



ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 17, 2009

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re	§	
	§	Chapter 11
PILGRIM'S PRIDE CORPORATION,	§	
et al.,	§	Case No. 08-45664 (DML)
	§	
Debtors.	§	JOINTLY ADMINISTERED

MEMORANDUM ORDER

Before the court is *Debtors' Motion Requesting Determination of Tax Liability Pursuant to Sections 105 and 505 of the Bankruptcy Code*¹ (the "Motion") filed by Debtors, the *Objection of the County Assessor of Hardy County, West Virginia, to the Debtors' Motion Requesting Determination of Tax Liability Pursuant to Sections 105 and 505 of the Bankruptcy Code* (the "Objection") filed by the County Assessor of Hardy County, West Virginia (the "Assessor" and the "County"), and *Debtors' Reply to Objection of the County Assessor of Hardy County, West Virginia, to the Debtors' Motion Requesting Determination of Tax Liability Pursuant to Sections 105 and 505 of*

¹ Docket number 2459.

the Bankruptcy Code (the “Reply”) filed by Debtors. By the Motion, Debtors ask that the court determine pursuant to section 505(a)(1) of the Bankruptcy Code (the “Code”)² whether the County may assess *ad valorem* taxes against Debtors³ based on the value of certain personal property which Debtors claim is exempt from taxation under West Virginia law. By the Objection, the Assessor asks that the court abstain from deciding the Motion so that the courts of West Virginia may determine the exemption issue.⁴

The Motion came on for hearing on August 4, 2009. At that time Debtors and the Assessor waived argument and asked that the court dispose of the Motion based on the pleadings. Although the court asked that the parties submit a stipulation by week’s end as to the amount of tax involved, no stipulation was by that time received; the court understands from statements made by counsel at the August 4 hearing that no more than \$1,000,000 per year in taxes turns on the question of whether the property at issue is exempt.⁵

The Motion is subject to the court’s core jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b). This memorandum order embodies the court’s findings and conclusions.

The issue presented is straight-forward. Code § 505(a)(1) provides:

² 11 U.S.C. §§ 101 *et seq.*

³ The taxes actually pertain to the assets of just one of Debtors, Pilgrim’s Pride Corporation of West Virginia, Inc. (“PPCWV”).

⁴ In accordance with West Virginia law, Debtors have filed a proceeding in the Circuit Court of Hardy County (the “Circuit Court”) to preserve their contest of the taxes as determined by the Assessor.

⁵ Subsequent communications from the parties to chambers (not in the form of a stipulation but sufficient for the court’s purposes) suggest the annual amount of tax at issue may be closer to \$500,000.

(a)(1) Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

Code § 505(a)(1). The operative language of the section for purposes of the instant dispute is “may determine.” It is well-accepted law that this language gives a bankruptcy court discretion to determine or not to determine a tax liability. *See, e.g., New Haven Projects, LLC v. City of New Haven (In re New Haven Projects, LLC)*, 225 F.3d 283, 288 (2d Cir. 2000); *In re Schmidt*, 205 B.R. 394, 399 (Bankr. N.D. Ill. 1997); 3 NORTON BANKRUPTCY LAW AND PRACTICE §51.8 (3rd. ed. 2008). The court does not understand that the Assessor contends that, by reason of any of the exceptions provided in section 505(a)(2), the court *may not* determine the exemption issue and so adjudicate the amount of taxes Debtors owe the County.

Courts have established a six factor test for determining whether or not to abstain from hearing a matter under section 505(a).⁶ However, the Court of Appeals for the Fifth Circuit has stated:

[W]e hold that where bankruptcy issues predominate and the Code’s objectives will potentially be impaired, bankruptcy courts should generally exercise their jurisdiction [to determine taxes under section 505(a)(1)]. Conversely, absent any bankruptcy issues or implication of the Code’s objectives, it is usually appropriate for the bankruptcy court to decline or relinquish jurisdiction.

⁶ Those factors are: “(i) the complexity of the issue under tax law, (ii) the exigency of the matter, (iii) the burden on the bankruptcy court's docket, (iv) the length of time required to hold a trial and to render a decision, (v) the debtor's asset and debt structure, and (vi) the actual or potential prejudice to either party.” *In re Davidson*, No. 98-42080, 2002 Bankr. Lexis 1984, *11 (Bankr. N.D. Tex. Oct. 21, 2002); *see also In re Galvano*, 116 B.R. 367, 372 (Bankr. E.D.N.Y. 1990).

