

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE**

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IN RE:

WILLIAM DOTSON,

Debtor.

BK #93-23811-WHB  
Chapter 7

WILLIAM DOTSON,

Plaintiff,

v.

Adversary Proceeding  
No. 93-0968

UNITED STATES OF AMERICA,

Defendant.

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**AMENDED MEMORANDUM OPINION AND ORDER ON  
PLAINTIFF'S COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF FEDERAL INCOME TAX OBLIGATION**

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This cause is before the Court on the debtor-plaintiff's complaint to determine whether his federal income tax obligations for the years 1983, 1985 and 1986 may be discharged. At issue is whether previous bankruptcy cases filed by the debtor tolled expiration of the time periods set forth in 11 U.S.C. §507(a)(7)(A). Expiration of these time periods would render the tax obligations at issue dischargeable. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I). The following constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

## **FACTUAL SUMMARY**

The pertinent facts giving rise to the instant controversy have been stipulated by the parties. The debtor's obligations for income taxes and accrued interest are as follows: \$8,899.96 for the tax year 1983, assessed on February 3, 1986; \$2,748.13 for the tax year 1985, assessed on May 26, 1986; and \$3,577.52 for the tax year 1986, assessed on July 3, 1989. The present chapter 7 case was commenced with the debtor's voluntary petition filed April 9, 1993. The debtor has had seven prior chapter 13 cases pending in this district. Beginning in 1982, these cases are: number 82-23951 filed November 3, 1982, closed January 19, 1984; number 84-20912 filed March 6, 1984 with an unknown closing date; number 84-24123, with unknown filing and closing dates; 86-21696 filed March 20, 1986 and closed June 21, 1988; number 88-28291, filed November 8, 1988 and closed July 3, 1991; number 91-25284 filed May 13, 1991 and closed March 23, 1992; and number 92-26595, filed June 19, 1992 and closed February 22, 1993.

An aggregate known time period of five years and seven months was consumed by these filings. This is significant because the parties have further stipulated that if the priority granting time periods of §507(a)(7)(A)(i) and (ii), i.e., three years and two hundred and forty days respectively, were extended by this duration, then the debtor's tax obligations are priority claims under this section and nondischargeable pursuant to §523(a)(1). It is the debtor's position that the §507(a)(7) time periods were not so extended by the debtor's prior filings. The defendant argues otherwise. By agreement the dispute was submitted on the pleadings, stipulations and memoranda.

## **DISCUSSION**

Exceptions to a debtor's discharge of certain debts in chapter 7 are found in §523. Among the debts excepted are those entitled to priority under §507. Section 507(a)(7)(A)(i) and (ii) establish

that certain taxes due within three years before the date of the filing of the bankruptcy petition or assessed within 240 days before the date of the filing of the bankruptcy petition are entitled to priority and thus, are excepted from discharge. Obviously, the reverse is true, and given the due and assessment dates for the taxes at issue, the debtor contends that these time periods expired prior to the filing of this chapter 7, rendering the obligations dischargeable. According to the debtor, the defendant should have obtained relief from the stay in the prior bankruptcy cases and pursued collection of the taxes due. at that time. The debtor further contends that the failure of the IRS to do so must result in the loss of the right of the IRS to now pursue such collection.

Absent the existence and effect of §108(c) of the Bankruptcy Code, the debtor's argument would have merit. This section<sup>1</sup> operates to extend the time in which "creditors have to collect claims that have been stayed by a bankruptcy proceeding." In re Montoya, 965 F. 2d 554, 555 (7th Cir. 1992). Essentially, the section "provides that an unexpired nonbankruptcy statute of limitations continues for 30 days after the stay has been lifted or until the limitations period has expired, whichever is later." Id. at 556. As discussed in its legislative history,<sup>2</sup> and applicable case law,<sup>3</sup>

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<sup>1</sup> In pertinent part, §108(c) provides: ". . . [i]f applicable nonbankruptcy law, . . . fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, . . . and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of - (1) the end of such period, including any suspension . . . ; or (2) 30 days after notice of the termination or expiration of the stay under section 362 . . . ."

<sup>2</sup> According to the Senate Report issued with enactment of §108(c), the section is designed to apply §6503 of the IRC to suspend the statute of limitations on a tax liability of a taxpayer from running while his assets are subject to a court proceeding, including one under Title 11 and for 6 months thereafter. "Accordingly, the statute of limitations on collection of a nondischargeable feral tax liability of a debtor will resume running after 6 months following the end of the period during which the debtor's assets are in the control or custody of the bankruptcy court." S. Rep. No. 989, 95th Cong., 2nd Sess. 30-31 (1978), U.S. Code Cong. & Admin. News 1978, pp. 5787, 5816-5817, reprinted at Norton Bankr. Code Phamp. 1993-1994 ed., p. 97.

<sup>3</sup> See, e.g., In re Montoya, *supra*; In re Brickley, 70 B.R. 113 (Bankr. 9th BAP 1986); In re West, 5 F. 3d 423 (9th Cir. 1993); In re Florence, 115 B.R. 109 (Bankr. S.D. Ohio 1990); In re Linder, 139 B.R. 950 (D. Colo. 1992); In re Stoll, 132 B.R. 782 (N.D. Ga. 1990); In re Ross, 130 B.R. 312 (Bankr. D. Neb. 1991); In re

§108(c) specifically gives effect to the tolling provision for tax collection efforts set forth in the Internal Revenue Code (IRC) at §6503. In relevant part, the section provides that:

[t]he running of the period of limitations . . . on the making of [tax] assessments or collection shall, in a case under [the Bankruptcy Code], be suspended for the period during which the Secretary is prohibited by reason of such case from making the assessment or from collecting and -

(1) for assessment, 60 days thereafter, and

(2) for collection, 6 months thereafter.

26 U.S.C. §6503(h).

In light of the undeniable applicability of this language to the issue at bar as evidenced by the above discussion and overwhelming number of cases that support such application, the Court is persuaded that the §507(a)(7)(A) time periods at issue were, as a matter of law, tolled during the pendency of the debtor's prior bankruptcy cases. See, footnotes 2 and 3. The debtor maintained the tolling effect by his repetitive bankruptcy filings and he may not shift the blame to the government.<sup>4</sup>

### **CONCLUSION**

As noted above, the parties here have stipulated that if the §507(a)(7)(A) time periods were tolled by the debtor's prior bankruptcy cases, the debtor's tax obligations will be entitled to priority

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Wise, 127 B.R. 20 (Bankr. E.D. Ark. 1991). No contrary cases that would support the debtor's position have been presented to or located by the Court.

<sup>4</sup> See, e.g., In re Wekell, 144 B.R. 503 (W.D. Wash. 1992) (holding that IRS should not be required to seek relief from the stay).

status in this case under §507(a)(7). It follows that tax obligations with such priority status are nondischargeable pursuant to §523(a)(1).

Thus, it may be determined that the tax obligations at issue are nondischargeable. It is therefore **ORDERED** that the debtor's tax obligations for 1983, 1985 and 1986 in the amounts of \$8,899.96, \$2,748.13 and \$3,577.52, respectively, are excepted from discharge in accordance with 11 U.S.C. §523(a)(1).

**SO ORDERED** this 30<sup>th</sup> of March, 1994.

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WILLIAM HOUSTON BROWN  
UNITED STATES BANKRUPTCY JUDGE

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