

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

IN RE:	:	
	:	CASE NO. G12-22092-REB
CHARLES N. CREW	:	
and LORA YVONNE CREW,	:	
	:	
Debtors.	:	
	:	
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CHARLES N. CREW	:	ADVERSARY PROCEEDING
and LORA YVONNE CREW,	:	NO. 12-2126
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	CHAPTER 7
GEORGIA DEPARTMENT OF REVENUE,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE
	:	

ORDER

Before the Court is the motion of Defendant Georgia Department of Revenue for summary judgment filed on October 25, 2012. Debtors commenced this adversary proceeding through the filing of a complaint herein on September 5, 2012 to determine dischargeability of certain state income tax indebtedness under 11 U.S.C. § 523(a)(1) in the total approximate amount of \$5,474.61 for the tax years and in the amounts as follows: 2003 (\$456.38), 2004 (\$1,690.56), 2006 (\$1,474.39), 2007 (\$946.36), and 2008 (\$906.92). Debtors seek a finding herein that they are not personally liable for these tax obligations. Upon review of Defendant's motion, brief, statement of material facts, and accompanying affidavit, and Debtors having filed no response thereto, based on the following reasons, the Court finds that Defendant's motion for summary judgment should

be granted as stated herein.

Debtors do not appear to dispute the following facts as set forth by Defendant in its statement of material facts as supported by affidavit, and the Court will address the tax liabilities at issue in the order presented in the motion. First, it appears that Debtors did not file an amended state income tax return for 2006 as required under O.C.G.A. § 48-7-82(e)(1) reflecting the upward revision to their federal income tax liability by the Internal Revenue Service. As cited in Defendant's brief, in the case of *Jones v. Georgia Dep't of Revenue (In re Jones)*, 158 B.R. 535 (Bankr. N.D.Ga. 1993), and as held by this Court in prior orders, under Georgia state law a debtor must file an amended state income tax return when the IRS modifies the amount of federal net income for income tax reporting purposes. Otherwise, the resulting tax liability in question cannot be discharged. See *Jones v. Georgia Dep't of Revenue (In re Jones)*, __ B.R. __, 2011 WL 7080658 (Bankr. N.D.Ga. Nov. 2, 2011); *Sparks v. Georgia Dep't of Revenue (In re Sparks)*, __ B.R. __, 2008 WL 7842096 (Bankr. N.D.Ga. Feb. 11, 2008). Debtors having failed to file the required amended return, the corresponding amount of Georgia income taxes due for that year are excepted from discharge under 11 U.S.C. § 523(a)(1)(B)(i).

Next, Debtors' income tax return for 2008, which was not due until October 15, 2009 as extended, falls within three years of the filing of their bankruptcy petition herein on June 8, 2012, and thus, their tax liability for that year is excepted from discharge under Section 523(a)(1)(A). See also 11 U.S.C. § 507(a)(8)(A)(i); *Daniel v. United States (In re Daniel)*, 170 B.R. 466, 471 (Bankr. S.D.Ga. 1994). Finally, Defendant concedes that Debtors' state income tax liability for the years 2003, 2004, and 2007 is dischargeable. Defendant further contends, however, that its recorded tax executions against Debtors for this debt. Defendant asserts, and this Court agrees, that its tax

liens survive Debtors' discharge and attach to any exempt property of the Debtors.¹

Upon review of the record and cited authority, the Court concludes that no fact issue is presented in connection with the complaint and same is subject to disposition by summary judgment in favor of Defendant. Accordingly, it is

ORDERED that the motion of Defendant Georgia Department of Revenue for summary judgment be, and hereby is, **granted**, and therefore, Debtors' state income tax liability based on a revision to their income for the year **2006** is **nondischargeable** under 11 U.S.C. § 523(a)(1)(B)(i), and Debtors' state income tax liability for the year **2008** is **nondischargeable** under § 523(a)(1)(A). It is

FURTHER ORDERED that Debtors' state income tax liability for the years **2003, 2004, and 2007** is **dischargeable**, but that Defendant's associated tax liens survive the discharge herein and attach to Debtors' property as provided by applicable law. It is

FURTHER ORDERED that judgment will be granted contemporaneously herewith in favor of said Defendant and against Plaintiff-Debtors on the complaint.


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

¹ See variously *Isom v. United States (In re Isom)*, 901 F.2d 744, 746 (9th Cir. 1990); *Millsaps v. United States (In re Millsaps)*, 133 B.R. 547, 552 (Bankr. M.D.Fla.), recommendation approved, 138 B.R. 87 (M.D.Fla. 1991); see also *In re Reed*, 165 B.R. 959, 962 (Bankr. N.D.Ga. 1993) (applying 11 U.S.C. § 522(c)(2)(B)); O.C.G.A. § 44-13-107.

States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 6th day of December, 2012.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE