

Dated: September 26, 2018
The following is SO ORDERED:




David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Terry Lyle Clothier and
Barbara Jean Clothier
fka Barbara J. Crigger,
Debtors.
S.S.N: xxx – xx – 4570 (H)
S.S.N: xxx – xx – 9927 (W)

Case No. 13-29432-K
Joint Chapter 7

Terry Lyle Clothier and
Barbara Jean Clothier,
Plaintiffs,
v.
Internal Revenue Service,
Defendant.

Adv. Proc. No. 18-00104-K

MEMORANDUM AND ORDER RE DEFENDANT'S MOTION TO ALTER OR AMEND
JUDGMENT COMBINED WITH NOTICE OF THE ENTRY THEREOF

INTRODUCTION

On September 4, 2013, the above-named Plaintiffs/Debtors, Terry Lyle Clotheir and Barbara Jean Clothier fka Barbara J. Crigger ("Debtors"), filed a joint no-asset case under Chapter 7 of the Bankruptcy Code. On December 18, 2013, they both received general discharges under 11 U.S.C. § 524(a)(1) of all their dischargeable debts whereupon this case was closed. On March 1, 2018, this case was reopened under 11 U.S.C. § 350(b) and F.R.B.P. 5010 to allow the Debtors to file the instant complaint under 11 U.S.C. § 523(a)(1) to determine the dischargeability of certain prepetition income tax obligations owed to the Defendant, the Internal Revenue Service ("IRS"). On May 16, 2018, Debtors filed a motion pursuant to F.R.B.P. 7056 for summary judgment (dkt. no. 6) to which the IRS responded and also filed its own motion for summary judgment (dkt. no. 13). On August 13, 2018, the Court partially granted summary judgment for both Debtor and the IRS.¹ (Dkt. no. 15.) The IRS timely filed this motion to alter or amend the judgment. (Dkt. no. 18.)

For the reasons discussed below, the Court will grant the IRS's motion to alter or amend the judgment as to the 2008 tax debt.

JURISDICTION

Determinations as to dischargeability of particular debts are core proceedings which the Court may both hear and determine under 28 U.S.C. § 157(b)(2)(I). The Court has subject matter jurisdiction under 28 U.S.C. § 1334(a)-(b) and § 157(a).

¹ *In re Clothier*, 588 B.R. 28 (Bankr. W.D. Tenn. 2018).

FACTS

As noted in the Court's original memorandum opinion, the relevant background facts underlying this proceeding are simple and undisputed. They may be briefly summarized as follows.

Debtors owed income taxes to the IRS for tax years 2008 and 2009. (Dkt. no. 7, *Memorandum in Support of Motion for Summary Judgment* ("Memorandum") 1.) The deadline for the filing of each of those tax returns was extended to October 15, 2009 and October 15, 2010 respectively. (Dkt. no. 14, *Memorandum in Support of Response to Motion for Summary Judgment and Cross Motion for Summary Judgment* ("Response") 7.)

Debtors filed a Chapter 11 petition on January 19, 2012. (*Memorandum* at 1.) The Chapter 11 case was dismissed on June 5, 2013. (*Id.*) Debtors subsequently filed a joint Chapter 7 petition on September 4, 2013 and received general discharges of all their dischargeable debts on December 18, 2013. (*Id.*) The IRS was listed as a prepetition creditor and was sent notice of the commencement of this joint Chapter 7 bankruptcy case. (*Id.*) The IRS understandably did not file a proof of claim in this no-asset Chapter 7 case. (*Id.*)

ANALYSIS

Federal Rule of Civil Procedure 59(e), made applicable to this proceeding by virtue of Federal Rule of Bankruptcy Procedure 9023, gives a party 14 days in which to move to alter or amend a judgment. Such a motion should only be granted if (1) a clear error of law exists; (2) new evidence is discovered; (3) there is an intervening change in controlling law; or (4) a need

exists to prevent manifest injustice. *See, for example, Mich. Flyer LLC v. Wayne Cty. Airport Auth.*, 860 F.3d 425, 431 (6th Cir. 2017).

In this case, the IRS's motion to alter or amend was filed within the 14-day time frame and is, thus, timely. The IRS's motion alleges that the Court's judgment contains a clear error of law because the Court failed to consider the "hanging paragraph" in 11 U.S.C. § 507(a)(8) which states:

An otherwise applicable time period specified in this paragraph shall be suspended for . . . any time during which the stay of proceedings was in effect in a prior case under this title . . . plus 90 days.

In the parties' briefs and responses filed in support and opposition of the motions for summary judgment, neither party ever mentioned or cited the hanging paragraph; and the Court did, in fact, fail to take it into consideration.

In its brief in support of its motion to alter or amend the judgment, the IRS states that the Court's oversight "likely stemmed from the Debtors' false representations in their filings" that no tolling provision applied to § 507(a)(8)(i). However, the Court notes that at no time did the IRS ever mention or cite the hanging paragraph. Moreover, the IRS's motion for summary judgment specifically and erroneously argues that the tolling provision of § 507(a)(8)(A)(ii) applied to § 507(a)(8)(A)(i).

Two facts are important for deciding this matter. First, that the hanging paragraph does exist, and second, that the Court failed to consider it. The IRS's original erroneous argument regarding § 507(a)(8)(A)(ii) does not change what the law is or the Court's duty to apply the law properly.

Debtors argue that the IRS must exhaust its administrative remedies in order for the period to toll. Debtors offer no support for this position. Requiring the IRS to exhaust all of its

administrative remedies would be in direct contradiction to the plain meaning of the statute which states the period "**shall** be suspended for . . . any time during which the stay of proceedings was in effect in a prior case under this title . . . plus 90 days." 11 U.S.C. § 507(a)(8) (emphasis added). The statute does not require the IRS to take any action at all; the look-back period automatically tolls upon the filing the previous case.

Therefore, because the clear meaning of the hanging paragraph is to toll the period, the 2008 tax liability was not outside of the three year lookback period and was not discharged by Debtors' Chapter 7 discharges. The Court made a clear error of law when it held otherwise. Accordingly, the IRS's motion to alter or amend is hereby granted.

CONCLUSION

As noted earlier, by not considering the hanging paragraph in 11 U.S.C. § 507(a)(8), the Court made a clear error of law when it held Debtors' 2008 tax debt was discharged. Considering the undisputed background facts and applicable law, summary judgment should have been granted in favor of the IRS regarding the Debtors' 2008 tax debt.

BASED ON ALL OF THE FOREGOING, IT IS ORDERED AND NOTICE IS
HEREBY GIVEN that:

1. The IRS's motion to alter or amend judgment is **GRANTED**.
2. The IRS's F.R.B.P. 7056 motion for summary judgment is **GRANTED** in full. The 2008 and 2009 tax debts are hereby non-dischargeable.
3. The Bankruptcy Court Clerk shall cause a copy of this Memorandum, Order, and

Notice of the entry thereof to be sent to the following:

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