

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA

In Re: )  
ANDERS H. KNUDSEN and )  
CYNTHIA J. KNUDSEN, )  
Debtors. )  
Bankruptcy No. 05-03136  
Chapter 12

**POST- HEARING BRIEF MEMORANDUM OF LAW IN SUPPORT OF THE UNITED STATES' OBJECTION TO CONFIRMATION OF THE CHAPTER 12 PLAN**

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Comes Now, the United States of America, on behalf of the Internal Revenue Service ("IRS"), and in support of its objection to confirmation of the Debtors' 5<sup>th</sup> Amended Chapter 12 plan, files its brief memorandum of law following the confirmation hearing in the above-entitled matter.

**I. PROCEDURAL CASE HISTORY**

The Debtors, Anders and Cynthia Knudsen, (hereafter, "Debtors") filed this bankruptcy proceeding on July 1, 2005, seeking relief under Chapter 12 of the United States Bankruptcy Code. On July 12<sup>th</sup> and 13<sup>th</sup>, 2006, the court held a confirmation hearing on the Fifth Amended Chapter 12 plan and objections filed by the United States and the Chapter 12 Trustee to the plan.<sup>1</sup> The Debtor, Anders Knudsen and Dr. Neil Harl testified on behalf of the Debtors. Howard Hoy, with the Internal Revenue Service, testified on behalf of the United States. The court requested additional briefing as to issues raised in the confirmation hearing.

On February 8, 2006, the United States filed an amended pre-petition claim in this proceeding. Claim 16-1.<sup>2</sup> The United States' claim sets forth an unsecured priority claim in the amount of \$52,440.52 and a general unsecured claim in the amount of

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<sup>1</sup>Objections were filed by other creditors, but were resolved prior to the time of the confirmation hearing.

<sup>2</sup>IRS had filed previous claims which were amended by the IRS. Claim 8-1 was filed on August 11, 2005, was amended by Claim 11-1 filed on August 25, 2005, and by Claim 15-1 filed on November 14, 2005.

\$703.37. In addition, the United States claims a right to set-off in the amount of \$106.46. A portion of the United States' claim is estimated because Debtors have not yet filed the return for the period for which the tax is estimated. The priority claim includes tax and interest to the petition date. Penalties on the taxes for the priority claim are not included in the priority claim, but are included in the United States' unsecured claim.

A Proof of Claim is prima facie correct. Bankr. R. 3001(f). See *Whitney v. Dresser*, 200 U.S. 532 (1906); 4 Collier on Bankruptcy ' 502.02[1] (Matthew Bender 15th Ed. Revised 1999). See also, *In re Fogelberg*, 79 B.R. 368 (Bankr. N.D. Ill. 1986). The United States has not agreed to any treatment of its claim other than as provided for in the Bankruptcy Code.

Debtors have filed a proposed Chapter 12 Plan, the FIFTH AMENDED AND SUBSTITUTED CHAPTER 12 PLAN OF REORGANIZATION, Document 136, filed on June 8, 2006. In that Plan, Debtors propose, under 11 U.S.C. § 1222 (a)(2)(A), that prepetition taxes that arose from the sale of property used in Debtors' farm operation be paid as an unsecured claim and discharged. In their proposed Plan, Debtors also assert that postpetition taxes that might arise from the sale of property used in Debtors' farming operation be paid as an unsecured claim and be discharged pursuant to § 1222 (a)(2)(A) . Further, in their Plan, Debtors also propose a method of allocating the prepetition and postpetition taxes due between (1) taxes that did not arise from the sale of property used in Debtors' farm operation and (2) taxes that did arise from the sale of property used in Debtors' farm operation. Finally, the Debtors also propose to include the sale of hogs raised for sale to the slaughter market (market hogs) with the hogs used for breeding and raising hogs for the market (breeding stock) in those assets sold

as having been “used in” the Debtors’ farm operation as stated in 11 U.S.C. § 1222(a)(2)(A).

The United States objected to those portions of the Debtors’ proposed Plan which: (1) provided that prepetition taxes that arose from the sale of property used in Debtors’ farm operation be paid as an unsecured claim and be discharged; (2) provided that postpetition taxes that might arise from the sale of property used in Debtors’ farm operation be paid as an unsecured claim and be discharged; and (3) which provided for a method of allocating the prepetition and postpetition taxes due between [1] taxes that did not arise from the sale of property used in Debtors’ farm operation and [2] taxes that did arise from the sale of property used in Debtors’ farm operation. The United States also objected to including market hogs as assets used in farming and the Debtors’ claim that those market hogs were entitled to treatment under § 1222(a)(2)(A) of the Bankruptcy Code.

## II. ARGUMENT

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was enacted on April 20, 2005 with a general effective date of October 17, 2005. 11 U.S.C. § 1222(a)(2) was changed by BAPCPA, § 1003. The effective date of the changes to § 1222 was April 20, 2005, on cases filed on or after April 20, 2005. The changes, then, are applicable to Debtors’ proceeding. Changes to the other Bankruptcy Code statutes that are applicable to this matter were not effective until October 17, 2005 for cases filed on or after October 17, 2005. BAPCPA, § 1501. This Court, then, must give effect to the changes in 11 U.S.C. § 1222 while retaining the pre-BAPCPA meaning or effect of statutes that did not change. References to § 1222 in this brief will include a qualifier “pre-BAPCPA” or “post-BAPCPA”. References to other statutes are to the statutes in effect before the general BAPCPA effective date, October 17, 2006.

