

district courts of the United States shall have jurisdiction to hear appeals . . . from final judgments . . . and, with leave of the court, from interlocutory orders¹ and decrees, of bankruptcy judges. . . .” Leave to appeal a bankruptcy court’s interlocutory order “should be granted only in circumstances [that] justify overriding the general policy of not allowing such appeals.” *Powers v. Montgomery*, No. Civ. A. 3:97-CV-1736-P, 1998 WL 159944, at *2 (N.D. Tex. Apr. 1, 1998). In determining whether to grant a motion for leave to appeal an interlocutory bankruptcy court order, most courts have adopted the standard set out in 28 U.S.C. § 1292(b). See *In re Ichinose*, 946 F.2d 1169, 1176 (5th Cir. 1991); *Powers*, 1998 WL 159944, at *2. “To be appealable under this standard, an interlocutory order must: (1) involve a controlling issue of law; (2) present a question upon which there is substantial ground for difference of opinion; and (3) an immediate appeal of this order must materially advance the ultimate termination of the litigation.” *Powers*, 1998 WL 159944, at *2.

Applying this standard to the appellant’s motion for leave to appeal, the Court concludes that, at the very least, the motion fails to show that an immediate appeal of the bankruptcy judge’s order will materially advance the ultimate termination of the litigation. To begin with, there is a chance that the appeal will become moot if the trial in the New York Supreme Court on the same taxation issues

¹“An interlocutory order is ‘one which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits.’” *Babin v. Hattier*, No. Civ. A. No. 93-4137, 11994 WL 43810, at *1 (E.D. La. Feb. 8, 1994) (quoting *In re Kutner*, 656 F.2d 1107, 1111 (5th Cir. 1981)).

begins no later than August 1, 2004. In addition, if the bankruptcy court does reach the merits of the tax liability of the debtors, it could determine that the tax liability of the debtors remains unchanged. Based on these factors, it is premature, at least at this stage, for the Court to consider whether the bankruptcy court has jurisdiction to hear the tax issues. Instead, the Court should make such a determination only if and when the bankruptcy court makes a final determination that adversely affects the appellants. See, e.g., *In re Bell Fuel Corp.*, Nos. 89-766 & 88-12195, 1989 WL 159393, at *1 (E.D. Pa. 1989).

Based on the foregoing, it is ORDERED that the motion filed by plaintiffs The Town of Haverstraw New York, The Town of Stony Point New York and The Haverstraw-Stony Point Central School District [doc. # 1 in 4:04-CV-124-Y] is DENIED.

It is further ORDERED that the motion filed by plaintiff Town of Ramapo, New York [doc. # 1 in 4:04-CV-125-Y] is DENIED.

SIGNED April 30, 2004.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/knv