

**THIS OPINION IS NOT INTENDED FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE: ) Case No. 92-51128  
 )  
JOHN V. BLASIO ) Chapter 13  
KAREN S. BLASIO )  
 ) JUDGE MARILYN  
SHEA-STONUM )  
Debtors )  
 ) **ORDER ALLOWING CLAIM AS**  
 ) **AS AN AMENDED PROOF OF**  
 ) **CLAIM**

This matter came on for hearing on January 5, 1995, pursuant to debtors' request for a hearing on an amended tax claim filed by the Summit County Treasurer ("Treasurer"). At that hearing counsel indicated to the Court that there would be no need for evidence to be presented, and, as such, no need for any witnesses to be called. Therefore, this decision is based upon debtors' motion, the proofs of claim at issue, and the representations of counsel at the January 5 hearing.

The facts in this matter are not in dispute. On May 8, 1992 debtors filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code. Thereafter, creditors were notified that September 11, 1992 was the last day to file timely proofs of claim. On May 22, 1992 the Treasurer filed a proof of claim

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("1992 Claim") for real estate taxes incurred through the first-half of 1991 on parcel number 60-02782.<sup>1</sup> That claim asserted priority, unsecured status in the amount of \$3,067.91. On October 25, 1994 the Treasurer filed a "supplemental<sup>2</sup>" claim ("1994 Claim") for real estate taxes incurred through the first-half of 1991 on parcel number 60-02782. That claim asserted secured status<sup>3</sup> in the amount of \$452.80.

Debtors object to the 1994 Claim on the grounds that it is wilfully late and that the Treasurer has not filed a motion pursuant to B.R. 3002(c)(1) requesting that this Court extend the time for filing said claim. The Treasurer claims that B.R. 3002(c)(1), by its very terms, does not apply in this instance, and that because the 1994 claim merely augments the timely filed 1992 Claim, that it should be allowed. Neither party, however,

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<sup>1</sup> Parcel number 60-02782 refers to the debtors' primary residence in which the debtors are still living.

<sup>2</sup> The Treasurer's proof of claim, filed on October 25, 1994, indicated that it amended a previously filed claim, dated May 22, 1994. Thereafter, on October 28, 1994, the Treasurer's office sent a letter to the Chapter 13 Trustee indicating that the 1994 Claim was incorrectly submitted as an amended claim and it should have been noted as a supplemental claim. Although a copy of this letter was sent to the Court, it does not appear that a copy was sent to debtors or their counsel.

Debtors', in their motion, indicate that the proof of claim at issue is unclear as to whether the Treasurer is referring to additional debt owed, or whether the 1994 Claim completely replaces the 1992 Claim. Debtors contend that if the second claim completely replaces the first then debtors have actually overpaid the Treasurer's office and are owed a refund. It is understandable why debtors would make this argument as the 1994 Claim merely states a new amount without explaining how that amount was reached. This Court believes that when amending a proof of claim, the better practice is to show, on the face of the claim, the mathematics used to arrive at the new number. Further, although the Bankruptcy Code and Rules do not legally distinguish between an "amendment" and "supplement," (see In re Woodson, 839 F.2d 610, 616 (9th Cir. 1988)) this Court cautions that counsel should take care in using these terms of art in the precise manner for which they are intended.

<sup>3</sup> The Summit County Treasurer asserts such a status based upon O.R.C. §5721.10. That provision grants the state a first lien on property that is equal to the amount of delinquent taxes on that property. Debtors have not contested this assertion of secured status.

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has provided this Court with any case authority supporting its position.

Based upon the foregoing, this Court views the issues before it as (1) whether B.R. 3002(c)(1) precludes the Treasurer from filing its 1994 Claim, and, if not, (2) is the 1994 Claim a permissible amendment to the 1992 Claim.

Bankruptcy Rule 3002(c) states that "[i]n a ... chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to §341(a) of the Code." See B.R. 3002(c). Subdivision (c)(1) of that same rule makes an exception to this time frame and states that "[o]n motion of the United States, a state, or subdivision thereof before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the United States, a state, or subdivision thereof. See B.R. 3002(c)(1) (emphasis added). This subdivision clearly contemplates that any motion made pursuant to its terms be made before the date set as the deadline to file a timely proof of claim. Further, this subdivision is pertinent not to amendments, but to independent proofs of claim in which a party may need additional time to file. Given that the issue at bar deals with an allegedly amended proof of claim that was filed well after the 90 day deadline set by B.R. 3002(c), subdivision (c)(1) of that rule does not apply.

The remaining issue to be decided then is whether the Treasurer's 1994 Claim acts to amend its 1992 Claim. "A creditor is permitted to file a proof of claim after the bar date when the proof of claim is an amendment to a timely filed claim but not when the proof constitutes a separate and distinct claim." In re Osborne, 159 B.R. 570, 573 (Bankr. C.D.Cal. 1993) (citing Menick v. Hoffman, 205 F.2d 365, 368 (9th Cir. 1953)). Such "amendments," filed after the bar date,

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however, should be closely scrutinized to ensure that they are not merely a newly filed claim disguised as an amendment. In re Chavis, 160 B.R. 804, 805 (Bankr. S.D.Ohio 1993); In re Grivas, 123 B.R. 876, 878 (Bankr. S.D.Cal. 1991); In re Overly-Hautz Co., 57 B.R. 932 (Bankr. N.D.Ohio 1986). Should it be determined that such an amendment acts to cure a defect in the original claim, provide greater detail to a previously filed claim, or plead a new theory on previously filed facts, then it is within the sound discretion of this Court as to whether that amendment should be allowed. In re Grivas, 123 B.R. 876, 878 (Bankr. S.D.Ohio 1993).

It has generally been held that amendments concerning tax claims are allowed if the amendment concerns the same kind of tax for the same tax year, and if the original claim provided notice that it was the creditor's intent to hold the estate liable for the taxes at issue in the amended complaint. In re Appling, 162 B.R. 43, 46 (Bankr. M.D.Ga. 1993); In re Overly-Hautz Co., 57 B.R. 932, 936 (Bankr. N.D.Ohio 1986). "An amendment adding a different type of tax to a timely claim generally does not relate back." In re Grivas, 123 B.R. 876, 878 (Bankr. S.D.Cal 1991). The amended Treasurer's claim clearly concerns the same kind of tax as the timely filed original claim as they both identify the subject of real estate taxes on parcel number 60-02782. The amended claim also clearly relates to the same tax year as the timely filed original claim as they both identify the date the tax was incurred as the first-half of 1991. Further, the original claim provided notice that the Summit County Treasurer's office intended to hold debtors' estate liable for at least \$3067.91, the amount of the timely filed proof of claim. While the Court notes that the original claim is classified as

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unsecured priority, and the amended claim is classified as secured, both will be paid in full under debtors' Chapter 13 plan. As such, this difference in classification does not make the allegedly amended proof of claim an entirely new and independent filing.

Some courts, in deciding whether to allow amendments to timely filed proofs of claim, have engaged in a balancing of equities in making the determination. In the widely cited case of In re Miss Glamour Coat Co., Inc., 80-2 U.S. T.C. 9793 (S.D.N.Y. Oct. 8, 1980) the court set forth several equitable factors to consider. Those factors include whether the debtors or creditors relied on the earlier proof of claim; whether the entity filing the amendment intentionally or negligently delayed in filing its amended proof of claim; and whether, if the amendment is not allowed, the other creditors would receive a windfall. The parties in this matter have not approached the objection in this manner, and therefore, the Court need not and cannot engage in this analysis.

Therefore, based upon the foregoing, this Court finds that the October 25, 1994 claim of the Summit County Treasurer's office shall be treated as an amendment to the timely filed claim of May 22, 1992. The debtors and/or the Trustee shall have 30 days from the date of the entry of this Order to file any substantive objections to the claim as so amended. In the absence of any such filing, the claim will be allowed 31 days from this date.

**IT IS SO ORDERED.**

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MARILYN SHEA-STONUM  
Bankruptcy Judge

**DATED: 1/23/95**