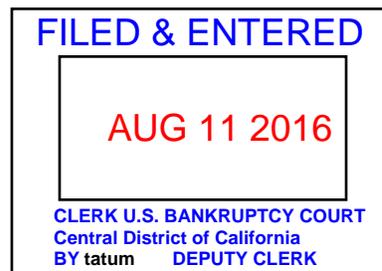


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NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
DALE ALFRED WILLIAMS.

Debtor.

Case No. 2:12-bk-15652-RK
Chapter 11

**ORDER DENYING CROSS-MOTIONS
FOR SUMMARY JUDGMENT IN
CONTESTED MATTER OF DEBTOR'S
MOTION OBJECTING TO CLAIM OF
INTERNAL REVENUE SERVICE AND
RESCHEDULING PRETRIAL
CONFERENCE AND JOINT PRETRIAL
STIPULATION FILING DEADLINE**

Hearings:
Date: August 10, 2016
Time: 1:30 p.m.
Place: Courtroom 1675
255 East Temple Street
Los Angeles, CA 90012

This bankruptcy case came on for hearing before the undersigned United States Bankruptcy Judge on August 10, 2016 on the cross-motions for summary judgment in the contested matter of the motion of debtor Dale Alfred Williams ("Debtor") objecting to the claim of the Internal Revenue Service ("Claimant"). Carl P. Blaine and Minna C. Yang, of the law firm of Wagner Kirkman Blaine Klomprens & Youmans, LLP, appeared for Debtor. Benjamin L. Tompkins, Assistant United States Attorney, appeared for Claimant.

1 Having considered the moving and opposing papers for the cross-motions for
2 summary judgment and the oral and written arguments of the parties, the court rules as
3 follows.

- 4 1. The court denies Debtor's motion for summary judgment since plaintiff has not
5 shown that he is entitled to judgment as a matter of law because: (1) the tax
6 claim is not disallowable for lack of a writing under Fed. R. Bankr. P. 3001 since
7 it is statutory and not based on a writing like a secured claim based on a
8 consensual security agreement, *In re Los Angeles International Airport*
9 *Associates*, 106 F.3d 1479, 1480 (9th Cir. 1997); (2) the tax claim is not
10 disallowable on grounds that a statutory notice of deficiency was not issued
11 because the IRS may summarily assess the tax arising out of tentative loss
12 carryback in excess of the allowable amount of refund pursuant to 26 U.S.C. §
13 6213(b)(3), *United States v. Frontone*, 383 F.3d 656, 662 (7th Cir. 2004); *Greer*
14 *v. Commissioner*, 557 F.3d 688, 690-693 (6th Cir. 2009)(distinguishing *O'Bryant*
15 *v. United States*, 49 F.3d 340 (7th Cir. 1995) relied upon by debtor); (3) the tax
16 claim is not disallowable based on equitable estoppel since there is no showing
17 of affirmative misconduct by the government beyond mere negligence and there
18 can be no reasonable reliance here on statements by IRS agents that a statutory
19 notice of deficiency would be issued, which statements are at most negligent,
20 since the Internal Revenue Code expressly authorizes the IRS to assess the
21 excess refund from a tentative loss carryback as tax under 26 U.S.C. §
22 6213(b)(3), *Purcell v. United States*, 1 F.3d 932, 939-940 (9th Cir. 1993); and (4)
23 the tax claim is not subject to equitable subordination under 11 U.S.C. § 510(c)
24 since there is no showing of inequitable conduct under the circumstances here
25 described above, *In re Filtercorp, Inc.*, 163 F.3d 570, 583 (9th Cir. 1998).
- 26 2. The court declines to consider the argument of Debtor for summary judgment
27 first raised in his reply to Claimant's opposition to his motion for summary
28 judgment that the claim is time-barred as to adjustments relating to taxable years

1 2003 through 2007, which are allegedly unrelated to the loss carryback for
2 taxable year 2008, pursuant to Local Bankruptcy Rule 9013-1(g)(4), which
3 provides that “[n]ew arguments or matters raised for the first time in reply
4 documents will not be considered,” which is applicable to a motion for summary
5 judgment pursuant to Local Bankruptcy Rule 7056-1(a).

- 6 3. The court overrules Debtor's objections to declaration of the revenue agent in
7 support of Claimant's motion for summary judgment because: (1) the form of
8 jurat on the declaration is permitted without the words "under the laws of the
9 United States of America" pursuant to 28 U.S.C. § 1746(2), which does not
10 require these words if the jurat is executed within the United States and it
11 appears that the agent executed the declaration where he is employed in
12 Sacramento, California, which is within the United States. Debtor would be right
13 if the jurat had been executed outside the United States applicable because then
14 28 U.S.C. § 1746(1) would require the words "under the laws of the United
15 States of America" as debtor argues; and (2) treat the agent as a lay percipient
16 witness as to his personal knowledge of the events relating to the audit and as a
17 "summary expert witness" as to his audit analysis and allow the testimony for
18 purposes of the motion. *See United States v. Frantz*, 2004 WL 5642909 (C.D.
19 Cal. 2004). The court is mindful of the concerns regarding use of summary
20 expert witnesses as stated by the district in *Frantz* and will help streamline the
21 presentation of evidence in the case, Fed. R. Evid. 611(a), and the concerns
22 expressed in *Frantz* should be mitigated in this case in that any trial will be by
23 court, not by jury, adverse parties will be able to fully cross-examine the witness
24 and the court will carefully scrutinize the testimony of such witness, recognizing
25 that the issues presented in this case will be decided based on the objective
26 factual evidence rather than by a witness's characterization of the objective
27 factual evidence.

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- 1 4. The court denies Claimant's motion for summary judgment on grounds that there
2 are genuine issues of material fact regarding the validity of debtor's claimed
3 losses to be resolved at trial.
- 4 5. At the request of the parties, the court reschedules the pretrial conference in this
5 contested matter for October 12, 2016 at 1:30 p.m. from August 23, 2016 at 2:00
6 p.m. in light of the court's order continuing the hearings on the summary
7 judgment motions from July 19, 2016 to August 10, 2016 necessitated by
8 Debtor's filing of an oversized supplemental memorandum of points and
9 authorities in opposition to Claimant's motion for summary judgment *nunc pro*
10 *tunc* wherein the court granted *nunc pro tunc* relief on condition that Claimant
11 would have an opportunity to respond with an opportunity for a sur-reply in
12 response to the oversized brief. Order, ECF 1279, filed on July 16, 2016.
- 13 6. The court further sets the deadline for filing the joint pretrial stipulation required
14 by Local Bankruptcy Rule 7016-1 for October 5, 2016.
- 15 7. The previously set pretrial conference and joint pretrial stipulation filing deadline
16 dates are vacated.

17 IT IS SO ORDERED.

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23 Date: August 11, 2016



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25 Robert Kwan
United States Bankruptcy Judge