

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)	
)	
ANTONIO TIM BROADUS,)	Case No. 03-16471-HRT
SSN: XXX-XX-3009)	Chapter 13
and BEVERLY KAY BROADUS,)	
SSN: XXX-XX-2858)	
)	
Debtors.)	
_____)	

**ORDER REGARDING OBJECTION TO INTERNAL REVENUE SERVICE CLAIM
AND MOTION TO CONFIRM CHAPTER 13 PLAN**

THIS MATTER is before the Court on the Debtors' Objection to the Internal Revenue Service's ("IRS") proof of claim and the IRS' Response; and, the Debtors' Motion to Confirm Amended Chapter 13 Plan and the Objection by the IRS.

PROCEDURAL BACKGROUND

1. The Debtors filed this Chapter 13 case on or about April 11, 2003.
2. The Debtors filed a Chapter 13 Plan on April 28, 2003.
3. On May 2, 2003, the IRS filed its proof of claim asserting priority tax claims for \$28,000.
4. The Debtors filed their Motion to Confirm their Chapter 13 Plan on July 30, 2003, more than three months after the Plan was filed. The Chapter 13 Trustee objected to this Plan, in part because it failed to address the IRS claim.
5. On November 20, 2003, the Court held a hearing to consider confirmation of the Debtors' Plan and the objection filed by the Chapter 13 Trustee.
6. At that November hearing, the Debtors' Plan was not confirmed since it failed to adequately address the IRS priority tax claim, which had been on file with the Court for more than six months. The Debtors request for additional time to amend their Chapter 13 Plan was granted. The Court ordered the Debtors to 1) file any objection they may have to the IRS proof of claim; and 2) file and mail an Amended Chapter 13 Plan, Motion to Confirm and Notice of opportunity to object to all creditors.
7. The Debtors timely filed and noticed their Objection and their Amended Plan. Objections to the Amended Plan were filed by the Chapter 13 Trustee, secured creditor Nuvel Credit Corp. ("Nuvel"), and the IRS, which also contested the Debtors' Objection to its claim.

8. Prior to the hearing, secured creditor Nuvell and the Chapter 13 Trustee withdrew their objections to the confirmation of the Amended Plan based upon a stipulation among those parties and the Debtors.

DISCUSSION

The Debtors' object to the IRS claim, primarily asserting that both of them are entitled to an Earned Income Credit (EIC) and Head of Household (HoH) tax treatment for the years 2000 and 2001, resulting in no further tax liability for those years. The Debtors admit they are not entitled to EIC or HoH tax treatment for the year 2002 and admit to a priority repayment of their previous refund of \$5,227.00.

The IRS contends that the Debtors are not entitled to the EIC and HoH treatment for years 2000 and 2001, and also dispute the amount the Debtors believe is owed for the year 2002. At hearing, the parties stipulated that the wife does not have any tax liability for 1999. However the IRS asserts that the Debtors' outstanding priority tax liability is \$15,000.

Section 502 creates a presumption in favor of the IRS by providing that, absent an objection, when a proof of claim is properly filed in accordance with § 501, it is deemed to be an allowed claim. 11 U.S.C. § 502(a). The ultimate burden of proof is always upon the claimant. *Alexander v. Theleman*, 69 F.2d 610, 611 (10th Cir. 1934). However, an objection which is unsupported by evidence will not defeat the proof of claim which is prima facie evidence of the claim's correctness. *Whitney v. Dresser*, 200 U.S. 532, 535, 26 S. Ct. 316, 317 (1906). Thus, the objecting party has the burden to come forward with evidence in support of the objection. Only after the objector has produced evidence to support the objection, does the burden shift back to the claimant. Judge Kane has explained the shifting burden as follows:

[A] party correctly filing a proof of claim is deemed to have established a prima facie case against the debtor's assets. The objecting party must then produce evidence rebutting the claimant or else the claimant will prevail. If, however, evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to "prove the validity of the claim by a preponderance of the evidence." The ultimate burden of proof always rests on upon the claimant.

T.G. Shown Associates, Inc. v. Frontier Airlines, Inc. (In re Frontier Airlines, Inc.), 112 B.R. 395, 399 (D. Colo. 1990) (quoting *California State Board of Equalization v. Official Unsecured Creditors' Committee (In re Fidelity Holding Co.)*, 837 F.2d 696, 698 (5th Cir.1988)).

The applicable sections of the Internal Revenue Code ("IRC") relevant to this matter are 26 U.S.C. §32 (Earned Income Credit or EIC) and 26 U.S.C. §7703 (Determination of Marital Status). As to EIC, an eligible individual is allowed a credit against his or her taxes for a taxable year in an amount equal to a credit percentage of so much of the taxpayer's earned income for the taxable year. Depending on the number of children the taxpayer may have, that credit percentage can be as high as 30-40%. 26 U.S.C. § 32(a) and (b).

IRC Section 7703, concerning marital status, provides that the determination of whether an individual is married shall be made as of the close of his taxable year. In the case of married individuals living apart, an individual is not considered married if

(1) an individual who is married and who filed a separate return, maintains his own household which is used for more than one-half of the taxable year as the principal place of abode of a child, for whom such individual taxpayer is entitled to a deduction for the taxable year;

(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year; and

(3) during the last 6 months of the taxable year, such individual's spouse is not a member of the household.

