

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

IN RE: ) CHAPTER 13  
LOREN L. DRISKELL, ) CASE NO. 94-51403-JDW  
)  
DEBTOR )  
)  
)  
LOREN L. DRISKELL, )  
)  
MOVANT )  
)  
V. ) CONTESTED MATTER  
)  
INTERNAL REVENUE SERVICE, )  
)  
RESPONDENT )

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Movant:

Richard M. Katz  
355 Cotton Avenue  
Macon, Georgia 31201

For Respondent:

Lillian H. Lockary  
Assistant United States Attorney  
Post Office Box 1702  
Macon, Georgia 31202

## MEMORANDUM OPINION

This matter comes before the Court on Motion to Displace the Priority Claim of the Internal Revenue Service ("Respondent") and on Motion to Modify Plan after Confirmation filed by Debtor Loren L. Driskell ("Debtor"). This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(L) and (O). After considering the pleadings, evidence and applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

### Findings of Fact

The Court confirmed Debtor's Chapter 13 plan on November 21, 1994. Respondent held a Section 507 priority tax claim for \$74,318.56, of which Debtor's plan proposed to pay one hundred percent in accord with 11 U.S.C. § 1322(a)(2). Respondent's tax claim appears to have been assessed against Debtor in the context of Debtor's criminal activity from November 1, 1986 to December 31, 1988. Debtor pleaded guilty to one count of conspiracy to launder currency and two counts of subscribing to a false income tax return on October 16, 1991.

On January 13, 2000, the Chapter 13 Trustee moved to dismiss Debtor's case, alleging that the plan could not be

completed within five years of confirmation. On of February 3, 2000, Debtor moved to displace Respondent's priority claim, of which \$47,000.00 remains unpaid, and on April 20, 2000, he moved to modify his plan.

Debtor proposes to pay Respondent's priority claim outside the plan. If allowed to do so, he can pay the Chapter 13 Trustee \$7,000.00. Such amount that will allow him to complete scheduled payments to his general unsecured creditors and pay anticipated administrative expenses. Respondent, which also holds a general unsecured claim for \$23,294.00, objects to both motions.

#### Conclusions of Law

Debtor argues Respondent will suffer no injury if the Court grants his motions, and that Debtor will enjoy the broader discharge afforded under Chapter 13. Such may be the case, but there appears to be no provision circumventing the requirement, stated in 11 U.S.C. § 1322(a)(2), that

(a) The plan shall –

\* \* \*

(2) provide for full payment, in deferred cash payments, of all claims entitled to priority under section 507 of [the Code], unless the holder of a particular claim agrees to a different treatment of such claim[.]

11 U.S.C. § 1322(a)(2) (emphasis added). As the emphasized language indicates, Section 507 priority claims may be paid

other than as prescribed in Section 1322(a)(2) only if the claim holder agrees. See In re Jones, 231 B.R. 110, 112 (Bankr. N.D. Ga. 1999).

Debtor cites no authority pursuant to which the Court might grant his motions over Respondent's objection. In Matter of Ungar, 104 B.R. 517 (Bankr. N.D. Ga. 1989), though the court considered a Section 507 priority tax claim paid outside the plan, it addressed the dischargeability of such claims paid thus. See Matter of Ungar, 104 B.R. at 518-19. The court did not address the question that would have been raised if the Section 507 priority tax claim holder had refused to agree to having its claim paid outside the plan, and though it is not specifically stated, it is probably the case that the claim holder agreed to be paid outside the plan.

Debtor's motions must be denied. He may not displace Respondent's Section 507 priority tax claim, nor may he, without Respondent's agreement, modify his plan to provide for payment of such claim outside the plan.

An order in accordance with this opinion will be entered on this date.

Dated this 20<sup>th</sup> day of November, 2000.

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James D. Walker, Jr.  
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

Richard M. Katz  
355 Cotton Avenue  
Macon, GA 31201

Lillian H. Lockary  
Assistant U.S. Attorney  
P. O. Box 1702  
Macon, GA 31202

This \_\_\_\_\_ day of November, 2000.

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Cheryl L. Spilman  
Deputy Clerk  
United States Bankruptcy Court

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ORDER

In accordance with the memorandum opinion entered on this date, it is hereby

ORDERED that Debtor Loren L. Driskell's Motion to Displace the Priority Claim of the Internal Revenue Service, is DENIED; and it is hereby further

ORDERED that Debtor Loren L. Driskell's Motion to Modify his Plan after Confirmation is DENIED.

SO ORDERED this 20<sup>th</sup> day of November, 2000.

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James D. Walker, Jr.  
United States Bankruptcy Judge

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