

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

IN RE:	:	
	:	
ERIC E. HARRIS,	:	CASE NO. G12-20541-REB
	:	
Debtor.	:	
	:	
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ERIC E. HARRIS,	:	ADVERSARY PROCEEDING
	:	NO. 12-2059
Plaintiff,	:	
	:	
v.	:	
	:	CHAPTER 7
GEORGIA DEPARTMENT OF REVENUE,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE
	:	

ORDER

Before the Court is the motion of Defendant Georgia Department of Revenue, filed on June 7, 2012, to dismiss in part the complaint of Plaintiff-Debtor. Debtor commenced this adversary proceeding through the filing of a complaint on April 16, 2012 to determine the dischargeability of certain state income taxes for the years 2006 through 2009 under 11 U.S.C. § 523(a)(1), to find that he is not personally liable for same, and to limit any such obligation to the assets listed in his petition. As described in Defendant's motion, the issue at stake herein specifically relates to Debtor's Georgia state income tax liability for the years 2008 and 2009. Debtor has not responded to the motion. Based on the following reasons, the Court finds that Defendant's motion to dismiss in part should be granted.

As asserted in the brief attached to its motion, Defendant contends that Debtor's state

income tax liability for 2008 and 2009 is excepted from discharge under 11 U.S.C. § 523(a)(1)(A) as a tax entitled to priority treatment under § 507(a)(8)(A) since Debtor was required to file a tax return concerning the liability at issue in accordance with O.C.G.A. § 48-7-56 and § 48-7-80 on April 15, 2009 and April 15, 2010, respectively. These returns, therefore, were each due “after three years before the date of the filing of the petition” on February 14, 2012. *See* 11 U.S.C. § 507(a)(8)(A)(i).

The United States Supreme Court has ruled that “to survive a motion to dismiss, a complaint must now contain factual allegations which are ‘enough to raise a right to relief above the speculative level.’”¹ In considering a motion to dismiss, the Court is limited in its inquiry to the legal feasibility of the complaint and whether same includes facts and not mere conclusory statements. The Court is also restricted in its review to the complaint and documents incorporated therein.

Upon review of this matter and applicable law, the Court concludes that no fact issue is presented with respect to Debtor’s claim that his state income taxes as due and owing for the years 2008 and 2009 should be excepted from discharge herein. As a result, this claim is subject to disposition herein in favor of Defendant through a dismissal of that portion of the complaint that seeks to address the status of this liability.

Accordingly, it is

ORDERED that the motion of Defendant Georgia Department of Revenue to dismiss the

¹ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929 (2007), as quoted in *Berry v. Budget Rent A Car Systems, Inc.*, 497 F.Supp.2d 1361, 1364 (S.D.Fla. 2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009).

complaint of Plaintiff-Debtor in part be, and hereby is, **granted**; and, the portion of Debtor's complaint seeking a ruling that his state income tax obligations for the years 2008 and 2009 are dischargeable herein is **dismissed** as failing to set forth a right to relief, and consistent with same, said obligations are held to be **nondischargeable** under 11 U.S.C. § 523(a)(1)(A).

The portion of the complaint addressing Debtor's state income tax liability for the years 2006 and 2007 remains pending and awaits further ruling herein.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff-Debtor, counsel for Defendant the Georgia Revenue Department, the Chapter 7 Trustee, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 14th day of August, 2012.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE