

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

|                             |   |                     |
|-----------------------------|---|---------------------|
| IN THE MATTER OF            | ) |                     |
|                             | ) |                     |
| GERD M. RAMM,               | ) | CASE NO. BK93-80584 |
|                             | ) |                     |
| DEBTOR                      | ) | A93-8167            |
|                             | ) |                     |
| GERD M. RAMM,               | ) |                     |
|                             | ) | CH. 13              |
| Plaintiff                   | ) |                     |
| vs.                         | ) |                     |
|                             | ) |                     |
| UNITED STATES OF AMERICA    | ) |                     |
| Acting through the Internal | ) |                     |
| Revenue Service,            | ) |                     |
|                             | ) |                     |
| Defendant                   | ) |                     |

MEMORANDUM

Hearing was held on April 18, 1994, on the Motion for Summary Judgment filed by the United States of America. Appearing on behalf of debtor/plaintiff was Albert Burnes of Omaha, Nebraska. Appearing on behalf of the United States of America was Lisa Hartnett of Omaha, Nebraska. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B) and (I).

Background

The debtor, Gerd M. Ramm, filed for relief under Chapter 13 of the Bankruptcy Code on April 8, 1993. The Internal Revenue Service (IRS) timely filed a proof of claim, which included a priority claim for 1989 income taxes and prepetition interest thereon in the amount of \$5,001.57.

The debtor filed an adversary proceeding to determine whether the 1989 federal income tax debt and prepetition interest thereon are dischargeable. The debtor's position is that the 1989 tax return was filed and received by the IRS prior to April 8, 1990, which is more than three years prior to filing for bankruptcy relief. Therefore, the alleged priority claim for 1989 income taxes and prepetition interest thereon is a general

unsecured claim and should be deemed as dischargeable pursuant to 11 U.S.C. §§ 507(a)(7)(A)(i) & (ii) and 523(a)(1)(A).

The IRS has moved for summary judgment in the adversary proceeding. The IRS argues that the debtor's Chapter 13 petition was filed within three years of the April 15, 1990 due date for the debtor's 1989 taxes and, therefore, the tax claim is a nondischargeable priority claim pursuant to 11 U.S.C. § 523(a)(1)(A) and Section 507(a)(7)(A)(i).

#### Discussion

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. Bankr. R. 7056; Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

11 U.S.C. § 523(a)(1)(A) exempts from discharge any priority tax claim described under 11 U.S.C. § 507(a)(7).

Section 507(a)(7)(A) states that allowed unsecured claims for taxes are entitled to priority status if the tax is on or measured by income or gross receipts --

(i) 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;

11 U.S.C. § 507(a)(7)(A)(i). In this case, if the claim is for a tax year whose return was last due less than three years before the petition was filed on April 8, 1993, the IRS's claim is nondischargeable.

It is not disputed that the IRS's claim is based upon the income tax due from debtor and that the debtor was obligated to file a return for 1989 taxes. The parties agree that the debtor's bankruptcy petition was filed on April 8, 1993 and that the debtor did not request any extensions to file a tax return beyond the IRS's regular due date. Finally, the IRS does not dispute, for the purpose of this motion, the fact that the debtor filed and that the IRS received his 1989 tax return prior to April 8, 1993.

The remaining issue is whether April 15, 1990 was the date "for which a return, if required, is last due," under Section 507(a)(7)(A)(i), or whether the date that the IRS received the return is the date the return is "last due." If the IRS is correct and April 15, 1990 is the correct date, the debtor's bankruptcy petition was filed within three years of the due date for debtor's 1989 income tax return, and, therefore, the tax claim is entitled to priority status and is nondischargeable. If the debtor is correct and the date that the IRS received the tax claim is the date "last due," the debtor's bankruptcy petition was filed more than three years after the date "last due," and the IRS's claim for 1989 income taxes is dischargeable.

The Motion for Summary Judgment is granted because the Internal Revenue Code (IRC) states that all returns filed before the due date under law "shall be considered as filed on such last day." 26 U.S.C. § 6501(b)(1). The last date for filing a federal income tax return is the fifteenth day of April following the close of the calendar year.<sup>1</sup> Since the debtor's 1989 tax return was due before or on April 15, 1990, the return is treated as filed on April 15, 1990 by the IRS, even though the debtor filed and the IRS received the return prior to that date.

The conclusion that April 15, 1990 is the date "last due" is supported by the plain language of Section 507(a)(7)(A)(i). The language in the section, "last due" is distinctive from date "received by the IRS" or from date "filed by the debtor." The plain meaning of Section 507(a)(7)(A)(i) is conclusive except when the literal application of the plain meaning is demonstrably at odds with the intent of Congress. United States v. Ron Pair Enters. Inc., 489 U.S. 235, 242, 109 S. Ct. 1026, 1031, 103 L. Ed. 2d 290 (1989). The legislative history of Section 507(a)(7)(A)(i) supports the plain meaning of the statute and states:

[p]riority is given to income taxes for a taxable year that ended on or before the date of the filing of the petition, if the last

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<sup>1</sup> 26 U.S.C. § 6072(a). In 1990, April 15 fell on a Sunday. When the fifteenth of April falls on a Saturday, Sunday, or legal holiday, the filing of the return shall be timely if filed on the next day that is not a Saturday, Sunday, or legal holiday. 26 U.S.C. 7503. Even though the statute extends the time within which a federal return may be timely filed, it does not affect the legal due date of April 15, or the IRS's treatment of the return as being filed on April 15. Rev. Rul. 81-269, 1981-2 C.B. 243, 244.

due date of the return for such year occurred not more than 3 years immediately before the date on which the petition was filed (§ 507(a)(7)(A)(i)).

**S. Rep. No. 95-989**, 95th Cong., 2d Sess. 1, 70, (1978) reprinted in 1978 U.S.C.C.A.N. 5787, 5856.

The bankruptcy courts that have considered this issue have reached the same conclusion: the date a return is "last due" is the deadline for filing the return and not the date the return is actually filed. Luke v. Internal Revenue Service (In re Luke), 142 B.R. 160, 162 (Bankr. W.D. Mich. 1992); Wood v. United States (In re Wood), 78 B.R. 316, 319-20 (Bankr. M.D. Fla. 1987). The accepted rule is that "[t]he key date under [Section 507(a)(7)(A)(i)] is the date a tax return is last due, rather than the tax year. For example, for tax year 1980, the return would not be last due until, at the earliest, April 15, 1981." James H. M. Sprayregen, 1990 National Conference of Bankruptcy Judges: Dischargeability of Personal Income Taxes In Bankruptcy, 64 **Am. Bankr. L.J.** 209, 212 (1990).

Under Section 507(a)(7)(A)(i), the claim filed by the IRS for 1989 income taxes is entitled to priority status. Therefore, under Section 523(a)(1)(A), the claim is nondischargeable. The prepetition interest is likewise nondischargeable because prepetition interest is treated as an integral part of a continuing debt. Bruning v. United States, 376 U.S. 358, 360, 84 S. Ct. 906, 907, 11 L. Ed. 2d 772 (1964); Hanna v. United States (In re Hanna), 872 F.2d 829, 830 (8th Cir. 1989).

The debtor's final argument is that Section 507(a)(7)(A) is conjunctive, and failure to meet the requirements of Section 507(a)(7)(A)(i), does not preclude the debtor from discharging the debt through Sections 507(a)(7)(A)(ii) and 523(a)(1)(A). It is not necessary to address the merits of the debtors argument that the claim is not entitled to priority status under Section 507(a)(7)(A)(ii) because the law regarding whether Section 507(a)(7)(A)(i) - (iii) is conjunctive or disjunctive is well-settled. "Cases considering the interplay of the three parts of § 507(a)(7)(A) have consistently upheld the IRS position that "§ 507(a)(7)[(A)] is disjunctive [and] ... classifies an unsecured claim for an unpaid income tax as a seventh priority claim on three alternative grounds." Daniel v. United States (In re Daniel), 1994 Bankr. LEXIS 437, \*4 (Bankr. S.D. Ga. March 30, 1994), (quoting Wines v. United States (In re Wines), 122 B.R. 804, 806 (Bankr. S.D. Fla. 1991), rev'd on other grounds, 1992

LEXIS 5574 (S.D. Fla. April 8, 1992); Smith v. United States (In re Smith), 109 B.R. 243, 245 (Bankr. E.D. Mich. 1989).

Once a claim qualifies as a priority claim under Section 507(a)(7)(A)(i), the fact that the claim would not qualify as a priority claim under Sections 507(a)(7)(A)(ii) or (iii) is immaterial. The IRS's claim is still entitled to priority status under Section 507(a)(7)(A)(i), and therefore, the claim is nondischargeable pursuant to Section 523(a)(1)(A).

Decision

The Motion for Summary Judgment is granted. The debtor's 1989 income tax debt and the prepetition interest thereon are a nondischargeable priority claim under Sections 507(a)(7)(A)(i) and 523(a)(1)(A).

Separate journal entry shall be filed.

DATED: May 5, 1994.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

CC: Movant, Debtor(s) Atty. and all parties appearing at hearing  
[ ] Chapter 13 Trustee [ ] Chapter 12 Trustee [ ] U.S.Trustee  
Movant is responsible for giving notice of this journal entry to all other parties if required by rule or statute.

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| Plaintiff(s)                | ) |                         |
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| UNITED STATES OF AMERICA,   | ) |                         |
| Acting through the Internal | ) |                         |
| Revenue Service,            | ) |                         |
|                             | ) | DATE: May 5, 1994       |
| <u>Defendant(s)</u>         | ) | HEARING DATE: April 18, |
|                             | ) | 1994                    |

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Summary Judgment filed by the United States of America; Resistance by the Debtor/plaintiff.

APPEARANCES

Albert Burnes, Attorney for debtor/plaintiff  
Lisa Hartnett, Attorney for USA

IT IS ORDERED:

The Motion for Summary Judgment is granted. The debtor's 1989 income tax debt and the prepetition interest thereon are a nondischargeable priority claim under Sections 507(a)(7)(A)(i) and 523(a)(1)(A). See memorandum this date.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

CC: Movant, Objector/Resistor (if any), Debtor(s) Atty. and all parties appearing at hearing  
[ ] Chapter 13 Trustee [ ] Chapter 12 Trustee [ ] U.S.Trustee

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