UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re Nora J. Rivera

345 B.R. 229 (Bankr. E.D. Cal. 2005) · No. 05-10567-B-13 · Decided September 29, 2005

SUMMARY

The bankruptcy court granted the Internal Revenue Service relief from the automatic stay to offset the debtor's 2004 income tax overpayment against prepetition tax liabilities. The court held that the IRS's statutory right of setoff under 26 U.S.C. § 6402(a) and 11 U.S.C. § 553(a) was not impaired by the confirmed Chapter 13 plan. The court denied sanctions because any stay violation was promptly remedied, caused no actual damages, and was not egregious or undertaken in bad faith.

CASE DETAILS

COURT	United States Bankruptcy Court for the Eastern District of California, Fresno Division
WRITING FOR THE COURT	W. Richard Lee
JURISDICTION	California
DECIDED	September 29, 2005
DOCKET	05-10567-B-13
DISPOSITION	other
PROCEDURAL POSTURE	The IRS moved for relief from the automatic stay under 11 U.S.C. § 362 so that it could offset the debtor's 2004 federal income-tax overpayment against her prepetition priority tax liability. The debtor opposed the motion, arguing that her confirmed chapter 13 plan bound the IRS to accept payment through the plan and that the IRS had violated the automatic stay.
PRECEDENTIAL VALUE	published bankruptcy court memorandum decision
PARTIES	United States of America on behalf of the Internal Revenue Service v. Nora J. Rivera

TOPICS

automatic stay · chapter 13 · income tax · tax refunds · statutory interpretation

PRACTICE AREAS

bankruptcy law | federal tax law | automatic stay and setoff

QUESTIONS PRESENTED

1. Whether the IRS's statutory right to offset a prepetition tax overpayment against a prepetition tax liability was impaired by the debtor's confirmed chapter 13 plan under 11 U.S.C. § 1327(a).
2. Whether the IRS was entitled to relief from the automatic stay to exercise the statutory setoff right.
3. Whether the IRS's levy notices or attempted setoff warranted sanctions, actual damages, or punitive damages under 11 U.S.C. § 362(h).

HOLDINGS

1. A confirmed chapter 13 plan does not impair the IRS's statutory right under 11 U.S.C. § 553(a) to offset a prepetition tax overpayment against a prepetition tax liability because § 1327(a) is not an exception identified in § 553(a).
2. The IRS was entitled to relief from the automatic stay to credit the debtor's 2004 income-tax overpayment against the priority portion of its prepetition tax claim.
3. Sanctions were not appropriate because the record did not establish actual damages or conduct that was egregious, vindictive, malicious, or in bad faith, and any setoff was promptly reversed.

KEY QUOTATIONS

> *"By the plain language of subsection 553(a), no provision of title 11, except sections 362 and 363, can be interpreted to effect or impair a creditor's right of offset"* (233)

> *"This court, therefore, concludes that the IRS has a statutory right to credit the 2004 Overpayment against its tax claim which is not impaired by the confirmed Plan."* (234)

> *"no punitive damages should be awarded in the absence of actual damages."* (237)

FACTUAL BACKGROUND

Nora J. Rivera filed a chapter 13 petition while owing the IRS prepetition tax liabilities. She later filed her 2004 federal tax return showing an undisputed overpayment of $3,681, which the IRS applied or attempted to apply to her prepetition tax debt and then placed under administrative freeze. Rivera's confirmed plan provided for payment of the IRS's priority and unsecured claims but did not expressly address setoff. The IRS sought relief from the automatic stay to apply the overpayment against the priority claim.

PROCEDURAL HISTORY

The debtor filed a chapter 13 petition on January 26, 2005, and later proposed a plan providing for payment of the IRS's priority and general unsecured claims. The IRS filed a proof of claim but did not object to confirmation. After the plan was confirmed, the IRS sought relief from the stay to apply the debtor's 2004 overpayment to the priority tax claim. The bankruptcy court granted the motion, denied sanctions, and authorized the IRS to file an amended proof of claim; the debtor and trustee could stipulate to reduced plan payments.

DISPOSITION

other

CASES CITED

- Internal Revenue Service v. Luongo (In re Luongo), 259 F.3d 323 (5th Cir. 2001)
- In re Buckenmaier, 127 B.R. 233 (9th Cir. BAP 1991)
- In re Davis, 889 F.2d 658, 661 (5th Cir. 1989)
- Schwartz v. United States (In re Schwartz), 954 F.2d 569, 570-72 (9th Cir. 1992)
- Citizens Bank of Maryland v. Strumpf, 516 U.S. 16, 116 S. Ct. 286, 290, 133 L. Ed. 2d 258 (1995)
- United States v. Ketelsen (In re Ketelsen), 880 F.2d 990, 993 (8th Cir. 1989)
- Crysen/Montenay Energy Co. v. Esselen Assocs., Inc. (In re Crysen-Montenay Energy Co.), 902 F.2d 1098, 1105 (2d Cir. 1990)
- McHenry v. Key Bank (In re McHenry), 179 B.R. 165, 168-69 (9th Cir. BAP 1995)
- Cox v. Billy Pounds Motors, Inc. (In re Cox), 214 B.R. 635, 646 (Bankr. N.D. Ala. 1997)
- Knaus v. Concordia Lumber Co. (In re Knaus), 889 F.2d 773 (8th Cir. 1989)
- In re Gault, 136 B.R. 736 (Bankr. E.D. Tenn. 1991)
- In re Lord, 270 B.R. 787 (Bankr. M.D. Ga. 1998)