



The relief described hereinbelow is SO ORDERED.

Signed January 26, 2005.

A handwritten signature in cursive script that reads "Robert D. Berger".

ROBERT D. BERGER
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE:

CYNTHIA L. HENDERSON-TAYLOR,
Debtor.

Case No. 04-20195-13

MEMORANDUM DECISION¹

This matter comes before the Court on the Chapter 13 Trustee's objection (Doc. #22) to a proof of claim filed by the Missouri Department of Revenue ("MDOR"). The parties have agreed to submit the issue for the Court's consideration upon briefs and without an evidentiary hearing. The Court has reviewed the legal briefs filed by the parties, as well as the associated facts and pertinent law, and is ready to rule. The Court finds that this proceeding is core under 28 U.S.C. § 157 and that the Court has jurisdiction under 28 U.S.C. § 1334.

¹ The debtor, Cynthia L. Henderson-Taylor, appears by her attorney, David A. Reed, Kansas City, Kansas. The Missouri Department of Revenue appears by its attorney, Phyllis Schaufler, Special Assistant Attorney General, Jefferson City, Missouri. William H. Griffin, the Chapter 13 Trustee, also appears.

Discussion and Legal Conclusions

The MDOR timely filed a proof of claim asserting a sales tax liability in the amount of \$1,075.13 and asserting that this tax is entitled to priority classification under § 507(a)(8)(C) (traditionally referred to as the “Trust Fund” priority tax classification). However, in its subsequent brief, the MDOR argues that the sales tax associated with the purchase of the debtor’s vehicle is an excise tax as contemplated under § 507(a)(8)(E). The MDOR tax claim arises from the debtor’s purchase of an automobile in which the seller did not withhold sales tax. In these circumstances, it was incumbent upon the debtor to submit the sales tax payment associated with the transfer to the Missouri Department of Revenue.

State sales taxes withheld by a debtor and collected from third parties for submission to a taxing entity are traditionally classified as Trust Fund liabilities under § 507(a)(8)(C).² In addition, sales taxes may be considered excise taxes entitled to claim priority status under § 507(a)(8)(E). With regard to this duality, it has been commented that “[i]f a tax claim fits within both categories, it will be entitled to priority under both categories.”³ The benefit to classification of a tax liability as a Trust Fund tax is that there is no time limit applicable to the tax’s classification as a priority claim under § 507(a)(8). In contrast, the excise tax liability generally entails a three-year trigger point from the date of the transaction or the due date of any return associated with the transaction.

In this debtor’s circumstances, the purchase date of the vehicle that triggered the sales tax was less than three years prior to the filing of the bankruptcy petition. The sales tax associated

² See, e.g., *In re Shank*, 792 F.2d 829 (9th Cir. 1986).

³ See 4 COLLIER ON BANKRUPTCY ¶ 507.10[4] (15th ed. rev. 2004).

with the debtor's purchase of her motor vehicle is not a Trust Fund tax since the debtor did not withhold or collect the tax from third parties on behalf of the MDOR. However, the sales tax remains an excise tax and is thus entitled to priority classification under § 507(a)(8)(B) as such.

The Chapter 13 trustee's objection to the MDOR's proof of claim is overruled and the MDOR tax claim is allowed as an unsecured priority claim in the amount of \$1,075.13.

The foregoing discussion shall constitute findings of fact and conclusions of law under Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(a). A judgment reflecting this ruling will be entered on a separate document in compliance with Fed. R. Bankr. P. 9021 and Fed. R. Civ. P. 58.

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ROBERT D. BERGER
U.S. BANKRUPTCY JUDGE
DISTRICT OF KANSAS