



**IT IS ORDERED as set forth below:**

**Date: June 30, 2009**

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

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

|                              |   |                           |
|------------------------------|---|---------------------------|
| IN THE MATTER OF:            | : | CASE NUMBER: 08-69791-PWB |
|                              | : |                           |
| WILLIAM WALLACE POWELL, JR., | : | CHAPTER 13                |
|                              | : |                           |
| Debtor.                      | : | JUDGE BONAPFEL            |
| _____                        | : |                           |
|                              | : |                           |
| WILLIAM WALLACE POWELL, JR., | : | CONTESTED MATTER          |
|                              | : |                           |
| Movant,                      | : |                           |
|                              | : |                           |
| INTERNAL REVENUE SERVICE,    | : |                           |
|                              | : |                           |
| Respondent.                  | : |                           |

**ORDER DENYING OBJECTION TO PROOF OF CLAIM OF INTERNAL REVENUE  
SERVICE [CLAIM #1]**

On August 28, 2008, the Debtor filed an Objection to Proof of Claim #1 filed by the Internal Revenue Service on June 12, 2008. [Docket No. 19]. With the Motion, the Debtor filed

a notice requiring a response to the objection within 30 days<sup>1</sup> and scheduling a hearing for October 1, 2008.

The text of the objection appears to state that the secured portion of the claim should be reduced from \$50,175 to \$27,800. The objection does not explain whether the reclassified portion should be allowed as a priority claim or as a general unsecured claim.

Because the IRS did not respond to the objection or appear at the call of the calendar on the hearing date, the courtroom deputy clerk directed counsel for the Debtor to submit a proposed order in accordance with the Court's usual procedures with regard to "no opposition" matters. Counsel submitted a proposed order on May 29, 2009, well beyond the seven days for submission of a proposed order that BLR 9013-2(a), N.D. Ga. requires.

The Court must deny the objection due to improper service of the objection and the notice of the hearing. BLR 3007-1(b), N.D. Ga, requires service on a governmental entity in accordance with FED. R. BANKR. P. 7004. With regard to service upon the United States, FED. R. BANKR. P. 7004(b)(4) requires the mailing of a copy of the papers "to the Civil Process Clerk at the Office of the United States Attorney for the District in which the action is brought" and by mailing a copy to the Attorney General of the United States. When the matter involves the Internal Revenue Service, FED. R. BANKR. P. 7004(b)(5) also requires mailing a copy to the Internal Revenue Service.

The problem here is that the Debtor mailed the objection and notice to the United States

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<sup>1</sup>The notice thus does not comply with BLR 3007-1(c), N.D.Ga., and Local Form 3007-1(c) because the form requires that a specific date be inserted as the deadline for a response. Further, the notice states that the objection seeks disallowance of the claim whereas the objection actually seeks a classification of part of it from secured to unsecured. Because the requested remedy is less drastic than what the notice announces, this deficiency alone might not preclude granting of the requested relief, but better practice requires an accurate statement of the relief requested.

Attorney at the wrong address<sup>2</sup> and did not address them to the Civil Process Clerk. Further, although the certificate of service reflects mailing to the Department of Justice's Tax Division in Washington, it does not reflect service on the Attorney General of the United States.

Because service has not been properly perfected, the objection to the claim is denied, without prejudice.

END OF DOCUMENT

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<sup>2</sup>The United States Attorney does not have offices on the 18<sup>th</sup> floor of the Richard B. Russell Building.