

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In Re)	
)	In Bankruptcy
ALVIN FUNK)	
JEANETTE FUNK)	Case No. 97-33000
)	
Debtors.)	
)	
ALVIN FUNK and)	
JEANETTE FUNK,)	
)	
Plaintiffs,)	
)	
)	Adversary No. 99-3038
)	
INTERNAL REVENUE SERVICE, and)	
UNITED STATES OF AMERICA,)	
)	
Defendants.)	

OPINION

The issue before the Court is whether certain motor vehicle excise taxes incurred more than three years prior to the filing of the bankruptcy petition are nondischargeable pursuant to 11 U.S.C. §§ 523(a)(1)(A) and 507(a)(8).

The material facts are not in dispute. The Debtor, Alvin Funk, was a principal of Funk Transport, Inc. Funk Transport incurred motor vehicle excise taxes for the periods ending in 1992 and 1993. These taxes were collected by Funk Transport upon the sale of various motor vehicle fuels. On September 5, 1997, the taxes were assessed against Mr. Funk in his capacity as the principal of Funk Transportation. A Notice of Federal Tax Lien was filed against Mr. Funk on September 22, 1997.

On October 20, 1997, the Debtor filed a petition pursuant to Chapter 7 of the Bankruptcy Code.

The Debtors listed the United States, Internal Revenue Service as a creditor in their bankruptcy schedules as having a claim in the amount of \$100,432.94 for certain motor fuel tax liabilities, penalties and interest. The Debtors received their discharge in bankruptcy on January 27, 1998.

The Debtors subsequently reopened their bankruptcy case and commenced this adversary proceeding to address the dischargeability of their tax debt to the IRS.

The Bankruptcy Code exempts certain taxes from discharge. 11 U.S.C. § 523(a)(1)(A) provides in pertinent part as follows:

(a) A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt –

(1) for a tax or custom duty –

(A) of the kind and for the periods specified in . . . 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed.

11 U.S.C. § 507(a)(8) provides in pertinent part as follows:

(8) . . . 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 –

(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 an extension, after three years before 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.

The Debtors maintain that the disputed taxes are excise taxes which were incurred more than three years before the filing of the bankruptcy petition and therefore not within "the period specified" as required for nondischargeability under § 523(a)(1). The IRS maintains that the disputed taxes are "collected taxes" within the meaning of subsection (c) for which there is no time limit. Thus, the determinative issue is whether the motor vehicle excise taxes are included in subsections (C) or (E) of § 507(a)(8).

In re Edmiston, 36 B.R. 1 (Bankr. D. Kan. 1982) specifically addressed the issue before the Court and found motor fuels taxes to fall within the definition of tax claims entitled to priority under § 506(a)(8)(E):

Section 507(a)(6)(C) [now (a)(8)(C)] grants a sixth priority for taxes that were required to be collected or withheld. This section is limited to "the so-called 'trust fund' taxes, that is, income taxes which an employer is required to withhold from the pay of his employees, and the employee's share of social security taxes." 3 COLLIER ON BANKRUPTCY paragraph 507.03, at 507-34 (15th ed. 1980). *See also In re Tapp*, 16 B.R. 315, 8 B.C.D. 642 (Bkrcty. Ct. D. Alaska 1981) (excise taxes not within purview of §507(a)(6)(C)).

Section 507(a)(6)(E) [now (a)(8)(E)] governs priority treatment for excise tax claims. Specifically, section 507(a)(6)(E) covers "(a) all Federal, State or local taxes generally considered or expressly treated as excises . . . including sales taxes, estate and gift taxes, gasoline and special fuel taxes, and wagering and truck taxes." 3 COLLIER ON BANKRUPTCY paragraph 507.03, at 507-35 (15th ed. 1980).

....

Both the motor fuels tax and the special fuels tax are excise taxes

....

36 B.R. at 3. Thus, the motor vehicle excise taxes at issue in this proceeding are excise taxes within the meaning of § 507 (a)(8)(E).

It is undisputed that the taxes were incurred more than three years before the filing of the bankruptcy petition. Accordingly, they do not fall within the period specified by §507 (a)(8)(E). Therefore, they are dischargeable pursuant to §523 (a)(1)(A).

For the foregoing reasons, the Amended Complaint to Determine Dischargeability of Debt is allowed, and the debt to the Internal Revenue Service for motor vehicle excise taxes incurred in 1992 and 1993 are determined to be dischargeable in bankruptcy.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: August 16, 1999

/s/ LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE