UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:	*	**NO. 06-10179**
OCA, INC., ET AL.	*	**SECTION: "B"**
Debtor	*	**CHAPTER 11**

* * *

RESPONSE OF THE UNITED STATES TO
DEBTORS' OBJECTION TO
INTERNAL REVENUE SERVICE'S PROOFS OF CLAIM

MAY IT PLEASE THE COURT:

INTRODUCTION

The debtors have filed an objection to four Proofs of Claim filed by the Internal Revenue Service ("Service"), namely:

1. OrthAlliance, Inc., No. 06-10229, Claim No. 11 filed on July 26, 2006 in the amount of $11,012,864.00;
2. OCA, Inc., No. 06-10179, Claim No. 124 filed on May 16, 2006 in the amount of $2,373,641.19;[1/]
3. Orthodontic Centers of Florida, Inc., No. 06-10186, Claim No. 2 filed on May 19, 2006 in the amount of $200.00; and
4. Orthodontic Centers of Nevada, Inc., No. 06-10201, Claim No. 2 filed on May 19, 2006 in the amount of $119.95.

[1/] The Service recently filed a Second Amended Proof of Claim setting forth a claim for taxes totaling $1,279,377.48, representing a unsecured priority claim for income taxes and interest for 2005 and 2006 and FUTA taxes and interest for the 2006 tax year of $1,267,177.48, and an unsecured general claim of $12,200 resulting from the debtor's failure to properly file its required information returns pursuant to 26 U.S.C. § 6721.

The debtors contend that the Service's claims should be disallowed because:

1. The debtors have satisfied their tax liabilities for the periods at issue;

2. The Service did not attach any documentation or evidence to support the amounts listed on the proofs of claim; and

3. The debtors are holding funds in reserve or are entitled to offsets adequate to discharge their tax liability.

The objection should be overruled because the debtors have not served the United States as required by Bankruptcy Rule 9014(b). Further, the objection lacks merit.

LAW AND ARGUMENT

A. Service of Process

The issue of this Court's jurisdiction should be addressed before the Court considers the substance of the debtors' objection. Proper service of process is a jurisdictional prerequisite to a lawful proceeding. Without valid service of process, a court is without personal jurisdiction. *See In re Evans*, 242 B.R. 407, 410 (Bankr. S.D. Ohio 1999) (citations omitted) ("[W]hen proper service of process has not been made upon the United States under Rule 7004(b)(4), the United States has not been made a party to an action and a court is without jurisdiction to enter judgment against the United States."); *In re Schweitzer*, 145 B.R. 292 (Bankr.

E.D. Ark. 1992) (noting that the failure to effect proper service deprives the court of personal jurisdiction).

Bankruptcy Rule 9014(b) governs service of process in a contested matter. It provides that service shall be made "in the manner provided for service of a summons and complaint by Rule 7004." Fed. R. Bankr. P. 9014(b). Where an contested matter is brought against an agency of the United States, service must be effected in accordance with Rule 7004(b)(5), which provides that an agency of the United States may be served by mailing a copy of the complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the agency. Rule 7004(b)(4) states that service may be made upon the United States within the United States by first class mail postage prepaid:

> by mailing a copy of the complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the complaint to the Attorney General of the United States at Washington, District of Columbia . . . .

Fed. R. Bankr. P. 7004(b)(4).

Although debtors served the Service, they did not serve the United States Attorney or the Attorney General. Thus, the objection to the Service's proofs of claim should be overruled. *In re Guardian Trust Company*, 260 B.R. 404, 408 n.6 (S.D. Miss. 2000) ("Failure to adhere to Rule 7004(b)(4) in serving process on the United States is ground for reversal for lack of jurisdiction.").

B. Proofs of Claim

1. Documentation to Support Proofs of Claim

In their second ground for objecting the Service's proofs of claim, the debtors maintain that the Service did not provide any documents or evidence to establish its claims. Bankruptcy Rule 3001, however, has no general requirement to provide supporting documentation. Rule 3001(c) provides that when a claim is based on a written document, the original or a duplicate of the document shall be filed. Here, the Service's claim is based on a federal statute not a written document. As such, courts have rejected challenges to the Service's proofs of claim based on the lack of supporting documentation. *See In re Los Angeles International Airport Hotel Associates*, 106 F.3d 1479, 1480 (9th Cir. 1997) (courts have been uniform in holding that when a claim is based on a statute, a taxing authority "is not required to attach documentation to its proof of claim."); *In re Shaver*, 247 B.R. 436, 438-439 (Bankr. E.D. Tenn. 1999) ("The majority of courts to consider this issue in the context of claims by the IRS have concluded that because tax claims are based on statutory obligations rather than a writing, Fed.R.Bank.P. 3001(c) does not apply to proofs of claims by taxing authorities."); *In re Vines*, 200 B.R. 940, 949 (M.D. Fla. 1996) (citing *In re Jenny Lynn Mining Co.*, 780 F.2d 585, 587 (6th Cir. 1986) ("the IRS was not required to attach any documentation to its Proof of Claim because the claim . . . [is] based not on a writing, but on federal

statutes."); *In re Jackson*, 189 B.R. 206, 209 (Bankr. M.D. Ala. 1994) (proof of claim sufficient where Service's claim "identifi[ed] the claimant, the amount of claim, the basis for claim, and a representation that the creditor intends to look to the estate for some payment"); *In re White*, 168 B.R. 825, 834 (Bankr. D. Conn. 1994) (Service not required to attach documentation to its proof of claim because the claim "is based not on a writing, but on federal statutes.").

Further, when documentation is required and missing from the proof of claim, a creditor is not forever barred from establishing its claim. Rather, a creditor is generally allowed to amend its proof of claim to comply with the requirements of Rule 3001(f). *See In the Matter of Stoecker*, 5 F.3d 1022, 1028 (7th Cir. 1993).

2. Claim No. 11 - OrthAlliance, Inc.

This claim sets forth unsecured priority claims for income taxes and interest for the tax years 1999, 2000 and 2001 based upon examination adjustments made after an audit of these returns. The proposed adjustments were appealed and are currently under consideration by the Appeals Division in Houston, TX. It is not anticipated that the Appeals Division will complete its consideration of these adjustments anytime soon.

3. Claim No. 124 - OCA, Inc.
Claim No. 2 - Orthodontic Centers of Florida, Inc.
Claim No. 2 - Orthodontic Centers of Nevada, Inc.

The proofs of claim filed in the above-referenced cases are estimated claims that the Service was required to file because the debtors have not filed the required federal tax returns. A proof of claim is not invalid because it is based on an estimated claim. *See In re White*, 168 B.R. 825, 834 (Bankr. D. Conn. 1994) (proof of claim sufficient where based solely on estimated IRS claim). It was necessary for the Service to file estimated proofs of claim here because the debtors have not filed the tax returns discussed below. Until the Service receives the required returns, the proofs of claim cannot be amended.

CONCLUSION

Accordingly, for the foregoing reasons, the debtors' objection should be overruled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following by first-class mail, postage, prepaid on this **20th** day of **December**, 2006:

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