UNITED STATES BANKRUPTCY COURT
for the
DISTRICT OF NEW HAMPSHIRE

In re: Bk. No. 97-10848-MWV
Chapter 7

Cornelius P. and Suzanne P. Young,
Debtors

Cornelius P. Young
Suzanne P. Young,
Plaintiffs,

v. Adv. No. 98-1096-MWV

United States of America,
Internal Revenue Service
Defendant

MEMORANDUM OPINION

The Court has before it the United States of America, Internal Revenue Service's ("Defendant") motion for summary judgment requesting that the Court order that the tax debt owed the Defendant by Cornelius P. and Suzanne P. Young ("Plaintiffs") is not excepted from discharge. The Defendant's motion alleges that the three-year nondischargeability period for income taxes was tolled during the Plaintiffs' prior bankruptcy. The Plaintiffs object, alleging that the plain meaning of section 507(a)(8)(A)(1) of the Bankruptcy Code is clear and does not lead to absurd results when taken in conjunction with section 523(a)(1); thus, the Plaintiffs allege that their prior bankruptcy filing did not toll the statutory period. For the reasons stated below, the Defendant's motion for summary judgment is granted.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in

accordance with 28 U.S.C. § 157(b).

FACTS

On October 15, 1993, the Plaintiffs herein filed their 1992 federal income tax returns, which the the Internal Revenue Service assessed on January 3, 1994. The Plaintiffs did not sign an offer in compromise, but paid the Internal Revenue Service monthly installment payments from April 1994 to November 1995. The Plaintiffs filed for Chapter 13 bankruptcy on May 1, 1996.[1] During their Chapter 13 case, the Plaintiffs filed a reorganization plan, which provided for payment of the remainder of the amount owed the Defendant. The Internal Revenue Service filed a proof of claim, which it amended on September 20, 1996. The amended proof of claim set forth a priority claim of $12,736.17 and a non-priority claim of $4,933.87. The Plaintiffs' plan was not confirmed. Thereafter, the Plaintiffs filed a voluntary notice of dismissal and their Chapter 13 case was dismissed on March 13, 1997.[2]

The Plaintiffs filed for Chapter 7 bankruptcy on March 12, 1997, and were granted a discharge on June 17, 1997. On September 22, 1997, their case was closed. However, on July 13, 1998, the Plaintiffs herein reopened their Chapter 7 case to file a complaint to determine the dischargeability of the 1992 income tax obligation. In their complaint, the Plaintiffs seek a declaration that their 1992 assessed federal income tax liability, which they reported on October 15, 1993, should be excepted from discharge pursuant to section 507(a)(8)(A) of the Bankruptcy Code because it became due more than three years before they filed for Chapter 13. The Defendant disagrees and asserts that its right to collect taxes was tolled during the Plaintiffs' Chapter 13 filing, and that the Plaintiffs should not be able to discharge this debt by filing Chapter 7 before the IRS could commence collection.

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[1] The case number is 96-11180-MWV.

[2] In case number 96-11180-MWV, the Debtors' notice of voluntary dismissal was filed October 23, 1996, the Trustee filed his report on February 2, 1997, and the case was closed on March 13, 1997.

DISCUSSION

Under Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, a summary judgment motion should be granted only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "Genuine," in the context of Rule 56(c), "means that the evidence is such that a reasonable jury could resolve the point in favor of the nonmoving party." Rodriquez-Pinto v. Tirado-Delgado, 982 F.2d 34, 38 (1st Cir. 1993) (quoting United States v. One Parcel of Real Property, 960 F.2d 200, 204 (1st Cir. 1992)). "Material," in the context of Rule 56(c), means that the fact has "the potential to affect the outcome of the suit under applicable law." Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Courts faced with a motion for summary judgment should read the record "in the light most flattering to the nonmovant and indulg[e] all reasonable inferences in that party's favor." Maldonado-Denis v. Castillo-Rodriquez, 23 F.2d 576, 581 (1st Cir. 1994).

The issue in dispute revolves around the construction of various Bankruptcy Code statutes. There are no material facts in dispute. Section 523(a)(1)(A) of the Bankruptcy Code states that taxes are not discharged if they are "of the kind and for the periods specified in section . . . 507(a)(8)(A) of this title, whether or not a claim for such tax was filed or allowed." 11 U.S.C.A. § 523(a)(1)(A) (1988 & Supp. 1998). Thus, section 507(a)(8)(A) determines whether section 523(a)(1)(A) is to have effect.

Section 507(a)(8)(A) states, in pertinent part:

(a) The following expenses and claims have priority in the following order:

> (8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts—

(i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition . . . .

11 U.S.C.A. § 507(a)(8)(A) (1988).

Statutes are to be followed to the literal letter, unless doing so would yield absurd results not intended by their drafters. See United States v. Ron Pair Enters., Inc., 489 U.S. 235 (1989) (the plain meaning of a statute controls); United States v. Rippletoe, 178 F.2d 735 (4th Cir. 1949) (citing United States v. American Trucking Ass'n, 310 U.S. 534, 543 (1940) ("[A]ll laws are to be given a sensible construction and that a literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose.") (other citations omitted).

The Defendant does not dispute, were no tolling to apply, that the taxes at issue became due more than three years prior to the filing of the Plaintiffs' second bankruptcy petition, and would thus be discharged. However, the Defendant does assert that if this Court looks only to section 507(a)(8)(A), which does not provide for tolling, discharging its debt would frustrate Congressional intent to give taxes priority under the Bankruptcy Code. (See Def.'s Mem. at 3-5.)

