



**Dated: January 25, 2021**  
**The following is ORDERED:**

*Jennie D. Latta*

Jennie D. Latta  
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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In re  
JOHNNIE RAYMOND CANDY,  
Debtor.

Case No. 19-27019-L  
Chapter 7 (Asset)

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JOHNNIE RAYMOND CANDY,  
Plaintiff,  
v.  
INTERNAL REVENUE SERVICE,  
Defendant.

Adv. Proc. No. 19-00262

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ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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BEFORE THE COURT is *Defendant's Motion for Summary Judgment* filed November 3, 2020 [Dkt. No. 15], and the *Plaintiff's Response to Defendant's Motion for Summary Judgment* filed December 4, 2020 [Dkt. No. 18]. In support of the motion, Defendant Internal Revenue Service ("Defendant" or "IRS") has filed a *Memorandum in Support of Defendant's Motion for Summary Judgment*; a *Statement of Undisputed Facts*; the *Declaration of Sonya Hardin, IRS Bankruptcy Specialist* with Exhibits A through L. The Plaintiff relies upon his *Complaint to*

*Determine Dischargeability* [Dkt. No. 1] and the *Answer* filed by the IRS [Dkt. No. 4]. The issues have been fully briefed and are now ready for decision.

**BACKGROUND FACTS**

The Plaintiff commenced his bankruptcy case by filing a voluntary petition under Chapter 7 of the Bankruptcy Code on September 4, 2019. [Bankr. Dkt. No. 1]. The Plaintiff’s schedules acknowledge only one debt owed – an unsecured, nonpriority obligation to the IRS in the amount of \$800,000.00. [Bankr. Dkt. No. 1, Schedule E/F]. The Plaintiff lists total assets of \$5,700, all of which is claimed as exempt. [Bankr. Dkt. No. 1, Schedules A/B, and C]. The Plaintiff is an attorney at law in active practice. The Plaintiff states that the current monthly income for himself and his non-filing spouse at the time of filing was \$717.33.

The Plaintiff acknowledges that he is indebted to the IRS in the amount of \$831,380.38, representing obligations for tax years 2001-2013. The IRS agrees that is the amount owed as of September 7, 2020. It consists of the following:

<b>Tax Type</b>	<b>Tax Year</b>	<b>Date of Assessment</b>	<b>Amount of Assessment</b>	<b>Outstanding Balance as of Sept. 7, 2020</b>
Income (Form 1040)	2001	09/01/2014	\$26,174.00	\$82,360.93
Income (Form 1040)	2002	09/23/2013	\$51,407.00	\$157,319.39
Income (Form 1040)	2003	09/30/2013	\$45,895.00	\$136,384.95
Income (Form 1040)	2004	10/07/2013	\$23,831.00	\$55,851.43
Income (Form 1040)	2005	07/17/2006	\$405,710.00	\$0.00
Income (Form 1040)	2006	02/22/2010 07/15/2013	\$1,961.00 \$11,071.00	\$30,587.14
Income (Form 1040)	2007	07/29/2013	\$42,174.00	\$100,115.75
Income (Form 1040)	2008	07/29/2013	\$25,408.00	\$7,554.77
Income (Form 1040)	2009	08/05/2013	\$16,866.00	\$35,855.53
Income (Form 1040)	2010	08/12/2013	\$10,501.00	\$21,231.04
Income (Form 1040)	2011	08/12/2013	\$35,467.00	\$71,598.56
Income (Form 1040)	2012	07/22/2013	\$35,923.00	\$63,722.06
Income (Form 1040)	2013	05/19/2014	42,381.00	\$68,798.83
				\$831,380.38

See Dkt. No. 15, Ex. 2.

The Plaintiff filed his *Complaint to Determine Dischargeability* on November 26, 2019 (the “Complaint”). Without citing any particular authority, the Complaint asks that, “the Court find that the Creditor allow the discharge of the portions of the tax debt that may be allowed for discharge.” [Dkt. 1, p. 2].

The Answer admits the factual statements of the Complaint but raises two defenses: first, “The Debtor made a fraudulent return or willfully attempted to evade or defeat his tax liability; therefore, the debt is nondischargeable under 11 U.S.C. § 523(a)(1)(C)”; second, “The Debtor is not entitled to a discharge for any debt for a tax with respect to which a return, or equivalent report or notice, if required, was not filed or given under 11 U.S.C. § 523(a)(1)(B).” [Dkt. No. 4, p. 1].

The IRS filed its *Motion for Summary Judgment* on November 3, 2020. [Dkt. No. 15]. It bases its motion on 11 U.S.C. § 523(a)(1)(C), alleging that the Plaintiff’s tax debt is nondischargeable because he “willfully attempted to evade or defeat the payment of the taxes.” The IRS asserts that the Plaintiff engaged in various affirmative acts to voluntarily, consciously, and knowingly evade payment of his taxes.

The Plaintiff argues that the question of his intent should not be decided based upon his deposition transcript but rather that the factfinder should have the opportunity to observe his demeanor and assess his credibility. He asserts that the exigencies of his law practice caused him to neglect its business side and fail to set aside sufficient funds to pay his taxes.

The only issue before the court is whether the Defendant is entitled to summary judgment.

### **JURISDICTION, AUTHORITY, AND VENUE**

Jurisdiction over a contested matter arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy

judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The determination of the dischargeability of a particular debt is a core proceeding arising under the Bankruptcy Code. *See* 28 U.S.C. § 157(b)(2)(I). Accordingly, the bankruptcy court has authority to hear and determine this adversary proceeding subject only to appellate review under section 158 of title 28. *See* 28 U.S.C. § 157(b)(1). Venue of this proceeding is proper to the Western District of Tennessee because this matter arises in a bankruptcy case pending in this district. *See* 28 U.S.C. § 1409(a).

#### **SUMMARY JUDGMENT STANDARD**

Federal Rule of Civil Procedure 56 made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7056 provides that summary judgment is appropriate if the movant can show that there is no genuine dispute as to any material fact and thus, the movant is entitled to judgment as a matter of law. Substantive law will identify which facts are material. A genuine issue of material fact exists only when, “there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). When deciding a motion for summary judgment, the court does not weigh the evidence to determine the truth of the matter asserted but to determine whether a genuine issue for trial exists. *Id.* In reaching its decision, the court views the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

The moving party bears the initial burden of proof that there are no genuine issues that might affect the outcome of the action under governing law. *In re Oliver*, 414 B.R. 361, 367

(Bankr. E.D. Tenn. 2009), citing, *Owens Corning v. Nat'l Union Fire Ins. Co.*, 257 F.3d 484, 491 (6th Cir. 2001); Fed. R. Civ. P. 56(a), incorporated at Fed. R. Bankr. P. 7056.

The Court of Appeals for the Sixth Circuit has described the standards for granting summary judgment as follows:

A genuine issue of material fact exists when, “there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In deciding whether this burden has been met by the movant, this court views the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). However, to survive summary judgment, the Plaintiff must present affirmative evidence sufficient to show a genuine issue for trial. *Anderson*, 477 U.S. at 249, 106 S. Ct. 2505. Therefore, “[i]f evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 249-50, 106 S. Ct. 2505.

*White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472, 475-76 (6th Cir. 2010).

Only disputes over facts that might affect the outcome of the suit under governing law will preclude the entry of summary judgment. *Id.* ““Summary judgment is proper if the evidence, taken in the light most favorable to the nonmoving party, shows that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.”” *Pazdzierz v. First American Title Ins. Co. (In re Pazdzierz)*, 718 F.3d 582, 586 (6th Cir. 2013), quoting *Mazur v. Young*, 507 F.3d 1013, 1016 (6th Cir.2007).

### UNDISPUTED FACTS

The Defendant submitted the following facts as undisputed based upon the record before the court.<sup>1</sup>

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<sup>1</sup> The court has omitted titles supplied by the Defendant as they do not constitute part of the factual record.

1. A delegate of the Secretary of the Treasury made the following federal income tax assessments against Johnnie Raymond Candy, resulting in the following amounts owed:

<b>Tax Type</b>	<b>Tax Year</b>	<b>Date of Assessment</b>	<b>Amount of Assessment</b>	<b>Outstanding Balance as of Sept. 7, 2020</b>
Income (Form 1040)	2001	09/01/2014	\$26,174.00	\$82,360.93
Income (Form 1040)	2002	09/23/2013	\$51,407.00	\$157,319.39
Income (Form 1040)	2003	09/30/2013	\$45,895.00	\$136,384.95
Income (Form 1040)	2004	10/07/2013	\$23,831.00	\$55,851.43
Income (Form 1040)	2005	07/17/2006	\$405,710.00	\$0.00
Income (Form 1040)	2006	02/22/2010 07/15/2013	\$1,961.00 \$11,071.00	\$30,587.14
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Income (Form 1040)	2008	07/29/2013	\$25,408.00	\$7,554.77
Income (Form 1040)	2009	08/05/2013	\$16,866.00	\$35,855.53
Income (Form 1040)	2010	08/12/2013	\$10,501.00	\$21,231.04
Income (Form 1040)	2011	08/12/2013	\$35,467.00	\$71,598.56
Income (Form 1040)	2012	07/22/2013	\$35,923.00	\$63,722.06
Income (Form 1040)	2013	05/19/2014	42,381.00	\$68,798.83
				\$831,380.38

Declaration of Sonya Hardin (Decl. of Hardin) at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*; Doc. No. 7 at 4–7.

2. On the date the Service made the assessments described in Paragraph 1, above, the Service sent notice and demand for payment of the assessments to Johnnie Candy. Decl. of Hardin at ¶ 8.

3. Despite notice and demand for payment, Johnnie Candy has failed to fully pay his tax liabilities. Decl. of Hardin at ¶ 9; Doc. No. 7 at 4–7.

4. Interest has been assessed against Johnnie Candy pursuant to 26 U.S.C. § 6601(a) and (b) from the date their tax liabilities became due, at a rate set forth in 26 U.S.C. § 6621(a). Decl. of Hardin at ¶ 10.

5. As a result of the failure of Johnnie Candy to timely file his tax returns and pay his taxes, penalties have been assessed against him pursuant to 26 U.S.C. § 6651. Decl. of Hardin at ¶ 11.

6. As of September 7, 2020, Johnnie Candy is indebted to the United States in the amount of \$831,380.38 with respect to the taxes, penalties, and interest assessed against him. Decl. of Hardin at ¶ 12; Government Exhibit A, *Johnnie Candy Account Transcripts*; Doc. No. 7 at 4–7. 3

7. In addition to the tax years at issue in this suit, a delegate of the Secretary of the Treasury made the following federal income tax assessments against Johnnie Raymond Candy:

<b>Tax Type</b>	<b>Tax Year</b>	<b>Date of Assessment</b>	<b>Amount of Assessment</b>
Income Form (1040)	1994	04/01/2002	\$19,039.00
Income (Form 1040)	1995	07/15/2002	\$24,155.00
Income (Form 1040)	1996	04/08/2002	\$30,672.00
Income (Form 1040)	1997	04/15/2002	\$39,363.52
Income (Form 1040)	1998	04/15/2002	\$26,663.92
Income (Form 1040)	1999	03/11/2002	\$23,269.00
Income (Form 1040)	2000	03/18/2002	\$38,151.00

Decl. of Hardin at ¶ 13; Government Exhibit A, *Johnnie Candy Account Transcripts*; Government Exhibit B, *Johnnie Candy Deposition Transcript* at 52 (“I’m sure it’s accurate.”).

8. On the date the Service made the assessments described in Paragraph 7, above, the Service sent notice and demand for payment of the assessments to Johnnie Candy. Decl. of Hardin at ¶ 14.

9. Despite notice and demand for payment, Johnnie Candy has failed to fully pay his tax liabilities. Decl. at ¶ 15.

10. Johnnie Candy's tax return for the tax year 1994 was due April 15, 1995. 26 U.S.C. § 6072. Johnnie Candy did not file his 1994 return until 2002. Decl. of Hardin at ¶ 13; Government Exhibit A, *Johnnie Candy Account Transcripts*; Government Exhibit B, *Johnnie Candy Deposition Transcript* at 52 ("I'm sure it's accurate.").

11. Johnnie Candy's tax return for the tax year 1995 was due April 15, 1996. 26 U.S.C. § 6072. Johnnie Candy did not file his 1995 return until 2002. Decl. of Hardin at ¶ 13; Government Exhibit A, *Johnnie Candy Account Transcripts*; Government Exhibit B, *Johnnie Candy Deposition Transcript* at 52 ("I'm sure it's accurate.").

12. Johnnie Candy's tax return for the tax year 1996 was due April 15, 1997. 26 U.S.C. § 6072. Johnnie Candy did not file his 1996 return until 2002. Decl. of Hardin at ¶ 13; Government Exhibit A, *Johnnie Candy Account Transcripts*; Government Exhibit B, *Johnnie Candy Deposition Transcript* at 52 ("I'm sure it's accurate.").

13. Johnnie Candy's tax return for the tax year 1997 was due April 15, 1998. 26 U.S.C. § 6072. Johnnie Candy did not file his 1997 return until 2002. Decl. of Hardin at ¶ 13; Government Exhibit A, *Johnnie Candy Account Transcripts*; Government Exhibit B, *Johnnie Candy Deposition Transcript* at 52 ("I'm sure it's accurate.").

14. Johnnie Candy's tax return for the tax year 1998 was due April 15, 1999. 26 U.S.C. § 6072. Johnnie Candy did not file his 1998 return until 2002. Decl. of Hardin at ¶ 13; Government Exhibit A, *Johnnie Candy Account*



*Transcripts*; Government Exhibit B, *Johnnie Candy Deposition Transcript* at 52 (“I’m sure it’s accurate.”).

15. Johnnie Candy’s tax return for the tax year 1999 was due April 15, 2000. 26 U.S.C. § 6072. Johnnie Candy did not file his 1999 return until 2002. Decl. of Hardin at ¶ 13; Government Exhibit A, *Johnnie Candy Account Transcripts*; Government Exhibit B, *Johnnie Candy Deposition Transcript* at 52 (“I’m sure it’s accurate.”).

16. Johnnie Candy’s tax return for the tax year 2000 was due April 15, 2001. 26 U.S.C. § 6072. Johnnie Candy did not file his 2000 return until 2002. Decl. of Hardin at ¶ 13; Government Exhibit A, *Johnnie Candy Account Transcripts*; Government Exhibit B, *Johnnie Candy Deposition Transcript* at 52 (“I’m sure it’s accurate.”).

17. Johnnie Candy’s tax return for the tax year 2001 was due April 15, 2002. 26 U.S.C. § 6072. Johnnie Candy did not file his 2001 return until 2013. Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*; Doc. No. 7 at 4–7.

18. Johnnie Candy’s tax return for the tax year 2002 was due April 15, 2003. 26 U.S.C. § 6072. Johnnie Candy did not file his 2002 return until 2013. Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*; Doc. No. 7 at 4–7.

19. Johnnie Candy’s tax return for the tax year 2003 was due April 15, 2004. 26 U.S.C. § 6072. Johnnie Candy did not file his 2003 return until 2013.

Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*;  
Doc. No. 7 at 4–7.

20. Johnnie Candy’s tax return for the tax year 2004 was due April 15, 2005. 26 U.S.C. § 6072. Johnnie Candy did not file his 2004 return until 2013. Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*;  
Doc. No. 7 at 4–7.

21. Johnnie Candy’s tax return for the tax year 2006 was due April 15, 2007. 26 U.S.C. § 6072. Johnnie Candy did not file his 2006 return until 2013. Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*;  
Doc. No. 7 at 4–7.

22. Johnnie Candy’s tax return for the tax year 2007 was due April 15, 2008. 26 U.S.C. § 6072. Johnnie Candy did not file his 2007 return until 2013. Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*;  
Doc. No. 7 at 4–7.

23. Johnnie Candy’s tax return for the tax year 2008 was due April 15, 2009. 26 U.S.C. § 6072. Johnnie Candy did not file his 2008 return until 2013. Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*;  
Doc. No. 7 at 4–7.

24. Johnnie Candy’s tax return for the tax year 2009 was due April 15, 2010. 26 U.S.C. 6072. Johnnie Candy did not file his 2009 return until 2013. Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*;  
Doc. No. 7 at 4–7.

25. Johnnie Candy's tax return for the tax year 2010 was due April 15, 2011. 26 U.S.C. 6072. Johnnie Candy did not file his 2010 return until 2013. Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*; Doc. No. 7 at 4–7.

26. Johnnie Candy's tax return for the tax year 2011 was due April 15, 2012. 26 U.S.C. 6072. Johnnie Candy did not file his 2011 return until 2013. Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*; Doc. No. 7 at 4–7.

27. Johnnie Candy's tax return for the tax year 2012 was due April 15, 2013. 26 U.S.C. 6072. Johnnie Candy did not file his 2012 return until June 2013. Decl. of Hardin at ¶ 7; Government Exhibit A, *Johnnie Candy Account Transcripts*; Doc. No. 7 at 4–7.

28. Johnnie Candy is an attorney. Government Exhibit B, *Johnnie Candy Deposition Transcript* at 12.

29. Johnnie Candy has “always known” he had a duty to make estimated tax payments, file his tax returns, and pay his taxes. Government Exhibit B, *Johnnie Candy Deposition Transcript* at 32.

30. By 2000, Johnnie Candy had contact with the Service regarding his delinquent taxes. Government Exhibit B, *Johnnie Candy Deposition Transcript* at 31.

31. Around 2005, Johnnie Candy earned approximately \$1 million from negotiating a legal settlement (the 2005 settlement). Government Exhibit B, *Johnnie Candy Deposition Transcript* at 46.

32. By the 2005 tax year, when he earned \$1 million, Johnnie Candy had over \$633,000 in outstanding tax assessments, plus accrued statutory additions to tax, for the tax years 1994 through 2004. Decl. of Hardin at ¶¶ 7 and 13; Government Exhibit A, *Johnnie Candy Account Transcripts*.

33. Of that \$1 million, Johnnie Candy paid only \$10,000 to the Service. Government Exhibit B, *Johnnie Candy Deposition Transcript* at 47.

34. Instead of paying the Service, Johnnie Candy spent approximately \$100,000 paying other overdue bills, \$18,000 in six-months of overdue rent, and \$400,000 on a new house in Collierville, Tennessee. Government Exhibit B, *Johnnie Candy Deposition Transcript* at 47.

35. Johnnie Candy spent the remaining \$300,000 “living beyond [his] means.” Government Exhibit B, *Johnnie Candy Deposition Transcript* at 47.

36. Between 2005 and 2015, while Johnnie Candy was indebted to the United States, he paid for both of his children to go to private school, paid for both of his children to attend college, paid for weddings for both of his children, and purchased vehicles for both of his children. Government Exhibit B, *Johnnie Candy Deposition Transcript* at 29–30 and 34.

37. In 2018, Johnnie Candy earned approximately \$317,000 from negotiating a legal settlement (the 2018 legal settlement). Government Exhibit B, *Johnnie Candy Deposition Transcript* at 25–28; Government Exhibit C, *Amy Candy Deposition Transcript* at Exhibit 10.

38. By 2018, Johnnie Candy had amassed over \$1 million in outstanding tax assessments, plus accrued statutory additions to tax, for the tax years 1994

through 2013. Decl. of Hardin at ¶¶ 7 and 13; Government Exhibit A, *Johnnie Candy Account Transcripts*.

39. In December 2018, Johnnie Candy transferred the money he earned from the 2018 legal settlement to Amy Candy. Government Exhibit B, *Johnnie Candy Deposition Transcript* at 25–28; Government Exhibit C, *Amy Candy Deposition Transcript* at Exhibit 10.

40. Of that \$317,000, only \$140,000 was paid to the Service. Government Exhibit B, *Johnnie Candy Deposition Transcript* at 50.

41. Instead of paying the Service, Johnnie and Amy Candy used the remaining money from the 2019 settlement to help them purchase a home in Florida, two vehicles, and to pay off other debts. Government Exhibit B, *Johnnie Candy Deposition Transcript* at 50.

42. Prior to 2005, Johnnie and Amy Candy lived in a rental home. Government Exhibit C, *Amy Candy Deposition Transcript* at 25.

43. In March of 2005, using the money he earned from a legal settlement, Johnnie Candy and Amy Candy purchased a home at 926 Juliana Cove, Collierville, Tennessee (the Juliana Cove property) for approximately \$419,000. Government Exhibit B, *Johnnie Candy Deposition Transcript* at 18 and 47; Government Exhibit C, *Amy Candy Deposition Transcript* at 38; Government Exhibit D, *2005 Juliana Cove Deed*.

44. During the times relevant to this case, Amy Candy did not earn an income. Government Exhibit C, *Amy Candy Deposition Transcript* at 59–60.

45. Even though Johnnie Candy earned the money to purchase the home, the Juliana Cove property was titled only in Amy Candy's name. Government Exhibit D, *Deed for Juliana Cove Property*; Government Exhibit C, *Amy Candy Deposition Transcript* at 46.

46. In August 2014, Amy Candy sold the Juliana Cove property for approximately \$405,000. Government Exhibit C, *Amy Candy Deposition Transcript* at 46; Government Exhibit E, *2014 Juliana Cove Deed*.

47. Also in August 2014, using the proceeds from the sale of the Juliana Cove property, Amy Candy purchased a home at 4203 Indian Bayou Trail, Destin, Florida (the Indian Bayou property) for \$170,000. Government Exhibit C, *Amy Candy Deposition Transcript* at 35 and 39–40; Government Exhibit F, *2014 Indian Bayou Settlement Statement*.

48. In February 2015, Amy Candy sold the Indian Bayou property for approximately \$170,000. Government Exhibit C, *Amy Candy Deposition Transcript* at 48.

49. Also in February 2015, using the proceeds from the sale of the Indian Bayou property, Amy Candy purchased a home at 743 Bayshore Drive, Miramar Beach, Florida (the Bayshore property) for approximately \$271,000. Government Exhibit C, *Amy Candy Deposition Transcript* at 48–49; Government Exhibit G, *2015 Bayshore Settlement Statement*.

50. In March 2016, Amy Candy sold the Bayshore property for approximately \$290,000. Government Exhibit C, *Amy Candy Deposition Transcript* at 49.

51. Also in March 2016, using the proceeds from the sale of the Bayshore property, Amy Candy purchased a home at 8933 River Sound Drive, Cordova, Tennessee (the River Sound property) for approximately \$245,000. Government Exhibit C, *Amy Candy Deposition Transcript* at 49; Government Exhibit H, *2016 River Sound Deed*.

52. In September 2017, Amy Candy sold the River Sound property for approximately \$270,000. Government Exhibit C, *Amy Candy Deposition Transcript* at 49–50; Government Exhibit I, *2017 River Sound Deed*. 10 53. Also in September 2017, using the proceeds from the sale of the River Sound property, Amy Candy purchased a home at 130 Woodbridge Cove, Somerville, Tennessee (the Woodbridge property) for approximately \$248,000. Government Exhibit C, *Amy Candy Deposition Transcript* at 50; Government Exhibit J, *2017 Woodbridge Settlement Statement*.

54. In May 2019, Amy Candy sold the Woodbridge property for approximately \$260,000. Government Exhibit C, *Amy Candy Deposition Transcript* at 50; Government Exhibit K, *2019 Woodbridge Closing Disclosures*.

55. Also in May 2019, using the proceeds from the Woodbridge Cove property plus money from the 2019 legal settlement, Amy Candy purchased a home at 1695 North Sky Glen Path, Hernando, Florida (the Sky Glen property) for approximately \$345,000. Government Exhibit C, *Amy Candy Deposition Transcript* at 50–51; Government Exhibit L, *2019 Sky Glen Deed*.

56. The houses described in Paragraphs 43–55, above, were titled only in Amy Candy’s name in order to avoid federal tax liens arising from Johnnie

Candy's tax liabilities. Government Exhibit C, *Amy Candy Deposition Transcript* at 51–52.

57. The houses described in Paragraphs 43–55, above, were purchased outright, and were not encumbered by a purchase money mortgage. Government Exhibit C, *Amy Candy Deposition Transcript* at 19–25.

The Plaintiff filed a response but did not refute any of the Undisputed Facts submitted by the Defendant. The Defendant's Statement of Undisputed Facts therefore will be accepted as true.

### ANALYSIS

Section 523(a)(1)(C), relied upon by the Defendant, provides that an individual debtor may not discharge a debt for a tax “with respect to which the debtor ... willfully attempted in any manner to evade or defeat such tax.” 11 U.S.C. § 523(a)(1)(C). The section 523(a)(1)(C) exception serves to limit the discharge of tax debts to the honest but unfortunate debtor. *Grogan v. Garner*, 498 U.S. 279, 286-87, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991). The United States Court of Appeals for the Sixth Circuit has specified that “[t]he analysis of a willful attempt to evade payment of tax debt under § 523(a)(1)(C) has two components: a conduct requirement and a mental state requirement.” *Stamper v. United States (In re Gardner)*, 360 F.3d 551, 558 (6th Cir. 2004). The party asserting that a tax debt should be excepted from discharge bears the burden of proof and both components must be proven by a preponderance of the evidence. *See Grogan v. Garner*, 498 U.S. at 291; *Gardner*, 360 F.3d at 557. Section 523(a)(1)(C) covers “both acts of omission, such as failure to file returns and failure to pay taxes, and acts of commission, such as affirmative acts of evasion.” *Id.* To satisfy the conduct requirement, proof of nonpayment alone is not enough; the government must show “knowing and deliberate” nonpayment. *Id.*, citing *Toti v. United States (In re Toti)*, 24 F.3d 806, 809 (6th Cir. 1994), *cert. denied*, 513 U.S. 987 (1994). To



satisfy the mental state requirement, the government must show that the debtor “(1) had a duty to pay taxes; (2) knew that he had such a duty; and (3) voluntarily and intentionally violated that duty.” *Id.* at 558, citing *United States v. Fretz (In re Fretz)*, 244 F.3d 1323, 1330 (11th Cir. 2001). That a debtor voluntarily and intentionally violated a known duty to pay taxes is established by proof that the debtor had sufficient income to pay tax liabilities but consciously chose not to do so. A showing that the debtor placed assets in the name of others to conceal them from the IRS supports such a determination. *See, e.g., Gardner*, 360 F.3d at 559 (finding that debtor concealed assets from the IRS by using nominee accounts); *United States v. Harold (In re Harold)*, 611 B.R. 835, 847 (Bankr. E.D. Mich. 2020) (finding that debtor sold and leased back her home to prevent IRS from enforcing its lien); *Volpe v. IRS (In re Volpe)*, 377 B.R. 579, 588 (Bankr. N.D. Ohio 2007) (finding that debtor paid all expenses of and lived in house titled in his mother’s name to avoid levy). A knowing, intentional violation also may be established by showing that a debtor paid for non-essential expenses such as vacations, luxury cars, or children’s private school tuition, rather than taxes. *See, e.g., Gardner*, 360 F. 3d at 560-61 (finding that while debtor was not paying taxes he went on twenty golfing and vacation trips); *Harold*, 611 B.R. at 847-48 (finding that while debtor was not paying taxes she paid “enormous amounts” for private school tuition for her children).

### ***The Conduct Requirement***

The evidence of the Plaintiff’s acts of omission and commission to evade payment of tax debt and of his “knowing and deliberate” nonpayment of taxes is overwhelming. The record reflects that the Plaintiff failed to timely file tax returns for the tax years 1994 to 2000, and that he eventually filed those returns in 2002. The IRS made assessments concerning these tax years in 2002. It sent notice to the Plaintiff of its assessments and made demand for payment. The record

further reflects that, notwithstanding notice, assessment, and demand for payment of his 1994-2000 taxes, the Plaintiff failed to timely file tax returns for the tax years 2001-2012. He did not file most of those returns until 2013.<sup>2</sup> The Plaintiff's conduct and his receipt of the assessment and demand for payment of his 1994-2000 taxes demonstrates that the Plaintiff knew that he had an obligation to file tax returns and pay taxes. Indeed, he testified as follows:

Q. Do you understand that you have a duty to pay taxes and file returns?

A. Yes, ma'am.

Q. And when did you first become aware of that duty?

A. Well, a lawyer took – I took tax in law school. So I knew you were supposed to file your returns and pay your taxes. I've always known that.

Defendant Exhibit B, *Johnnie Candy Deposition Transcript* at 32.

In order to satisfy the conduct requirement, the government need only show that a debtor failed to file tax returns and failed to pay taxes. It need not show an affirmative act to evade payment of taxes that would rise to the level of criminality. *See Toti*, 24 F.3d at 809 (“[A] plain reading of § 523(a)(1)(C) includes both acts of commission and acts of omission.”). The Sixth Circuit has stated that, “[F]ailure to file a tax return and failure to pay a tax fall within the definition in § 523(a)(1)(C) of a willing attempt to evade or defeat a tax liability.” *Id*; *see also Fretz*, 244 F.3d at 1329 (“Omitting to file tax returns, when coupled with the failure to pay taxes, does satisfy the conduct requirement of § 523(a)(1)(C).”).

The IRS has shown that the Plaintiff engaged in a pattern of failing to file tax returns and failing to pay taxes. It has shown that the failure to file and pay was knowing and deliberate. It has satisfied the conduct requirement of § 523(a)(1)(C).

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<sup>2</sup> The exception was the 2005 Tax Return, discussed *infra*, which was filed in July of 2006.

### *The Mental State Requirement*

To satisfy the mental state requirement, the government must show that the debtor had a duty to pay taxes; knew that he had such a duty; and voluntarily and intentionally violated that duty. There is no dispute that the Plaintiff had a duty to pay taxes (he acknowledges the outstanding debt) and that he knew that he had such a duty (his testified that he has known of his duty to pay taxes since at least the time he was in law school). The only remaining dispute, if any, concerns whether the Plaintiff “voluntarily and intentionally” violated that duty.

The IRS has shown that the Plaintiff failed to pay taxes when he had the ability to do so. In 2005 the Plaintiff earned approximately \$1 million. At that time, he owed more than \$633,000 in outstanding tax assessments from prior tax years. The Plaintiff filed his tax return for tax year 2005 on July 17, 2006. It showed a tax obligation for that year of \$405,710, yet the Plaintiff paid only \$10,000 toward his outstanding tax liability. When asked, “Where did the rest of the money go?”, the Plaintiff replied:

A. Well, I bought that house in Collierville. It was over \$400,000. I paid college expenses that were due at that time. It was quite a bit. I was \$100,000 behind in bills probably. Six months behind in rent. That was \$3,000 a month. So I spend about \$700,000 of that on what I just told you, plus bills. The other \$300,000 slowly got spent living beyond my means.

Government Exhibit B, *Johnnie Candy Deposition Transcript* at 47.

The IRS has also shown that the Plaintiff failed to pay taxes when he had the ability to pay them through the Plaintiff’s testimony that for the years tax 2005 through 2015 he did not pay taxes but did pay for both his children to go to private school, for both of his children to attend college, for their vehicles, and for their weddings.

The IRS has further shown that the Plaintiff failed to pay taxes when he had the ability to do so through the Plaintiff’s testimony that when he earned approximately \$317,000 in 2018, he

transferred the proceeds from the settlement to his wife, Amy Candy, rather than paying his taxes. While it is true that Mrs. Candy paid \$140,000 of that amount toward her husband's tax liability, the remainder was used to purchase a house in Florida, two vehicles, and to pay bills and living expenses.

These facts (and others) establish that in addition to failing to timely file tax returns and failing to timely pay taxes when he had the ability to do so, acts of omission, the Plaintiff also engaged in acts of commission to evade his tax liability. Beginning with the purchase of the Collierville house in 2005, the Plaintiff and his wife purchased a series of houses always titled in her name alone. Mrs. Candy did not have a separate source of income. When asked why the houses were titled in her name, Mrs. Candy replied:

A. The houses are in my name because I was told to do that from a licensed IRS agent back when we lived on Juliana Cove. That house had a lien on it, and I went to him to help me get the lien off, which he did, and at that time he told me to always put the houses in my name and to not put my name on his taxes. And I was just following advice. So that's what I've done. And that man has – he is gone. He died a few years ago.

Q. Who was that?

A. I do not recall his name.

Government Exhibit C, *Amy Candy Deposition Transcript* at 51-52.

Even if Mrs. Candy's statements are taken as true, they show only that the unnamed individual attempted to assist Mrs. Candy to avoid liability for her husband's unpaid taxes. They do not negate the fact that the Plaintiff took affirmative steps to evade the payment of taxes by paying over his income to his wife and arranging for the houses that he lived in to be titled in her name alone.

The Plaintiff does not dispute any of these facts. In response to the strong evidence of his intentional and voluntary evasion of his duty to pay taxes, the Plaintiff offers the following statements of his attorney:

First, the Plaintiff earned a relatively impressive income but paid few, if any, income taxes during these years. The Plaintiff and the undersigned [Attorney John E. Dunlap], although we were never in the same office, had a professional association with a lawyer in Memphis who employed other lawyers to conduct his trials. While the undersigned was assigned workers' compensation cases and simple motor vehicle accident cases, the Plaintiff prosecuted capital murder cases, serious personal injury and death cases. The Plaintiff would routinely receive cases contained in as many as five bankers boxes less than a week before trial. The Plaintiff is one of the few lawyers able to conduct extensive trials without relying on any notes or prepared texts. The Plaintiff was maintaining his own full-time practice at the same time. In spite of overwhelming professional obligations, the Plaintiff raised children and remained married.

All of these obligations resulted in the Plaintiff neglecting the business side of his law practice. This included setting aside adequate funds to fulfill his federal income tax obligations.

Second, the Defendant argues that an absence of consumer debt, credit cards, automobile notes, etc., indicates willful evasion of taxes. In reality, the enormous tax liens filed against the Plaintiff made it impossible for him to obtain credit in any form. Because he was unable to obtain credit, he had to do exclusively cash transactions.

Third, the United States contends that transferring fund [sic] to his wife constitutes willful evasion. As explained by the Plaintiff and his wife, this arrangement was formulated in 2014 to ensure tax obligations were paid and kept current. The Plaintiff transfers funds to his wife who immediately withholds 28% and pays it to the Department of Treasury. This arrangement has enabled the Plaintiff to remain current in federal income tax obligations since 2014.

While it is undeniable that the Defendant could prevail in a dischargeability hearing by a preponderance of the evidence [sic!], it is by no means certain. Prior to declaring the income tax obligation nondischargeable, the trier of fact must hear the testimony of all witnesses and assess the credibility of the Plaintiff's explanation, state of mind and credibility are ordinarily not appropriate for summary judgment [*Carter-Jones Lumber Co. v. Beatty*,] *In Re Beatty*, 583 BR 128 ([Bankr. N.D. Ohio] 2018).

*Plaintiff's Response to Defendant's Motion for Summary Judgment*, p. 6. [Dkt. No. 18]. Counsel for the Plaintiff offers himself as a witness to the fact that the Plaintiff was too busy to attend to his duty to file tax returns and pay taxes. Counsel argues that the inability of the Plaintiff to obtain consumer credit because of his own evasion of taxes should excuse this final attempt to avoid payment of taxes. Counsel argues that the Plaintiff's realization in 2014 that asking his wife to handle his finances to ensure that funds were set aside to pay taxes should excuse the 20 previous years of evasion and non-payment. None of these arguments is persuasive. Finally, counsel argues that the determination of whether the Plaintiff voluntarily and intentionally violated his duty to pay taxes should not be decided by summary judgment but should be left to the trier of fact. Complaints to determine the dischargeability of a particular debt are not tried to a jury but are tried before the bankruptcy judge (the judge who is reviewing this motion for summary judgment). *See, e.g., Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 961 (6th Cir. 1993); *Smith v. Bandy (In re Bandy)*, 237 B.R. 661 (Bankr. E.D. Tenn. 1999). Moreover, the case relied upon by the Plaintiff to support his argument is one in which the court *did* decide that summary judgment was appropriate even though the debtor's intent was at issue. Indeed, the bankruptcy judge in that case said, "Intent may be decided at the summary judgment stage when the evidence is so one sided that reasonable minds could not differ as to the only rational outcome." *Beatty*, 583 B.R. at 138, citing *Nurick v. Burke (In re Burke)*, 523 B.R. 765, 770-71 (Bankr. E.D. Pa. 2015). This is just such a case.

During his deposition, the Plaintiff offered the following explanation for his failure to file tax returns and pay taxes, which differs remarkably from the statements of his attorney:

A. Well, I didn't have any money at the time to send in. I was living beyond my means. I had more debt than I had income coming in. I ended up not filing, and I didn't have the money to send in. One year turned into two, and the next thing you know, I got a little depressed about it, and I just didn't—I ended up not

filing and not paying. Frankly, I was living beyond my means. Truthfully, I was looking for the day when I would have a large settlement and could catch up.

Government Exhibit B, *Johnnie Candy Deposition Transcript* at 33-34. These statements are honest and sincere, but they do not excuse the Plaintiff's conduct nor raise a genuine issue of material fact for trial. Instead they reinforce the court's conclusion that the Plaintiff knew that he had a duty to pay taxes and failed to pay them when he had the ability to do so. As he testified, he was living beyond his means. It was conscious decisions concerning the lifestyle adopted by himself and his family that prevented him from paying taxes rather than any calamity for which he should not justly be held accountable.

The IRS has satisfied the mental state requirement by showing that the Plaintiff intentionally and voluntarily evaded his known duty to pay taxes. Having satisfied both the conduct requirement and the mental state requirement of section 523(a)(1)(C) by a preponderance of the evidence, the IRS is entitled to summary judgment.

### CONCLUSION

For the foregoing reasons, the *Defendant's Motion for Summary Judgment* is **GRANTED**. The Plaintiff's obligation to pay taxes for tax years 2001 through 2013 in the amount of \$831,380.38 is excepted from discharge pursuant to 11 U.S.C. § 523(a)(1)(C).