UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:
GREGORY J. BARTELS,
Debtor.

Case No. 98-10688
Chapter 7

#97-1

ORDER DENYING MOTION TO ESTABLISH BAR DATE FOR CREDITOR NOT ORIGINALLY SCHEDULED

This cause is before the Court pursuant to the Motion to Establish Bar Date for a Creditor Not Originally Scheduled [Dkt. #88-1] filed by the debtor on December 13, 2001 (hereafter "Motion to Establish Bar Date").

Background

The claims bar date set in this case was September 4, 2001. The creditor not originally scheduled is identified as the New York State Department of Taxation and Finance (hereafter "the State of New York"). This creditor was not listed on any of the original schedules and has not filed a proof of claim or appeared in the case. On December 13, 2001, the debtor filed an Amended Schedule E (creditors holding unsecured priority claims) and disclosed for the first time that the State of New York was owed a tax claim of $24,635. In the Motion to Establish Bar Date, the debtor's counsel indicates that at some unspecified time after the case was determined to be an asset case on June 4, 2001, the State of New York notified the debtor that it had a claim, and that debtor's counsel "became aware of this claim in this context after the bar date had come and gone for filing Proof of Claims." In the Memorandum in Support of Motion to Establish Bar Date for New York State Department of Taxes filed on February 12, 2002, the debtor's counsel again states that subsequent to the original schedules being filed herein, "New York provided the debtor with notice of a tax assessment against him," and requests relief based upon "constitutional due process" principles. An initial hearing on this motion was held on January 8, 2002. However, the Court ruled at that time that the debtor had failed to give proper notice to the State of New York and directed the debtor to serve the motion upon the State of New York in advance of the adjourned hearing set for February 12, 2002. A Certificate of Service was filed on January 10, 2002 alleging proper service upon the State of New York.

This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.

US BANKRUPTCY COURT
DISTRICT OF VERMONT
MAR 14 2002
FILED & ENTERED ON DOCKET
BY: KATHLEEN A. FORD

Issue and Findings

The debtor essentially seeks an Order excusing the State of New York from complying with the requirements of Bankruptcy Rule 3002(c), which sets the time period for filing a proof of claim in a chapter 7 case, notwithstanding the fact that the State of New York has not appeared in this case at all, either to file a proof of claim or to indicate its support of, or opposition to, the relief being sought.

Based upon the record and the argument of debtor's counsel at the two hearings, the Court makes the following findings: (1) the debtor has provided no evidence as to why the State of New York Department of Taxation and Finance was omitted from his schedules until the amended Schedule E filed after the bar date on December 13, 2001; (2) the debtor has provided no evidence as to when and how the State of New York became aware of a potential claim against the debtor herein and when the debtor received notice of said claim; (3) the debtor has provide no factual or legal authority in support of the extraordinary relief being requested in this instance; (4) the debtor has failed to demonstrate how a determination to deny the requested relief will adversely effect the governmental unit's tax claim being asserted by the State of New York or the interests of other creditors; (5) the debtor has not submitted any evidence to substantiate the source of the address used to provide the creditor with notice of the subject motion on January 10, 2002 and that service by mail at said address is appropriate under the laws of New York and the circumstances of this claim; and (6) the debtor has not submitted the requisite evidence to demonstrate good faith or exceptional circumstances as required to justify the requested relief in accordance with 11 U.S.C. §§ 521(1) and 523(a)(3)(A).

Conclusion

It is therefore ordered that the Motion to Establish Bar Date is denied without prejudice.

March 13, 2002
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge