



IT IS ORDERED as set forth below:

Date: April 09, 2009

A handwritten signature in black ink, reading "Paul W. Bonapfel", is written over a horizontal line.

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

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

IN RE:	:	
	:	Chapter 13
ROGER PATRICE OWENS and	:	
VEIRA MARCALIN OWENS,	:	Case No. A08-61790-PWB
Debtors.	:	
_____	:	
	:	
ROGER PATRICE OWENS and	:	
VEIRA MARCALIN OWENS,	:	
Movants,	:	
vs.	:	
	:	
UNITED STATES OF AMERICA,	:	
Respondents.	:	
_____	:	

**ORDER WITH REGARD TO OBJECTION
TO CLAIM OF UNITED STATES [Claim No. 10]**

The Internal Revenue Service filed a proof of claim in the amount of \$36,631.23 [No. 10] for income taxes for the years 2005 through 2007. The proof of claim indicates that the debtors

have not filed tax returns for any of the three years.

The Debtors filed an objection to the claim [Docket No. 49], asserting that they have now filed tax returns for 2005 and 2006 and that, therefore, the claim should be disallowed “until such time when it is amended to reflect actual tax liabilities owed by the Debtors.” A hearing was scheduled for February 25, 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 Debtors have asserted that they have now filed tax returns for 2005 and 2006, so they now know what their taxes for those years are. That being the case, it is clearly not appropriate to deny the proof of claim until the IRS amends it. Rather, the proper remedy is to allow the claim in the amount that the Debtors know is due, *i.e.*, the amounts shown on their tax returns for those years.

In any event, the Court cannot sustain the objection with regard to 2007 taxes, because

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 six 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.

no basis for disallowance of the claim for that year has been shown. In this regard, the Debtors have not asserted that they have filed a return for 2007, so it is inappropriate to disallow the claim for that year.

Accordingly, the Court will deny the Debtor's objection, without prejudice. The Debtor may file another objection that (1) shows the liabilities that are properly due in accordance with the tax returns they have filed for each of the years 2005 through 2007 and (2) seeks allowance of the claim in those amounts.³ 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

³To 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

E. L. Clark
Clark & Washington, P.C.
Bldg. 3, Suite A
3300 Northeast Expwy.
Atlanta, GA 30341

Internal Revenue Service
Attn: Robin Harris
P.O.Box 21126
Philadelphia, PA 19114

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

The Internal Revenue Service
Insolvency
Room 400 - Stop 334D
401 West Peachtree St. NW
Atlanta, GA 30308

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

Internal Revenue Service
P.O. Box 995
Room 1640, Stop 334-D
Atlanta, GA 30370
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