The Court agrees and holds that the Defendant's right to collect taxes was tolled during the pendency of the Plaintiffs' first Chapter 13 case. In doing so, this Court follows the well reasoned decisions in this circuit, as well as others, that the Internal Revenue Code's tolling provision tolls the Bankruptcy Code's three-year priority period under section 507(a)(8)(A). See 11 U.S.C.A. § 108(c) (1988 & Supp. 1998) (a creditor may commence an action against the debtor thirty days subsequent to either the end of the automatic stay or the statutory limitations period); 26 U.S.C.A. § 6503 (1982 & Supp. 1998) (Section 6503(b) of the Internal Revenue Code suspends the collection of taxes for any period the taxpayer's assets "are in the control or custody of the court in any proceeding before any court of the United States . . . and

for six months thereafter."); Waugh v. Internal Revenue Serv. (In re Waugh), 109 F.3d 489 (8th Cir. 1997); In re Taylor, 81 F.3d 20 (3rd Cir. 1996); West v. United States (In re West), 5 F.3d 423 (9th Cir. 1993); United States v. Richards (In re Richards), 994 F.2d 763 (10th Cir. 1993); Montoya v. United States (In re Montoya), 965 F.2d 554 (7th Cir. 1992); Palmer v. Internal Revenue Serv. (In re Palmer), 228 B.R. 880 (B.A.P. 6th Cir. 1999); Pagnac v. Minnesota Dep't of Revenue (In re Pagnac), 228 B.R. 219 (B.A.P. 8th Cir. 1998); Brickley v. United States (In re Brickley), 70 B.R. 113, 115 (B.A.P. 9th Cir. 1986) ("it is clear that Congress, by enacting Section 108(c), intended to activate Section 6503(b) and thereby suspend the running of the statute of limitations for tax collection during a taxpayer's bankruptcy proceeding"); In re Pastula, 203 B.R. 941 (Bankr. E.D. Mich.) (holding that three-year priority period was not suspended), rev'd, 227 B.R. 794 (E.D. Mich. 1997); In re Eysenbach, 183 B.R. 365 (W.D.N.Y. 1995); In re Avila, 228 B.R. 63 (Bankr. D. Mass. 1999); Daniel v. United States (In re Daniel), 227 B.R. 675 (Bankr. N.D. Ind. 1998); Fontes v. United States (In re Fontes), 228 B.R. 3 (Bankr. N.D. Ala. 1998); Zecco v. United States (In re Zecco), 211 B.R. 109 (Bankr. D. Mass. 1997). Cf. Quenzer v. United States (In re Quenzer), 19 F.3d 163 (5th Cir. 1993) (tolling could not be used to toll priority period for collection of taxes).

The Court also finds that to discharge this debt by simply following the literal construction of sections 507(a)(8)(A) and 523(a)(1)(A) would be an absurd consequence unintended by Congress and would allow debtors to manipulate the bankruptcy system. See Brickley, 70 B.R. at 115 ("The Debtors' argument that the Internal Revenue Service failed to collect its taxes within the three-year period of nondischargeability ignores the fact that their property was unreachable during most of that time."). Although the Court imputes no bad faith on the Plaintiffs, it is worth noting that the Defendant's claim was to be paid in full under the Plaintiffs' Chapter 13 plan. Were the Court to allow this debt to be discharged, debtors could easily propose a plan to pay the Internal Revenue Service's claim in full under Chapter 13, dismiss their Chapter 13 case and file Chapter 7 to discharge the tax debt. Such an easy loophole cannot be allowed.

Congress enacted section 108 to "protect the right of governmental units (and other creditors) to

collect debts which are not discharged in the bankruptcy proceeding." S. REP. NO. 95-989 at 15 (1978), reprinted in 1978 U.S.C.C.A.N. 5787. Further, section 108 contemplates Internal Revenue Code section 6503(b). See § 108; S. REP. NO. 95-989 at 30-31 (1978), reprinted in 1978 U.S.C.C.A.N. 5787. In granting the Defendant's motion for summary judgment, this Court follows the reasoning of Zecco v. United States, in which Judge Hillman wrote:

> Absence of tolling would permit a scenario where a tax debtor could file a petition under Title 11 and allow the automatic stay to consume much or all of the three year period, then dismiss or otherwise terminate the earlier case and file anew, more than three years after the original assessment, and obtain discharge from the tax liabilities. This would not be a desirable conclusion . . . . [T]he court, in expounding a statute, [will not] give to it a construction which would in any degree disarm the government of a power which would enable individuals to embarrass it, in the discharge of the high duties it owes to the community—unless plain and express words indicated that such was the intention of the Legislature. . . ."

Zecco, 211 B.R. at 109 (citing Brown v. Duchesne, 60 U.S. 183, 194-95 (1956)) (internal quotations omitted). Under the scenario of the present case, allowing this tax debt to be discharged would circumvent wholly the IRS's three-year time period in which to collect taxes. It is clear that Congress intended the IRS to be granted three years to collect taxes, after which a tax debt could be discharged. § 507(a)(8)(A). Therefore, summary judgment is granted in favor of the Defendant.

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this _____ day of May, 1999, at Manchester, New Hampshire.

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Mark W. Vaughn
Chief Judge