SO ORDERED.

SIGNED this 28th day of March, 2015.

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:	)	
	)	
John G. McCormick, et al,	)	Case No. 06-80976
	)	
Debtor.	)	

ORDER

This case is before the Court on the objections by John Northen, as Chapter 7 trustee (the "Trustee") for the estate of John G. McCormick ("McCormick" or "Debtor"), to claims resulting from unpaid taxes imposed on the estates of Andrew Harrison Peatross and Mary Elise Livingston Peatross (the "Peatross Estates"). The Debtor was co-executor for each of the Peatross Estates. The Trustee filed an Objection ("IRS Claim Objection") [Doc. # 810] to Claim of the Internal Revenue Service ("IRS") Number 33 & 34 (the "IRS Claims"), and an Objection (the "NCDOR Claim Objection") [Doc. #813] (together, "Trustee's Objections") to the Claim of the North Carolina Department of Revenue ("NCDOR") Number 32 (the "NCDOR Claims"). The Debtor filed a response to the IRS Claim Objection [Doc. # 823], and the IRS filed a response to the IRS Claim Objection [Doc. # 828]. The North Carolina Department of Revenue filed a Response to the NCDOR Claim Objection [Doc. # 832]. The Trustee's IRS Claim Objection and the Trustee's NCDOR Claim Objection first came before the Court on January 12,

2012. At that hearing, all matters were continued indefinitely so that the parties could complete discovery [Doc. # 839].

The Trustee filed a Status Report and Request for Scheduling Order on August 27, 2014 [Doc. # 980], and the Court conducted a status conference on September 25, 2014. After the status conference, the Court entered a scheduling order requiring all parties to submit briefs in support of or in opposition to the Trustee's Objections (the "Scheduling Order") [Doc. # 982]. After the parties submitted their briefs, the Court, believing that matters could be narrowed for purposes of summary rulings and, if necessary, evidentiary hearing, set an additional pre-trial hearing for January 22, 2015 (the "January Hearing"). Appearing by telephone at the January Hearing were creditors Lisa Beck, pro se, and Jonathan D. Carroll on behalf of the IRS. Appearing in person at the hearing were John A. Northen as the Trustee, Robert Price on behalf of the Bankruptcy Administrator, David D. Lennon for the NCDOR, William P. Janvier on behalf of the Peatross Estates, and Michel P. Gnagy, and Lewis Wooten on behalf of the Peatross Estates.

At the January Hearing, the parties reported that a portion of the Trustee's Objections had been resolved, and the Court entered a Consent Order on March 20, 2015, effectuating that resolution [Doc. # 1029] (the "Consent Order"). The parties further jointly agreed at the January Hearing that the issue of whether the estate taxes asserted in the IRS Claims and the estate taxes asserted in the NCDOR Claim were priority claims under 507(a)(8) was ripe for determination as a matter of law.

BACKGROUND

An involuntary bankruptcy proceeding was filed against John G. McCormick ("McCormick") on August 7, 2006 (Case No. 06-80976), and this Court entered an Order for

Relief on October 24, 2006. Shortly before the Order for Relief was entered, voluntary proceedings were commenced for McCormick, LLC (Case. No. 06-81321) and John G. McCormick (Case No. 06-81324). All three cases have been consolidated as Case No. 06-80976.

McCormick served as co-executor of the estates of his step-father, Andrew Harrison Peatross, Sr. ("A. Peatross"), and mother, Mary Elise Livingston Peatross ("M. Peatross"), each of whom died on October 14, 2001. At the time the Order for Relief was entered, neither federal estate tax returns nor state inheritance tax returns had been filed on behalf of the Peatross Estates, and no federal or state estate taxes on the Peatross Estates had been paid. The estate tax returns were due on or before July 14, 2002.

