

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In re:

ALTA MARIE BROADUS,

Case No.: 02-15358-MAM-13

Debtor.

**ORDER DECLARING THE INTEREST LIABILITY ON THE IRS'S TAX CLAIM
SURVIVES DISCHARGE OR REQUIRING THE CHAPTER 13 TRUSTEE TO
RECOUP THE FUNDS FROM OTHER CREDITORS**

Charles Baer, attorney representing the United States of America
Jeffery J. Hartley, attorney representing John C. McAleer, III, Chapter 13 Trustee
Missty C. Gray, attorney representing Alta Marie Broadus

This matter is before the Court on the Internal Revenue Service's Motion to Reconsider the Debtor's Discharge. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), and the Court has authority to enter a final order. For the reasons indicated below, the Court concludes that the debtor's interest liability on her U.S. tax debt survives her discharge or the Chapter 13 Trustee must recoup the sums paid to other creditors that would otherwise have been paid to the United States.

FACTS

On September 19, 2002, the debtor filed a chapter 13 bankruptcy petition. The Internal Revenue Service (IRS) filed its proof of claim listing secured debt in the amount of \$63,896.86. The IRS objected to debtor's filed plan because its claim was not listed in the proposed plan. On March 12, 2003, the debtor amended her plan to cover the total secured debt listed in the IRS proof of claim. The debtor and the IRS executed a stipulation to resolve the IRS's objection.

The stipulation required the debtor to file needed tax returns with the IRS, and she complied. The IRS accepted the returns and agreed to amend its proof of claim to reflect any tax liability from the delinquent returns. The debtor was also given the right to amend her plan to include any additional amounts due from the delinquent returns. The debtor agreed to fully pay any secured and priority tax claims over the life of the plan.

On May 28, 2002, the order regarding the IRS's objection to the debtor's original plan was signed. The order referenced the parties' agreement and stated that: (1) the IRS was allowed its statutory period to review the recently filed tax returns of the debtor; (2) any additional amount of tax liability determined to be owed by the Debtor as a result of the examination would be non-dischargeable; (3) no collection of taxes would be undertaken in violation of the stay; (4) the debtor was to fully pay the allowed secured Federal claim, *with interest at the Title 26 rate*, in equal monthly payments over the remaining life of the plan.

On June 11, 2003, the plan was confirmed. On July 18, 2003, the IRS filed its proof of claim. On July 21, 2003, the debtor filed her Third Amended Plan. On January 22, 2008, the debtor filed her Fourth Amended Plan. The Trustee paid the IRS throughout the plan term, \$63,896.86, the amount listed in its proofs of claim. On October 10, 2008, the debtor's discharge order was entered. On October 16, 2008, the IRS filed its Motion to Reconsider Discharge.

The IRS requests that its secured claim and lien survives the discharge order and that it be granted relief from the discharge order due to the debtor's failure to pay the interest due on the tax claim. The IRS maintains that the debtor agreed, in the stipulation between the debtor and the IRS, and was ordered by the court, to pay the tax claim with interest at the Title 26 statutory rate in equal monthly payments over the remaining life of the plan. However, interest was not paid; the plan paid

in full only the amount listed on the IRS's proof of claim.

The trustee and debtor argue that the IRS had to amend its claim to reflect the amount or percentage of any interest that is to be calculated and paid through the plan. The trustee disburses plan payments based on filed proofs of claims, and since the IRS submitted its secured debt in a claim, the trustee relied on the IRS claim to determine the amount due the IRS. The debtor asserts that the IRS has waived its right to collect interest on its claim because it had notice of amended plans, received payments for five years in the amount of its filed claim, and the case has been discharged.

The issue before the court is whether or not the debtor owes the IRS unpaid interest on its secured claim.

LAW

Given that the material facts of this case are undisputed, the remaining issue is purely a question of law and no party carries the burden of proving its position. *In re PT-1 Communications, Inc.*, 386 B.R. 402, 407 (Bankr. E.D. N.Y. 2007).

The issue is whether the unpaid interest due on the IRS claim was discharged by the discharge order of October 10, 2008. The trustee and debtor assert that the claim was discharged because the IRS did not include the interest in its proof of claim and/or because the IRS waived its right to the sum by failing to object to the nonpayment during the life of the debtor's chapter 13 plan. The U.S. asserts that the Code allows for the IRS to collect interest due on past due tax debts and provides the details on how the interest rate is to be calculated. 11 U.S.C. §§ 1325(a)(5), 511; *see* 26 U.S.C. 6221. Section 511 provides that the interest rate due on an IRS claim is to be "determined under applicable nonbankruptcy law" as of the date the plan was

confirmed.

