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**(Cite as: [1995 WL 626491](#) (Bankr.E.D.Cal.))**

**In re Paul H. MORTIMER and, Janice I. Mortimer, Debtor(s).**

**Bankruptcy No. 94-27786-A-13.**

United States Bankruptcy Court, E.D. California.

Aug. 10, 1995.

Thomas M. Rohall, Special Assistant U.S. Attorney,  
Sacramento, California, for the Internal Revenue Service.

Richard Dangler, Law Offices of Richard Dangler, Sacramento,  
California, for Debtors.

ORDER OVERRULING OBJECTION TO CLAIM

DAVID E. RUSSELL, Chief Judge.

**\*1** On September 29, 1994, Debtors Paul and Janice Mortimer filed for bankruptcy under Chapter 13 of the Bankruptcy Code. On or about February 8, 1995, the Internal Revenue Service [hereinafter "IRS"] properly filed a proof of claim (#1003) in the amount of \$9,003.67. On May 25, 1995, Debtors filed an objection to the general unsecured portion of the IRS claim in the amount of \$4,481.22 for unpaid taxes due from tax years

1986 and 1987.

Under the Federal Rules of Bankruptcy Procedure, a proof of claim executed and filed in accordance with the bankruptcy rules "shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). The properly executed proof of claim both shifts the evidentiary burden of producing evidence and entitles the claimant to share in the distribution unless an objector comes forward with evidence contradicting the claim. [In re Global Western Dev. Corp., 759 F.2d 724, 727 \(9th Cir. 1985\).](#)

Debtors object to the claim on the grounds that the claim represents Social Security taxes that should have been deducted by from Debtor Janice Mortimer's paychecks by Debtor's then-employer. According to Debtors, the employer wrongly classified Ms. Mortimer as an independent contractor and thus, these deductions were not made. When it was determined that Debtor was an employee instead of an independent contractor, the IRS demanded payment of the delinquent Social Security taxes. Debtors contend that they should not be penalized for the employer's mischaracterization of Debtor Janice Mortimer's employment status.

The court finds the proof offered by Debtors insufficient to overcome the presumptively valid proof of claim filed by the IRS. Furthermore, pursuant to [Fed. R. Evid. 201](#), the court takes judicial notice that Debtor filed an earlier petition for bankruptcy under Chapter 13 on April 1, 1992 (Case No. 92-22872-A-13). The IRS filed a similar proof of claim for the same unpaid taxes due for the tax years 1986 and 1987. Debtor objected to that claim based on the same theories employed in the case at hand. On March 1, 1994, the court overruled the objection. The court can find no reason to waiver from its previous ruling.

IT IS THEREFORE ORDERED that the objection to the IRS claim (#1003) is hereby OVERRULED.

1995 WL 626491 (Bankr.E.D.Cal.), 76 A.F.T.R.2d 95-6422