

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

**ENTERED ON DOCKET**  
**OCT 12 2006**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
ROYCE EARL WILLIFORD,	:	06-11428-WHD
	:	
Debtor.	:	
ROYCE EARL WILLIFORD,	:	<b>CONTESTED MATTER</b>
	:	
Movant,	:	
	:	
v.	:	
	:	
INTERNAL REVENUE SERVICE,	:	<b>IN PROCEEDINGS UNDER</b>
	:	<b>CHAPTER 7 OF THE</b>
Respondent.	:	<b>BANKRUPTCY CODE</b>

**ORDER**

Before the Court is a Motion to Avoid Lien filed by the Debtor in the above-referenced bankruptcy proceeding against the Internal Revenue Service of the United States (hereinafter the "IRS"). The IRS has not filed a response to the motion. This matter constitutes a core proceeding, over which this Court has jurisdiction. See 28 U.S.C. § 157(b)(2)(K); § 1334.

Section 522(f) provides that a debtor may "avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). To be avoidable, a lien must be either a judicial lien, other than certain judicial liens arising from a domestic support

obligation, or a nonpossessory, nonpurchase money security interest in certain household goods and wearing apparel. *Id.*

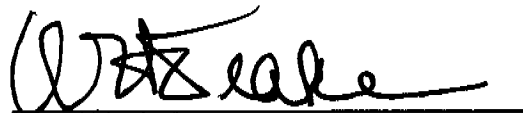
In this case, the Debtor has filed a motion to avoid the IRS's lien on the Debtor's exempt property. The Debtor's motion states that the IRS's lien is a judicial lien. However, a tax lien arises by operation of law and is not a judicial lien. *See In re Washington*, 242 F.3d 1320 (11th Cir. 2001) (liens that arise by operation of law are not avoidable under § 522(f) notwithstanding the fact that the creditor may have subsequently obtained a judgment). "Because the tax lien is neither a security interest nor a judicial lien, it may not be avoided under § 522(f)." *In re Rench*, 129 B.R. 649, 652 (Bankr. D. Kan. 1991); *see also In re Khoe*, 255 B.R. 581 (E.D. Cal. 2000).

Additionally, the Court notes that the Debtor has not properly served the motion upon the IRS. Rule 4003(d) of the Federal Rules of Bankruptcy Procedure provides that a motion by a debtor to avoid a lien, pursuant to § 522(f), is a contested matter governed by Rule 9014. FED. R. BANKR. P. 4003(d). Rule 9014 requires that a contested matter be served in the same manner as a summons and complaint as set forth in Rule 7004. FED. R. BANKR. P. 9014. Rule 7004(b)(4) requires that a summons and complaint be served upon the United States by mailing the summons and complaint to the civil process clerk at the office of the United States attorney for the district in which the action is brought and to the office of the United State Attorney General in Washington, D.C. FED. R. BANKR. P. 7004(b)(4). Because the Debtor has failed to perfect service, this Court lacks jurisdiction over the IRS. *See In re Hernandez*, 173 B.R. 430 (N.D. Ala. 1994).

For the reasons set forth above, the Debtor's Motion to Avoid Lien is hereby  
**DENIED.**

**IT IS SO ORDERED.**

At Newnan, Georgia, this 12 day of October, 2006.

A handwritten signature in black ink, appearing to read 'W. Homer Drake, Jr.', written over a horizontal line.

W. HOMER DRAKE, JR.  
UNITED STATES BANKRUPTCY JUDGE