

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE:

PAMELA MARITA VICTOR,
a/k/a PAMELA R. PRICE,

BK #90-32697-WHB

Debtor.

PAMELA MARITA VICTOR,
a/k/a PAMELA R. PRICE,

Plaintiff,

v.

Adversary Proceeding
No. 91-0021

INTERNAL REVENUE SERVICE,
Creditor and
NORMAN P. HAGEMEYER,
Chapter 7 Trustee,

Defendants.

**MEMORANDUM OPINION AND ORDER
ON COMPLAINT TO DETERMINE DISCHARGEABILITY
OF IRS TAXES**

This cause is before the Court on the complaint filed by Pamela Marita Victor ("Debtor") against the Internal Revenue Service ("IRS") and Norman P. Hagemeyer ("Trustee") to determine dischargeability of certain claims filed by the IRS. The issues raised are core pursuant to 28 U.S.C. §157(b)(2)(I) & (K). The following constitutes findings of fact and conclusions of law pursuant to F.R.B.P. 7052.

ISSUES RAISED

1. Is the property of the debtor declared in Schedule B-2 and exempted in Schedule B-4, pursuant to Tennessee statutes also exempt from levy and lien pursuant to 26 U.S.C. §6334?

2. If the personal property is exempt from the IRS lien, is the underlying tax obligation dischargeable as an unsecured non-priority debt?

3. If the personal property is subject to the lien, may the underlying tax obligation be rendered dischargeable as an unsecured, non-priority debt, by payment of the fair market value of the schedule B-2 property?

4. In the plaintiff's prayer for relief in the original complaint, the plaintiff is also requesting the Court to "order the IRS to enter, record and release the federal tax lien as to Plaintiff individually and her property hereafter acquired as of the date of discharge granted by this Court." May this relief be granted?

FACTUAL SUMMARY

The pertinent facts in this adversary proceeding are as follows and most are agreed to by stipulation of the parties:

1. The debtor filed her voluntary Chapter 7 petition under Title 11 of the U.S. Code on December 11, 1990. Norman P. Hagemeyer was appointed the case Trustee.

2. The debtor listed the IRS as a creditor on Schedule A-1 of her petition with a claim of \$30,924.11 for 1982 taxes.

3. The plaintiff and her ex-husband filed a joint federal income tax return on August 16, 1983 for the tax year ending December 31, 1982.

4. The IRS assessed a tax deficiency of \$23,627.17 and interest of \$9,165.19 on February 3, 1986.

5. The IRS also assessed, subsequent to February 3, 1986, interest of \$1,140.83 and failure to pay penalties of \$1,254.87 on February 16, 1987 on the underlying taxes due.

6. The IRS filed a properly perfected notice of federal tax lien on November 27, 1987 in the Register's Office of Shelby County, Tennessee, against Timothy L. and Pamela R. Price.

7. The plaintiff filed this adversary proceeding on January 24, 1991 seeking to have the 1982 taxes with penalties and interest discharged.

8. In her bankruptcy schedules, the plaintiff declared an interest in a parcel of real estate located at 6707 Reindeer, Memphis, Tennessee with a fair market value of \$58,200.00, a first mortgage to BancBoston of \$62,500.00 and a Federal tax lien of \$30,924.11. In her Statement of Intent, the plaintiff declared that she was going to surrender this property.¹

9. All of the personal property exempted by the debtor under Schedule B-4, except for the \$5,000.00 homestead exemption claimed on 6707 Reindeer, and contained in Schedule B-2 is property exempt from levy pursuant to the provisions of 26 U.S.C. §6334.

10. In the "Answer of the United States" filed on March 5, 1991, defendant IRS admits that the debtor's tax liabilities for the 1982 tax year are dischargeable pursuant to 11 U.S.C. §727 and §523 of the Bankruptcy Code. However, the IRS denies that the tax lien filed by the IRS may be released by this Court.

**DISCUSSION AND
CONCLUSIONS OF LAW**

The debtor lists in Schedule B-2 of her petition and schedules the following personal property:

Cash on hand	10.00
Deposits of Money	100.00
Household goods and furnishings	250.00
Wearing apparel, jewelry, firearms, and personal, possessions	250.00

Total:	\$610.00

¹ An Agreed Order Granting Relief From The Automatic Stay and Abandoning Property was entered by this Court on March 12, 1991. The real property described in the Agreed Order was foreclosed upon by the mortgage company on or about July 26, 1991. There were no proceeds of this sale exceeding the outstanding mortgage balance due and the costs of the foreclosure sale.

In Schedule B-4 of her petition and schedules the debtor claims the following property as exempt, under applicable Tennessee statutes:

Household Goods	250.00
Cash on hand	10.00
Financial Account	100.00
Personal Effects	250.00
6707 Reindeer	5,000.00

26 U.S.C. §6334 states, in pertinent part:

§6334. Property exempt from levy.

a. Enumeration - There shall be exempt from levy:

1. Wearing apparel and school books;
2. Fuel, provisions, furniture and personal effects;
3. Books and tools of a trade, business or profession;
4. Unemployment benefits;
5. Undelivered mail;
6. Certain annuity and pension payments;
7. Workmen's compensation;
8. Judgments for support of minor children;
9. Minimum exemption for wages, salary and other income;

b. Appraisal - The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt . . .

c. No other property exempt . . . ;

d. Exempt amount of wages, salary or other income . . .

In the matter of U.S. v. Stowe, 121 B.R. 549 (N.D. Ind. 1990), the Bankruptcy Court had held that certain goods exempted on Schedule B-4 were not subject to a federal tax lien. On appeal, the District Court stated that "federal courts have decidedly held that federal tax liens may be secured on property exempt from levy under 28 U.S.C. §6334(a). While [26 U.S.C. §6334] exempts certain property . . . from a tax levy, it does not grant a delinquent taxpayer with exemption from a tax lien on such items." 121 B.R. at 552, citations omitted. In the matter of U.S. v. Barbier, 896 F. 2d 377 (9th Cir. 1990), that Court distinguished the difference between a tax levy and a lien. "A levy forces debtors to relinquish their property. It operates as a seizure by the IRS to collect delinquent income taxes . . . A lien, however, is merely a security interest and

does not involve the immediate seizure of property." Id. at 379, citations omitted. Moreover, 26 U.S.C. §6321 states:

§6321. Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(Emphasis added)

Here, the real property of the debtor has been foreclosed on and no funds were realized by the debtor or by IRS. It appears that, at this point, the IRS has not asserted its levying powers against any property of the debtor. However, this Court does not have the authority to force IRS to release its tax lien. Section 522(f) of the Bankruptcy Code does not empower the debtor to avoid tax liens. Moreover, §522(c)(B) permits a properly filed tax lien to survive the bankruptcy and to continue to encumber otherwise exempt property.

The "Notice of Federal Tax Lien Under Internal Revenue Laws" reads, in pertinent part, ". . . there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest and costs that may accrue." (Emphasis added) The tax lien does not limit itself to only real property or the property located at 6707 Reindeer. Therefore, the Court finds that the property of the debtor listed in Schedule B-2 and exempted in Schedule B-4 is not exempt from a federal tax lien pursuant to the Bankruptcy Code. The suggestion that the debtor's personal property may be exempt from levy under the tax statutes is to the debtor's benefit but still does not give this Court authority to order IRS to release its lien. As the IRS counsel pointed out in her brief, the debtor has administrative remedies available which establish a method for seeking the exemption of her existing property from the tax lien and for seeking the release of the tax lien. See, 26 U.S.C. §6325; 26 C.F.R. §301.6325-1

The debtor's argument regarding this Court's ruling in In re Zobenica, 109 B.R. 814 (Bankr. W.D. Tenn. 1990), wherein the Court allowed the debtors to utilize §506 and to avoid the undersecured portion of

the second mortgage so long as the debtors redeemed the secured portion, is not analogous to the case at bar since this Court has found that the lien of the IRS does attach to otherwise exempt property of the debtor. See, e.g., In re Barbier, 896 F. 2d at 378.

It has been stipulated and this Court agrees that the underlying taxes due and which are the basis of this adversary proceeding are indeed dischargeable pursuant to 11 U.S.C. §523(a)(1) and §727. This of course means that IRS is prevented from collecting the dischargeable taxes as a personal liability from the debtor. See, e.g., In re Isom, 901 F. 2d 744 (9th Cir. 1990). The in rem liability as to the debtor's state law exempt property remains, and it is outside this Court's jurisdiction to order the IRS to release its lien. Id.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the personal tax liability of the debtor to the Internal Revenue Service for 1982 income taxes is hereby discharged pursuant to 11 U.S.C. §523(a)(1);
2. That the tax lien of the Internal Revenue Service is otherwise allowed to remain in force, without prejudice to the debtor's administrative remedies under the IRS Code and Regulations.
3. No action by the Chapter 7 Trustee is required.

SO ORDERED this 9th day of December, 1991.

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE

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