



[CLICK HERE to return to the home page](#)

In re Boudreau

95-1 USTC P 50115 (Bankr. M.D. Fla 1995)

Judge: GLENN, Bankruptcy Judge:

Order Overruling Debtor's Objection to Claim No. 3 of the Internal Revenue Service

This Case came on for hearing on the Objection to Claim No. 3 of the Internal Revenue Service filed by Michael D. Boudreau ("Debtor") and the Response to Objection to Claim filed by counsel for the United States of America ("USA"). The Debtor asserts that he is not indebted to the Internal Revenue Service ("IRS") for the tax liability on distributions to him from a qualified pension plan because he subsequently transferred an amount equal to half of the distributions to Karen B. Boudreau, his former wife, pursuant to an Amended Final Judgment of Dissolution of Marriage ("Final Judgment") entered in state court. 1 In response, the USA contends that because the Final Judgment is not a "Qualified Domestic Relations Order" ("QDRO"), the Debtor recognized income on the entire distribution to him and he is responsible for the entire tax liability.

The facts relevant to the resolution of this controversy, as established at the hearing and by the record, are as follows:

The Debtor and Karen B. Boudreau were married on March 25, 1967, and they later separated in January, 1990. The parties eventually divorced, and the Final Judgment was entered on October 20, 1990. Relevant portions of the Final Judgment are: ...

9. The parties marital assets are as follows:

...

(e) Husband's PRA lump sum pension account with Nabisco valued at \$103,241....

(b) Husband's stock plan with Nabisco valued at \$58,310.73.

10. The parties have previously equally divided a \$9,156.00 pension distribution.

...

D. As and for further equitable distribution, each party is awarded one-half (1/2) of the pre-tax value of the Husband's PRA Lump Sum Nabisco pension account and the Nabisco stock plan. The valuation date shall be the date of distribution

...

L. The Court reserves jurisdiction ...for the entry of a Qualified Domestic Relations Order (QDRO) ...

In 1990, the Debtor received a distribution from his PRA Lump Sum Nabisco pension account in the amount of \$103,241.00, a distribution from his Nabisco stock plan in the amount of \$58,310.73, and a distribution from his pension in the amount of approximately \$9,000.00. On October 3, 1990, the Debtor paid his former wife the sum of \$30,195.55, an amount which the parties do not dispute is one-half of the pre-tax value of the Debtor's Nabisco stock plan at the date of distribution. On November 28, 1990, the Debtor paid his former wife the sum of \$51,750.00, an amount which the parties do not dispute is one-half of the pre-tax value of the

Debtor's PRA Lump Sum Nabisco pension account. Prior to the Final Judgment, the Debtor paid his former wife the sum of \$4,500.00, an amount which the parties do not dispute is an equal division of a \$9,156.00 pension distribution to the Debtor.

On his 1990 Form 1040 U.S. Individual Tax Return, the Debtor reported \$178,140.00 as the total of distributions he received from pensions and annuities. The Debtor reported his taxable income from pensions and annuities at \$56,284.00. Based upon the foregoing and additional income, the Debtor reported a tax liability [pg. 95-876] of \$18,907.00 in 1990, and paid that amount in 1991. The Debtor neither itemized nor paid income tax on the amounts of money paid to his former wife as listed above.

On September 7, 1993, the Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. On September 13, 1993, the Court entered a Notice of Commencement of Case Under Chapter 13 of the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates establishing January 10, 1994, as the deadline for creditors to file a proof of claim. On December 20, 1993, the IRS filed Claim No. 3 in the total amount of \$93,966.10 for income taxes due and owing by the Debtor. 2 On May 16, 1994, the Debtor filed an Amended Objection to Claim No. 3 of the IRS on the basis that he was not indebted to the IRS for any income tax liability. On June 8, 1994, counsel for the USA filed a Response to Objection to Claim asserting that it lacked sufficient knowledge to admit or deny the allegations contained in the Objection. On August 26, 1994, the Court held a final evidentiary hearing on the Debtor's Objection and the USA's Response.

Gross income includes income from all pensions. 3 In general, income is taxable in the year in which it is received. 4 A distribution from a qualified pension plan is taxed to the distributee as ordinary income in the year of distribution. 5 The word "distributee" is not defined in the Internal Revenue Code. Generally, a "distributee" is the participant or beneficiary of the pension plan. See *Darby v. Commissioner*, 97 T.C. 51, 58 (1991). In this case, the plan participant and beneficiary is the Debtor, and the Debtor received the distributions from the plan. Accordingly, the Debtor is the distributee under the plan, and, absent an exception to the general rule, the Debtor is liable for the taxes arising from the distribution.

[1] The Debtor argues that the state court found that both parties had a specific equal property right in the pension account and the stock plan, and that the payments of cash to his former wife in amounts equal to her pre-tax interest in the plans were transfers to her of her special equity interest, and therefore tax-free transfers.

The Debtor argues that "[n]o gain or loss shall be recognized on a transfer of property from an individual to ...a former spouse, ...if the transfer is incident to the divorce." See 26 U.S.C. section 1041. A transfer from the former husband to the former wife of an interest in property which was awarded to the former wife in a divorce would not result in a gain or a loss on the transfer. In the case of *In re Bosch*, 590 F.2d 165 [43 AFTR 2d 79- 707] (5th Cir. 1979), the court held that a Florida divorce decree finding that a wife had a special equity interest in land and awarding this special equity to the wife in [pg. 95-877] the divorce did not constitute a taxable transfer from the husband to the wife. Also in the case of *Serianni v. Commissioner of Internal Revenue*, 765 F.2d 1051 [56 AFTR 2d 85-5559] (11th Cir. 1985), the court held that the transfer of stock from a former husband to a former wife pursuant to a special equity award in a Florida divorce proceeding was incident to a nontaxable division of property and was not a taxable event to the husband.

In this case, the Debtor did not transfer an interest in the pension and stock plans to the former wife; rather, the Debtor received distributions from the plans, and transferred cash to the former

wife. The USA is not asserting a tax on a transfer which may have occurred upon the entry of the divorce decree, nor is it asserting a tax on the transfer of cash from the Debtor to his former wife. The USA is asserting that the Debtor received income from the plans when he received the distributions, and should be taxed on that income.

The USA asserts that special provisions of the tax laws apply to distributions from plans which have had special tax treatment. Since these plans are created under special tax laws, with special tax effects, the tax consequences of distributions are governed by those special provisions. ("...[F]or the employees' plan area, Congress has provided more specialized rules." Darby, 91 T.C. at 58).

26 U.S.C. section 402 6 provides as follows:

Section 402. Taxability of Beneficiary of Employees' Trust

(a) Taxability of Beneficiary of Exempt Trust. -

1. General Rule. - Except as provided in paragraphs (2) and (4), the amount actually distributed to any distributee by any employees' trust described in section 401(a) which exempt from tax under section 501(a) shall be taxable to him, in the year in which so distributed, under section 72 (relating to annuities)....

...

2. Repealed. October 22, 1986.

...

4. Distributions by United States to Resident Aliens. - (not applicable)

...

9. Alternate Payee under Qualified Domestic Relations Order Treated as Distributee. - For purposes of subsection (a)(1) and section 72, any alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a Qualified Domestic Relations Order (as defined in section 414(p)).

It is agreed that the husband received all the distributions from the plans, that the former wife was never designated as an alternate payee by any plan, and that no distribution or payment was ever made by a plan directly to the former wife.

The USA concedes, however, that even though the husband received the distributions and paid his former wife cash, she would be treated as the distributee if the payments were made by the husband to her as an alternate payee under a Qualified Domestic Relations Order.

26 U.S.C. section 414(p)(1)(A) provides:

Qualified Domestic Relations Order - The term qualified domestic relations order means a domestic relations order (i) which creates or recognizes the existence of an alternate payee's right to, or assigns an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and (ii) with respect to which the requirements of paragraphs (2) and (3) are met.

26 U.S.C. section 414(p)(2) provides:

Order Must Clearly Specify Certain Facts - A domestic relations order meets the requirements of this paragraph only if such order clearly specifies - (A) the name and the last known mailing address (if any) of the participant [pg. 95-878] and the name and mailing address of each alternate payee covered by the order, (B) the amount or percentage of the participant's benefits to

be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined, (C) the number or payments or period to which such order applies, and (D) each plan to which such order applies.

The USA maintains that the Final Judgment is not a QDRO and, therefore, the payments from the Debtor to his former wife are not entitled to treatment under the exception provided for by 26 U.S.C. section 402(a)(9) and are taxable to the Debtor as the distributee under 26 U.S.C. section 402(a). Specifically, the USA states that the Final Judgment is not a QDRO because it fails to satisfy the requirements of section 414(p)(1)(A) and section 414(p)(2). The Final Judgment does not state that it intends to create a QDRO and it does not designate the former wife as an "alternate payee." In addition, it does not identify the name and last known mailing address of the plan participant and alternate payee or the number of payments or periods to which such order applies. In sum, the Final Judgment does not comply with the special provisions of the tax laws which would qualify the payment from the husband to the former wife for special tax treatment. The USA argues that the mere fact that the Final Judgment awards the Debtor's former wife an interest in his pension plans is not sufficient to create, recognize or assign her rights as an alternate payee.

