

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82(34)S
Sales Tax
September 7, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820312A

On March 12, 1982, a Petition for Advisory Opinion was received from Mary Glanzel, 63 E. Main Street, Wolcott, New York 14590.

The issue raised is whether Petitioner, a former officer and stockholder of Mill Tavern, Inc., a bankrupt corporation, is liable for interest owed by the corporation on unpaid sales tax.

Petitioner was the sole shareholder, officer and director of Mill Tavern, Inc. The corporation filed New York State Sales Tax returns for certain periods but failed to submit the sales tax due. Subsequently, the corporation and Petitioner filed petitions in bankruptcy. The sales tax liability, including penalties and interest, to the date of the filing of the petitions in bankruptcy were scheduled in the petitions. Petitioner received her discharge in bankruptcy.

Petitioner was assessed for the unpaid sales tax liability of Mill Tavern, Inc., plus interest. No penalties were assessed. Petitioner acknowledges that she is liable for the unpaid sales tax but contends that she is not liable for the interest due. It is Petitioner's contention that the interest is dischargeable in a bankruptcy proceeding because the Bankruptcy Reform Act of 1978 does not specifically except interest from discharge, but rather excepts from discharge only the tax itself.

Section 505 of Title 11 of the United States Code provides, in relevant part, as follows: "Determination of tax liability (a)(1) . . . the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax . . . (c) . . . after determination by the court of a tax under this section, the governmental unit charged with responsibility for collection of such tax may assess such tax against the estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law."

Section 507 of Title 11 provides, in relevant part, as follows: "Priorities (a) The following expenses and claims have priority in the following order: . . . (6) . . . allowed unsecured claims of governmental units, to the extent that such claims are for - . . . (C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity; . . ."

Section 523 of Title 11 provides, in relevant part, as follows: "Exceptions to discharge (a) A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt - (1) for a tax . . . (A) of the kind and for the periods specified in Section 507 . . . (a) (6) of this title, whether or not a claim for such tax was filed or allowed; . . ."

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The sales and compensating use taxes imposed by Article 28 and pursuant to the authority of Article 29 of the Tax Law are taxes which are "required to be collected or withheld and for which the debtor is liable in whatever capacity" within the meaning of section 507(a)(6) of Title 11 of the Unites States Code. See In Re Fox, 609 F. 2d 178.

The Supreme Court of the United States held in Bruning v. United States, 376 US 358, 11 L ed 2d 772, 84 S CT 906, that under section 17 of the former Federal Bankruptcy Act, a debtor remains personally liable after bankruptcy proceedings for interest that has accrued after the filing of a petition in bankruptcy on a tax debt incurred prior to the filing of the petition. The Court reasoned that interest is an integral part of a tax debt. Liability for interest should therefore survive bankruptcy proceedings even though section 17 of the former Federal Bankruptcy Act specifically excepted only taxes from discharge. Bruning did not address the issue of the dischargeability of interest accruing prior to the date of filing of a petition in bankruptcy since the debtor in that case conceded that such interest was not dischargeable. Under the reasoning of the Court in such decision, however, it must be concluded that the liability of the debtor for such pre-petition interest also survives bankruptcy proceedings. It is to be noted that Bruning has been followed in construing the Bankruptcy Reform Act of 1978. See In Re Busman, 5 B.R. 332.

Accordingly, Petitioner is liable for the interest accrued on her unpaid sales and compensating use tax debt. The assessments issued by the Tax Commission were therefore not inappropriate in asserting such liability.

DATED: August 20, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau