

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

IN RE:	:	
	:	CASE NO. G11-22101-REB
INPAHN THAVONGSA	:	
and CHRIS THAVONGSA,	:	
	:	
Debtors.	:	
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INPAHN THAVONGSA	:	ADVERSARY PROCEEDING
and CHRIS THAVONGSA,	:	NO. 11-2133
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	CHAPTER 13
GEORGIA DEPARTMENT OF REVENUE,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE
	:	

**ORDER**

Before the Court is the motion of Defendant Georgia Department of Revenue for summary judgment on the complaint of Plaintiff-Debtors as filed herein. Debtors commenced this adversary proceeding through the filing of a complaint on July 6, 2011 to determine dischargeability of a certain indebtedness under 11 U.S.C. § 523(a)(5)(B), (15), (a)(2)(A), and (a)(1)(A). Consistent with the description offered in Defendant's motion, and Debtors having filed no response thereto, the Court will construe the issue herein as seeking a determination of dischargeability of Debtors' Georgia state income tax liability for the year 2000 in reference to Section 523(a)(1).<sup>1</sup> Based on

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<sup>1</sup> As Defendant further notes, Debtors also appear to be challenging the classification of Defendant's claim and whether it is secured or unsecured. This matter seems to address a question of lien priority as it relates to Defendant and the Internal Revenue Service. Defendant acknowledges that its lien was recorded subsequent to that of the I.R.S. and thus, its lien does not have priority over the lien interests of the I.R.S.

the following reasons, the Court finds that Defendant's motion for summary judgment should be granted.

The only remaining issue to be resolved by Defendant's motion is the dischargeability of Debtors' tax obligation for 2000, and with respect to same Debtors do not appear to dispute the following facts as set forth by Defendant in its statement of material facts filed with its motion. Subsequent to the filing of Debtors' 2000 return, the Internal Revenue Service revised Debtors' federal net income upward in amount for that year. Defendant asserts that although Debtors filed an original tax return for 2000, they failed to file an amended Georgia income tax return to reflect said revision as required under O.C.G.A. § 48-7-82(e)(1). Defendant has assessed additional state income taxes for 2000 based on this revision. Since the amended return remained unfiled as of the petition date, Defendant maintains Debtors' state income tax liability based on the revision is excepted from discharge under 11 U.S.C. § 523(a)(1)(B)(i).

Summary judgment may be granted pursuant to Federal Rule of Civil Procedure 56, applicable herein by and through Federal Rule of Bankruptcy Procedure 7056, if "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In deciding a motion for summary judgment, the court "is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202, 212 (1986). Further, all reasonable doubts should be resolved in favor of the non-moving party, and "if reasonable minds could differ on any inferences arising from undisputed facts, summary judgment should be denied." *Twiss v. Kury*, 25 F.3d 1551, 1555 (11<sup>th</sup> Cir. 1994), citing *Mercantile Bank & Trust Co. v. Fidelity & Deposit Co.*, 750 F.2d 838, 841 (11<sup>th</sup> Cir. 1985).

Upon review of this matter, the Court concludes that no fact issue is presented for resolution and same is subject to disposition by summary judgment. As cited in Defendant's brief, in the case of *Jones v. Georgia Dep't of Revenue (In re Jones)*, 158 B.R. 535 (Bankr. N.D.Ga. 1993), and as held by this Court in prior orders, under Georgia state law a debtor must file an amended state income tax return when the Internal Revenue Service modifies the amount of federal net income for income tax reporting purposes. See *Jones v. Georgia Dep't of Revenue (In re Jones)*, \_ B.R. \_\_, 2011 WL 7080658 (Bankr. N.D.Ga. Nov. 2, 2011); *Sparks v. Georgia Dep't of Revenue (In re Sparks)*, \_ B.R. \_\_, 2008 WL 7842096 (Bankr. N.D.Ga. Feb. 11, 2008). Otherwise, the resulting tax liability in question cannot be discharged. Based on the reasoning as set forth in these cases, this Court holds that under O.C.G.A. § 48-7-82(e)(1), Debtors were required to file an amended state income tax return consistent with the revision to income made by the I.R.S. Having failed to do so, Debtors are not entitled to relief on the issue of nondischargeability herein, and their state income tax as based on said upward revision is excepted from discharge.

Accordingly, it is

**ORDERED** that the motion of Defendant Georgia Department of Revenue for summary judgment be, and hereby is, **granted**, and therefore, Debtors' state income tax obligation for the year 2000 as based on an upward adjustment to their federal net income by the Internal Revenue Service is **nondischargeable** under 11 U.S.C. § 523(a)(1)(B)(i) and 11 U.S.C. § 1328(a)(2). It is

**FURTHER ORDERED** that judgment will be granted contemporaneously herewith in favor of said Defendant and against Plaintiff-Debtors on the complaint.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff-Debtors, counsel for Defendant the Georgia Revenue Department, the Chapter 13 Trustee, and the United

States Trustee.

**IT IS SO ORDERED.**

At Atlanta, Georgia this 7<sup>th</sup> day of February, 2012.



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ROBERT E. BRIZENDINE  
UNITED STATES BANKRUPTCY JUDGE