IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

IN RE: **CHAPTER 13**

JOHN A. SALTER **CASE NO. 9702752JEE**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court on the (1) *Trustee's Objection to Confirmation;* (2) *Motion to Disallow Claims from the Internal Revenue Service for Alleged "Income Taxes"* filed by the Debtor, John A. Salter, *pro se;* (3) *Response of the United States of America, Internal Revenue Service, to Debtor's Motion to Disallow Claims from the Internal Revenue Service for Alleged "Income Taxes;"* and (4) *Motion to Dismiss* filed by the Chapter 13 Trustee, Harold J. Barkley, Jr. (Trustee). Having considered the testimony and evidence presented at the trial and the arguments of the parties, the Court finds that the Debtor's motion to disallow claims should be

denied, that the Trustee's objection should be sustained, and that the Trustee's motion to dismiss should be granted.

FINDINGS OF FACT

This is John A. Salter's (Debtor) second *pro se* Chapter 13 bankruptcy case. The Court will first review the history of the Debtor's previous Chapter 13 case.

A. PRIOR CASE

On November 24, 1993, the Debtor filed a voluntary petition, *pro se,* for relief pursuant to Chapter 13 of the United States Bankruptcy Code (Case No. 9303892JEE). On January 20, 1994, the Internal Revenue Service (IRS) filed its proof of claim in the total amount of $42,018.67 for income taxes owed for the years 1979 to 1982 and 1984 through 1992[1]. The Debtor filed an objection to the IRS's proof of claim.

On February 7, 1994, the Trustee filed the *Trustee's Objection to Confirmation.* The Trustee alleged that the Debtor's plan was not feasible due to the amount of the IRS's proof of claim and that the Debtor's plan was not filed in good faith pursuant to 11 U.S.C. § 1325(a)(3)[2].

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[1]In its June 16, 1994, *Findings of Fact and Conclusions of Law* and its *Final Judgment,* this Court stated that the IRS proof of claim covered taxes assessed for the years 1979 through 1982, 1984 through 1989, and 1992. After re-examining the proof of claim filed in the Debtor's previous case, the Court realized that the IRS's proof of claim was actually filed for taxes assessed for the years 1979 through 1982 and 1984 through 1992. However, the omission of the years 1990 and 1991 in the recitation of the years covered by the IRS's proof of claim was a harmless omission in that the opinion and the final judgment correctly stated that the total amount of the IRS's proof of claim was allowed for $42,018.67. The $42,018.67 includes the taxes assessed for the years 1990 and 1991.

[2]Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

After the May 5, 1994, trial on the Debtor's objection and the Trustee's objection, this Court issued its *Findings of Fact and Conclusions of Law* and its *Final Judgment* on June 16, 1994. In its ruling, the Court overruled the Debtor's objection to the IRS's Proof of claim and sustained the Trustee's objection. The Debtor appealed this Court's ruling to the United States District Court for the Southern District of Mississippi.

On September 26, 1995, the United States District Court for the Southern District of Mississippi issued a *Memorandum Opinion and Order* affirming this Court's June 16, 1994, ruling. Salter v. United States (In re Salter), 1995 WL 723178 (S.D. Miss. Sept. 26, 1995).

The Debtor appealed the District Court's ruling to the United States Court of Appeals for the Fifth Circuit. On August 28, 1996, the United States Court of Appeals for the Fifth Circuit issued a *per curiam* opinion (No. 95-60758) affirming the District Court's ruling. Salter v. IRS, 96 F.3d 1444 (5th Cir. 1996)(table)

The Debtor then petitioned the United States Supreme Court for a *writ of certioriari*. On February 18, 1997, the Supreme Court denied the Debtor's petition for *writ of certiorari*. Salter v. Richardson, ___ U.S. ___, 117 S.Ct. 996, 136 L.Ed. 2d 876 (February 18, 1997).

The Debtor's first bankruptcy case was subsequently dismissed on April 11, 1997, on the *Trustee's Motion to Dismiss.*

B. CURRENT CASE

On May 23, 1997, the Debtor filed his current petition, *pro se*, pursuant to Chapter 13 (Case No. 9702752JEE). On November 20, 1997, the Chapter 13 Trustee, Harold J. Barkley, Jr., (Trustee) filed his *Trustee's Objection to Confirmation.* In his objection, the Trustee alleges that the Debtor's plan does not comply with the provisions of the Bankruptcy Code as required by

§ 1325(a)(1). One of the Trustee's objections to the Debtor's plan is that the Debtor fails to provide for payment of the tax claim which he included in his schedule in the approximate amount of $41,000.

In response to the Debtor's commencement of the second bankruptcy case and pursuant to Federal Rule of Bankruptcy Procedure 3002(c)[3], the IRS, on or about December 5, 1997, timely filed its proof of claim with the Trustee[4] for the following amounts:

> a) Secured claims for income taxes, interest and penalties for the tax years 1979 through 1982 and 1984 through 1991, in the amount of $54,987.35;
>
> b) Unsecured priority claims for income taxes and interest for the tax years 1992, 1993, 1994, 1995 and 1996, in the sum of $4,560.90;
>
> c) Unsecured general claims for penalties on the IRS's unsecured priority claims, in the total amount of $221.00.

On or about January 14, 1998, the Debtor filed an objection to the IRS's proof of claim, which objection is styled as *Motion to Disallow Claims from the Internal Revenue Service for Alleged "Income Taxes"*. The Debtor's objection to the IRS's proof of claim as set forth in his motion, is based upon his assertion that "all renumeration paid to him . . . is 'excludable', as it is 'excluded' from having been income earned from a 'taxable source' as set forth in the internal revenue laws, and is thus 'excluded' and 'excludable' from 'Gross Income' as defined in § 61(a) of the Internal Revenue Code."

On February 2, 1998, the IRS filed its *Response of the United States of America, Internal Revenue Service, to Debtor's Motion to Disallow Claims from the Internal Revenue Service for Alleged "Income Taxes."*

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[3]Hereinafter, all rules refer to the Federal Rules of Bankruptcy Procedure unless specifically noted otherwise.

[4]Pursuant to Uniform Local Rule S13-4, all original Chapter 13 proofs of claim are filed with the office of the standing trustee to whom the case is assigned. The proof of claim is deemed filed as of the date of its original delivery to the trustee. The trustee will then transmit the proofs of claim to the Clerk along with a motion and an order to allow or disallow the claims.

Shortly after the Debtor filed his motion, the IRS, on or about January 29, 1998, filed an amended proof of claim. The only difference between the IRS's original proof of claim and its amended proof of claim is the change in the notation under "Date Tax Assessed" for the unsecured priority claim for the tax year 1992 from "11/25/97" to "PROHIBITED".

On or about October 14, 1998, the IRS filed its second amended proof of claim (2ND amended claim). In its 2ND amended proof of claim, the IRS has filed a claim for tax years 1979 through1982 and 1984 through 1992. This 2ND amended claim was filed for the total amount of $56,452.20. The $56,452.20 is broken down in the following amounts:

a) Secured claims for income taxes, interest and penalties for tax years 1979 through 1982 and 1984 through 1991, in the amount of $54,987.35;

b) Unsecured priority claims for income taxes and interest for the tax year 1992, in the amount of $1,243.85;

c) Unsecured general claims for penalties on the IRS's unsecured priority claims, in the amount of $221.00.

The difference between the 2ND amended claim and the IRS's prior two claims is that the IRS has dropped its unsecured priority claims for income tax and interest for the tax years 1993, 1994, 1995, and 1996. This 2ND amended claim is for the exact same tax years as the proof of claim the IRS filed in the Debtor's prior bankruptcy case. The IRS has simply included the interest and penalties which have accrued on its claim since the prior bankruptcy.

The Trustee's objection, the Debtor's objection to the IRS's proof of claim and the IRS's response thereto were set for trial on September 24, 1998. The Debtor did not receive from the IRS the discovery previously ordered by the Court until the morning of the trial, and the trial was continued to October 21, 1998.

C. PRETRIAL MOTIONS

The Debtor filed a *Motion for Jury Trial*, and the IRS filed an *Objection to Motion for Jury Trial*. In its July 24, 1998, *Findings of Fact and Conclusions of Law on the Motion for Jury Trial*, the Court denied the Debtor's motion for a jury trial.

On May 4, 1998, the Debtor filed two (2) separate *Motions for Discovery* in connection with his motion to disallow claims of the IRS. On July 7, 1998, the IRS filed a *Motion for Protective Order* only with respect to the *Motion for Discovery* (which is docket entry number 43) filed on May 4, 1998, at 10:59AM. On July 24, 1998, the IRS filed an *Amendment to Motion for Protective Order* with its *Good Faith Certificate* attached.

In items numbered 1 through 6 of the *Motion for Discovery*, the Debtor sought documents regarding the IRS's claims for income taxes, interest and/or penalties for the tax years 1979 through 1996. Item number 6 also seeks *Delegation Orders* from the IRS.

In its motion for a protective order, the IRS alleged that the doctrine of *res judicata* or claim preclusion barred the Debtor from relitigating the allowance of the claims included on the IRS's proof of claim in the Debtor's current Ch. 13 case which were ruled upon by this Court, the District Court, the Fifth Circuit, and the U.S. Supreme Court in the Debtor's prior Ch.13 case. This includes those claims for income taxes, interest and penalties for the tax years 1979 through 1982 and 1984 through 1991, and for income taxes and interest for the tax year 1992. The IRS requested the Court to enter a protective order limiting the scope of the Debtor's discovery to the tax years 1993, 1994, 1995 and 1996. The IRS also requested that the Court deny the Debtor's request for the IRS's *Delegation Orders.*

On August 18, 1998, the Debtor filed his *Amendment to Motion for Discovery* in which the Debtor moved to have his *Motion for Discovery* amended to "include Discovery only for those years not previously adjudicated (1993 *et. seq.).*"

A hearing was held on August 19, 1998, on the IRS's motion for protective order and on the Debtor's motion for a hearing on the IRS's motion for protective order. At the conclusion of the hearing, based upon the Debtor's *Amendment to Motion for Discovery* and the Debtor's statements on the record that he was no longer seeking discovery for years prior to 1993, the Court held that the Debtor would be limited to obtaining discovery for the years 1993, 1994, 1995, & 1996. The Court further held that the IRS was to provide whatever delegation orders that the IRS had from the lowest level of the IRS. An order conforming to the Court's holdings was entered on September 1, 1998.

On August 26, 1998, the Debtor filed a *Motion to Strike Government's Motion and Proposed Order to Deny Debtor's Motion for Discovery.* On September 11, 1998, the Debtor filed his *Motion and Request for Memorandum of Fact and Conclusions of Law.* It appeared to the Court that the Debtor was seeking to have the Court, pursuant to Federal Rule of Bankruptcy Procedure 7052, reconsider its ruling denying the Debtor's motion for a jury trial.

Both the motion to strike and the request for memorandum of fact were also set for hearing on September 24, 1998. These matters were also reset for hearing on October 21, 1998.

On September 21, 1998, the Debtor filed his *Addendum to Motion and Request for Memorandum of Fact and Conclusions of Law.* In this addendum, it appeared that the Debtor was now requesting, pursuant to Federal Rule of Bankruptcy Procedure 7052, that the Court provide to the Debtor "memorandum of law and facts" to support the Court's September 1, 1998, order limiting the Debtor's discovery to years 1993 through 1996. This matter was also reset for hearing on

October 21, 1998.

On September 25, 1998, the Debtor filed a *Motion to Withdraw.* In his motion, it appears that the Debtor is seeking to withdraw his August 18, 1998, *Amendment to Motion for Discovery.* As previously stated, this August 18, 1998, amendment stated that the Debtor was only requesting discovery "for those years not previously adjudicated (1993 *et. seq.).*" The Debtor's *Motion to Withdraw* was also set for hearing on October 21, 1998.

D. OCTOBER 21, 1998, HEARING

At the October 21, 1998, hearing, the Court first heard the arguments of the Debtor and the IRS on the various pretrial motions filed by the Debtor. The Court then dismissed all of the above motions which were set for hearing for the reasons stated and recorded in open court. The Court entered an order memorializing this ruling on November 4, 1998.

The Court then took up the *Trustee's Objection to Confirmation (Objection); Motion to Disallow Claims from the Internal Revenue Service for Alleged "Income Taxes" (Objection to proof of claim)* filed by the Debtor, John A. Salter, *pro se; Response of the United States of America, Internal Revenue Service, to Debtor's Motion to Disallow Claims from the Internal Revenue Service for Alleged "Income Taxes" (Response);* and the *Motion to Dismiss* filed by the Trustee.

CONCLUSIONS OF LAW

I.

This Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(B) and (L).

II.

The Court must first determine the validity and the amount of the IRS's proof of claim. Once the validity and the amount of the IRS's claim are determined, the Court must then determine if the

Debtor's plan is feasible.

III.

In finding that the Debtor's objection to the IRS's claim should be denied, the Court bases its ruling on two separate legal grounds. The Court will address each ground separately.

A. BURDEN OF PROOF

Section 501 pertains to the filing of a proof of claim. Section 502 pertains to the allowance of a claim. They state in pertinent part:

> **§ 501. Filing of proofs of claims or interests.**
>
> (a) A creditor or an indenture trustee may file a proof of claim. . . .
>
> **§ 502. Allowance of claims or interests.**
>
> (a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects.
>
> (b) (I)f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount . . . .

In accordance with § 501, the IRS timely filed its *Proof of Claim* (Claim). Pursuant to § 502, the Debtor objected to the IRS's claim, and the Court subsequently held an evidentiary hearing on the matter.

Rule 3001(f) explains the evidentiary effect of the filing of a proof of claim. Rule 3001(f) states:

> **Rule 3001. Proof of Claim.**
>
> . . . .
>
> (f) EVIDENTIARY EFFECT. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

The issue of who bears the burden of proof in regard to an objection to a proof of claim was addressed by the Fifth Circuit Court of Appeals in In the Matter of Fidelity Holding Company, Ltd., 837 F.2d 696 (5th Cir. 1988). The Fifth Circuit stated:

> Under Bankruptcy Rule 301(b),[5] a party correctly filing a proof of claim is deemed to have established a prima facie case against the debtor's assets. The objecting party must then produce evidence rebutting the claimant or else the claimant will prevail. If, however, evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to "prove the validity of the claim by a preponderance of the evidence." The ultimate burden of proof always rests upon the claimant.

Fidelity Holding, 837 F.2d at 698(citations omitted)(footnote omitted).

Applying this standard to the case at bar, the IRS submitted its claim as prima facia evidence of its claim against the Debtor. The Debtor then had the burden of producing evidence to rebut the IRS's claim. The Debtor did not submit any proof or any evidence which proved that he did not owe the IRS the $ 56,452.20. Since the Debtor failed to produce any contrary evidence to rebut the IRS's prima facia evidence as to the validity of its claim, the Debtor has not met his burden, and the claim of the IRS is allowed. Fidelity Holding, 837 F.2d at 698. *See also* In the Matter of Placid Oil Co., 988 F.2d 554, 557 (5th Cir. 1993); In re Rankin, 141 B.R. 315, 324 (Bankr. W.D. 1992); In re Turner, 147 B.R. 989, 995 (Bankr. E.Wyo. 1992). Consequentially, pursuant to § 502(b) the Court finds that the *Proof of Claim* of the IRS is an allowed claim for $56,452.20

B. CLAIM PRECLUSION

The Debtor is barred from relitigating his objection to the IRS's proof of claim pursuant to the doctrine of claim preclusion. As noted above, in the Debtor's prior case, this Court ruled in its June 16, 1994, *Findings of Fact and Conclusions of Law* that the IRS had an allowed claim in the amount of $42,018.67 for income taxes, interest and penalties for the tax years 1979 through1982

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[5]Bankruptcy Rule 301 is the precursor to Rule 3001.

and 1984 through 1992. This ruling was upheld by the United States District Court, the Fifth Circuit Court of Appeals, and *certiorari* was denied by the United States Supreme Court. [See respectively: Salter v. United States (In re Salter), 1995 WL 723178 (S.D. Miss. September 26, 1995); Salter v. IRS, 96 F.3d 1444 (5th Cir. 1996)(table); and Salter v. Richardson, ___ U.S. ___, 117 S.Ct. 996, 136 L.Ed. 2d 876 (February 18, 1997)].

The Fifth Circuit Court of Appeals recently addressed the issue of *res judicata* or claim preclusion. The Fifth Circuit stated:

> *Res judicata*, also known as claim preclusion,[6] forecloses litigation of matters that (1) have previously been litigated, or (2) have never been litigated but should have been advanced in an earlier suit. See *Langston v. Ins. Co. of North America*, 827 F.2d 1044, 1046 (5th Cir. 1987)(citation omitted); Charles A. Wright, *Federal Courts* § 100A, p. 722 (5th ed. 1994). This Circuit's test for claim preclusion requires that:
>
> > "(1) The parties be identical in both suits, (2) A court of competent jurisdiction rendered the prior judgment, (3) There was a final judgment on the merits in the previous decision, and (4) The plaintiff raises the same cause of action or claim in both suits." *Matter of Howe*, 913 F.2d 1138, 1143-44 (5th Cir. 1990)(footnote omitted).

(Super Van Inc. v. City of San Antonio) In the Matter of Super Van, Inc., 92 F.3d 366, 370 (5th Cir. 1996). *See also* Crowell v. Theodore Bender Accounting, Inc. (In the Matter of Crowell), 138 F.3d 1031, 1033 (5th Cir. 1998); Southmark Corp. v. Coopers & Lybrand (In re Southmark Corp.), 1999 W L 303, 309 (5th Cir. 1999).

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[6]"As this Court has recognized, the doctrine of *res judicata*, in its broadest sense, encompasses two distinct preclusion concepts, claim preclusion *(res judicata)* and issue preclusion *(collateral estoppel)*. 'Unfortunately, the terminology used in this area of the law often breeds confusion.'" *Gulf Island–IV, Inc. v. Blue Steak–Gulf Is OPS*, 24 F.3d 743, 746 (5th Cir. 1994)(citation omitted), *cert. denied*, ___U.S.___, 115 S.Ct. 1112, 130 L.Ed.2d 1076 (1995). . . .

Applying this test to the case at bar: (1) the parties are identical in both cases, (2) a court of competent jurisdiction rendered the judgment which was then upheld by the District Court and the Fifth Circuit, (3) there was a final judgment on the merits in the previous case, and (4) the Debtor has raised the same objection in both cases. Therefore, the doctrine of claim preclusion prohibits the Debtor from raising this same objection to the IRS's proof of claim.

IV.

Having found that the IRS has an allowed claim for $56,452.20, the Court must now address the Trustee's objection to the Debtor's plan. The pertinent Code sections state:

> **§ 1322. Contents of plan.**
>
> (a) The plan shall–
>
> . . . .
>
> (2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; . . . .
>
> **§ 1325. Confirmation of plan.**
>
> (a) Except as provided in subsection (b), the court shall confirm a plan if–
>
> (1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;
>
> . . . .
>
> (6) the debtor will be able to make all payments under the plan and to comply with the plan.

As noted above, "(s)ection 1322(a)(2) requires that every chapter 13 plan propose payment in full of all priority claims." 8 L. King, Collier on Bankruptcy, ¶ 1322.03 at 1322-9 (15th ed. Revised

1998). Pursuant to § 507(a)(8), taxes owed to state and federal taxing authorities are priority claims. Therefore, the Debtor must pay the IRS's claim in full over the life of his plan. In the case at bar, the Debtor's proposed plan does not provide for payments to the IRS. Therefore, as the Debtor's plan does not propose payment for the IRS's priority claim as required by § 1322(a)(2), confirmation should be denied for the Debtor's failure to propose a plan which complies with § 1325(a)(1).

V.

