

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

IN RE:

JEFFREY ADKINS
CATRINA DENISE ADKINS

CASE NO. 11-70450

DEBTORS

MEMORANDUM OPINION AND ORDER

The issue before the Court is whether the Debtors' pre-petition Kentucky property tax debt is a dischargeable general unsecured claim or a secured claim. If the tax claim is secured, the Debtors' Chapter 13 plan is not feasible, and cannot be confirmed. For the reasons below, the Court holds that the property tax debt is secured.

FACTS

Debtors' Schedule E lists \$11,729.07 in property tax debt as an unsecured priority claim owed to the Pike County Clerk [DOC 1 page 15]. Debtors' Schedule D lists no secured tax claims (DOC 1 page 13). No taxing authority or other party has filed a proof of claim for the property tax debt.

The Chapter 13 Trustee does not recommend confirmation because the Debtors owe property taxes that may date back for as many as 10 years which, she contends, will require the Debtors to contribute an additional \$14,000.00 or more to the plan to make the plan feasible [DOC 21]. At a hearing held on November 16, 2011, the Trustee made clear that the reason the plan was not feasible was because the property tax debt, even if it doesn't have priority status, constitutes a lien against the subject property.

Debtors filed a Memorandum [DOC 30] agreeing that the property tax debt may date back as many as 10 years, but arguing that the tax can be discharged. Debtors refer to 11 U.S.C.

§523(a)(1)(A) which provides that taxes described in sections 507(a)(3) or 507(a)(8) are excepted from discharge. Interpreting 11 U.S.C. § 507(a)(8)(B) (which states generally that a property tax incurred pre-petition and due within one year before the filing of the bankruptcy are excepted from a debtor's discharge), the Debtors reason that any property tax debt over a year past due before the bankruptcy filing is dischargeable. Debtors aver that this position is supported by the Pike County Property Valuation Administrator's ("PVA") based on a PVA Regional Meeting Informational Packet of Spring 1994. Debtors' counsel further contends that the Legal Support Branch of the Kentucky Revenue Cabinet indicated to him that the taxes were discharged and the "lien" goes away.

CONCLUSIONS OF LAW

As a general rule, property taxes are secured by the property upon which the taxes are assessed. "If the tax was last payable without penalty more than one year before the case began, it will be a general unsecured claim unless it has become secured by a lien. . . The most common type of property tax is a tax assessed by a state or a subdivision of a state based on the value of real property. Most of these taxes, however, are typically secured by the real property with respect to which the tax was assessed. Consequently, the claim for the tax is a secured claim and will not be entitled to priority under section 507, which deals only with the priority or unsecured claims." 4 COLLIER ON BANKRUPTCY ¶ 507.11[3] (Alan N. Resnick & Henry J. Somme eds., 16th ed. 2010).

In Kentucky, property taxes are secured for 11 years following the date when the taxes became due. K.R.S. § 134.420(1) provides:

The state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for eleven (11) years following the date when the taxes become delinquent.

Thus, in Kentucky, counties hold a statutory lien on property assessed for taxes due for 11

years following the date when the taxes become delinquent. See also In re Crigler, Bankr. E.D. Ky. Case No. 10-22769, DOC 76, April 8, 2011 (J. Wise). While Debtors' counsel points out that Crigler involved a third-party purchaser, such a distinction is not made by K.R.S. § 134.420.

There is no dispute that the taxes here all became due within 11 years prior to the bankruptcy filing. Thus, the subject property tax debt is secured, and Debtors' plan is not feasible.

IT IS HEREBY ORDERED that the Debtors shall have 14 days from the date of this Memorandum Opinion and Order to amend their plan. The Chapter 13 Trustee shall tender an order continuing the confirmation hearing in accordance herewith.

Copy to:

Debtors
R. Roland Case, Esq.
Beverly M. Burden, Esq.

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Tracey N. Wise**  
**Bankruptcy Judge**  
**Dated: Monday, November 21, 2011**  
**(tnw)**