

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
MICHELE D. MAZE,) CASE NO. 09-20482-jpk
) Chapter 13
)
Debtor.)

ORDER FOR TELEPHONIC HEARING REGARDING OBJECTION TO CLAIM

_____ On May 20, 2009, the debtor, by counsel, filed an objection to claim #5 of the Indiana Department of Revenue. The basis for the objection is stated to be that the debtor has filed tax returns required by the State of Indiana for the tax years 2006 and 2008, and that the amount of the tax liability stated on the debtors' returns is different from that asserted by the Indiana Department of Revenue in its claim. Claim #5 states liability for retail sales tax for the periods ended September 30, 2008; October 31, 2008; November 30, 2008 and December 31, 2008, obviously derived from returns reviewed by the Indiana Department of Revenue. The claim also asserts that the debtor has not filed an Indiana Income tax return for tax year 2006.

11 U.S.C. § 502(a) states that a claim, proof of which has been filed, is deemed allowed unless a party in interest objects to the claim. Fed.R.Bankr.P. 3001(f) provides that a validly filed proof of claim "shall constitute prima facie evidence of the validity and amount of claim." The objection apparently disregards the fact that the claim is based upon retail sales tax returns; it is phrased in terms of filing of income tax returns. The claim evidences that the Indiana Department of Revenue has reviewed retail sales tax returns and has determined that the tax stated on those returns is not the tax asserted by the Indiana Department of Revenue. Therefore, any assertion by the debtor that retail sales tax returns state an amount different from that stated in the claim is not a valid objection to the claim: a valid objection would state that the amount of the claim is erroneous based upon applicable law with respect to determination of the debtor's state tax liabilities. The objection does state grounds sufficient to

overcome the prima facie validity of claim #5 with respect to retail sales tax.

As to the assertion that the estimate stated for income tax for the year 2006 is erroneous, the debtor apparently relies on an affidavit filed on May 26, 2009 as docket record entry number 27. In this Affidavit, the debtor has mixed apples and oranges. The State of Indiana has made no claim for income taxes for the years 2007 or 2008, and yet the affidavit admits liability for taxes for those years. Based upon prior experience with debtors, the Court is unwilling to accept an affidavit which simply states that the debtor filed required tax returns, unless the date of filing, the mechanism by which returns were filed, and the office of the taxing authority to which those returns were sent is stated.

There is so much confusion in this record as to the objection to claim #5 that the court deems it necessary to conduct a hearing with respect to the objection.

IT IS ORDERED that a Telephonic Hearing will be held on **August 12, 2009, at 1:10 P.M.**, with respect to the debtor's Objection to Claim #5 of the Indiana Department of Revenue.

IT IS FURTHER ORDERED that Deputy Attorney General Magdalena Josipovic shall participate in that hearing on behalf of the Indiana Department of Revenue.

Dated at Hammond, Indiana on July 20, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor

Trustee, US Trustee

IDR

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