Since the Debtor's proposed plan cannot be confirmed because it does not meet the requirements of § 1322(a)(2), the Court will determine if the Debtor can modify his plan in order to comply with § 1322(a)(2) and thereby get his plan confirmed. In order to comply with § 1322(a)(2), the Debtor must pay the IRS's allowed claim in the amount of $56,452.20 plus 8% interest, for a total of $68,422.20, to the IRS over the sixty months proposed in his plan. Including this debt to the IRS, the Debtor's other creditors, and the Trustee's compensation and expenses, the Debtor's minimum monthly payment would be $1,263.52.[7] The Debtor testified that he receives only a certain income of $597 a month[8], and thus, the Debtor does not have sufficient income to "make all payments under the plan" as required by § 1325(a)(6). Therefore, the Debtor's plan is not feasible, and the plan cannot be confirmed. *See* Lundin, 2 *Chapter 13 Bankruptcy* § 5.56 *Feasibility*, pp. 5-160-165, 2nd ed. 1994; Lundin, *Chapter 13 Bankruptcy* § 5.56 *Feasibility*, pp. 620-24, 1997-98 Cumulative

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[7]For a detailed breakdown, see trial exhibit 16.

[8]The Debtor testified that he received $597 a month from social security. He further testified that he had a job selling something that gave him additional income each month. However, the Debtor stated that "I do not keep records," *Transcript*, p. 34, and was unable to give an exact dollar amount of this additional monthly income. It should be noted that the day after the October 21st trial, the Debtor filed an amended plan sheet and an amended *Schedule I–Current Income of Individual Debtor(s)* (Schedule I). In his amended Schedule I, the Debtor lists his social security income as $597 a month plus he lists under *other monthly income* the sum of "approximately 375.00." The Debtor then lists his total monthly income as $972. Even giving the Debtor the benefit of this additional income which he claims in his amended Schedule I, his monthly income is still insufficient to pay the $1,263.52 monthly plan payments.

Supplement; Vines v. Internal Revenue Service (In re Vines), 200 B.R. 940 (M.D. Fla. 1996); Todd v. Railroad Federal Credit Union (In re Todd), 181 B.R. 997 (Bankr. N.D. Ala. 1995).

VI.

Having found that the Debtor's plan is not feasible, and thereby, cannot be confirmed, the Court must now address the *Trustee's Motion to Dismiss* (motion to dismiss). The Trustee duly noticed his motion to dismiss to all creditors and parties in interest as required by Rule 1017. No party filed a response to the motion. The Trustee alleges in his motion that the Debtor's plan is not feasible and should not be confirmed, and therefore, cause exists to dismiss the Debtor's case.

Section 1307 pertains to conversion or dismissal of a Chapter 13 petition. Section 1307 states:

> **§ 1307. Conversion or dismissal.**
>
> (c) Except as provided in subsection (e) of this section, on request of a party in interest . . . and after notice and a hearing, the court . . . may dismiss a case under this chapter . . . for cause, including–
>
> . . . .
>
> (5) denial of confirmation of a plan under section 1325 of this title. . . .

The Court has previously held that the Debtor's plan proposes no payments to the IRS in direct contradiction of the provisions of § 1325(a)(1) and § 1322(a)(2). Further, the Debtor testified that if the IRS's claim was allowed as filed then he would be unable to pay the required monthly plan payments of $1,263.52 (*Transcript*, p. 44-5). Consequentially, the Court found that confirmation should be denied. Therefore, the Court finds that cause does exist to dismiss the Debtor's case pursuant to § 1307(5). *See* Vines v. Internal Revenue Service (In re Vines), 200 B.R. 940, 947 (M.D. Fla. 1996)("Even if the Bankruptcy Court had not dismissed the case based upon

Vines' failure to file returns in direct violation of a court order, the Plan as it stood was not confirmable because it failed to provide for the secured priority claim made by the IRS.")

Another ground available to the Court for dismissal of the Debtor's Chapter 13 petition is the presence of bad faith. In his treatise on Chapter 13, Judge Keith M. Lundin addressed the issue of dismissal of a case for bad faith:

> Although bad faith is not listed as a cause for dismissal under § 1307(c), it is the most often cited basis for dismissal. It is generally held that "bad faith" sufficient to justify dismissal of a Chapter 13 case for "cause" under § 1307(c) is similar to the "bad faith" that will bar confirmation of a Chapter 13 plan under § 1325(a)(3); . . . . The characteristics of a bad-faith Chapter 13 case include the presence of few creditors, . . . a plan that contains provisions that could not be confirmed under any circumstances . . . . It could be argued that good faith or bad faith should be assessed at confirmation consistent with § 1325(a)(3), but many courts have reached good-faith analysis on the motion to dismiss of a party in interest in advance of confirmation.

Lundin, 3 *Chapter 13 Bankruptcy* § 8.42 *Cause Found*, pp. 8-68-71, 2nd ed. 1994(footnotes omitted).

This is the Debtor's second attempt to use Chapter 13 as a platform for expressing his belief that the Internal Revenue Code is not applicable to him. "To use the bankruptcy court solely as an alternative forum for the resolution of a tax dispute is not a proper use of the Bankruptcy Code. On that basis alone the bankruptcy court (can) . . . (dismiss) the case for bad faith in accordance with § 1307(c)." Greatwood v. United States (In re Greatwood), 194 B.R. 637, 641 (9th Cir. BAP 1996). *See also*, In re Burrell, 186 B.R. 230 (Bankr. E.D. Tenn. 1995); In re Aichler, 182 B.R. 19 (Bankr. S.D. Tex. 1995); Matter of Spurgeon, 166 B.R. 150 (Bankr. D. Neb. 1993). The Court finds that the Debtor is using this Court "solely as an alternative forum for the resolution of a tax dispute" id., therefore, the Court finds that the Debtor's case should be dismissed for bad faith in accordance with § 1307(c).

CONCLUSION

In the Debtor's previous case he was given a full and fair opportunity to present evidence to support his position with respect to his objection to the IRS's proof of claim. He not only failed to do so before this Court, but also before the District Court, the Fifth Circuit, and the United States Supreme Court. The Debtor is barred by the doctrine of claim preclusion from attempting a second "bite at the apple." Since he is unable to pay the IRS in full over the life of his plan, confirmation should be denied, and the case dismissed with prejudice.

The summation of the United States District Court for the Middle District of Florida in the In re Vines case, succinctly summarizes the matter before this Court. In upholding the bankruptcy court's dismissal of the debtor's case, the court held:

> (The debtor) came to this court of equity seeking to readjust his debts. He was given a full and fair opportunity to support his objection to the IRS's claim by offering evidence that he owed no taxes or that the claim was overstated. Instead, he chose to pursue specious legal arguments. That effort has failed and the bankruptcy court's decision to dismiss with prejudice is upheld.

Vines v. Internal Revenue Service (In re Vines), 200 B.R. 940, 950 (M.D. Fla. 1996).

Similarly, in the case at bar, the Debtor's efforts have failed, and his case should be dismissed with prejudice.

A separate judgment consistent with this opinion will be entered in accordance with Federal Rule of Bankruptcy Procedure 9021.

SO ORDERED this the 28th day of January, 1999.

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

IN RE: **CHAPTER 13**

JOHN A. SALTER **CASE NO. 9702752JEE**

FINAL JUDGMENT

Consistent with the *Findings of Fact and Conclusions of Law* dated contemporaneously herewith:

IT IS THEREFORE ORDERED that the *Motion to Disallow Claims from the Internal Revenue Service for Alleged "Income Taxes"* filed by the Debtor, John A. Salter, *pro se,* is hereby denied and that the *Proof of Claim* of the Internal Revenue Service is an allowed claim in the amount of $56,452.20.

IT IS FURTHER ORDERED that the *Trustee's Objection to Confirmation* filed by the Chapter 13 Trustee, Harold J. Barkley, Jr., is hereby sustained and that confirmation of the Debtor's proposed plan is hereby denied.

IT IS FURTHER ORDERED that the *Motion to Dismiss* filed by the Chapter 13 Trustee, Harold J. Barkley, Jr., is hereby granted and that the Debtor's case is dismissed with prejudice.

This is a final judgment for purposes of Federal Rule of Bankruptcy Procedure 9021.

SO ORDERED this the 28th day of January, 1999.

UNITED STATES BANKRUPTCY JUDGE