A.

Must the interest liability owed be stated in the IRS' proof of claim?

The interest rate or interest amount does not have to be provided for in the proof of claim in order for the debtor to be liable for it. The standard proof of claim form states that the creditor is to list the amount of its claim "at time case filed." This is what the IRS did. It listed the tax debt owed by the debtor at the time she filed her bankruptcy case. Even if the IRS had wanted to calculate the interest owed or indicate the interest rate on the proof of claim, the form utilized by the court at that time did not provide a space for entering in any interest rate(s) or added interest amount(s). Neither the Federal Rules of Bankruptcy Procedure nor the Local Bankruptcy Rules or General Orders required a claim to include interest. This court stated in an oral ruling in *Cole*, that "there [was] no requirement for the IRS to put an interest rate in its claims." *In re Cole*, Case No. 06-11065, oral ruling on July 9, 2007, p. 2.

B.

Does the interest liability survive discharge if it was not disbursed through the plan?

The interest liability on the tax claim survives the debtor's discharge for several reasons. First, the debtor and the IRS entered into a stipulation that the debtor was to fully pay the allowed secured tax claim, *with interest at the Title 26 rate*, in equal monthly payments over the life of the plan. Pursuant to the agreement, the court entered an order on May 28, 2002 ordering the debtor to pay the secured claim with interest to be determined at the designated nonbankruptcy rate. The debtor should be required to fulfill her agreement. Otherwise, the tax claim must be nondischargeable as the agreement provided.

In order to encourage settlements, this court consistently upholds the agreements and contracts made between parties. Adherence to this strict rule provides faith and confidence in parties making these agreements that the court will uphold them. Without this consistency, parties would cease to resolve their issues outside of the courtroom. For this reason, the debtor is liable for the interest owed on the allowed secured IRS claim.

Second, this court has previously ruled that where the IRS's filed proof of claim did not contain the interest amount or provide the interest rate, the interest was still due. *Favors*, Case No. 01-14514-WSS-13, *Brief of U.S. Motion to Reconsider Order or to Alter or Amend*. In *Favors*, the court concluded that the debtors' discharge remained, but the debtors' liability for interest on their tax liabilities was excepted from the discharge. *Favors*, Order dated April 20, 2007.

Third, most other courts that have dealt with the issue of unpaid interest on tax claims have held that the debtor's interest liability to the IRS survives discharge. *See In re Cousins*, 209 F.3d 38 (1st Cir. 2000)(debtors remained liable on postpetition interest on prepetition tax debt); *In re Artisan Woodworkers*, 225 B.R. 185(9th Cir. B.A.P. 1998)(court held confirmed plan did not extinguish or discharge an otherwise nondischargeable tax debt, even where creditor failed to participate in confirmation process); *In re Mayer*, 208 B.R. 75 (Bankr. D. Kan. 1996)(court concluded "the purpose of the proof of claim was to state the amount the IRS asserted the debtors owed it on the date they filed for bankruptcy, not to specify the maximum amount the IRS could ever try to recover from them").

In keeping with this court's precedent, the court concludes that the interest liability owed to the IRS, as stated in the agreed stipulation and the May 2003 order, must be paid. Where that

money is to come from is less precise. The trustee may attempt to recoup money disbursed through the plan to pay the interest liability, or the debtor may choose to pay the debt outside the plan or file a new case and plan.

In the future, however, to prevent this issue from arising, the IRS must (1) file a withdrawal of objection to confirmation with a numerical percentage specifying the interest rate owed; (2) provide a proof of claim with the interest percentage to be paid; or (3) provide the interest percentage rate to be paid in a consent order, otherwise, the court will deem the interest debt owed intentionally waived and discharged when the case is completed.

IT IS ORDERED that:

1. The Internal Revenue Service's Motion to Reconsider be GRANTED;
2. The interest debt own on the IRS's tax claim must be paid;
3. A further hearing on this matter is set on January 28, 2009 at 10:30 A.M., in Courtroom 2, to determine how the debtor and trustee wish to proceed.

Dated: January 7, 2009


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE