

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

IN RE:)
)
JAMES RANNEY,) Bankruptcy Case No. 05-32427
)
Debtor.)
)
JAMES RANNEY,)
)
Plaintiff,)
)
vs.) Adversary No. 05-3251
)
INTERNAL REVENUE SERVICE,)
)
Defendant.)

OPINION

This matter having come before the Court for trial on a Complaint to Determine Dischargeability of Debt, filed by the Debtor; the Court, having heard 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.

Findings of Fact

The parties to this matter agree that the material facts are not in dispute. The Debtor owes various outstanding tax liabilities, including a liability for 1040 taxes for the tax year 1992. The Internal Revenue Service concedes that all other years at issue, excluding 1992, are dischargeable pursuant to the provisions of 11 U.S.C. § 523(a)(1). As for the year 1992, there is no dispute that the Debtor never filed a tax return for that year, and, rather, the Internal Revenue Service filed a substitute tax return for that year, which the Debtor never signed and never acknowledged as representing the actual amount of taxes due. The only issue before the Court is whether the Debtor's 1040 income tax obligation for the tax year 1992 is subject to his discharge under Chapter 7 of the Bankruptcy Code.

Conclusions of Law

Given the undisputed facts in this matter, the Court must find that the Debtor's tax obligation for the tax year 1992 is not subject to his discharge in bankruptcy. This matter is governed by 11 U.S.C. § 523(a)(1)(B)(i), which states:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

(1) for a tax or a customs duty -

(B) with respect to which a return, if required -

(i) was not filed;

In an opinion of recent vintage, the Seventh Circuit Court of Appeals has clearly stated that, to be deemed a return for dischargeability purposes, a document must satisfy all four of the following requirements: (1) the document must purport to be a return; (2) the document must be signed under the penalty of perjury; (3) the document must contain enough information to enable the tax liability to be calculated; and (4) the document must evince an honest and reasonable endeavor to satisfy the law. In re Payne, 431 F.3d 1055 (7th Cir. 2005). In this case, it is clear that the Debtor did not sign the substituted return for the year 1992, which was filed by the Internal Revenue Service rather than the Debtor, and, additionally, the return, as filed, was not acknowledged by the Debtor as his return. The opinion in Payne is in keeping with other Courts of Appeals, District Courts, and Bankruptcy Courts that have considered the issue raised herein, and have held that taxes assessed, based upon substitute returns filed by the Internal Revenue Service, are not dischargeable pursuant to 11 U.S.C. § 523(a)(1)(B)(i). See: In re Bergstrom, 949 F.2d 341 (10th Cir. 1991); U. S. v. D'Avanza, 132 B.R. 462 (M.D. Fla. 1991); In re Rench, 129 B.R. 649 (Bankr. D. Kan. 1991); In re Pruitt, 107 B.R. 764 (Bankr. D. Wyo. 1989); In re Hoffmann, 76 B.R. 853 (Bankr. S.D. Fla. 1987); and In re Chapin, Case No. 91-82663, Adv. No. 91-8138 (Bankr. C.D. Ill. 1992).

In conclusion, the Court finds that the law is clear that, where the Internal Revenue Service has made a substitute filing on behalf of a Debtor, such a filing cannot be considered for the purposes of determining dischargeability under 11 U.S.C. § 523(a)(1)(B)(i). As such,

the Court finds that the Debtor's tax liability for the year 1992, in the instant case, is non-dischargeable in his Chapter 7 bankruptcy proceeding.

ENTERED: April 20, 2006.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge

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Defendant.)

ORDER

For the reasons set forth in an Opinion entered on the 20th day of April 2006;

IT IS HEREBY ORDERED that:

A. The Complaint to Determine Dischargeability of Debt is ALLOWED as to all tax years, excluding the tax year 1992; and,

B. The Debtor's tax liability for the tax year 1992 is determined to be non-dischargeable in Debtor's Chapter 7 bankruptcy proceeding pursuant to the provisions of 11 U.S.C. § 523(a)(1)(B)(i).

ENTERED: April 20, 2006.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge