

COPY

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In Re:)
)
JAMES A. MOSER and)
ELIZABETH W. MOSER,) Case No. 98-11766
) Chapter 11
Debtors.)
)

- ORDER DENYING DEBTORS' OBJECTION TO CLAIM NO. 10 OF THE
INTERNAL REVENUE SERVICE

THIS MATTER came on for hearing before the undersigned bankruptcy judge on December 2, 1999, on the Objection by Debtors to Claim No. 10 of the Internal Revenue Service. Appearing for Mr. and Mrs. Moser (the "Debtors") was Matthew E. Bates and appearing on behalf of the Internal Revenue Service (the "IRS") was Edwina L. Charlemagne. After hearing the testimony and arguments of counsel, the Court gave counsel for the Debtors thirty (30) days to file legal authorities and counsel for the IRS two (2) weeks thereafter to reply. Having reviewed all of the briefs submitted by counsel, the court makes the following:

FINDINGS OF FACT

The Debtors filed for Chapter 11 on July 16, 1998. The IRS filed its original proof of claim on October 13, 1998 which was subsequently amended, most recently on January 11, 1999. The IRS's amended claim proof of claim is for a secured claim of \$638,238.08. The Debtors filed their objection to the claim on October 8, 1999, asserting that the computation was inaccurate and excessive and that the true liability amount was impossible to determine from the information the IRS had provided. The matter came on for hearing on December 2, 1999, at which time the Court heard arguments from counsel and the IRS presented testimony and

exhibits as to how the service arrived at the amount of \$638,283.03 by specifically going through the calculations of interest and penalties owed to the IRS.¹

DISCUSSION

In determining the correct amount of a tax liability, the Fourth Circuit has always held that the Commissioner has the burden of persuasion as to the amount and existence of a deficiency but before the Commissioner is required to carry this burden, the taxpayer must dispense with the "presumption of correctness" by establishing by a preponderance of the evidence that the assessment is arbitrary and excessive. See Cebollero v. Comm'r of Internal Revenue, 967 F.2d 986, 991 (4th Cir. 1992).

The burden of proof is on the Commissioner to show that the taxpayer received income. This burden is initially satisfied, however, by the fact that the Commissioner's deficiency determination is presumed correct. The burden is thus on the taxpayer to prove the incorrectness of the deficiency determination. The burden is procedural and is met if the taxpayer produces competent and relevant evidence from which it could be found that he did not receive the income alleged in the deficiency notice. If the burden is met, the burden of proof shifts back to the Commissioner to prove the existence and amount of the deficiency.

In re Martin, 180 B.R. 90, 94 (E.D. N.C. 1994) (quoting Foster v. Commissioner, 391 F.2d 727, 735 (4th Cir. 1968)). The Fourth Circuit reaffirmed this procedure when it stated, "[A] taxpayer need only prove by a preponderance of the evidence that the Government's assessment is erroneous, and, once that burden is met, the Government, not the taxpayer, must prove how much the taxpayer actually owes." Id. (quoting Higgenbotham v. U.S., 556 F.2d 1173 (4th Cir. 1977)).

The same approach is followed in bankruptcy proceedings. If a proof of claim is

¹ The IRS states that it erred in computing the amount of penalties by basing its calculations on the amount of \$118,605.00, rather than \$195,533.00. However, this error benefits the Debtors. See Simon v. Comm'r, 248 F.2d 869 (8th Cir. 1957).

executed and filed in accordance with the rules, then it is prima facie evidence of the validity and amount of the claim. See Fed. R. Bankr. P. 3001(f). The burden of going forward then shifts to the Debtors to refute the claim with evidence of equal force. See In re Weidel, 208 B.R. 848, 854 (Bankr. M.D. N.C. 1997).

Here, the Debtors do not contend that the IRS's proof of claim was not filed in conformity with Rule 3001 so, applying the above analysis, the proof of claim filed here by the IRS is prima facie evidence of the claim and shifts the burden of going forward to the Debtors. Even given the additional time that the Court granted the Debtors to file legal authorities in support of their position, the Debtors have failed to come forward with any credible evidence to support the assertion that the IRS's computation of their tax liability was inaccurate. The Court finds that the Debtors' conclusory assertion that the IRS's claim has been miscalculated is not sufficient evidence to refute the presumed validity of the IRS's claim. The IRS does not have to rely on a "presumption of correctness" in having the court allow the amendment of the proof of claim. The testimony of the IRS agents and the supporting exhibits demonstrated under what code provisions the tax, interest and penalties were addressed and how the sum of \$638,238.08 was computed. The Debtors have neither refuted the government's proof nor shown the assessment to be erroneous.

IT IS THEREFORE ORDERED THAT the Objection by Debtors to Claim No. 10 of the Internal Revenue Service is denied and the claim is allowed as filed.

This the 27 day of March, 2000.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
U.S. Bankruptcy Judge