UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

PAUL S. HUDSON,

Debtor.

Chapter 7
Case No.: 00-11683

APPEARANCES:

Paul S. Hudson, *Pro Se*
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DECISION AND ORDER

Currently before the court is the objection of Paul S. Hudson (the "Debtor") to the amended proof of claim filed by the Internal Revenue Service ("IRS"). The court derives jurisdiction over this core proceeding by virtue of 11 U.S.C. §§ 157(a), (b)(2)(B), and 1334(b).

The Debtor filed the above-captioned chapter 7 case on November 12, 1999. The clerk's office fixed and noticed the deadline for filing proofs of claim as May 25, 2001. On March 12, 2001, the IRS filed its original proof of claim (Claim No. 8) in the amount of $65,826.61, which was amended by the claim now at issue, Claim Number 18, in the amount of $50,026.61, filed on December 11, 2002. The amended claim is comprised of principal in the amount of $27,916.49, plus pre-petition interest in the amount of $22,110.12. The claim arises out of the assessment of trust fund recovery penalties pursuant to 26 U.S.C. § 6672, the principal of which the Debtor does not dispute. On the grounds that (1) the IRS has improperly included interest in the claim amount and (2) the claim amount, excluding interest, has been fully satisfied, the Debtor filed an objection to the claim on February 10, 2003. The IRS disagrees with both contentions and each party has submitted memoranda and supplemental memoranda in support of its position. Because it appeared that an evidentiary hearing would not be required, the court has taken the matter on submission. The core issue

to be decided is whether interest accrues by operation of law or otherwise on trust fund penalties when the parties have entered into a valid Stipulation and Settlement Agreement (the "Agreement") compromising and setting the Debtor's "total liability."[1] The secondary issue to be decided is whether the underlying liability has been satisfied and, if so, to what extent.

In an unrelated case initiated by the Debtor as personal representative to the Estate of Eleanor Hudson against the IRS, United States District Court Judge Thomas J. McAvoy decided the main issue at hand in a lengthy Decision and Order dated March 25, 2004 (the "District Court Decision").[2] *See Hudson, et al v. Internal Revenue Service,* 03-CV-172 (N.D.N.Y. March 25, 2004).[3] For purposes of this decision, the court assumes familiarity with that of the District Court. In both the tax case and this bankruptcy case, the Debtor objected to the IRS's inclusion of interest against trust fund penalties based upon the "total liability" language of the Agreement. In addition, the Debtor claims here, as he did in the District Court, that he is entitled to set-off of the tax debt because the IRS has allegedly received overpayments of the settlement amount through payroll deductions and garnishment of state and federal income tax refunds.

On the question of whether interest may accrue against the settlement amount, this court adopts the reasoning and conclusions of Judge McAvoy:

> It must be assumed that when the Agreement was entered into, [sic] interests had already accrued on the trust fund penalties and, therefore, the parties' agreement as to Plaintiff's "total liability" on this date must be deemed to include the trust fund penalties and accrued interest.
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> . . . .

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[1] The parties entered into the Agreement within the context of a former Chapter 7 case, *Kent and Haroldson Associates, Inc.,* Case Number 95-10607. In that case, the Agreement was filed with this court on January 3, 2000. *See* Case No. 95-10607, Dkt. No. 291. Neither party disputes that the Agreement is binding here. The relevant portion of the Agreement reads, "The total Trust Fund portion of said tax will be $30,838.49. The total liability of Eleanor and Paul Hudson shall be the trust fund portion." Agreement ¶ B.

[2] Review of the District Court docket shows that no appeal was taken from the District Court Decision.

[3] The District Court Decision was docketed in this case on July 13, 2004. *See* Docket No. 266. Therein, Judge McAvoy noted, "It appears from the allegations in the complaint that Paul S. Hudson is litigating the propriety of this same tax debt in his bankruptcy proceeding." *Id.* at 6 n.5.

> [T]he clear and unambiguous terms of the Agreement demonstrate the parties' agreement to abate statutory interest . . . .

(District Court Decision at 21, 23.) Therefore, the IRS is collaterally estopped from relitigating the issue here.[4]

The District Court, however, left open the question of whether, and to what extent, the Debtor paid the IRS monies toward settlement after January 2, 2000. *See* District Court Decision at 17 (reasoning that this was a factual issue that could not be resolved on the pleadings). Thus, this issue is ripe for decision here.

The parties' submissions, however, are inadequate to resolve questions of fact concerning the Debtor's claim for set-off. The Debtor has submitted, among other documents, the following in support of his objection: a schedule of payments purportedly showing overpayment in the amount of $37,303, *see* Objection Exhibit C; two letters from the Debtor to the IRS requesting the application of alleged overpayments to the settlement amount, *see Id.* Exhibit C; and certain annual statements from the IRS for the periods December 1994 to December 2001, *see Id.* Exhibit E. Yet, neither the Debtor nor this court have personal knowledge relating to those statements. The court therefore cannot interpret the statements with any degree of accuracy. Moreover, the United States, on behalf of the IRS, disputes that the Debtor is entitled to an overpayment credit for each of the years identified by the Debtor in his affidavit. *See* United States' Resp. to Debtor's Objection to Amended Proof of Claim (No. 18) of the Internal Revenue Service, Dkt. No. 146, at 2. Thus, while it appears that the Debtor has met his burden of presenting sufficient evidence to overcome the presumed validity of the claim,[5] the court is, without further clarification, at a

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[4] "Collateral estoppel, also called issue preclusion, seeks to prevent the repetitive and wasteful relitigation of issues that have already been the subject of judicial resolution." *Rosendale v. Provident Nat'l Bank*, 1991 WL 45056, at *4 (S.D.N.Y. March 26, 1991). Under the applicable standard set by the Second Circuit, collateral estoppel may be invoked when: (1) the issue in the subsequent proceeding is identical to that decided in the prior proceeding; (2) the issue in the prior proceeding was actually litigated and actually decided; (3) the party to be estopped had a full and fair opportunity for litigation in the prior proceeding; and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits. *Gelb v. Royal Globe Insurance Co.*, 798 F.2d 38, 44 (2d Cir. 1986).

[5] Federal Rule of Bankruptcy Procedure 3001(f) provides, "A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." While the

standstill to rule on the Debtor's objection.

Based on the foregoing, it is hereby

ORDERED that the parties are directed to appear at a status conference to be held pursuant to 11 U.S.C. § 105 on October 4, 2004 at 10:30 a.m.; unless the parties advise otherwise, the court will conduct the conference by telephone so that personal appearances are not required.

It is SO ORDERED.

Dated:
Albany, New York

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Court Judge

IRS raises Rule 3001(f) in its defense, the court finds that the Debtor has overcome this initial evidentiary hurdle by presenting annual statements from the IRS which reflect credits for withheld taxes for the employment tax periods in question, to wit, January 1, 1989 through December 31, 1990.