26 U.S.C. § 7703.

At hearing, the Debtors testified about the strain of certain marital difficulties on their relationship and on their whereabouts during the relevant tax years. It appears that during the years 2000 and 2001, at times they lived together with their children, and at other times, they lived separately, each supporting with their own funds, the child or children in their respective custody. Specifically, the Debtors assert they lived separately from July 2, 2000, for the rest of that year. They testified that lived separately for all of 2001, and got back together in August, 2002, remaining so since. The Debtors also stated that, during the two-year period, the husband continued to use his wife's address as his mailing address, even though he was physically living at different locations. Therefore, as these periods of separation fall, the Debtors assert that they are each entitled to separate EIC and HoH tax treatment, which results in a lower amount of taxes owed.

The Debtors did not enter any exhibits into evidence as part of their case. The Debtors submitted no leases, receipts, cancelled checks, third-party affidavits or relevant post-marked mail to support their substantially self-serving testimony. Therefore, the Debtors' case is wholly uncorroborated by documentary evidence. However, even assuming the truth of the Debtors' testimony, it does not appear that Debtors are entitled to claim HoH status for the year 2000, because neither maintained a separate household for more than one-half of the year.¹ In any event, the Court finds the Debtors' testimony is at variance with the written record before the Court, both in their tax returns filed with the IRS and their bankruptcy schedules and statements filed in this Chapter 13 case. Therefore, the Court cannot afford their testimony much weight.

1. For the year 2000, both Debtors' tax returns (Form 1040A) listed their mailing address as "547 32 1/8 Rd., Apt. G, Clifton, CO 81520". For 2001, both listed their address as

¹ By the Debtors' testimony, they lived apart from July 2, 2000, through December 31, 2000. That turns out to be 183 days inclusive of the beginning and ending dates. As the year 2000 was a leap year with 366 days, by their testimony, debtors resided apart *exactly one-half* of the year which falls slightly short of the *more than one-half* of the year required under the statute.

“3210 Kennedy Avenue, Clifton, CO 81520”. The Debtors explained that H and R Block, the professional tax preparer used to prepare and file their returns, did not ask them if they lived at different addresses, resulting in the same address being used.

2. A similar pattern is found in the Debtors’ Statement of Financial Affairs, filed with the Court on April 28, 2003, following their Chapter 13 filing on April 11, 2003. Question 15 (Prior Address of Debtor) requests that

if the debtor has moved within the two years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to commencement of this case. If a joint petition is filed, report also any separate address of either spouse. (Emphasis added).

The Debtors both gave their address as “3210 Kennedy Ave., Grand Junction 81520” and stated the Dates of Occupancy were “7/00-2/03”.

Question 15 requests the physical, living addresses for each of the Debtors during the two years before they filed the case. Their answer is substantially different from their testimony at hearing. Under these circumstances, the Debtors’ filing of an Amended Answer to Question 15 on the day of the hearing is too little, too late by way of corroborating support. The Court finds that the record does not adequately support the Debtors’ claims for separate EIC and HoH tax treatment for the years 2000 and 2001. From their testimony, the Court is aware that the Debtors have apparently overcome some rather significant marital difficulties and are now living together full time. They should be commended for overcoming such problems.

The Court also finds that Debtors have not adequately satisfied their burden in objecting to the IRS’ priority tax claim. As noted above, the kinds of documents that should have been easily available to the Debtors to support their testimony were not offered into evidence. Additionally, their testimony is directly contradicted by the information contained in sworn bankruptcy schedules which they filed with the Court before the IRS claim became a matter of controversy. As a consequence, the evidence provided by the Debtors was not sufficient to rebut the IRS proof of claim and was not successful in shifting the ultimate burden of proof to the IRS.

But, even if the Court could consider the Debtors’ evidence sufficient to place the burden upon the IRS, the Court would find the IRS evidence to be convincing. The IRS supported its claim by the testimony of Ms. Kate Preston, an IRS Bankruptcy Specialist who has worked for the agency since 1989. Ms. Preston’s testimony was amply supported by more than twenty (20) exhibits entered into evidence. These corroborating documents consist of business records maintained by the IRS in the normal course of reviewing tax returns, such as information and documents received from taxpayers, employers and other third-parties, and used by the agency to assess the amount of taxes owed. This IRS evidence was not significantly rebutted by the Debtors. Accordingly, the Court finds that the IRS proved, by a preponderance of the evidence, that it holds a priority tax claim in the amount of \$15,000.00.

The Court finds that the Debtors’ Amended Plan cannot be confirmed since it does not adequately provide for the payment of the IRS’ priority tax claim. Therefore, it is hereby

ORDERED that the Debtors' Motion to Confirm Amended Chapter 13 Plan is hereby DENIED; it is further

ORDERED that the Debtors have until March 23, 2004, to file an Amended Chapter 13 Plan in accordance with this ruling or their case will be dismissed without further notice or hearing.

DATED this 5th day of March, 2004.

BY THE COURT:



Howard R. Tallman, Judge
United States Bankruptcy Court