

**United States Bankruptcy Court  
District of New Mexico**

**Document Verification**

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**Case Number:** 01-01186  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

In re:

CARLA J. CHAVEZ,  
Debtor.

No. 13-01-11036 SS

CARLA J. CHAVEZ,  
Plaintiff,

v.

Adv. No. 01-1186 S

INTERNAL REVENUE SERVICE, et al.,  
Defendants.

**MEMORANDUM OPINION AND ORDER ON  
PLAINTIFF'S MOTION FOR NEW TRIAL AND  
AMENDMENT OF FINDINGS AND CONCLUSIONS**

This matter is before the Court on Plaintiff's Motion for New Trial and Amendment of Findings of Fact and Conclusions of Law ("Motion"), filed by her attorney Robert Hilgendorf.

(Docket 54). Defendant New Mexico Department of Labor filed a response (Docket 55) through its attorney Rebecca Wardlaw. For the reasons set forth below the Motion will be denied.

In this case Plaintiff filed 9 briefs in support of her position (docket #s: 22, 24, 33, 34, 37, 40, 41, 44, and 49). Defendant New Mexico Department of Labor responded with 6 briefs (docket #s: 20, 32, 35, 36, 39, and 42). The Court conducted a full trial on the merits, and issued Findings of Fact and Conclusions of Law and a Judgment on September 27, 2002. The Findings of Fact and Conclusions of Law and Judgment were docketed on September 30, 2002. This Motion was filed on October 8, 2002. This Motion to reconsider seeks a

new trial, or an amendment of findings and conclusions, pursuant to Federal Rule of Civil Procedure 59 made applicable to Bankruptcy Courts by Federal Bankruptcy Rule 9023.

Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. See Brumark Corp. v. Samson Resources Corp., 57 F.3d 941, 948 (10th Cir. 1995). Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law. cf. Fed.R.App.P. 40(a)(2)(grounds for rehearing). It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing. See Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991).

Servants of the Paraclete v. John Does, I-XVI, 204 F.3d 1005, 1012 (10th Cir. 2000).

Plaintiff does not argue an intervening change in the law or new evidence previously unavailable. Therefore, she must base her motion on the need to correct clear error or prevent manifest injustice. Plaintiff sets forth four arguments. Each will be addressed.

First, she argues that the Findings and Conclusions are not supported by substantial evidence insofar as they are silent with respect to the issues of penalties and interest on the taxes, and the collectability of such charges from the Debtor. The Court found that taxes and penalties were assessed, that no documents were provided to the taxing

authorities to dispute the correctness of the assessments, and that the community was liable for the debt. The Court has reviewed its finding that the community was liable for the full amounts assessed and comes to the same conclusion. There is no clear error or manifest injustice.

Second, Plaintiff argues that the Court did not consider section 505 of the Bankruptcy Code and that she should be given a new trial so she can introduce evidence pertaining to the amount of taxes owing from the community. Plaintiff has already had the opportunity to present material challenging the validity of the tax assessments, but did not do so at trial. Indeed, one fact that was abundantly clear at trial was that there were no such documents because Plaintiff's husband failed to keep records from which the taxes could be accurately computed. The burden was on plaintiff to establish that the taxes claimed were incorrect, and she failed to do so at trial. There is no clear error or manifest injustice.

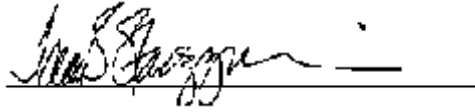
Third, Plaintiff argues that the Findings and Conclusions do not include an analysis of the relevant New Mexico statutes regarding validity and priority of liens, nor do they establish the amount and priority of the tax liens. The complaint in this case did not request a determination of the amount or priority of the tax liens, and no cross-claims were

filed between the defendants seeking these determinations. Presumably the taxing authorities can work out amongst themselves which agency will receive which proceeds in what order, or they can file a motion for such a determination. The only ruling that pertains to the Plaintiff is that the tax liens were valid and superior to her interest in the proceeds.

Finally, Plaintiff reargues the application of Regulation 3-1-6-16 and due process. These arguments were thoroughly presented in the extensive briefs submitted in this case. The Court addressed the applicability, and non-applicability, of Regulation 3-1-6-16 in the Findings of Fact and Conclusions of Law, as well as the due process arguments. Among other things, the Court stated that because the marital community was the taxpayer and through its agent Richard Ortiz had received the requisite notice, Ms. Chavez, as part of the marital community, was not entitled to any additional notice, whether pursuant to the regulation or otherwise. "It is not appropriate to revisit issues already addressed" in this motion to reconsider. Id. Plaintiff's remedy is to appeal.

For these reasons, the Court finds that the Motion is not well taken and should be denied.

IT IS ORDERED that the Plaintiff's Motion for New Trial and Amendment of Findings of Fact and Conclusions of Law is denied.



Honorable James S. Starzynski  
United States Bankruptcy Judge

I hereby certify that on October 22, 2002, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

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