The USA relies on *Hawkins v. Commissioner*, 102 T.C. 61, 74 (1994) In *Hawkins*, the United States Tax Court held that a distribution directly from a plan to a former spouse pursuant to a settlement agreement executed by a husband and wife pursuant to a divorce decree which provided that the wife would receive cash of \$1,000,000.00 from the husband's share of his pension plan was taxable to the husband because the settlement agreement was not a QDRO and the section 402(a)(9) exception was therefore inapplicable. In so ruling, the *Hawkins* court explained:

[A] QDRO should be "clear and specific" and not "left to determination by inference or conjecture." To allow otherwise would be to spawn again "a relentless stream of litigation" comparable to that described in *Beard v. Commissioner*, 77 T.C. 1275, 1284 (1981), and sought to be reduced by enactment of section 71. See H. Rept. 98-432 (Part 2), at 1495 (1984). *Hawkins*, 102 T.C. at 73.

The Debtor asserts that the Final Judgment "substantially qualifies" as a QDRO but for the fact that the Final Judgment fails to provide for the last known mailing address of the pension account participant (the Debtor) and the mailing address of each alternate payee covered by the Final Judgment (Karen B. Boudreau).

Upon review of the record, it appears that the USA is correct and that the Final Judgment is not a QDRO pursuant to 26 U.S.C. section 414(p). The Internal Revenue Code sets forth specific requirements that must be satisfied before an order will qualify as a QDRO:

The plain language of section 414(p) states that a domestic relations order must create or recognize an alternate payee's right to, or assign to an alternate payee the right to, plan benefits payable with respect to a plan participant in order to constitute a QDRO. See, e.g., *Caminetti v. United States*, 242 U.S. 470, 485 (1917) (stating that a court must accord first priority in statutory interpretation to the plain meaning of the provision in question).

...

The Senate report also states that, "In order to provide rational rules for plan administrators, the committee believes it is necessary to establish guidelines for determining whether the exception to the spendthrift rules applies." *Hawkins*, 102 T.C. at 74. In this case, the Final Judgment fails to

state that it intends to create a QDRO, it does not mention the term "alternate payee," it does not specify the number of payments or periods to which the order applies, and it does not identify the name and last known mailing address of the plan participant and alternate payee. The legislative history of the section indicates that the absence of mailing addresses should not be a fatal flaw if the plan administrator has reason to know the addresses independently of the order. See Hawkins, 102 T.C. at 74. The other deficiencies, however, still exist. Also damaging to the Debtor's argument is the fact that the Final Judgment was not intended to be a QDRO and its drafter apparently did not believe it qualified as a QDRO, since in paragraph L the state court "reserves jurisdiction ...for the entry of a Qualified Domestic Relations Order (QDRO)...."

Based upon the foregoing, the Objection should be overruled and the claim should be allowed as filed.

Accordingly:

It Is Ordered that the Objection to Claim No. 3 of the Internal Revenue Service filed by the Debtor is overruled and Claim No. 3 is allowed as filed.

Dated this 9th day of January, 1995.

1 Karen B. Boudreau, Petitioner/Wife, and Michael D. Boudreau, Respondent/Husband, Case No. 89-16816, Division "U", Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida, Family Law Division (hereinafter referred to as "state court action").

2 The total claim consists of a secured claim in the amount \$580.00, an unsecured priority claim in the amount of \$80,510.63, and an unsecured general claim in the amount \$12,875.47.

3 26 U.S.C. section 61. Gross Income Defined.

((a)) General Definition. - Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: ... (11) Pensions.

4 26 U.S.C. section 451. General Rule for Taxable Year of Inclusion.

(a) General Rule. - The amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

5 26 U.S.C. section 402. Taxability of Beneficiary of Employee's Trust.

(a) Taxability of Beneficiary of Exempt Trust. --

(1) General Rule. - Except as provided in paragraphs (2) and (4), the amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to him, in the year in which so distributed, under section 72 (relating to annuities).

(Section 402 has been revised since the time of the distributions in question, but the sections effective at the time are quoted here.)

6 Section 402 has been revised since the time of the distributions in question, but the sections effective at the time are quoted here.