

THOMAS E. MOSS
UNITED STATES ATTORNEY
WARREN S. DERBIDGE (ISB# 1214)
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
WELLS FARGO CENTER
877 WEST MAIN STREET, SUITE 201
BOISE, IDAHO 83702
MAILING ADDRESS:
BOX 32
BOISE, IDAHO 83707
TELEPHONE : (208) 334-1211
FACSIMILE: (208) 334-1414

FILED MAY 01 '03 PM 03:29 USCTID

ATTORNEY FOR CREDITOR IRS

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF IDAHO

IN RE:)	
)	
FRANK L. CHAPIN and)	
SYDNEY L. GUTIERREZ-CHAPIN,)	
)	Case No. 02-20218
Debtors.)	
)	OBJECTION TO CONFIRMATION
)	OF CHAPTER 11 PLAN

COMES NOW, the United States Attorney, acting on behalf of the Internal Revenue Service (the Service), and moves that confirmation of debtors' Chapter 11 plan be denied.

IN SUPPORT THEREOF, the Service states:

1. The debtors filed a petition for relief under Title 11, Chapter 11, on February 22, 2002.
2. On or about July 25, 2002, the Service filed a proof of claim for federal taxes in the amount of \$763,007.59, of which amount \$443,262.59 represents unsecured priority claims and

OBJECTION TO CONFIRMATION OF CHAPTER 11 PLAN - 1

\$319,745.00 represents unsecured general claims. A copy of the proof of claim is attached hereto as Exhibit A.

3. The unsecured priority claims arise from unfiled returns and taxes, which are the subject of stayed proceedings in the United States Tax Court for the determination of the debtors' income tax liabilities. The liabilities in the Tax Court largely arise from unreported income adjustments from the debtors' apparent diversion of client trust funds to their own use.

4. On or about March 6, 2003, Frederick A. Leaf, M.D., creditor, filed with the debtors a proposed Joint Plan of Reorganization with the Court ("the Plan"). For the reasons stated below, the Service objects to the confirmation of the Plan.

5. The Service objects to the confirmation of the Plan, because it contains inadequate provisions for payment of priority taxes. These provisions, when read in conjunction with the rest of the Plan, indicate a lack of good faith in the proposal of the Plan.

6. The operative paragraph with respect to the priority taxes is ¶ 6.1.5. This paragraph indicates the Plan's intention to avoid payment of the Service's priority claim. The paragraph offers full payment as follows:

"[O]n the later of

- a. the Plan's Effective Date;
- b. that date after the Plan's Effective Date on which such claim is assessed;
- c. the date on which such claim becomes an Allowed Claim; or
- d. the date on which such Trust has adequate assets with which to make payment of such allowed claim."

7. The foregoing language effectively forecloses both the payment and the possibility of payment of the debtors' Federal income liabilities through this bankruptcy. The Liquidating Trust contemplated by the Plan may never have adequate assets with which to make payment of

the Service's \$443,262.59 priority claim, given that the Trust will be charged with gathering and distributing the debtors' assets to creditors long before the Service's claims are assessed. It is probable that the Trust will be emptied before it is called upon to pay the Service's priority claim.

8. Likewise, the claims may not be assessed for several years. The Tax Court litigation may not become final for some time, given the length of time necessary to adjudicate the dispute in the Tax Court as well as making allowance for a potential appeal.

9. Although Sec. 1129(a)(9)(C) requires that the Plan provide for full payment within six years from date of assessment, the Plan merely nods at that requirement. As an alternative, the Plan proposes that the creditor may seek satisfaction from the debtors' post-petition earnings. Neither prospect complies with the statute. Even though the taxes may not be assessed for some time, the Plan must still provide a reasonable prospect and feasible mechanism by which such taxes will be paid, otherwise the debtors may dissipate their assets into the Trust while under the protection of the Court and Plan, leaving the Service empty-handed.

10. The fact that the debtors have failed to file numerous tax returns raises an additional ground for objection to confirmation. The debtors have failed to file Individual Federal Income Tax Returns for the years 1993 through 2001, inclusive. The Service objects to confirmation of the amended plan until it has received the unfiled returns.

11. Except where the Court orders otherwise for good cause shown, the debtors should file all required tax returns prior to the date set for the initial hearing on confirmation of a plan. The debtors' failure to file such tax returns requires the Service to estimate the amount that may be due. Admittedly, Local Rule 1007.4, requiring the filing of tax returns, specifically refers only to

Chapter 12 and Chapter 13 cases; however, the Advisory Committee Notes to Rule 1007.4

address the problem in the Chapter 11 context as follows:

Although chapter 11 cases are not specifically addressed in this rule, the proper and timely filing of required tax returns may still be:

- (i) a basis for dismissal of the petition, or;
- (ii) required, in whole or in part, for the approval of the Disclosure Statement, and
- (iii) *an element of confirmation of a plan.* (Italics added)

12. Further, the debtors appear intent on creating a discharge in violation of Sec. 1141(d). Art. 10 of the Plan specifically provides that confirmation "shall operate" as a discharge. This language is improper. The debtors' income tax liabilities, as reflected in the proof of claim, are not dischargeable in this bankruptcy unless paid in full. The Service should not be required to seek an order of non-dischargeability for a legally obvious point.

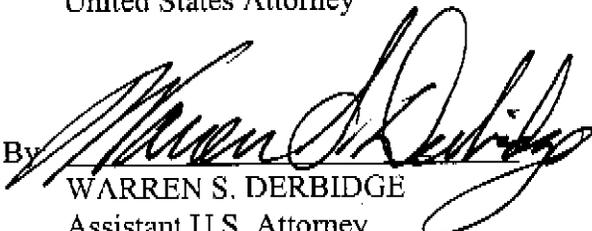
13. The ethereal payment provisions, attempt to manufacture a discharge, and the many unfiled returns point to a lack of good faith by the debtors in proposing this Plan. The United States offers no comment on the good faith of the Plan's other proponent, Dr. Leaf.

WHEREFORE, the Service prays that confirmation of debtors' Chapter 11 plan be denied.

Dated this 7th day of May, 2003.

THOMAS E. MOSS
United States Attorney

By


WARREN S. DERBIDGE
Assistant U.S. Attorney

FORM B10 (Official Form 10)(4/01)

UNITED STATES BANKRUPTCY COURT <u>IDAHO</u> DISTRICT OF <u>IDAHO</u>		PROOF OF CLAIM
Name of Debtor FRANK & SYDNEY L GUTIERREZ CHAPIN	Case Number 02-20218 - CH-11	U.S. COURTS 02 JUL 25 AM 10:43 REC'D CAMERON S. BURKE CLERK IDAHO COPY THIS SPACE IS FOR COURT USE ONLY
Name of Creditor (The person or entity to whom the debtor owes money or property): Department of the Treasury - Internal Revenue Service	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and addresses where notices should be sent: Internal Revenue Service INTERNAL REVENUE SERVICE 550 W Fort St. MSC 041 BOISE, ID 83724-0041	Telephone number: (208) 334-1360 Creditor #:	
Account or other number by which creditor identifies debtor: see attachment	Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ (date) to _____ (date)
2. Date debt was incurred: see attachment	3. If court judgment, date obtained:	
4. Total Amount of Claim at Time Case Filed: \$ <u>763,007.59</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$443,262.59 Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>* Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
9. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date 07/25/2002	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>nm</u> Insolvency Manager	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

EXHIBIT A

Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service

Form 10
Attachment

In the Matter of: **FRANK & SYDNEY L GUTIERREZ CHAPIN**
PO BOX 2028
SANDPOINT, ID 83864

Docket Number	02-20218
Type of Bankruptcy Case	Chapter 11
Date of Petition	02/02/2002

This claim is not subject to any setoff or counterclaim.

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
518-44-6544	INCOME	12/31/1993	J Unassessed Exam Liab	\$63,854.00	\$59,408.59
268-38-7542	INCOME	12/31/1998	B UNFILED RETURN	\$40,000.00	\$0.00
518-44-6544	INCOME	12/31/1998	B UNFILED RETURN	\$40,000.00	\$0.00
268-38-7542	INCOME	12/31/1999	B UNFILED RETURN	\$40,000.00	\$0.00
518-44-6544	INCOME	12/31/1999	B UNFILED RETURN	\$40,000.00	\$0.00
268-38-7542	INCOME	12/31/2000	B UNFILED RETURN	\$40,000.00	\$0.00
518-44-6544	INCOME	12/31/2000	B UNFILED RETURN	\$40,000.00	\$0.00
268-38-7542	INCOME	12/31/2001	B UNFILED RETURN	\$40,000.00	\$0.00
518-44-6544	INCOME	12/31/2001	B UNFILED RETURN	\$40,000.00	\$0.00
				\$383,854.00	\$59,408.59

Total Amount of Unsecured Priority Claims: **\$443,262.59**

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
268-38-7542	INCOME	12/31/1994	B UNFILED RETURN	\$45,720.00	\$0.00
518-44-6544	INCOME	12/31/1994	B UNFILED RETURN	\$45,720.00	\$0.00
268-38-7542	INCOME	12/31/1995	B UNFILED RETURN	\$12,412.00	\$0.00
518-44-6544	INCOME	12/31/1995	B UNFILED RETURN	\$12,412.00	\$0.00
268-38-7542	INCOME	12/31/1996	B UNFILED RETURN	\$53,859.00	\$0.00
518-44-6544	INCOME	12/31/1996	B UNFILED RETURN	\$53,859.00	\$0.00
268-38-7542	INCOME	12/31/1997	B UNFILED RETURN	\$40,156.00	\$0.00
518-44-6544	INCOME	12/31/1997	B UNFILED RETURN	\$40,156.00	\$0.00
				\$304,294.00	\$0.00

Penalty to date of petition on unsecured priority claims (including interest thereon) \$15,451.00

Total Amount of Unsecured General Claims: **\$319,745.00**

J AN UNASSESSED LIABILITY TAX CLAIM HAS BEEN FILED FOR THE PERIOD STATED DUE TO PROPOSED A ADDITIONAL ASSESSMENT OF TAX IN AN ONGOING EXAMINATION. FURTHER REVISION OF THIS CLAIM, TO INCREASE OR DECREASE, MAY BE NECESSARY AFTER COMPLETION OF THE EXAMINATION.

B AN ESTIMATED TAX CLAIM HAS BEEN FILED BECAUSE THE DEBTOR HAS FAILED TO FILE THE RETURN FOR THIS PERIOD. AFTER THE RETURN HAS BEEN FILED AND ASSESSED THIS CLAIM WILL BE ADJUSTED AS NECESSARY.