

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	
	)	
RALPH HARDY EDWARDS and	)	Bankruptcy Case No. 94-30649
MARY HELEN EDWARDS,	)	
	)	Adversary No. 95-3256
Debtors.	)	
	)	
RALPH HARDY EDWARDS and	)	
MARY HELEN EDWARDS,	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	
UNITED STATES OF AMERICA,	)	
INTERNAL REVENUE SERVICE and	)	
STATE OF ILLINOIS, DEPARTMENT	)	
OF REVENUE,	)	
	)	
Defendants.	)	

OPINION

This matter having come before the Court for trial on an adversary Complaint filed by the Debtors to determine the dischargeability of certain income tax liabilities to the United States of America and to the State of Illinois; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Trial was held in this matter on May 17, 1996, at which time certain stipulations were entered into between the parties. As between the United States of America, Internal Revenue Service, and the Debtors, it was stipulated that income taxes for the Debtors for the years 1979, 1981, 1982, 1983, and 1986 were dischargeable in bankruptcy and subject to the Debtors' discharge. A separate Order was entered on this stipulation following trial in this matter. A finding was also made that the Debtors were required by 35 ILCS 5/506(b) to file amended Illinois income tax returns due to increases in their tax amounts for the years 1979, 1980, 1985, and 1987. The Court specifically found and the

Debtors conceded that they had not filed amended Illinois individual income tax returns for those years. As such, the Illinois income tax due for the years 1979, 1980, 1985, and 1987 were non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(1)(B)(i). An Order was also entered subsequent to trial on these taxes due to the State of Illinois.

In addition to the tax years mentioned above, at the close of trial there remained a question as to Debtors' tax liability to the Internal Revenue Service for the years 1985, 1987, 1989, and 1991. Sworn testimony was heard concerning the Debtors' assertion that returns had been filed for 1985 and 1987, and the Court found that the Debtors' testimony on this subject was not credible and that there had been no proof showing that tax returns had been filed with the Internal Revenue Service for 1985 and 1987. As such, those returns not being filed, the Court requested the parties to file written briefs on the dischargeability of taxes for the years 1985 and 1987. Additionally, the Court requested a brief from the parties concerning Debtors' tax liability for the years 1989 and 1991. In as much as tax returns for those years were filed, they were not filed in a timely fashion. The Court requested the parties to address the issue of whether those taxes would be dischargeable in bankruptcy given the fact that the tax returns for those years were not filed until December 18, 1992, a period of time within two years of the filing of Debtors' bankruptcy petition. The United States of America filed a brief on June 10, 1996, and, as of June 21, 1996, nothing had been heard from the Debtors on this issue, with the Debtors' time period for filing a brief having long since passed. Given the Debtors' failure to file a brief in this matter, the Court finds that it will rule upon the facts before it and upon the brief the United States of America submitted on June 10, 1996.

As for the Debtors' tax liability to the Internal Revenue Service for the years 1985 and 1987, as noted above the Court found that the Debtors had not shown sufficient proof to convince the Court that the Debtors had in fact filed tax returns for the years 1985 and 1987 as claimed. Since no tax returns were filed for those years, the Court must find that, pursuant to 11 U.S.C. §523(a)(1)(B)(i), Debtors' income tax liabilities for the years 1985 and 1987 are non-dischargeable in bankruptcy. As for the Debtors' income tax liabilities for the years 1989 and 1991, the Court finds that there is no dispute that returns for

those years were not filed until December 18, 1992, and that such date was within two years of the filing of Debtors' bankruptcy petition. Thus, pursuant to 11 U.S.C. § 523(a)(1)(B)(ii), the Court finds that the Debtors' income tax liability to the Internal Revenue Service for the years 1989, 1990, and 1991 are non-dischargeable in bankruptcy and not subject to the discharge heretofore entered in Debtors' favor.

ENTERED: June 25, 1996

/s/ GERALD D. FINES  
United States Bankruptcy Judge