

**REFERRED ON DOCKET**  
**JUN 30 2005**

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

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBERS</b>
	:	
HARRY L. CALLAWAY,	:	BANKRUPTCY CASE
	:	NO. 94-12108-WHD
Debtor.	:	
_____	:	
	:	
HARRY L. CALLAWAY,	:	ADVERSARY PROCEEDING
	:	NO. 04-1705
Plaintiff,	:	
	:	
v.	:	
	:	
INTERNAL REVENUE SERVICE,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

**ORDER**

Currently before the Court is the Motion for Summary Judgment filed by the United States of America through its agency, the Internal Revenue Service (hereinafter the "IRS"). The Motion arises from a Complaint filed by Harry Callaway (hereinafter the "Debtor") in which he has requested that the Court force the IRS to release certain tax liens on the basis that the tax liability was satisfied during the course of the Debtor's Chapter 7 bankruptcy proceeding. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 157(b); § 1334.

## FINDINGS OF FACT

On September 29, 1994, the Debtor filed a voluntary bankruptcy petition under Chapter 11 of the Code, which was converted to a petition under Chapter 7 of the Code on September 1, 1995. Griffin Howell, III (hereinafter the "Trustee") was appointed as the trustee of the Debtor's bankruptcy estate. The Debtor received a Chapter 7 discharge on August 8, 1996.<sup>1</sup>

The IRS filed proofs of claim for unpaid Federal income taxes for tax years 1988, 1989, and 1990, which were allowed as secured claims, and proofs of claim for tax years 1991, 1992, 1993, and 1994, which were allowed as unsecured, priority claims. As of the petition date, the Debtor had not filed Federal tax returns for tax years 1993 or 1994. Taxes and penalties were assessed for tax years 1993 and 1994 in December 1996, following the entry of the Debtor's discharge. The proof of claim filed by the IRS against the Debtor's bankruptcy estate included only the assessed taxes for tax years 1988 through 1994 and penalties and interest that had accrued as of the petition date. The IRS issued a Notice of Federal Tax Liens on March 24, 1997 for liens recorded in Spalding and Clayton counties.

Throughout the course of the Debtor's bankruptcy case, the Trustee distributed

---

<sup>1</sup> In making its findings of fact, the Court relies upon the Statement of Undisputed Facts submitted by the IRS, as well as the Court's record. The Debtor has responded to the Motion, but has not specifically controverted the Statements of Undisputed Fact submitted by the IRS. Accordingly, the Court must deem these facts to be admitted. *See* BLR 7056-1(b)(2) ("All material facts contained in the moving party's statement which are not specifically controverted in respondent's statement shall be deemed admitted.").

\$523,766.98 to the IRS in payment of its filed and allowed claim. This distribution paid the IRS claims arising from tax years 1988 through 1993 in full, including penalties and interest accruing post-petition. The IRS also applied \$9,610.86 to the 1994 tax liability. Following the distribution, the IRS released tax liens filed against the Debtor in other counties, but did not release the tax liens filed in Spalding and Clayton counties.

On January 23, 2004, the Debtor filed a complaint seeking to have the Court force the IRS to lift the remaining liens on his property located in Spalding and Clayton counties. Initially, the IRS contended that the liens continued to secure tax debt owed for tax years 1993 and 1994. The Debtor alleged that the tax liabilities owed to the IRS had been paid in full by the Trustee. The IRS filed the instant motion for summary judgment, in which it concedes that the Debtor's 1993 tax debt was satisfied fully by the Trustee, but that the full amount of the tax liability owed by the Debtor for tax year 1994 was not paid by the Trustee because the allowed proof of claim did not include tax penalties and post-petition interest owed by the Debtor for tax year 1994.

#### **CONCLUSIONS OF LAW**

In accordance with Federal Rule of Civil Procedure 56 (applicable to bankruptcy under FED. R. BANKR. P. 7056), this Court will grant summary judgment only if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if it might affect the outcome of a

proceeding under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute of fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The moving party has the burden of establishing the right to summary judgment, *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991); *Clark v. Union Mut. Life Ins. Co.*, 692 F.2d 1370, 1372 (11th Cir. 1982), and the Court will read the opposing party's pleadings liberally. *Anderson*, 477 U.S. at 249.

In determining whether a genuine issue of material fact exists, the Court must view the evidence in the light most favorable to the party opposing the motion. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Rosen v. Biscayne Yacht & Country Club, Inc.*, 766 F.2d 482, 484 (11th Cir. 1985). The moving party must identify those evidentiary materials listed in Rule 56(c) that establish the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986); *see also* FED. R. CIV. P. 56(e). Once the motion is supported by a *prima facie* showing that the moving party is entitled to judgment as a matter of law, the party opposing the motion must go beyond the pleadings and demonstrate that there is a material issue of fact that precludes summary judgment. *Celotex*, 477 U.S. at 324; *Martin v. Commercial Union Ins. Co.*, 935 F.2d 235, 238 (11th Cir. 1991).

The Debtor's challenge to the IRS tax liens that remain upon his property is based on the argument that the Trustee paid all of the Debtor's outstanding tax liability for tax years 1993 and 1994. Pursuant to Section 6325 of the Internal Revenue Code, the IRS is required to release a tax lien if the underlying tax liability has been satisfied. See 26 U.S.C. § 6325.

The IRS does not dispute its obligation to do so, but alleges that the full amount of the tax liability secured by the liens has not been paid.

The allowed proof of claim included amounts due for 1993 and 1994, and the Trustee's final report proves that the Trustee distributed the full amount of the allowed proof of claim. However, the IRS contends that the allowed proof of claim did not include certain penalties and interest owed for the 1994 tax year. According to the transcript of the Debtor's 1994 Federal Income Tax Return, which was submitted by the IRS, the Debtor's 1994 return was filed in September of 1996, and the IRS assessed a tax of \$17,230. Additionally, the IRS assessed an "estimated tax penalty" of \$887, a late payment penalty of \$3,876.75, a penalty for failure to pay tax of \$1,809.15, and interest of \$3,415.76. The total liability assessed for tax year 1994 was \$27,218.66. Proof of Claim Number 35 indicates that the IRS included only the original \$17,230 of assessed tax in its proof of claim, without adding the penalties and interest. Upon receipt of the disbursement from the Trustee, the IRS credited the 1994 tax year balance with payments totaling \$9,610.86, leaving a balance of \$17,607.80. It is still not clear why the IRS had only \$9,610.86 to credit to the 1994 tax liability when it had included \$17,230 for tax year 1994 in its proof of claim, and the Trustee paid the full amount listed. Nonetheless, the Court need not determine the exact amount of the unpaid tax liability. So long as any amount remains unpaid, the Court must deny the Debtor's requested relief because the tax liens remain validly filed so long as any amount of the tax debt remains unpaid. Even if the IRS had credited the full \$17,230 against the

balance owed for 1994, a balance of \$9,988.66 would have remained unpaid and would have continued to be secured by the liens.

As to why the IRS failed to include the full amount of the tax liability owed for tax year 1994 in its proof of claim, the IRS submits that it properly omitted interest because § 502(b)(2) provides that unmatured interest cannot be added to a proof of claim filed against the estate. See 11 U.S.C. § 502(b)(2). Additionally, since the penalties assessed for late payment and failure to pay tax would not have been owed or assessed until the Debtor's 1994 tax return was due, these penalties would also have been post-petition debts that could not have been paid by the Debtor's bankruptcy estate and would not have been properly added to the proof of claim. The IRS correctly points out that it is permitted to collect the penalties and post-petition interest from the Debtor following the bankruptcy because the penalties and interest are, like the underlying tax debt, nondischargeable. There is no dispute as to this, as the Court has previously determined that the 1994 tax liability was entitled to unsecured priority status pursuant to § 507(a)(8). See Order Allowing IRS Proof of Claim Number 35 (Dec. 15, 1999); see also 11 U.S.C. § 523(a)(1) (taxes referenced in § 507(a)(8) are nondischargeable in a Chapter 7 case whether or not a claim was filed or allowed). Further, any penalties or interest would also be nondischargeable. See *In re Burns*, 887 F.2d 1541, 1544 (11th Cir. 1989); *In re Simmons*, 227 B.R. 338, 341 (Bankr. N.D. Ga. 1998) (Drake, J.).

The undisputed material facts of this case confirm that the IRS tax liens filed in

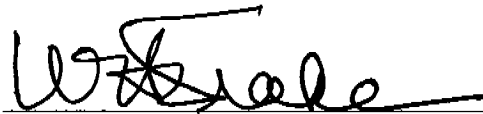
Spalding and Clayton counties remain valid, as they secure a nondischargeable debt owed by the Debtor to the IRS for penalties and interest on tax liability that has not yet been paid. Accordingly, the Court cannot grant the relief sought by the Debtor, and summary judgment in favor of the IRS is appropriate.

#### CONCLUSION

For the reasons stated above, the Court concludes that the Motion for Summary Judgment filed by the United States of America, through its agency, the Internal Revenue Service, should be, and hereby is, **GRANTED**.

**IT IS SO ORDERED.**

At Newnan, Georgia, this 30 day of June, 2005.



W. HOMER DRAKE, JR.

UNITED STATES BANKRUPTCY JUDGE