

DEC 04 2015

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No. EC-15-1072-DJuF
)	
6	RICHARD JACKSON and)	
	TAMARA ANNE JACKSON,)	Bk. No. 10-11810-A-13
7)	
	Debtors.)	
8	_____)	
)	
9	RICHARD JACKSON;)	
	TAMARA ANNE JACKSON,)	
10)	
	Appellants,)	
11)	
	v.)	O P I N I O N
12)	
	UNITED STATES,)	
13)	
	Appellee.)	
14	_____)	

Argued and Submitted on November 19, 2015
at Sacramento, California

Filed - December 4, 2015

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable Frederick E. Clement, Bankruptcy Judge, Presiding

Appearances: David R. Jenkins appeared and argued for Appellants
Richard Jackson and Tamara Anne Jackson. Jeffrey J.
Lodge, Assistant U.S. Attorney, appeared and
argued on behalf of Appellee United States.

Before: DUNN, JURY, and FARIS, Bankruptcy Judges.

1 DUNN, Bankruptcy Judge:

2
3 The Internal Revenue Service (IRS") timely filed a proof of
4 claim ("Initial Claim") in the chapter 13¹ case of Richard and
5 Tamara Anne Jackson. The Initial Claim included (1) an estimate
6 of the Jacksons' income tax liability for the 2009 tax year and
7 (2) a reservation of the right to assess the true tax liability
8 for the 2009 tax year once the Jacksons had filed their 2009
9 income tax return ("2009 Return"). Approximately six months
10 after the 2009 Return was filed, the IRS amended the Initial
11 Claim ("Amended Claim") to assert priority status with respect to
12 the 2009 assessed tax liability, which was approximately six
13 times the amount estimated. Nearly four years later, the
14 Jacksons objected ("Claim Objection") to the Amended Claim
15 pursuant to § 502(b)(9) on the basis that it was untimely,
16 asserting that § 1308 required the IRS to file its claim for the
17 2009 assessed tax liability within 60 days after the 2009 Return
18 was filed.

19 We AFFIRM the bankruptcy court's order overruling the Claim
20 Objection.

21 **I. FACTUAL BACKGROUND**

22 The Jacksons filed their chapter 13 bankruptcy petition
23 ("Petition") on February 24, 2010. At the time the Petition was
24 filed, the Jacksons' 2009 Return had not been filed.

25
26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

1 On February 28, 2010, the Jacksons filed their Chapter 13
2 Plan ("Plan"). The Plan provided that claims entitled to
3 priority pursuant to § 507 would be paid in full. The Plan
4 included an estimated IRS priority claim in the total amount of
5 \$57,086.93.²

6 The IRS filed its Initial Claim on April 5, 2010. Through
7 the Initial Claim, the IRS asserted an unsecured priority claim
8 in the amount of \$6,102.60 under § 507(a)(8) for the 2009 tax
9 year. The Initial Claim reflected that the Jacksons' income tax
10 liability for that period was "unassessed" because no return had
11 been filed. In a footnote, the Initial Claim provided:
12 "Unassessed tax liability(ies) have been listed on this claim
13 because our records show no return(s) filed. When the debtor(s)
14 files the return or provides other information as required by law
15 the claim will be amended."

16 Important to the resolution of this appeal, but not
17 addressed by either party, through the Initial Claim the IRS also
18 asserted assessed income tax unsecured priority claims in the
19 amounts of \$3,526.00 and \$3,857.00, respectively, for the 2007
20 and 2008 tax years. In addition, the IRS asserted unsecured
21 priority tax claims in the amount of \$4,999.00 each for the 2007
22 and 2008 tax years; these latter amounts were marked "Pending
23 Examination" as "proposed tax deficiency determined by
24 examination of debtor(s) tax return." In total, the IRS asserted
25 an unsecured priority claim in the amount of \$23,992.92 through

26
27 ² Under §§ 3.04 and 5.04 of the First Amended Plan, the
28 claim amounts stated in the Plan were estimates only. The proofs
of claim, not the Plan, controlled the allowed amounts of claims.

1 the Initial Claim.³

2 On April 28, 2010, the Jacksons filed their First Modified
3 Chapter 13 Plan ("First Amended Plan"), which provided that IRS
4 claims entitled to priority pursuant to § 507 would be paid in
5 full. The First Amended Plan estimated that the IRS priority
6 claim was \$42,678.44. The First Amended Plan was confirmed by
7 the bankruptcy court's order entered July 8, 2010.

8 Pursuant to the extension they had requested, the Jacksons
9 filed their 2009 Return on October 14, 2010. No copy of the 2009
10 Return is included in the record either in the bankruptcy court
11 or on appeal.

12 On November 26, 2010, the Jacksons filed their Second
13 Modified Chapter 13 Plan ("Second Amended Plan"), which reduced
14 the total monthly plan payment from \$2,677.00 to \$2,127.00,
15 necessitated, as set forth in their declaration filed in support
16 of approval of the Second Amended Plan, by a decrease in income
17 experienced by the Jacksons. In their motion for approval of the
18 Second Amended Plan, the Jacksons outlined the impact on secured
19 creditors resulting from the reduction in the monthly plan
20 payment. The motion did not address the impact, if any, on
21 priority creditors. Notably, both the treatment and the amount
22 of the IRS priority claim remained unchanged under the Second
23 Amended Plan. The Second Amended Plan was approved by the
24 bankruptcy court's order entered February 3, 2011.

25 The IRS filed the Amended Claim on April 11, 2011. Through
26

27 ³ This total does not include interest to the petition date
28 in the amount of \$462.12.

1 the Amended Claim the IRS asserted a total priority claim in the
2 amount of \$61,735.00. The increase is accounted for as follows:

3 1. On March 12, 2011, following the examination of the
4 Jacksons' return for the 2007 tax year, the IRS made an
5 additional assessment of \$12,672.00, an increase of \$7,673.00
6 over the amount included in the Initial Claim.

7 2. On February 7, 2011, following the examination of the
8 Jacksons' return for the 2008 tax year, the IRS made an
9 additional assessment of \$6,071.00, an increase of \$1,072.00 over
10 the amount included in the Initial Claim.

11 3. On November 22, 2010, following the filing of the 2009
12 Return, the IRS assessed \$35,309.00 for the 2009 tax year, an
13 increase of \$29,206.40 over the estimated liability included in
14 the Initial Claim.

15 On January 5, 2015, nearly four years after the Amended
16 Claim had been filed, the Jacksons objected to the Amended Claim.
17 In the Claim Objection, the Jacksons acknowledged that they were
18 obligated under the Second Amended Plan to pay, in full, the IRS
19 priority tax claim. They asserted, however, that the \$35,309.00
20 assessment for the 2009 tax year included in the Amended Claim
21 constituted an untimely claim where the IRS did not assert the
22 assessment for the 2009 Return either before the governmental
23 claims bar date of August 23, 2010, or within 60 days after the
24 2009 Return was timely filed. The IRS countered that there was
25 no deadline for amending the Initial Claim and that the Initial
26 Claim was sufficient to put the Jacksons on notice that the IRS
27 intended to assert a claim for any future assessment to be made
28 for the 2009 tax year once the Jacksons had filed the 2009

1 Return.

2 The bankruptcy court overruled the Claim Objection, holding
3 that the claims bar date pertained only to the filing of the
4 Initial Claim and was "not intended to preclude an amendment."
5 Tr. of Feb. 19, 2015 H'rng at 11:2-8. The Jacksons filed a
6 timely notice of appeal.

7 **II. JURISDICTION**

8 The bankruptcy court had jurisdiction under 28 U.S.C.
9 §§ 1334 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C.
10 § 158.

11 **III. ISSUE**

12 Whether the bankruptcy court erred when it determined that
13 neither § 502(b)(9) nor Rule 3002(c)(1) rendered the Amended
14 Claim untimely.

15 **IV. STANDARDS OF REVIEW**

16 We review de novo issues of statutory construction and
17 conclusions of law, including a bankruptcy court's interpretation
18 of the Bankruptcy Code. Samson v. W. Capital Partners, LLC (In
19 re Blixseth), 684 F.3d 865, 869 (9th Cir. 2012)(per curiam). See
20 also Aspen Skiing Co. v. Cherrett (In re Cherrett), 523 B.R. 660,
21 667 (9th Cir. BAP 2014).

22 Similarly, we review a bankruptcy court's interpretation and
23 application of the Rules de novo. All Points Capital Corp. v.
24 Meyer (In re Meyer), 373 B.R. 84, 87 (9th Cir. BAP 2007) (citing
25 Ruvacalba v. Munoz (In re Munoz), 287 B.R. 546, 550 (9th Cir. BAP
26 2002)).

27 De novo means that we review a matter anew, as if no
28 decision previously had been rendered. Dawson v. Marshall, 561

1 F.3d 930, 933 (9th Cir. 2009).

2 **V. DISCUSSION**

3 Section 502(b)(9) authorizes the bankruptcy court, upon the
4 filing of an objection, to disallow a claim that has not been
5 timely filed.

6 Section 1308 was added to the Bankruptcy Code in 2005
7 through the enactment of the Bankruptcy Abuse Prevention and
8 Consumer Protection Act of 2005 and requires debtors to file tax
9 returns for all taxable periods ending during the 4-year period
10 ending on the date of the filing of the petition. At the same
11 time, § 502(b)(9) was amended to address the timeliness of claims
12 filed as a result of § 1308.

13 [A] claim of a governmental unit shall be timely filed if it
14 is filed before 180 days after the date of the order for
15 relief or such later time as the [Rules] may provide and
16 except that in a case under chapter 13, a claim of a
17 governmental unit for a tax with respect to a return filed
18 under section 1308 shall be timely if the claim is filed on
19 or before the date that is 60 days after the date on which
20 such return was filed as required.

21 § 502(b)(9) (emphasis added).

22 Rule 3002(c)(1) was amended in 2008 to address the
23 implications of § 1308.

24 Rule 3002. Filing Proof of Claim or Interest

25 (c) TIME FOR FILING.

26 (1) A proof of claim filed by a governmental unit,
27 other than a claim resulting from a tax return filed
28 under § 1308, is timely if it is filed not later than
180 days after the date of the order for relief. A
proof of claim filed by a governmental unit for a claim
resulting from a tax return filed under § 1308 is
timely if it is filed no later than 180 days after the
date of the order for relief or 60 days after the date
of the filing of the tax return. The court may, for
cause, enlarge the time for a governmental unit to file
a proof of claim only upon motion of the governmental

1 unit made before expiration of the period for filing a
2 timely proof of claim.

3 As stated in the Advisory Committee note to the 2008 amendment to
4 Rule 3002:

5 Subdivision (c)(1) is amended to reflect the addition
6 of § 1308 to the Bankruptcy Code in 2005. This
7 provision requires that chapter 13 debtors file tax
8 returns during the pendency of the case, and imposes
9 bankruptcy-related consequences if debtors fail to do
10 so. Subdivision (c)(1) provides additional time for
11 governmental units to file a proof of claim for tax
12 obligations with respect to tax returns filed during
13 the pendency of a chapter 13 case. The amendment also
14 allows the governmental unit to move for additional
15 time to file a proof of claim prior to the expiration
16 of the applicable filing period.

17 The Jacksons assert on appeal that, because the 2009 Return
18 was filed as directed by § 1308, any claim by the IRS for the
19 assessed liability for the 2009 tax year would have been timely
20 only if the IRS had asserted that liability in a claim filed by
21 December 13, 2010, the date which is 60 days after the October
22 14, 2010 filing date of the 2009 Return.

23 The only question presented by this appeal is whether § 1308
24 establishes an absolute deadline for asserting the assessed
25 dollar amount of the 2009 tax liability. We conclude that it
26 does not.

27 It has long been established in the Ninth Circuit that an
28 amendment to a timely proof of claim "relates back" to a timely
29 filed claim when the original claim provided "fair notice of the
30 conduct, transaction, or occurrence that forms the basis of the
31 claim asserted in the amendment." State of Cal. Bd. Of
32 Equalization v. Ulrich (In re Solari), 63 B.R. 115, 117 (1986),
33 quoting Pepperland, Inc. v. Westgate-California Corp. (In re

1 Westgate-California Corp.), 621 F.2d 983 (9th Cir. 1980). With
2 respect to federal taxes, a timely-filed claim based on estimated
3 personal income taxes can be amended.

4 [T]he fact that the IRS filed a proof of claim for
5 income taxes put the debtors on notice that the IRS
6 might augment its claim, especially where it only
7 listed estimated liability. Therefore, equitable
principles reinforce a finding that the IRS may amend
its original proof of claim for income taxes to include
income taxes due for other years not initially listed.

8 In re Osborne, 159 B.R. 570, 577 (Bankr. C.D. Cal. 1993), aff'd
9 167 B.R. 698 (9th Cir. BAP 1994), aff'd 76 F.3d 306 (9th Cir.
10 1996).

11 There is no dispute that the Initial Claim was timely filed,
12 that it included an estimated liability for the 2009 tax year,
13 and that it explicitly stated the Initial Claim would be amended
14 after the 2009 Return was filed. There also is no dispute that
15 the Amended Claim explicitly indicated it amended the Initial
16 Claim and that it replaced the estimated claim with an assessed
17 liability based on the 2009 Return. We see no reason why the
18 Amended Claim cannot benefit from the relation back principle for
19 amended claims generally, particularly where the audits with
20 respect to the Jacksons' 2007 and 2008 tax years were continuing.

21 The Advisory Committee note to Rule 3002 suggests that,
22 because § 1308 provides for tax returns to be filed post-
23 petition, the general 180-day claims deadline for governmental
24 units may not be sufficient. For that reason, the general claims
25 deadline for governmental units is automatically extended to a
26 date 60 days after the post-petition tax return is filed, if the
27 general deadline expired before that date. We see nothing in the
28 Bankruptcy Code or the Rules that precludes, as a matter of law,

1 the IRS from asserting a claim based on an estimate within the
2 general claims deadline, and then amending it once the debtor has
3 provided the information necessary for the actual assessment of
4 the tax liability.⁴

5 **VI. CONCLUSION**

6 The bankruptcy court correctly overruled the Claim
7 Objection, holding that the Amended Claim is not an untimely
8 claim under § 502(b)(9), but instead is an amendment to the
9 previously-filed timely Initial Claim.

10 We AFFIRM.

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20 ⁴ We recognize that in chapter 13 cases, claims bar dates
21 serve an expanded purpose in allowing debtors to formulate and
22 confirm a plan promptly to address their debts. As such, there
23 may be cases where it would be inequitable to allow an amendment
24 to a claim if there is an unreasonable delay. However, the
25 bankruptcy court was not asked to reach the equities of allowing
26 the Amended Claim under the circumstances of this case. We
27 observe that the Jacksons filed the Second Amended Plan after the
28 2009 Return was filed, at a time when they would have been aware
of their true liability for the 2009 tax year, yet they did not
address the increased liability in the Second Amended Plan. In
addition, for unknown reasons, the Jacksons waited until almost
four years after the Amended Claim was filed and within
approximately one month prior to the end of the plan term before
filing the Claim Objection.