

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION**

IN RE:	:	
	:	CASE NO. G10-22530-REB
KENNETH J. JONES and SONJA D. JONES,	:	
	:	
Debtors.	:	
	:	
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KENNETH J. JONES and SONJA D. JONES,	:	ADVERSARY PROCEEDING
	:	NO. 11-2119
Plaintiffs,	:	
	:	
v.	:	
	:	CHAPTER 7
GEORGIA DEPARTMENT OF REVENUE,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE
	:	

**ORDER**

Before the Court is the motion of Defendant Georgia Department of Revenue filed on August 23, 2011 for summary judgment on the complaint of Plaintiff-Debtors, who commenced this adversary proceeding through the filing of a complaint on June 17, 2011 to determine dischargeability of a certain indebtedness under 11 U.S.C. § 523(a)(1) for certain alleged state income tax liability. In its motion, brief, and attached affidavit, which Debtors have not contested, Defendant states that Debtors' income tax liabilities for the years 2006 and 2007 are dischargeable. However, Debtors' tax liability for 2004, as argued by Defendant, is subject to exception from discharge herein because Debtors failed to file an amended return for same following an upward adjustment of their net income by the Internal Revenue Service as required by Georgia law in O.C.G.A. § 48-7-82(e)(1).

This Court has previously held on a number of occasions that the failure to file an amended return in such situation results in a legal characterization of the underlying tax debt as nondischargeable in accordance with 11 U.S.C. § 523(a)(1)(B)(i). See *Sparks v. Georgia Department of Revenue (In re Sparks)*, \_ B.R. \_, 2008 WL 7842096 (Bankr. N.D.Ga. Feb. 11, 2008); *Jones v. Georgia Department of Revenue (In re Jones)*, 158 B.R. 535 (Bankr. N.D.Ga. 1993).

Given the undisputed facts of record and legal authority cited by Defendant, the Court concludes that Defendant's motion for summary judgment under Federal Rule of Civil Procedure 56, applicable herein by and through Federal Rule of Bankruptcy Procedure 7056, should be granted. Defendant has established an entitlement to relief on its assertion that Debtors' tax indebtedness for the year 2004, for which Debtors did not file an amended return, should be excepted from Debtors' discharge in this case under 11 U.S.C. § 523(a)(1)(B)(i).

Accordingly, for the above reasons, it is

**ORDERED** that the motion of Defendant Georgia Department of Revenue for summary judgment be, and the same hereby is, **granted**, and therefore Debtors' Georgia state income tax obligation for the year 2004 in the amount of \$627.78 is **nondischargeable** herein; and, it is

**FURTHER ORDERED** that judgment will be granted contemporaneously herewith in favor of said Defendant and against Plaintiff-Debtors on this issue. Based upon a review of the allegations in the complaint and the representations of Defendant in its motion, it is

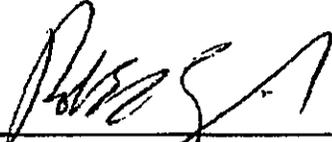
**FURTHER ORDERED** that the state income tax liability of Plaintiff-Debtors for the years 2006 and 2007 is **not** subject to an exception to discharge herein and that same is, therefore,

**dischargeable.**

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff-Debtors, counsel for the Georgia Revenue Department, the Chapter 7 Trustee, and the U.S. Trustee.

**IT IS SO ORDERED.**

At Atlanta, Georgia this 2<sup>nd</sup> day of November, 2011.

  
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ROBERT E. BRIZENDINE  
UNITED STATES BANKRUPTCY JUDGE