



IT IS ORDERED as set forth below:

Date: April 09, 2009

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:	:	
	:	Chapter 13
MICHAEL S. RAY and PATRICIA L. RAY,	:	
f/k/a Patricia L. Norton,	:	Case No. 08-43009-PWB
Debtors.	:	
_____	:	
	:	
MICHAEL S. RAY and PATRICIA L. RAY,	:	
f/k/a Patricia L. Norton,	:	Case No. 08-43009-PWB
Movants,	:	
vs.	:	
	:	
UNITED STATES OF AMERICA,	:	
Respondent.	:	
_____	:	

**ORDER WITH REGARD TO OBJECTION
TO CLAIM OF UNITED STATES [Claim No. 6]**

The Internal Revenue Service filed a proof of claim [Claim No. 6] in the amount of \$53,358.15 (\$29,161.12 as an unsecured priority claim and \$24,197.03 as an unsecured general

claim) based on unpaid taxes for the years 2001 through 2007. The proof of claim indicates that tax returns were filed for all years except 2007.

The Debtors filed an objection to the claim [Docket No. 25], asserting that they have now filed tax their tax return for 2007 and that they received a tax refund of \$950 that the IRS applied to the unpaid balance of other taxes. For some unexplained reason, they conclude that this set of circumstances entitles them to disallowance of the entire proof of claim. A hearing was scheduled for March 15, 2009 on the objection; the Internal Revenue Service did not appear at the hearing or otherwise respond to the objection.¹ The Court will deny the objection, without prejudice.²

A Chapter 13 debtor must act in good faith in connection with the claims resolution process. *In re Shank*, 315 B.R. 799, 814 (Bankr. N.D. Ga. 2004) (“[T]he good faith requirement for confirmation of a chapter 13 plan, 11 U.S.C. § 1325(a)(3), requires that a debtor not proceed to object to claims that she admittedly owes based on an amendable pleading deficiency.”). The Court does not understand how disallowance of the entire proof of the claim can possibly be proper based on the circumstances alleged by the Debtors. Rather, it would appear to the Court that the proper remedy is disallowance of the claim for 2007 taxes and reduction of the claim for

¹The Internal Revenue Service can hardly claim lack of notice of the objection or the hearing. The certificate of service shows that counsel for the Debtors mailed the objection and notice of the hearing to the Internal Revenue Service at nine addresses.

²As the Internal Revenue Service well knows, because it regularly declines to respond to objections and other motions affecting its interests in this Court, Rule 55(d) of the Federal Rules of Civil Procedure, applicable under FED. R. BANKR. P. 7055 and 9014(c), provides, “A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.” Thus, the Court cannot sustain an objection to a proof of claim filed by the Internal Revenue Service merely because it fails to respond to it.

2001 taxes by \$950, which appears to be the way in which the IRS applied the refund.³

The Court cannot grant the relief requested by the Debtors. Accordingly, the Court will deny the Debtor's objection, without prejudice. The Debtors may seek allowance of the claim in such amounts as they contend are appropriate, taking into account their proper taxes as shown on the 2007 return and application of the 2007 tax refund.⁴ If the Internal Revenue Service disagrees with the amounts as stated by the Debtors, it will then have the opportunity to object.

End of Order

³Exhibit "A" to Objection.

⁴To insure proper service and notice to the Internal Revenue Service, counsel for the Debtors should mail any renewed objection and notice of hearing to the Internal Revenue Service at the same addresses to which it mailed the original objection and notice.

DISTRIBUTION LIST

Jeffrey B. Kelly (Lead)
Law Office of Jeffrey B. Kelly, P.C.
107 E. 5th Avenue
Rome, GA 30162

Mary Ida Townson
Chapter 13 Trustee
Suite 2700 Equitable Bldg.
100 Peachtree Street, NW
Atlanta, GA 30303

Steven Shapiro
Chief - Tax Division
Civil Trial Section, Southern Region
Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044

U.S. Attorney General
Main Justice Building
10th and Constitution Ave NW
Washington, DC 20530

Paula Hopkins
Bankruptcy Specialist – IRS
401 W. Peachtree Street NW Room 415
Atlanta, GA 30308

Lisa Johnson
Bankruptcy Specialist
Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

Internal Revenue Service
Insolvency Section
P.O. Box 21126
Philadelphia, PA 19114

Internal Revenue Service
Insolvency
Room 1640, Stop 334-D
401 West Peachtree St NW
Atlanta, GA 30308

Internal Revenue Service
District Counsel
P.O. Box 901
Stop 1000-D
Atlanta, GA 30370

U.S. Attorney
Chief Civil Process Clerk
1800 U.S. Courthouse
75 Spring St., SW
Atlanta, GA 30303

John Sheffield
Internal Revenue Service
401 W. Peachtree Street
Suite 1400, Stop 1000-D
Atlanta, GA 30308

Brianna Taylor
Internal Revenue Service
401 W. Peachtree Street
Suite 1400, Stop 1000-D
Atlanta, GA 30308