Internal Revenue Service v. Luongo (In re Luongo), 259 F.3d 323, 332 (5th Cir. 2001). In *Luongo*, the Court of Appeals held the bankruptcy court properly proceeded under section 505(a). In that case, issues of the extent and effect of the debtor's discharge and the debtor's right to claim an exemption under Code § 522 were central to the dispute.

In the case at bar, no bankruptcy issue need be decided to determine Debtors' liability to the County. Rather, Debtors' liability to the County depends entirely on West Virginia law. While *Luongo* itself rests on the implication in the case of issues of bankruptcy law, however, the Court's opinion would also support this court's determination of the taxes owed to the County if the "Code's objectives" would be frustrated if it did not exercise its jurisdiction under section 505(a)(1). The court understands that it would therefore be appropriate to determine the tax liability to the County if not doing so would delay or impair Debtors' reorganization.

The concern expressed by the Court of Appeals in furthering the Code's objectives – here Debtors' reorganization – is not surprising. In reviewing the established standards for when a bankruptcy court should exercise its jurisdiction in matters not arising under the Code, the impact on case administration – which in a chapter 11 case includes the reorganization process – is a consistent, central theme. See *In re R-P Packaging, Inc.*, 278 B.R. 281, 287 (Bankr. M.D. Ga. 2002) (one factor courts consider when making a determination of whether to abstain under Code § 505 is the effect abstention would have on case administration); see, similarly, *In re Chicago, M. & St. P. & Pac. R.R.*, 6 F.3d 1184, 1189 (7th Cir.

1993) (describing factors, including the impact on efficient administration of the estate, used when determining whether to exercise permissive abstention under 28 U.S.C. § 1334(c)); *Denton County Elec. Coop. v. Eldorado Ranch, Ltd.* (*In re Denton County Elec. Coop.*), 281 B.R. 876, 881 (Bankr. N.D. Tex. 2002); *see, similarly*, 1 COLLIER ON BANKRUPTCY ¶ 3.04(1)(b) (15th ed. rev. 2008) (one of the pertinent factors when considering a motion to withdraw the reference is advancing the bankruptcy process); *see, similarly*, *Edge Petroleum Operating Co. v. GPR Holdings, L.L.C. (In re TXNB Internal Case)*, 483 F.3d 292, 298 (5th Cir. 2007) (retention of a removed action is favored if the action would impact the administration of the bankruptcy estate); *see, similarly*, *In re Commonwealth Oil Refining Co.*, 596 F.2d 1239, 1247 (5th Cir. 1979) (listing factors to consider when transferring an adversary under FED. R. BANKR. P. 7087, including administering the estate); 10 COLLIER ON BANKRUPTCY ¶ 7087.02 (15th ed. rev. 2007) (factors for courts to consider when transferring an adversary under FED. R. BANKR. P. 7087 include “whether the transfer would promote the economic and efficient administration of the bankruptcy case.”).

In the case at bar, Debtors suggest that millions of dollars are involved – especially considering the precedential effect of a determination of the exemption issue both in West Virginia and in other jurisdictions. That may be. But Debtors in their cases have reflected in their schedules more than \$2.75 billion in debt and assets of over \$3 billion.⁷ One million dollars in taxes is certainly a significant

⁷ Although these figures reflect the schedules of Debtors as a group (*see* schedules for each of the seven consolidated debtors), PPCWV, itself, scheduled assets of \$80,257,319.24 and debt of \$9,837,780.75.

annual expense. But whether or not that amount of tax is properly assessed will not, so far as the court can tell, delay or even meaningfully affect Debtors' reorganization.⁸

Debtors point the court to the decision of Hon. Barbara Houser in *Davidson*. Debtors contend that Judge Houser's opinion stands for the proposition that a bankruptcy court should exercise its jurisdiction and determine taxes under section 505(a)(1) "when a tax determination could benefit creditors." Reply p. 3. Were that the standard the court should apply, taken at face value, there would be few, if any, tax disputes in business chapter 11 cases that would not have to be decided by the bankruptcy court: it is rare that a tax dispute will not affect the debtor's cash flow and/or the amount available from the debtor's estate for unsecured creditors. The court seriously doubts Judge Houser intended her observation in *Davidson* to be given so broad a reading.

In fact, *Davidson* presented a very different situation than the instant matter. The court there was being asked only to determine the value of local real estate for *ad valorem* tax purposes, a task clearly within the bankruptcy court's typical duties. *See Davidson*, 2002 Bankr. Lexis 1984 at *11. No state law was to be interpreted. *Id.* The property to be valued was essentially the entire estate intended to satisfy creditors. *See Id.* at *8-9. Valuation of the property for tax

⁸ If PPCWV were a stand-alone debtor, the court might view the issue differently. As it is, based on PPCWV's apparent solvency, value in excess of its debt will be upstreamed to its parent for the benefit of all of Debtors' creditors and equity owners. The amount of taxes owed the County will most likely have minimal effect on the return to Debtors' creditors and stockholders and will not slow Debtors' rehabilitation efforts.

purposes under Code § 505(a) had been referred to as an important step under the debtors' plan. *Id.* at *2 n. 2.

Clearly the case before the court is different. The sole issue to be decided under the Motion is one of West Virginia law. While it may be that, as Debtors suggest, determination of that issue requires no more than straight forward construction of a statute, it remains true that the statute is West Virginia's, and is best addressed by the courts of that state.

Although the court is satisfied that it need go no further to justify abstaining, it further concludes that the factors alluded to above and used by the *Davidson* Court and other courts in determining whether to proceed with a matter under Section 505(a)(1) or abstain do not by any means favor exercise by the court of its discretionary authority to adjudicate the taxes owed the County. As noted, the tax law issues may or may not be complex; they are, however, clearly specific to West Virginia law. The exigencies of the matter must be taken in context: disposition of the question of Debtors' liability to the County is not a significant piece of the reorganization puzzle – even if a decision is delayed past the projected time of plan confirmation, that is unlikely to affect the progress of Debtors' reorganization. As to the burden on this court's docket, disposition of the Motion is surely a manageable chore; whether there are other, greater demands Debtors must make upon the court is another question. The time required for a trial is not great – but it will be no greater in the Circuit Court. Given the short time remaining before Debtors expect to confirm a plan, moreover, a day of court time may have better uses than determination of Debtors' liability to the County.

Again, it is important that the issues presented in the dispute over tax exemptions are only a tiny part of Debtors' asset and debt structure.

As to prejudice to the parties, the court is confident Debtors do not believe they will be treated unfairly in the courts of West Virginia. The County could expect fair treatment in this court. Yet the facts on the ground are in West Virginia, and there may be prejudice to the parties to force trial of those facts in so distant a forum as this court.

Finally, Debtors argue that the process in West Virginia may be too slow to be accommodated to the timing of Debtors' reorganization. Reply p. 6. The County, on the other hand, asserts that the Circuit Court could render a decision within 60 days. Objection p. 4 n. 1.

First, as already discussed, the court is not at this point persuaded that a decision on the particular tax issue is necessary or even of great significance to Debtors' (or PPCWV's) ability to formulate and confirm a plan of reorganization. Thus it is doubtful that it would matter if trial of the issue were deferred to 2010.

Second, the concerns expressed by Debtors as to the time it would take to try the dispute in West Virginia appear overstated. As the court, below, modifies the stay of Code § 362(a) to allow the case in the Circuit Court to proceed, there will be no further delay at the Texas end of the parties' legal entanglement. As to timing under West Virginia's procedural rules, these, as is true of judicial procedure generally, may be adjusted by the Circuit Court as necessary. *See, e.g.*, W. Va. TCR 16.01; W. Va. R. Civ. P. 6.

However, in order to protect Debtors' reorganization process, the court will reconsider invocation of its section 505(a)(1) authority if quantification of Debtors' liability to the County later appears necessary to advance Debtors' (or, in a stand-alone context, PPCWV's) reorganization and the Circuit Court appears unable to decide the matter timely.⁹ By retaining the ability to reach the issues between Debtors and the County, the court is comfortable that it both ensures prompt disposition of the dispute and protection of the reorganization process.

For all the foregoing reasons (1) the Objection is SUSTAINED; (2) the Motion is DENIED without prejudice; and (3) the automatic stay of Code § 362(a) is, *sua sponte*, modified to permit continuation to completion of proceedings in the Circuit Court.¹⁰

It is so ORDERED.

END OF MEMORANDUM

⁹ Obviously delay in West Virginia attributable to Debtors would offset a conclusion that the Circuit Court is unable to try the case promptly.

¹⁰ From the pleadings it appears the suit in the Circuit Court was commenced by Debtors. Thus, it is not clear relief from the stay is necessary. *See* Code § 362(a)(1).