On April 13, 2007, the NCDOR filed Claim # 32 for $275,364.00, of which amount $59,062.00 is asserted as a general unsecured claim and $216,302.00 is asserted as an unsecured priority claim. The NCDOR indicated that the claim was for "[t]axes or penalties owed to government units" within the provision of 11 U.S.C. § 507(a)(8). The taxes were listed as "fiduciary."[1]

On May 2, 2007, the IRS filed Claim # 34, which amended and replaced Claim # 33, filed on April 18, 2007. Claim # 34 was further amended on December 23, 2014. As finally amended, Claim # 34 asserts an unsecured priority tax claim under 11 U.S.C. § 507(a)(8) of $1,021,991.43, described as an estate tax. For the following reasons, the Court determines that the claims for unpaid estate taxes which the Debtor, as co-executor, was required to withhold from the Peatross Estates are entitled to priority under 11 U.S.C. § 507(a)(8)(C).

[1] Although D. R. Horton, Inc. ("Horton"), an unsecured creditor in the case, labels these "fiduciary" taxes as inheritance taxes, the NCDOR claims they are based on N.C. Gen. Stat. §105-32.3(b), making them estate taxes. Although N.C. Gen. Stat. §105-32.3(b) has been repealed, this repeal only affects the estates of decedents dying on or after January 1, 2013. See 2013 N.C. Sess. Laws page no. 316, s. 7(a).

DISCUSSION

The issue before the Court is whether the estate taxes claimed by the IRS and the NCDOR have priority under 11 U.S.C. § 507(a)(8). Section 507 governs the payment distribution priority of claims against a debtor. Section 507(a)(8), in relevant part, gives eighth level priority to "allowed unsecured claims of governmental units, only 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;
> . . .
> **(E)** an excise tax on--
> **(i)** a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or
> **(ii)** if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;
> . . .
> **(G)** a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

11 U.S.C. § 507(a)(8). If a creditor (or governmental unit) asserts a claim for "excise" taxes under § 507(a)(8)(E), such taxes are entitled to priority only when a return, if required, is due after three years prior to the date of the filing of the petition. 11 U.S.C. § 507(a)(8)(E)(i). In contrast, trust fund taxes always are entitled to priority, regardless of timing. See 11 U.S.C. § 507(a)(8)(C).

Although neither the NCDOR nor the IRS indicated in their respective claims under which subpart of section 507(a)(8) they assert that the estate tax claims fall, each now contends (along with the Peatross Estates and the estate beneficiaries) that the taxes are entitled to priority pursuant to § 507(a)(8)(C), as taxes for which the Debtor is liable as executor of the Peatross Estates, due to the Debtor's failure to properly collect and withhold the taxes. In the Trustee's Objection and Brief in Support of Objections to Priority Status of Estate Tax Claims [Doc. #

987], the Trustee contends that the IRS and NCDOR claims for estate taxes are only excise tax claims under section 507(a)(8)(E), citing legislative history in support of this conclusion. [Doc. # 813, ¶ 9; Doc. # 810, ¶ 9]. Since the Trustee argues that the estate portion of the IRS claim and the estate portion of the NCDOR claim are excise taxes under section 507(a)(8), he further contends that they are not entitled to priority status, because the estate tax returns were due on or before July 14, 2002, more than three years prior to the petition date [Doc. # 813, ¶ 12; Doc. # 810, ¶ 12]. The Trustee also argues that estate taxes cannot be trust fund taxes as contemplated by section 507(a)(8)(C), because they are not withheld or collected. [Doc. # 813, ¶ 11; Doc. # 810, ¶ 11].[2]

The NCDOR, in its Brief on the Trustee's Objections (the "NCDOR Brief") [Doc. # 998], argues that the estate taxes asserted in Claim #32 constitute trust fund taxes under section 507(a)(8)(C), and that it is irrelevant whether the estate taxes are in the nature of excise taxes, because the subparagraphs of section 507(a)(8) are not mutually exclusive. The NCDOR further argues that, even if Claim # 32 is an excise tax only, and not a trust fund tax, it still is entitled to priority because the correct determination of the stale date for section 507(a)(8)(E) should be the earliest date upon which the Debtor could have been personally liable for the tax and not when the estate returns were due. The NCDOR also argues that, should the Court decline to find that the estate taxes are entitled to priority under the excise tax and trust fund tax provisions, that the claim still should receive priority treatment under § 507(a)(8)(G) as a claim for a penalty.

In its Brief on the Trustee's Objections (the "IRS Brief") [Doc. # 987], the IRS similarly argues the estate claims in Claim # 34 are the type of claims contemplated by § 507(a)(8)(C), and

[2] Horton filed a Brief in Support of Trustee's Objections (the "Horton Brief") [Doc. # 988], agreeing with the Trustee's exclusive classification of the estate taxes as excise taxes, resulting in the IRS and NCDOR estate claims properly classified as general unsecured, non-priority claims.

therefore should be awarded priority status regardless whether they also would be entitled to priority under § 507(a)(8)(E) if they had fallen within the time periods set forth therein.[3]

In considering the application of any statute, the Court begins by looking first at its plain language, and then looking to legislative history only if the plain language is ambiguous. In re Enright, 397 B.R. 272, 278 (Bankr. M.D.N.C. 2007) ("In discerning congressional intent, courts must start by looking to the plain language of the statute." (citing Lamie v. United States Tr., 540 U.S. 526, 533, 124 S.Ct. 1023 (2004)). A word must be read in the context of its provision, just as a provision must be read in context of the rest of the statute. See In re Shat, 424 B.R. 854, 865 (Bankr. D. Nev. 2010) ("[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme . . . Our goal in interpreting a statute is to understand the statute 'as a symmetrical and coherent regulatory scheme' and to 'fit, if possible, all parts into a . . . harmonious whole.'" (quoting Am. Bankers Ass'n v. Gould, 412 F.3d 1081, 1086 (9th Cir.2005)).

Although the terms "estate tax" and "excise tax" are not defined in the Bankruptcy Code (the "Code"), the legislative history shows, and it is in fact undisputed by the parties, that federal and state estate taxes constitute excise taxes as contemplated by section 507(a)(8)(E). See, e.g., 124 Cong. Rec. S.517429-30 (daily ed. Oct. 6, 1978) (Remarks of Sen. DeConcini); 124 Cong. Rec. H 11095, 11112-13 (daily ed. Sept 28, 1978) (Remarks of Rep. Don Edwards) (Joint Statement of Senator DeConcini and Representative Edwards: "all Federal, State or local taxes generally considered or expressly treated as excises are covered by this category, including sales taxes, estate and gift taxes, gasoline and special fuel taxes, and wagering and truck taxes"). The

[3] A. Harrison Peatross, Jr., the co-executor of the Peatross Estates, filed a separate brief as a Response to Briefs Filed by the Trustee and D.R. Horton (the "Executor's Brief") [Doc. # 994]. The Executor's Brief argues that the IRS and NCDOR tax claims are entitled to priority as trust fund taxes under the express terms of § 507(a)(8)(C).

NCDOR and the IRS, however, argue that the fact that estate taxes are excise taxes does not necessarily mean that they are not the type of taxes entitled to priority under § 507(a)(8)(C). Therefore, this Court must determine whether a stale excise tax[4] may independently qualify for priority as a trust fund tax. This issue contains two sub issues: (1) whether it is permissible for a claim to fall within two separate classifications of priority, or whether Congress intended that the priorities would be exclusive; and (2) whether the estate taxes in this case constitute taxes of the kind contemplated by § 507(a)(8)(C).

In making these determinations, it is helpful for the Court to consider cases analyzing the priority of other excise taxes which also might ostensibly fall into the category of trust fund taxes under § 507(a)(8)(C). Most cases analyzing the interplay between sections 507(a)(8)(C) and 507(a)(8)(E) do so in the context of sales taxes, which, like estate taxes, the legislative history indicates constitute excise taxes. See, e.g., In re Calabrese, 689 F.3d 312, 315 (3d Cir. 2012) (holding that sales taxes withheld from third parties, falling under the definition of an excise tax, also fit under the trust fund provision); DeChiaro v. N.Y. State Tax Comm'n, 760 F.2d 432, 434-35 (2d Cir. 1985). As noted in these cases, although the language in sections (C) and (E) does not appear ambiguous at first glance, each provision may be plainly read to apply to excise taxes *collected from others*. See, e.g., In re Calabrese, 689 F.3d at 315 (finding ambiguity in section 507(a)(8) as it contains two clear but contradictory instructions because retail sales taxes were "required to be collected or withheld" according to New Jersey law, but were also excise taxes by definition); DeChiaro v. N.Y. State Tax Comm'n, 760 F.2d at 435 (reading an overlap

[4] The NCDOR argues the excise tax priority time period is determined based upon the earliest date upon which the Debtor could have been personally liable for the taxes and not when the estate returns were due. With that reasoning, because the executor became liable for the taxes in July of 2004, Claim #32 would be given priority as an excise tax on a transaction occurring within the three years of the petition date in 2006. See 11 U.S.C. § 507(a)(8)(E)(i) and (ii). That argument would be correct only if there were no returns required for the state sales tax. N.C. General Statute § 105-32.4(a), however, requires a return on estate taxes when federal estate tax returns are required. As the federal estate tax return was due in this case on July 14, 2002, the state tax also was due, and the date when the return was last due is still outside of the three year time period set in section 507(a)(8)(E)(i).

between the provisions as applied to sales taxes); Rosenow v. State of Ill., Dep't of Revenue (In re Rosenow), 715 F.2d 277 at (finding the language of subsection (C) to be broad enough to give rise to problems of interpretation, as some retail sales taxes could be given priority under either category). But see Tapp v. Fairbanks North Star Borough (In re Tapp), 16 B.R. 315, 322-23 (Bankr. D. Alaska 1991) (holding that because Congress understood the "excise taxes" to include the sales taxes, sales taxes could not also be considered trust fund taxes under subsection (C)). Some of these courts conclude that the statute is in fact ambiguous, since it would be inconsistent to have a tax that is both always entitled to priority and entitled to priority only if a return is due less than three years from the petition. See, e.g., In re Calabrese, 689 F.3d at 314; In re Rosenow, 715 F.2d at 279. After finding that the overlap creates an ambiguity, these courts have turned to legislative history and public policy analysis to determine whether an untimely excise tax may still be entitled to priority if "collected or withheld" as contemplated by § 507(a)(8)(C).[5] See, e.g., Shank v. Wash. State Dep't of Revenue, Excise Tax Div. (In re Shank), 792 F.2d 829, 831-32 (9th Cir. 1986) (interpreting legislative history to determine whether liability for a sales tax as required to be collected under state law by retailers from their customers is a trust fund tax or excise tax under the Code); DeChiaro, 760 F.2d at 434-35 (reading legislative history to create an overlap between trust fund and excise taxes); In re Rosenow, 715 F.2d at 279 (discussing the "somewhat confusing" legislative history of subsection (C) and determining that the Senate reports which created an overlap of subsection (C) and subsection (E) were more consistent with

[5] In concluding that the excise taxes are entitled to priority status, it does not matter whether the excise taxes actually ever were collected from the estate (or earmarked to be paid). The language of the statute makes clear that it is the requirement that the taxes be collected, rather than the actual collection, that entitles the claim to priority. See 11 U.S.C. § 507(a)(8)(C) ("*required* to be collected or withheld" (emphasis added)). See also In re Taylor, 106 B.R. at 445-446 (acknowledging a lack of explanation for the addition of the word "required" to the provision does not change the fact that a change has occurred, and therefore section (C) does not refer to whether the taxes had been collected but instead applies to taxes required to be collected).

other reports and therefore more reliable and complete); In re Calabrese, 689 F.3d at 315 (reluctantly wading into the "murky waters of legislative history" due to the section's ambiguity to find that the best evidence arising from legislative history was unhelpful to deciding the present question and therefore it was appropriate to turn to public policy considerations); In re Taylor Tobacco Enterprises, Inc. (In re Taylor), 106 B.R. 441, 444-45 (finding the legislative history of the statute to be illustrative but inconclusive).

The legislative history of the Bankruptcy Act of 1898[6] supports the conclusion that trust fund taxes included excise taxes if those excise taxes had the characteristics of trust funds. Time limitations were first set on priority of taxes in the Bankruptcy Act amendments of 1966, DeChiaro, 760 F.2d at 434, but trust fund taxes were excepted from the time limitation due to the Treasury Department's argument that a debtor should not receive the benefit of discharge or escape a tax becoming a priority if the debtor failed to pay taxes to a taxing authority which were collected on behalf of a third party. Id. (citing S. Rep. No. 114, 89th Cong., 1st Sess. 5 (1963)). The Treasury Department specifically cited income withholdings as an example but also noted that "excise taxes" withheld from third parties should not have a limited time set for achieving priority status. S. Rep. No. 114, 89th Cong., 1st Sess. 10 (1965) (reprinting letter from Assistant Secretary of Treasury to Chairman of the Senate Judiciary Committee). Therefore, the formative history of the Bankruptcy Act suggests that Congress did not intend for those excise taxes withheld from others to escape priority treatment after a certain number of years had passed. See DiChiaro, 760 F.2d at 434; Shank, 792 F.2d at 831; Rosenow, 515 F.2d at 280.

Legislative history after the enactment of the Code in 1978 muddies this analysis of Congressional intent. House and Senate versions of new provisions in section 507 were in

[6] Trust fund taxes included taxes the debtor "has collected or withheld from others." Bankruptcy Act of 1898 § 17a(1)(e).

opposition: the House version limited trust fund taxes to those "required to be withheld from wages, salaries, commission, dividends, interest, or other payments that were paid by the debtor," H.R. 8200, 95th Cong., 1st Sess. § 507(6)(E) (1977), while the Senate labeled trust fund taxes more broadly, as "taxes required to be collected or withheld from other and for which the debtor is liable in any capacity." S. 2266, 95th Cong., 2d Sess. § 507(a)(6)(C) (1978). Thus, the legislative history could be cited to support either side of the debate. Despite the opposing authority, the Second Circuit, in DeChiaro, argued that it found no indication that Congress intended to change the priority treatment of trust funds from that under the Bankruptcy Act. See 760 F.2d at 435.

A number of courts resolve the overlap in the statute by finding that Congress intended to differentiate between two categories of excise taxes, such that some excise taxes also are covered by the trust fund provision if they are the kind required to be collected or withheld from third parties.[7] In re Shank, 792 F.2d at 832 ("We believe that Congress intended to retain the distinction between the two forms of sales tax liability; those owed personally by a retailer and those incurred by a retailer's customers which are collected by the retailer under the authority of the state . . . ."); DeChiaro, 760 F.2d at 435 (finding that the excise tax provision was not intended to carve out an exception to the trust fund tax provision, but that the trust fund tax provision excepts from discharge those excise taxes required to be collected from third parties); see also In re Rosenow, 715 F.2d at 280; In re Hayslett, 426 F.3d at ; In re Taylor, 106 B.R. at 444.

[7] Although the language from Section 17(a)(1)(e) requiring it to be withheld or collected "from others" was removed in the amended statute, courts have still interpreted the trust-fund tax to be "collected or withheld by the debtor from a third party." Ill. Dep't of Revenue v. Hayslett/Judy Oil, Inc. (In re Hayslett), 426 F.3d 899, 902 (7th Cir. 2005); see 4 Collier on Bankruptcy ¶ 507.11[4].

This Court agrees with the conclusion that some excise taxes will be entitled to priority under § 507(a)(8)(C) if they are the kind required to be collected or withheld from third parties. Like sales taxes, the liability for estate taxes may fall on different entities. Although the beneficiaries and the estate are liable for estate taxes, both North Carolina and federal law, as set forth below, impose liability for those taxes upon an executor who fails to collect, withhold, and pay those taxes to the taxing authorities. Moreover, the plain language of § 507(a)(8) does not provide or suggest that the subcategories of taxes are meant to be exclusive, and finding that some but not all estate taxes may fall under the trust fund provision does not render either section superfluous, as some excise taxes still will fit under only § 507(a)(8)(E). Rosenow, 715 F.2d at 279-80 (stating that cases which find that no excise tax can also be a trust fund tax under provision (C) fail to make the distinction between taxes personally owed and those owed by a retailer for the state and do not take into consideration the legislative history of the Bankruptcy Act as well as the plain language of Section 507(a)(8)(C)). But see In re Tapp, 16 B.R. at 320 (finding that a reading of the statute like that of Rosenow would make the limiting provision supedrfluous). Therefore the issue that remains for this Court is whether the estate taxes for which the Debtor is liable as executor in this case are of the type of excise taxes that may fall under the trust fund category.

To obtain priority under section 507(a)(8)(C), the "trust fund" category, a debt must be a claim by a governmental unit for a tax withheld or collected by the debtor from a third party, for which the debtor is liable in some capacity. 11 U.S.C. § 507(a)(8)(C). A determination of whether a tax is "withheld or collected" may be made by examining the nature of the imposition of the tax. In re Hayslett, 426 F.3d at 903 ("Illinois state law is illuminating on the issue of whether the Tax is imposed directly on consumers."); In re Calabrese, 689 F.3d at 321

(examining New Jersey's treatment of its own sales tax to determine liability of the customer and the retailer); Groetken v. State of Ill., Dep't of Revenue (In re Groetken), 843 F.2d 1007, 1010 (7th Cir. 1988) (examining the Illinois Occupation Tax scheme and determining that the tax is not one collected within the meaning of the trust fund priority provision). There is no dispute that the claims opposed by the Trustee in this case are in fact taxes imposed by a governmental unit. Title 26 of the United States Code imposes a tax "on the transfer of the taxable estate of every decedent . . . ." 26 U.S.C. § 2001(a). Therefore, an estate tax is imposed on the estate, rather than directly upon the individual executor. Such a tax is calculated based on a rate schedule, correlated to the size of the taxable estate. 26 U.S.C. § 2001(b) & (c). Although the tax is imposed upon the estate, Title 26 places the responsibility for paying the estate tax upon the executor by providing that a "tax imposed by this chapter shall be paid by the executor." 26 U.S.C. § 2002.

State law is also helpful in determining the nature of the federal liabilities imposed by state tax. See In re Hayslett, 426 F.3d at 899; In re Groetken, 843, F.2d at 1013. North Carolina statutes impose liability on the executor for all accounts of the estate and any breach of duty with regards to that estate. N.C. Gen. Stat. § 28A-13-10 (a) & (c). If he does not collect the tax from the estate and remit it, he becomes personally liable for the tax. See id. Thus, the IRS estate tax claim is imposed by a governmental unit, collected from the estate by the executor, and the executor is required to remit the tax to the governmental unit.

Similarly, the estate tax claim held by NCDOR meets the statutory requirements of the trust fund provision. "An estate tax is imposed on the estate of a decent when a federal estate tax is imposed on the estate under section 2001. . . ." N.C. Gen. Stat. § 105-32.2(a). The tax is payable "from the assets of the estate." N.C. Gen. Stat. § 105-32.3(a). Those assets may be sold

in order to obtain the money to pay the tax imposed. N.C. Gen. Stat. § 105-32.4(d). The amount to be paid is obtained from the estate. Furthermore, the executor, or "personal representative of an estate is liable for an estate tax that is not paid within two years after it was due." N.C. Gen. Stat. § 105-32.3(b).

Neither the estate corpus, which the executor holds in trust for the beneficiaries of the estate, nor the funds collected by the executor from the estate to pay the estate taxes are the individual property of the executor. The funds owed for estate taxes remain in trust for the government agency until they are paid, as contemplated by section 507(a)(8)(C). See Allen v. Currie, 254 N.C. 636, 640 (1961) ("Although title to the personal property of a decedent vests in his executor or administrator, he takes such personal property in trust for the payment of the debts of the decedent and the distribution of the remainder among his next of kin, in accordance with the provisions of the will or the law." (quoting 21 Am.Jur., Executors and Administrators § 283)). In this way, estate taxes are more similar to sales taxes and employer taxes than to unemployment taxes, in that they are to be withheld or collected from others.[8]

Public policy considerations such as those discussed in Shank and Taylor further support a finding that Congress intended estate taxes to be granted priority under the trust fund provision if collected or withheld by the liable party from a third party on behalf of the governmental unit. See In re Shank, 792 F.2d at 832 (supporting the court's interpretation of legislative history with public policy considerations that a failing retailer should not be incentivized to default on paying tax obligations collected from their customers); In re Taylor, 106 B.R. at 444 (applying the same public policy considerations on uncollected sales taxes as were applied to collected sales taxes). Congress provided for a stale date for excise taxes and not for trust fund taxes because the Code

[8] Having determined that the taxes are entitled to priority under § 507(a)(8)(C), it is unnecessary to determine whether the taxes further are entitled to priority as a penalty under section 507(a)(8)(G).

"is not designed to unjustly enrich a company that converted consumers' tax dollars to its own use, but is designed to allow forgiveness of debts that a company accrued for itself." In re Hayslett, 426 F.3d at 904 (using public policy to distinguish between the sales tax liability which are owed personally by a debtor and those incurred by retailer's customers for which the retailer is holding for the benefit of the state taxes).

If the Court were to disallow priority status for unpaid estate taxes by an executor (and the consequential allowance of a discharge of estate tax claims under 11 U.S.C. § 523(a)(1)), it would create the incentive for an executor to default on taxes collected from an estate and abscond with that money, just as there would be an incentive to default on sales taxes collected by a retailer if such taxes were dischargeable once stale. See In re Shank, 792 F.2d at 832; In re Taylor, 106 B.R. at 445 (reasoning that the same public policy considerations apply to different types of taxes as the emphasis was on the liability of the debtor for the tax and not the type of tax, and stating, "[w]e find no indication that Congress intended to treat retailers differently than employers, who clearly cannot discharge their liability for withheld income taxes"); In re Rosenow, 715 F.2d at 280. The Code is designed to allow forgiveness of debts that McCormick accrued in his own right but not to forgive a debt that he was charged with collecting from and on behalf of an estate and remitting to the governing authorities as executor – a task that he failed to do and for which he is now liable. Therefore, if estate taxes are truly "withheld or collected" within the meaning of section 507(a)(8)(C), the taxes should be considered an excise tax that fits within section 507(a)(8)(C)'s description and of the type never dischargeable. See id.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the IRS Claim #33, amended and replaced by #34 for estate taxes and interest, with respect to the A. Peatross Estate in the amount of $460,310.47, and with respect to the M. Peatross Estate in the

amount of $561,680.96, for an aggregate of $1,021,991.43, and the NCDOR Claim #32 for estate taxes and interest with respect to the A. Peatross Estate in the amount of $109,008.00, and with respect to the M. Peatross Estate in the amount of $107,294.00, for an aggregate of $216,302.00 are allowed as priority claims under 11 U.S.C. § 507(a)(8)(C).

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