

JUL 19 2005

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF:	:	CASE NUMBER: A04-76610-PWB
	:	
ROBERT CARL HAHLBOHN	:	
and PAMELA KIMBERLY HAHLBOHN,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtors.	:	BANKRUPTCY CODE
	:	
ROBERT CARL HAHLBOHN	:	
and PAMELA KIMBERLY HAHLBOHN,	:	
	:	
Plaintiffs	:	ADVERSARY PROCEEDING
	:	NO. 05-6145
v.	:	
	:	
GEORGIA DEPARTMENT OF	:	JUDGE BONAPFEL
REVENUE,	:	
	:	
Defendant.	:	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Chapter 7 Debtors seek a determination that tax indebtedness for the tax years 1990 through 2001 is dischargeable under 11 U.S.C. § 727. Georgia Department of Revenue ("Georgia") admits that tax liabilities owed to Georgia for 1990 through 1999 are dischargeable, but seeks summary judgment on its contention that Debtors' tax liabilities for 2000 and 2001 are excepted from discharge pursuant to § 523(a)(1). Debtors have not filed a response opposing Georgia's motion for summary judgment. For the reasons stated herein, Georgia's motion is granted.

2000 Tax Return

Section 523(a)(1)(B) provides that a chapter 7 discharge does not discharge any debt

(1) for a tax or a customs duty –

....

(B) with respect to which a return, if required—

(i) was not filed; or

(ii) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition.

Georgia law requires that a taxpayer file an annual tax return on or before April 15 of the year following the year for which the return is filed. O.C.G.A. § 48-7-56. Thus, Debtors' tax return for tax year 2000 was due on April 15, 2001. Georgia avers and Debtors do not controvert that Debtors' 2000 tax return was filed on July 23, 2003. (Affidavit of Sonja H. Allen, ¶ 5). Debtors filed their chapter 7 case on October 6, 2004. Thus, because Debtors filed their 2000 Georgia tax return after it was due and after 2 years before the chapter 7 petition was filed, the 2000 tax liability owed to Georgia is excepted from discharge pursuant to § 523(a)(1)(B)(ii).

2001 Tax Return

Section 523(a)(1)(A) excepts from discharge any debt for a tax "of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed." Section 507(a)(8)(i) includes taxes "for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition." Thus, tax claims entitled to priority under § 507(a)(8) are not dischargeable in chapter 7.

Because Debtors' tax return for 2001 was due on April 15, 2002 and they filed their chapter 7 petition on October 6, 2004, Georgia contends that the indebtedness owed for 2001 is nondischargeable. Debtors have not filed a response controverting Georgia's contention. Based

upon Debtor's chapter 7 filing date of October 6, 2004, Debtors' 2001 tax indebtedness was not due "after three years before the date of the filing of the petition." Thus, as a matter of law, Debtors' 2001 tax indebtedness owed to Georgia is excepted from discharge pursuant to § 523(a)(1)(A).

In summary, the Court finds that it is undisputed that Debtors' 1990 through 1999 tax indebtedness owed to Georgia is dischargeable, and that the Debtors' 2000 and 2001 tax indebtedness owed to Georgia is excepted from discharge pursuant to § 523(a)(1). Based on the foregoing, it is

ORDERED that the motion of Georgia Department of Revenue for summary judgment is **GRANTED**. The tax indebtedness owed by Debtors to Georgia for 1990 through 1999 is discharged. The tax indebtedness owed by Debtors to Georgia for 2000 is excepted from discharge pursuant to § 523(a)(1)(B), and the tax indebtedness owed by Debtors to Georgia for 2001 is excepted from discharge pursuant to § 523(a)(1)(A). A separate judgment shall be entered contemporaneously herewith.

The Clerk is directed to serve copies of this Order on the persons on the attached Distribution List.

At Atlanta, Georgia, this 19 day of July, 2005.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

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