

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:04-bk-10607-ABB
Chapter 13

JAMES H. LAWSON and
CATHERINE E. LAWSON,

Debtors.

ORDER

This matter came before the Court on the Motion to Enforce Automatic Stay as to the Internal Revenue Service (Doc. No. 59) filed by the Debtors, James H. Lawson and Catherine E. Lawson (collectively, "Debtors"), against the Internal Revenue Service ("IRS"). The Court issued an Order Granting the Debtors' Motion to Enforce Automatic Stay ("Order") (Doc. No. 63) finding "The Internal Revenue Service violated the Automatic Stay when it garnished the Debtors' bank account." A hearing to assess any damages and attorney fees was held on January 23, 2008; Debtors' counsel, the Chapter 13 Trustee, and counsel for the United States were present. The Debtors and the IRS submitted briefs regarding the Court's jurisdiction in ordering sanctions against the IRS (Doc. Nos. 74 and 76). The Court makes the following findings and rulings after reviewing the pleadings and evidence, hearing argument and being otherwise fully advised in the premises.

The threshold issue to be determined is whether a Bankruptcy Court has jurisdiction to issue sanctions against the IRS for a willful violation of the automatic stay, pursuant to 11 U.S.C. Section 362(h).

11 U.S.C. Section 106(a) is an "unequivocal" waiver of the federal government's sovereign immunity with respect to the provisions listed, which includes 11 U.S.C. Section 362. Bankruptcy Reform Act of 1994, H.R. 5116, 103rd Cong. (1994); *U.S. v. Nordic Village Inc.*, 503 U.S. 30, 33-34 (1992). Bankruptcy courts are permitted to "hear and determine any issue arising with respect to the application of such sections to governmental units." 11 U.S.C. § 106(a)(2). Courts may award compensatory damages against a "governmental unit;" they are prohibited from awarding punitive damages. 11 U.S.C. Section 106(a)(3). "[E]nforcement of any such order...shall be

consistent with appropriate *nonbankruptcy law applicable to such governmental unit,*" including, but not limited to, 26 U.S.C. Section 7433. (*emphasis added*).

26 U.S.C. Section 7433 provides:

(e)(1) In general.—If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service willfully violates any provision of Section 362 (relating to the automatic stay)...of title 11, United States Code...such taxpayer may petition the bankruptcy court to recover damages against the United States.

(2)(A) In general.—Except as provided in subparagraph (B), notwithstanding section 105 of such title 11, such petition shall be the exclusive remedy for recovering damages resulting from such actions.

(B) Certain other actions permitted.—Subparagraph (A) shall not apply to an action under section 362(h) of such title 11 for a violation of a stay provided by section 362 of such title; except that—

(i) administrative and litigation costs in connection with such an action may only be awarded under section 7430.

....

26 U.S.C. § 7433.

26 U.S.C. Section 7433(b) applies to "petitions filed under subsection (e)...;" the plaintiff may recover "actual, direct economic damages sustained...and the costs of the action." Administrative and litigation costs not available pursuant to 26 U.S.C. Section 7433(e) may be recoverable pursuant to 26 U.S.C. Section 7430. *Treas. Reg. § 301.7433-2(b)(2)(as amended in 2003).*

A plaintiff seeking damages pursuant to 26 U.S.C. Section 7433 and 26 U.S.C. Section 7430 are required to exhaust their administrative remedies available within the IRS. 26 U.S.C. § 7433(d)(1); 26 U.S.C. § 7430(b)(1). Administrative exhaustion requires filing an administrative claim, in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation. *Treas. Reg. § 301.7433-2(d); Treas. Reg. § 301.7430-1(e)(2)(as amended in 2003).* Recovery of litigation and administrative costs pursuant to 26 U.S.C. Section 7430, requires filing an administrative claim "prior to filing a petition under section 362(h) of the

Bankruptcy Code.” Treas. Reg. § 301.7433-1(e)(2)(as amended in 2003).

Courts interpreting 26 U.S.C. Section 7433(e) have awarded damages accordingly. Graycarr, Inc. v. Dep’t of Treasury (In re Graycarr), 330 B.R. 741, 747 (Bankr. W.D. Ark. 2005), found: “[a]lthough the petition referred to under subsection (e) is the exclusive remedy available under 26 U.S.C. Section 7433 for violation of the automatic stay, before that remedy is available the taxpayer must exhaust her administrative remedies, which are set forth in the Treasury Regulations.”¹ The Honorable Alexander L. Paskay of the United States Bankruptcy Court for the Middle District of Florida held: “...the Debtors [are] required to first exhaust their administrative remedies, and the failure to do so is a bar to recovery....” In re Lowthorp, 332 B.R. 656, 659 (Bankr. M.D. Fla. October 27, 2005) (citing Graycarr, 330 B.R. 741, 746-47 (Bankr. W.D. Ark. 2005)).

Debtors’ counsel relies on In re Letona, No. 02-00373-8B3, 2003 Bankr. LEXIS 1581 (Bankr. M.D. Fla. 2003). The Bankruptcy Court in In re Letona sanctions the IRS for its violation of the automatic stay, however, it does not discuss 11 U.S.C. Section 106(a), 26 U.S.C. Section 7433, or 26 U.S.C. Section 7430. Id. In re Letona is inconsistent with the weight of authority which recognizes Congress’ waiver of sovereign immunity in 11 U.S.C. Section 106(a) is conditioned on compliance with applicable nonbankruptcy law. Id.

The Debtors, in the present case, have requested sanctions; attorney fees and actual costs against the IRS. A Motion to Enforce Automatic Stay as to the Internal Revenue Service (Doc. No. 59) was filed on December 5, 2007. The Debtors have neither established they filed an administrative claim with the Chief, Local Insolvency Unit in this judicial district, nor exhausted their administrative remedies pursuant to 26 U.S.C. Section 7433(d)(1) and 26 U.S.C. Section 7430(b)(1). The Bankruptcy Court lacks jurisdiction to issue sanctions against the IRS

¹ The court in Graycarr was refuting In re Graham’s interpretation of § 7433(e), construing § 7433(e) in isolation without consideration of the language in § 7433(b) and (d). 330 B.R. 741, 747 (Bankr. W.D. Ark. 2005); No. 99-26549-DHA, 2003 WL 21224773, at 2 (Bankr. E.D. Va. April 11, 2003). The court in In re Graham found the administrative exhaustion requirement did not explicitly apply to §7433(e). This is contrary to the plain language of the statute, § 7433(b), (d) and (e).

for actual, direct economic damages or litigation and administrative costs at this time.

ORDERED, ADJUDGED and DECREED the IRS shall return funds garnished from Debtors’ bank account, pursuant to this Court’s December 26, 2007 Order (Doc. No. 63); and it is further

ORDERED, ADJUDGED AND DECREED this Court retains jurisdiction for further consideration upon Debtors’ satisfaction of the statutory requirements of 26 U.S.C. Section 7433 and 26 U.S.C. Section 7430.

Dated this 27th day of February, 2008.

/s/Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge