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OCT 20 2006

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_  
IN RE:

CASE NO. 05-91543

Roy Lee Patterson,

CHAPTER 7

Debtor.

JUDGE MASSEY  
\_\_\_\_\_

Roy Lee Patterson,

Plaintiff,

v.

ADVERSARY NO. 06-9058

Georgia Department of Revenue,

Defendant.  
\_\_\_\_\_

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

In this adversary proceeding, Roy Patterson ("Plaintiff") seeks a determination that a debt he owes Georgia Department of Revenue ("Defendant") is dischargeable pursuant to § 523(a)(1). On August 2, 2006, Defendant filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6), made applicable in adversary proceedings by Fed. R. Bankr. P. 7012. Plaintiff has not responded to this motion. The Court has jurisdiction over this core proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(b)(2)(I). For the reasons stated below, Defendant's motion is denied.

Plaintiff's complaint alleges that a debt in the amount of \$52,321.47 for "*payroll taxes* which include interest and penalties assessed before the commencement of the case" is

dischargeable pursuant to § 523. (Compl. ¶¶ 4, 5) (emphasis added). Defendant moves to dismiss on the grounds that Plaintiff's use of the phrase "payroll taxes" in the complaint indicates that this debt falls squarely within an exception to discharge under § 523(a)(1)(A).

When reviewing a complaint under Fed. R. Civ. P. 12(b)(6), the court must "accept[] the factual allegations as true and constru[e] them in the light most favorable to the plaintiff." *Glover v. Liggett Group, Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006). "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). "Dismissal is therefore permitted when on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." *Glover*, 459 F.3d at 1308 (internal quotation marks omitted).

Navigating the Bankruptcy Code's numerous exceptions to discharge for tax debts begins with § 523(a)(1). That section excepts from discharge debts:

(1) for a tax or customs duty—

(A) 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;

(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 filing the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.

11 U.S.C. § 523(a)(1). Under § 523(a)(1)(A), debts for taxes specified in § 507(a)(8)(C) are nondischargeable, namely "tax[es] required to be collected or withheld and for which the debtor is liable in whatever capacity." §§ 507(a)(8)(C), 523(a)(1)(A).

Section 507(a)(8)(C) covers so-called “trust fund taxes”— taxes that the debtor collects from a third party and holds in trust for the government. *See* 4 Collier on Bankruptcy P 507.10 (15th ed. rev. 2006). In determining whether a tax debt falls into the § 507(a)(8)(C) category,

a court must determine that (i) the claim is held by a governmental unit, (ii) the claim is for a tax, (iii) the tax is owed by a party other than the debtor, (iv) the tax must be collected or withheld by the debtor and transmitted to the governmental unit, and (v) the debtor must be liable for payment of the tax in some capacity.

*Id.* A nondischargeable debt arises when a person responsible for transmitting the taxes owed by others fails to transmit those taxes to the governmental unit to which the taxes are owed.

Defendant construes Plaintiff’s use of the phrase “payroll taxes” to mean that the tax debt he owes Defendant arose from trust funds taxes he collected but failed to transmit to Defendant. The problem with this construction is that the phrase “payroll taxes,” which is not a term of art, may also mean taxes owed by an individual based on the fact that the individual was on some other entity’s payroll, where the complaint is read in the light most favorable to Plaintiff. This interpretation is not far-fetched. For example, the term “payroll tax” has been defined to mean “[a] tax on an employee’s salary or on the income of a self-employed individual,” Black’s Law Dictionary 1129 (6th ed. 1990), which does not suggest trust funds. Indeed, courts have used the phrase “payroll taxes” to refer to an employee’s tax expenses. *See generally Hardin v. Hardin*, 2006 Bankr. LEXIS 2111, \*4 (Bankr. S.D. Iowa Aug. 21, 2006) (listing debtor’s tax expenses as payroll taxes); *Miller v. U.S. Dep’t. of Educ. (In re Miller)*, 2006 Bankr. LEXIS 1782, \*6 (Bankr. W.D. Pa. Aug. 14, 2006) (listing payroll taxes as a deduction from debtor’s monthly income).

Plaintiff’s complaint states a claim upon which relief can be granted if the phrase “payroll taxes” is read to mean taxes owed personally by Plaintiff as a result of his having been on a

payroll.<sup>1</sup> A motion for summary judgment would no doubt reveal whether there is any factual dispute about the nature of the taxes in question. Accordingly, it is

ORDERED that Defendant's motion to dismiss is DENIED.

Dated: October 19, 2006.

  
JAMES E. MASSEY  
U.S. BANKRUPTCY JUDGE

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<sup>1</sup> This reading may not be the most likely one to describe the actual facts, but as indicated, the Court must construe the complaint most favorably to Plaintiff on a motion to dismiss under Bankruptcy Rule 7012. The reason that this is not the most likely meaning of the phrase in the complaint is that Plaintiff swore in Schedule E that he owed "back taxes" to state and federal governments totaling \$361,688, but he stated in his statement of financial affairs that his gross income was \$17,000 in each of the two years prior to filing bankruptcy. Maybe he owes taxes on a very large income in earlier years, but this seems only a remote possibility. The parties undoubtedly know all of the relevant facts. The Court suggests that Plaintiff's counsel may want to review Bankruptcy Rule 9011 in detail. Asserting a legal position that has no factual support would waste the Court's time at considerable expense to federal taxpayers, as well as, in this instance, state taxpayers. If the taxes are in fact trust fund taxes that Plaintiff failed to pay over, it was his counsel's responsibility to ferret out that fact and not to file a complaint asserting a frivolous claim.