

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

IN RE:)
)
CHRISTOPHER A. RICE,) Bankruptcy Case No. 99-42244
)
Debtor.)
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)
CHRISTOPHER A. RICE,)
)
Plaintiff,)
)
vs.) Adversary Case No. 00-4019
)
)
UNITED STATES OF AMERICA)
INTERNAL REVENUE SERVICE)
)
Defendant.)

OPINION

This matter having come before this Court for trial on a Complaint by Debtor Seeking Determination that Income Taxes are Dischargeable; 11 U.S.C. § 523(a)(1); 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.

Under 11 U.S.C. § 523(a)(1)(B), it is stated that:

(a) A discharge under section 727, 1141, 1288(a), 1288(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; or

(ii) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; . . .

In the instant case, the Debtor/Plaintiff has admitted on the record that he did not file a tax return for the years 1988, 1989, 1990, 1991, and 1992, even though he was aware that those returns were due. The uncontroverted evidence in this case indicates that the Debtor did file a request for an extension of time to file tax returns for the years 1988 through 1992, but that no tax returns were ever, in fact, filed. The Debtor entered into a repayment agreement with the Internal Revenue Service in 1997, and does not now, nor has he ever, disputed the amount of tax due pursuant to the repayment agreement which he voluntarily entered into. The record also reflects that, since 1997, the Debtor has cooperated with the Internal Revenue Service and has provided some information as requested. However, he has never signed the substitute returns filed by the Internal Revenue Service, although he stated on the record that he would sign them if he were asked to do so.

The burden of proof by a preponderance of the evidence is upon "the party seeking to establish an exception to the discharge of a debt." In re Crawley, 244 B.R. 121 (Bankr. N.D. Ill. 2000). Courts which have examined the meaning of 11 U.S.C. § 523(a)(1)(B) have found

that the language of this statute is clear, and that an individual's debt arising as a result of a tax for which the debtor was required to file a return is non-dischargeable if the debtor did not file that return. See: In re Haywood, 62 B.R. 482, at 485 (Bankr. N.D. Ill. 1986). The Debtor herein does not dispute that he was required to file tax returns for the years 1988 through 1992, and he admits that those tax returns were not filed. The only basis upon which the Debtor seeks to have the tax debt for the years 1988 through 1992 discharged is based upon the case of In re Hatton, 216 B.R. 278 (BAP 9th Cir. 1997), in which the Bankruptcy Appellate Panel determined, on facts substantially similar to the instant case, that the debtor's cooperation therein with the Internal Revenue Service and his entry into a payment agreement provided the equivalence of filing the required tax return and, thus, the tax debt in question was dischargeable under 11 U.S.C. § 523(a)(1)(B). Unfortunately for the Debtor, the case of In re Hatton has been reversed by the Ninth Circuit Court of Appeals in an Opinion filed on August 10, 2000, cited as In re Hatton, 2000 WL 1126374 (9th Cir. 2000). The Ninth Circuit, in its Opinion, succinctly points out that the language of 11 U.S.C. § 523(a)(1)(B) is patently clear, and that an installment agreement and substitute returns fail to qualify as a return as that term is used in § 523(a)(1)(B).

In the present case, it is commendable that the Debtor has

cooperated with the Internal Revenue Service and entered into an installment agreement for payment of the taxes due for the years 1988 through 1992; however, the Court is unable to locate any authority which would support the Debtor's position that his cooperation and entry into a repayment agreement is equivalent to the filing of tax returns for those years that are the subject of this litigation. As such, the Court can only conclude that the tax debt due the Internal Revenue Service for the years 1988 through and including 1992 is non-dischargeable in bankruptcy pursuant to the provisions of 11 U.S.C. § 523(a)(1)(B). The Internal Revenue Service and the Debtor have stipulated that the Debtor's tax debt for the years 1993, 1994, and 1995 is dischargeable in bankruptcy in that the Debtor did file income tax returns for those years and, thus, do not fall within the exceptions to discharge under § 523(a)(1). The parties also have stipulated that the Debtor has a small amount of tax due for the year 1996, and that that amount will be duly paid by the Debtor.

ENTERED: August 21, 2000.

/s/ GERALD D. FINES
United States Bankruptcy Judge