulate to the following facts:

1. Dale Edward Kumbier filed for relief under Chapter 11 of the, Bankruptcy Code on September 2, 1986.

2. The Internal Revenue Service filed on or about December 1, 1986 a proof of claim in this case which as amended evidences a total claim in the sum of $29,945.92 as of the petition date. The substantial portion of the claim asserted by the IRS arises from its assessment of penalty against Dale Kumbier as a responsible party for unpaid, employee withholding taxes.

3. The IRS on October 1, 1985 recommended that a 100-percent penalty in the sum of $31,407.70 be assessed against Kumbier.

4. Following assessment of the 100-percent penalty against Kumbier, the IRS received payments and other credits against the penalty assessment.

5. Two credits disclosed on the report of account relate to the sale of a van and motorcycle repossessed from Kumbier. The seizure of the van and motorcycle was accomplished under levy dated May 21,1986. Revenue officers Howard L. Hoy and David Edgington supervised removal of the vehicles from Kumbier's residence in Marshalltown, Iowa. The van was towed from Kumbier's driveway and the motorcycle was removed from an opened garage. Mr. Hoy would testify that the Service felt an emergency existed as Kumbier had begun taking steps to transfer title in the property to relatives in Missouri.

6. The IRS provided notice to Kumbier of the seizure and proposed sale of the property, using Form 4585. Kumbier disputed the values assigned the vehicles under the worksheets prepared by the revenue officers. Kumbier would testify that the motorcycle was a limited-run production item which enhanced its desirability for collectors. Kumbier would assign a value of $6,000 to the motorcycle. Similarly, Kumbier believed the van was worth $2,100. Kumbier phoned the revenue officers concerning his dispute

over the valuation of the items and requested that the service get a second opinion concerning their value. The revenue officer would testify he advised Kumbier an independent appraisal of the vehicles would be considered if obtained by Kumbier at his own expense. Kumbier would dispute he was given that instruction by the revenue officer. The revenue officers believe they accurately assessed the value of the motorcycle after visiting with Harley Davidson dealers in Ames and Des Moines.

7. Public notice of the auction of those vehicles seized from Kumbier was given by notice dated July 31, 1986. Revenue officers were unable at the sale scheduled August 26, 1986 to obtain the minimum bid required for purchase of the Chevy Van. Sale of the motorcycle was accomplished on August 26, 1986.

8. Revenue officers revised the worksheet on the Chevy Van and rescheduled the sale of that item for September 9, 1986. The Chevy Van was sold September 9, 1986 for the sum of $750. Kumbier filed for bankruptcy relief a week prior to the sale of the Chevy Van. The revenue officer conducting the sale had no actual notice of the bankruptcy filing and was not informed by Kumbier of the pending bankruptcy.

9. The penalty assessed against Kumbier represents unpaid social security and income taxes which the employer or other responsible party is obligated to withhold from employee's wages and deposit with the IRS. Kumbier would

testify that he withheld a portion of the business earnings on a weekly basis and forwarded them monthly for payment on the tax obligation to the IRS. Kumbier assumed during this period that the payments were being credited against the employee's or "trust-fund" portion of the tax liability. Kumbier was never advised nor understood any need to designate tax deposits as trust or non-trust fund payments. Kumbier would not dispute that he was behind in his obligation to pay the employer's share of withholding taxes incurred by his businesses. Indeed, revenue officers would testify that Kumbier admitted in an interview of July 3, 1985 that he knew he was getting behind in his tax liabilities beginning in 1983.

10. Revenue officers would testify that periodic payments made by Kumbier prior to the assessment of the 100-percent penalty were credited against the employer's share of withholding taxes. Kumbier would testify if the periodic payments were properly credited against the employee’s or "trust-fund" share of withholding taxes the 100-percent penalty assessed against him in 1985 would amount to only $17,353.63. Kumbier does not dispute the amount of outstanding income taxes owed for 1984 and 1985. Kumbier believes that, after proper credit of the full value of the seized vehicles and other payments disclosed in the record of account, the remaining tax liability owed the IRS should be $4,295.79.

DISCUSSION

I.

The debtor first takes exception to the seizure of the motorcycle and van. Apparently, he contends the seizure violates the Fourth Amendment's guarantee against warrantless seizures.

With respect to the constitutional issue, the court notes there do not appear to be many bankruptcy cases on point; however, it is commonly known that bankruptcy courts have authority to decide such an issue. See In re Standard Financial Management Corp., 77 B.R. 324 (Bankr. D. Mass. 1987)(court deciding both Fourth and Fifth Amendment issues). Certainly, district courts have original and exclusive jurisdiction of all title 11 cases. 28 U.S.C. § 1334(a). A district court may refer bankruptcy cases to the district's bankruptcy judges who may then hear and determine all cases under title 11 and all core proceedings arising under title 11 or arising in a case under title 11. 28 U.S.C. § 157.[1] "Core" proceedings include, but are not limited to, the allowance or disallowance of claims against the estate. 28 U.S.C. § 157(b)(2). This proceeding concerns the debtor's objection to the claim of the IRS. It is a "core" proceeding arising in a case under title 11. Accordingly, this court has jurisdiction to decide the

[1] On January 6, 1987 the Chief District Judge for the Southern District of Iowa entered a referral order pursuant to section 157(a) of the Bankruptcy Amendments and Federal Judgeship Act of 1984.

Fourth Amendment issue.

The IRS levied against the debtor's property under 26 U.S.C. section 6331(a). That provision authorizes it to levy on property belonging to persons who refuse or neglect to pay taxes. “Levy" is defined in section 6331(b) as including "the power of distraint and seizure by any means". The United States Supreme Court ruled that warrants are not required for tax seizures of automobiles parked in open spaces because such seizures do not involve invasions of privacy. G.M. Leasing Corp. v. U.S., 429 U.S. 338, 352, 97 S.Ct. 619, 628, 50 L.Ed.2d 530 (1977). However, the court also ruled that seizure of property situated on private premises does implicate Fourth Amendment limitations. G.M. Leasing, 429 U.S. at 354, 97 S.Ct. at 630.

The critical question in search and seizure cases is whether a person has a constitutionally protected reasonable expectation of privacy. Oliver v. United States, 466 U.S. 170, 177, 104 S.Ct. 1735, 1740-41, 80 L.Ed.2d 214 (1984). The Fourth Amendment protects the curtilage of the house. U.S. vs Dunn,____ U.S.____ 107 S.Ct. 1134, 1139 (1987). Factors relevant in determining the extent of that curtilage include the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put and the steps taken by the resident to protect the area from observation. Id.

Application of the relevant factors to the instant case leads the court to conclude that the vehicles in question were not within the curtilage of the debtor's house. Examination of the photos submitted by the debtor reveals that the garage in which the motorcycle was kept was detached from the house. Nothing indicates that the house, garage and driveway were enclosed by a fence. Both the garage and driveway can be readily viewed by passersby. Nothing in the record suggests that the garage and driveway were being used for intimate activities of the home. Finally, the record contains no evidence that the debtor took steps to protect the area from observation. In fact, the door on the garage containing the motorcycle was open at the time of the seizure. Hence, the IRS's seizure did not transgress the bounds imposed by the Fourth Amendment.

II.

Next, the debtor challenges the disposition of the vehicles. He contends that the minimum bid placed on the sale of the motorcycle resulted in a sale below the "book value" of the motorcycle. He further argues that t he IRS's charge of $830.00 for storing the motorcycle is excessive.

Pursuant to 11 U.S.C. section 505(a), the court has jurisdiction to determine the tax liability of the debtor. The sale of seized property is governed by 26 U.S.C. section 6335(e) which provides in part:

> (e) Manner and conditions of sale--

> (1) In general--
>
> (A) Determinations relating to minimum price--
>
> Before the sale of property seized by levy, the Secretary shall determine--
>
> (i) a minimum price for which such property shall be sold (taking into account the expense of making the levy and conducting the sale), and
>
> (ii) whether, on the basis of criteria prescribed by the Secretary, the purchase of such property by the United States at such minimum price would be in the best interest of the United States.

The language of this provision suggests that the minimum price requirement is designed to ensure that the United States recoups the costs of conducting the sale rather than to provide a floor to enhance the sale price. See Crump v. United States, et al., 66-1 U.S.T.C. 9308 (N.D. Ga. 1965) (pursuant to section 6335(e)(1) the IRS did not have to fix the minimum bid price based upon the taxpayer's equity in an automobile).

However, the IRS does not have unfettered discretion in selling seized property. In Ringer v. Basile, 645 F.Supp. 1517 (D. Colo. 1986), the court found that the IRS's acceptance of $1,725.00 for a house worth $40,000.00 was actionable. In doing so, the court remarked that "[t]he limits

placed on the discretion do not end with the costs of levy and sale, they only begin there". Id. at 1521 (emphasis in original). The court ruled that inadequacy of price is transformed into an actionable wrong when a price is so low that it shocks the judicial conscience or is so unconscionable that it is analogous to fraud, mistake or accident. Id. at 1522. The court was careful to explain that the IRS is not required to realize the full fair market value and has the right to set a minimum price far below the fair market value. The court stated:

> From the nature of [the taxpayer's] argument, a price of, say, $30,000.00, or perhaps even $20,000.00, for this $40,000.00 house would be considered by [the taxpayer] to be "low" but not, as yet, "unconscionable" so as to make it an actionable wrong. Such differences in price, though large they may be, are still considered to be within the proper discretion of the Secretary.

Id. at 1519.

Relying upon the above statutory and case authorities, this court finds that the IRS does have great discretion in conducting sales even if that discretion is not boundless. In this case, the minimum price was low and the fee for storage was high, but the court does not conclude the amounts are unconscionable or shocking. The IRS acted within its discretion.

III.

Last, the debtor contends that the IRS's "trust fund" tax assessment was improper. Specifically, he argues that

the IRS's policy of allocating voluntary payments denies him equal protection and due process under the Fifth Amendment.

Under 26 U.S.C. section 3102(d), an employer is required to deduct such taxes as withholding and social security taxes from wages paid to employees. The amounts deducted are held in trust for the United States. 26 U.S.C. § 7501(a). Employees receive credit for the taxes whether or not they are paid by an employer. Matter of Ribs-R-Us, Inc., 828 F.2d 199, 200 (3rd Cir. 1987). Employers who fail to pay the withheld tax to the IRS may be liable for a penalty equal to the total amount of the tax not paid. 26 U.S.C. § 6672. The purpose of this provision is to prevent the corporate form from shielding persons responsible for an employer's failure to pay the taxes withheld. In re Quattrone Accountants, Inc., 88 B.R.713F 717 (Bankr. W.D. Pa. 1989). The 100% penalty is not truly penal in nature but rather is simply a means of ensuring payment of taxes. Id. at 718. However, personal liability under section 6672 is not dischargeable in bankruptcy pursuant to 11 U.S.C. section 523 (a)(1)(A).

It is well-settled that taxpayers who make voluntary payments to the IRS may direct application of the payments to whatever liability they choose. Montwyler v. United States, 703 F.2d 1030, 1032 (7th Cir. 1983); O'Dell v. United States, 326 F.2d 451, 456 (10th Cir. 1964); In re B&P Enterprises, Inc., 67 B.R. 179, 181 (Bankr. W.D. Tenn.

1986); In re Energy Resources Co., Inc., 59 B.R. 702, 704 (Bankr. D. Mass. 1986). In cases where the taxpayer fails to direct application of the funds, the IRS may make any allocation it sees fit. Montwyler, 703 F.2d at 1032; Liddon v. United States, 448 F.2d 509, 513 (5th Cir. 1971), cert. denied, 406 U.S. 918, 92 S.Ct. 1769, 32 L.Ed.2d 117 (1972).

Prior to imposition of the 100% penalty, the debtor submitted voluntary payments to the IRS without direction as to application. The amounts were credited to the employer's share of the tax liability rather than to the "trust fund" portion. The debtor contends that this allocation of funds was discriminatory and thus deprived him of equal protection under the law. He also argues that due process compels the IRS to notify the-debtor that he has the option of allocating voluntary payments. These arguments are not persuasive.

Equal protection ensures that persons similarly situated are treated alike. In re Success Tool and Mfg. Co., 62 B.R. 221, 224 (N.D. Ill. 1986). The federal government is prohibited from denying persons equal protection of the law under the due process clause of the Fifth Amendment. Bolling v. Sharp, 347 U.S. 497, 499, 74 S.Ct.. 693, 98 L.Ed.2d 884 (1954). "[I]n all equal protection cases ... the crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment." Police Dept. of Chicago v. Mosely, 408 U.S. 92, 95, 92 S.Ct. 2286, 2290, 33 L.Ed.2d 212 (1972).

Statutory classifications are valid if they bear a rational relation to a legitimate governmental purpose. Richards v. C.I.R., 745 F.2d 524, 525 (8th Cir. 1984). Congress has especially broad latitude in creating classifications and distinctions in tax statutes. Id. In passing on the constitutionality of a tax statute, the appropriate standard is the "relaxed scrutiny" standard. Merchants National Bank v. United States, 583 F.2d 19, 24 (lst Cir. 1978). The debtor must clearly show that the statute in question is unconstitutional. In re Volk, 26 B.R. 457, 459 (Bankr. D. S.D. 1983).

If indeed the IRS's policy of allocating payments in "no direction" cases creates classifications, the underlying purpose satisfies the relaxed scrutiny standard. Certainly the payments must be allocated to some liability. If the taxpayer fails to direct payment, it is not irrational for the IRS to do so. This serves a legitimate governmental purpose of ensuring that voluntary payments are in fact allocated, to a tax liability. Any differential treatment that may result from the allocation is rationally related to a legitimate government interest.

With respect to the due process challenge, the court notes that the IRS's allocation policy is set out in Rev. Rul. 79-284, 1979 - 2 C.B. 83. As cited earlier, it is well established in case law that taxpayers may designate voluntary payments. All persons are generally presumed to know

the law. Ross v. Martin, 800 F.2d 808, 811 (8th Cir. 1986). However, the government may not rely on presumptions of knowledge of the law in all circumstances--for example, when a statute has been amended without providing persons an opportunity to familiarize themselves with the law. Id. Qualifying circumstances are not present in this case. The case law and revenue ruling are of long standing. The IRS notified the debtor of the penalty assessment. It was incumbent upon him to become familiar with the manner in which payments were being allocated. No due process violation occurred in this case.

CONCLUSIONS

WHEREFORE, based on the foregoing discussion, the court finds that:

1. The seizure of the motorcycle and van did not violate the Fourth Amendment's guarantee against warrantless seizures;

2. The IRS acted within its discretion in selling the vehicles; and

3. The IRS's policy of allocating voluntary payments in the absence of taxpayer direction did not violate equal protection and due process under the Fifth Amendment.

ORDER

THEREFORE, the debtor's objection to the IRS's claim is overruled.

Signed and dated this 4th day of January, 1989.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE