

ENTERED ON  
MAR 31 2009

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DOCKET

IN RE: ) CHAPTER 7  
)  
ARNOLD J. HAYSMAN, ) CASE NO. 08-72495 - MHM  
)  
Debtor. )

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ARNOLD J. HAYSMAN, )  
)  
Plaintiff, ) **ADVERSARY PROCEEDING**  
v. ) **NO. 08-6564**  
)  
GEORGIA DEPARTMENT OF REVENUE, )  
)  
Defendant. )

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS**

This adversary proceeding was filed by Debtor seeking an determination under §523(a)(1) and §505(a) that Plaintiff is not a "responsible person" liable for trust fund taxes owed to the Georgia Department of Revenue ("Defendant"). Defendant filed a motion to dismiss or abstain pursuant to 11 U.S.C. §505(a) or 28 U.S.C. §1334(c)(1).

In the case of *Hospitality Ventures/Lavista v. Heartwood 11, LLC*, 314 B.R. 843 (Bankr. N.D. Ga. 2004) (J. Bonapfel), the court thoroughly discussed permissive abstention under 11 U.S.C. §505(a) or 28 U.S.C. §1334(c)(1) and concluded that the use of the permissive verb "may" in §505(a) does not provide authority for abstention that is

independent of the permissive abstention authorized by 28 U.S.C. §1334(c)(1). The court goes on to conclude that permissive abstention under §1334(c)(1) is not authorized unless the plaintiff has an alternative forum available. The undersigned finds the rationale in the *Hospitality Ventures* case persuasive.

In the instant case, Defendant asserts that Plaintiff has four alternative avenues for the relief sought in this adversary proceeding. Plaintiff shows, however, that two of those avenues are unavailable because the time allowed for Plaintiff to act has expired. The other two avenues require that Plaintiff first pay the tax claimed and then seek refund. Plaintiff, however, is financially unable to pay the tax. Plaintiff has sustained its burden of showing that no alternative forum exists to challenge his tax liability. Accordingly, it is hereby

ORDERED that Defendant's motion to dismiss or abstain is denied.

**The Clerk, U.S. Bankruptcy Court, is directed to serve** a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 30<sup>th</sup> day of March, 2009.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE