

Court¹ dismissed the Missouri Department on the ground of Eleventh Amendment immunity from suit and granted summary judgment in favor of the United States for most of the tax years in question. The Eighth Circuit Bankruptcy Appellate Panel affirmed. May appeals the dismissal of the Missouri Department and the grant of summary judgment to the United States for tax years 1990, 1991, 1992, and 1993.

Regarding the dismissal of the Missouri Department, we agree that it has not yet filed a proof of claim in the chapter 7 proceeding and therefore is entitled to Eleventh Amendment immunity at the present time. However, May will no doubt be entitled to raise the dischargeability question if and when the Missouri Department files a claim in the federal bankruptcy proceeding, or seeks to enforce the alleged tax liabilities in state court. Therefore, we modify the dismissal of the Missouri Department to be without prejudice.

We affirm the grant of summary judgment in favor of the United States for the reasons stated in the Bankruptcy Court and Bankruptcy Appellate Panel opinions. See 8th Cir. R. 47B. We grant the United States' motion to strike documents in May's addendum that are not part of the Bankruptcy Court record. See Dakota Indus., Inc. v. Dakota Sportswear, Inc., 988 F.2d 61, 63 (8th Cir. 1993).

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The HONORABLE FRANK W. KOGER, Chief Judge, United States Bankruptcy Court for the Western District of Missouri.