

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
RANDY K. SHANNON,	)	CASE NO. BK95-80024
)	
DEBTOR	)	A95-8012
)	
RANDY K. SHANNON,)	
	)	CH. 7
Plaintiff)	
vs.)	
)	
UNITED STATES OF AMERICA,)	
DEPARTMENT OF TREASURY,)	
INTERNAL REVENUE SERVICE,)	
NEBRASKA DEPARTMENT OF REVENUE,)	
)	
Defendant)	

MEMORANDUM

Hearing was held on May 21, 1996, on the Cross Motions for Summary Judgment filed by the debtor and the Internal Revenue Service. Appearances: James Bachman, Attorney for plaintiff, and Loren Mark, Attorney for USA. 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)(I).

Background

The debtor, Randy K. Shannon, filed a Chapter 7 bankruptcy case on January 6, 1995. He initiated this adversary proceeding against the United States, through the Internal Revenue Service (IRS), and the State of Nebraska, through the Nebraska Department of Revenue, on February 7, 1995 to determine the dischargeability of approximately \$35,000 in taxes, interest and penalties thereon, for the tax years 1987, 1988, 1989, and 1990. The debtor is alleging that he is entitled to a discharge of these obligations because the tax returns were due more than three (3) years before the filing of the bankruptcy case, the debtor filed a late return more than two (2) years prior to filing the bankruptcy case, and the taxes were assessed prior to 240 days before the filing of the bankruptcy case.

The debtor filed a motion for summary judgment on February 29, 1996 and is requesting that the tax liabilities due to the IRS for the tax years 1987-1991 be found dischargeable as a matter of law. The IRS has acknowledged that the taxes, penalties and interest for the tax year 1990 are dischargeable, and the IRS has acknowledged that the penalties assessed for the 1987, 1988, and 1989 tax years are also dischargeable. The IRS does not resist the debtor's motion for summary judgment on these points. The IRS contends that the debtor failed to plead for a discharge of the 1991 tax liabilities in the adversary complaint, and therefore, argues that the debtor's request for summary judgment on the issue of the dischargeability of the 1991 liabilities is not properly before the court, but the IRS concedes that if the 1991 taxes, penalties and interest thereon, had been properly pled, the liabilities would be dischargeable. The IRS has resisted the debtor's motion on all other points and has filed a counter-motion for summary judgment on the basis that the taxes and interest thereon for the tax years 1987, 1988, and 1989 are not dischargeable pursuant to 11 U.S.C. § 523(a)(1)(B)(I) because the debtor failed to file a tax return for 1987, 1988, and 1989.

Statutory Authority

The portion of Section 523(a)(1), the Bankruptcy Code provision for the non-dischargeability of the tax obligations at issue in this case, provides:

A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt --

(1) for a tax or customs duty --

(A) of the kind and for the periods specified in section . . . 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 the filing of the petition.

11 U.S.C. § 523(a)(1)(A) & (B).

Uncontroverted Facts

The debtor failed to file timely tax returns for the years 1987, 1988, and 1989. The debtor's omission is attributed to personal turmoil, and there is no allegation of fraud in this case. The IRS sent the debtor numerous notices of his outstanding tax returns, and after he failed to respond, the IRS's Kansas City Service Center initiated its own investigation into the debtor's liabilities for 1987, 1988, and 1989. The IRS filed substitutes for returns (SFRs) reflecting zero tax liability pursuant to 26 U.S.C. § 6020(b) for the tax years 1987, 1988, and 1989. The debtor did not participate in the preparation of the SFRs, did not contact the IRS regarding the outstanding tax liabilities, and did not sign the SFRs.

Subsequent to the preparation of each SFR, the IRS issued a statutory notice of deficiency for 1987, 1988, and 1989. The notices of deficiency were mailed to the debtor and reflected taxable income and tax liabilities of the debtor, as determined by the IRS through third parties. The notice of deficiency for 1987 was issued on February 8, 1991, and the 1987 liabilities were assessed against the debtor on August 26, 1991. The notice for deficiency for 1988 was issued on August 23, 1991, and the 1988 liabilities were assessed on March 9, 1992. The notice for deficiency for 1989 was issued on June 30, 1992, and the tax liabilities for 1989 were assessed on November 11, 1992. The IRS assessed the tax liabilities reflected in the notices of deficiency pursuant to the authority at 26 U.S.C. § 6213, which permits automatic assessment after the 90-day appeal period for the debtor to appeal the IRS's calculations to the United States Tax Court expires.

The debtor contacted the IRS on December 16, 1991, to have his case transferred from the Kansas City office to the Omaha IRS office, and he was informed on January 21, 1992, that he had to contact the Omaha office and request that his case be transferred. After he made the request, he received a letter from an IRS office in Ogden, Utah. The letter was dated April 1, 1992 and it acknowledged that the debtor had requested an interview and that the local district office in Omaha would contact him to arrange an appointment.

The debtor filed tax returns for 1990 and 1991 on October 6, 1992. On this date, the debtor also signed and mailed a Taxpayer Consent Form (IRS Form Letter 256SC/CG) for the 1989 tax year to the IRS office in Kansas City, which was received on October 16, 1992. By October of 1992, however, the IRS had already sent the notice of deficiency for 1989, and the 90-day appeal period to contest the notice of deficiency had expired, and the 1989 liabilities were subject to immediate assessment.

Controverted Facts

The IRS alleges that the debtor did not provide any assistance or information for the preparation of the notices of deficiency for 1987, 1988 and 1989. The debtor argues

that in addition to signing the consent form for 1989, he also signed a form admitting his outstanding liabilities for the 1987 and 1988 tax years. The IRS counters that the "form" referred to by the debtor was actually a letter dated October 9, 1992 from the debtor to the IRS Service Center in Kansas City, which admitted that the debtor owed taxes for 1987, 1988, 1990 and 1991, but did not provide any information regarding the debtor's taxable income or tax liabilities for the years in question. The IRS also argues that whether the 1989 consent form and the letter regarding the 1987 and 1988 tax liabilities are the equivalent of a tax return is not a relevant question of fact because the consent form and the letter were sent to the IRS after the debtor's taxable income and tax liabilities had been calculated through third party sources, without any assistance from the debtor, and after the IRS had already assessed the debtor for the 1987 and 1988 taxes and after the 1989 taxes were subject to immediate assessment.

The debtor argues that on or about October 6, 1992, he met in person with a female agent at the Taxpayer Service Unit in Omaha, Nebraska. The debtor alleges that the agent told him that it was not necessary for him to file returns for 1987, 1988, and 1989 if he agreed with the computations contained in the notices of deficiency and the assessment made by the IRS, and that he should mail the consent form for the 1989 tax deficiency to the Kansas City Service Center, which originated the consent form. The IRS's case records for the debtor do not reflect that the debtor contacted an IRS agent at a Nebraska IRS office, and the debtor did not provide more specific information regarding the agent. The IRS contends that whether the meeting occurred is not a material issue of fact because on the date of the alleged meeting between the debtor and an IRS agent, the IRS had already assessed the tax liabilities for 1987 and 1988, and the tax liabilities for 1989 were subject to immediate assessment.

The debtor asserts that during the meeting between the debtor and the IRS agent, the IRS agent violated her statutory duty to inform the debtor that if he did not file an "official" return, the tax liabilities would not be dischargeable in a bankruptcy proceeding. The debtor takes the position that the IRS owed the debtor such a statutory duty pursuant to the authority of "The Taxpayers' Bill of Rights," which is codified as The Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3746 (codified in scattered sections of 26 U.S.C.), and that the debtor is entitled to a discharge of his 1987, 1988, and 1989 tax liabilities because said omission caused the debtor to fail to file an "official" tax return [hereinafter this statute shall be referred to as the "The Taxpayers' Bill of Rights"].

The IRS argues that even if the "alleged" meeting did occur, the meeting was after the IRS had independently prepared the notices of deficiency and assessed the tax liabilities for 1987 and 1988, and 1989, and also that the IRS does not have a duty to advise a taxpayer, who has not filed a petition in bankruptcy, of the taxpayer's "right" to a discharge under Bankruptcy Code for certain tax liabilities in the event the taxpayer decides to file bankruptcy in a few years. Thus, since the debtor failed to file a tax return for 1987, 1988, and 1989, the IRS states that the debtor is not entitled to discharge pursuant to Section 523(a)(1)(B)(i) as a matter of law. The IRS concedes

that none of its publications advise taxpayers of the potential for a discharge in bankruptcy if tax returns are filed within a certain time before an order for relief in bankruptcy is entered.

Decision

1. Summary judgment is granted in favor of the debtor on the issue of the dischargeability of the 1990 taxes, interest and penalties thereon.

2. The dischargeability of the 1991 taxes, interest and penalties thereon, was not pled in the adversary complaint, and therefore, is not properly raised in the summary judgment motion. Summary judgment is denied.

3. Summary judgment is granted in favor of the debtor on the issue of whether the penalty claims for 1987, 1988, and 1989 are dischargeable.

4. Summary judgment is granted in favor of the IRS regarding the non-dischargeability of the interest and taxes due for the 1987, 1988 and 1989 tax years. The debtor failed, as a matter of law, to file a tax return for these years as required under 11 U.S.C. § 523(a)(1)(B)(I). The debtor's motion for summary judgment on the dischargeability of the 1987, 1988 and 1989 tax years for taxes and interest is denied.

5. The Taxpayers' Bill of Rights, codified at 26 U.S.C. § 7521(b)(1)(B), does not create a duty requiring the IRS to disclose to taxpayers during in-person meetings the right that the taxpayer may have to a discharge of the tax claims under the Bankruptcy Code.

Discussion

A. Definition of a Tax Return

The debtor failed to file tax returns for 1987, 1988, and 1989, which causes these taxes to be non-dischargeable as a matter of law under Section 523(a)(1)(B)(I).

This court follows the rule that documents prepared by the IRS pursuant to 26 U.S.C. § 6020(b) are legally sufficient to assess taxes, but are not "deemed to be filed by the debtor" for the purposes of Section 523(a)(1)(B)(I). Gless v. United States (In re Gless), 181 B.R. 414, 416 (Bankr. D. Neb. 1993) (citing Bergstrom v. United States (In re Bergstrom), 949 F.2d 341, 343 (10th Cir. 1991)) (summary judgment opinion) [hereinafter Gless I]; Gless v. United States (In re Gless), 179 B.R. 646, 648 (Bankr. D. Neb. 1995) (citing to summary judgment opinion) [hereinafter Gless II]. Evidence that the IRS prepared a substitute return is prima facie proof that a return was not filed by the taxpayer. Eastwood v. Department of the Treasury (In re Eastwood), 164 B.R. 989, 991 (Bankr. E.D. Ark. 1994). For a return prepared by the IRS to qualify as a return filed by the debtor, the debtor must disclose information to the IRS to enable the IRS to

prepare the return, and the debtor must sign the return created by the IRS. 26 U.S.C. § 6020(a).

The documents in question, which are the SFRs prepared by the IRS, are administrative returns under 26 U.S.C. § 6020(b) because the debtor did not disclose information to the IRS concerning his income and tax liabilities for the preparation of the notices of deficiency and because the debtor did not sign the SFRs or notices of deficiency prepared by the IRS. The IRS determined the tax liabilities calculated in the notices of deficiency based on its own investigation of the debtor through third party sources, and therefore, the liabilities fall under Section 6020(b), and are not returns of the taxpayer pursuant to Section 6020(a). The debtor's evidence provides that the debtor did not discuss the tax liabilities computed by the IRS until October of 1992, by which time the IRS had already independently determined the debtor's tax liabilities for 1987, 1988, and 1989 and by which time the tax liabilities had already either been assessed or were subject to immediate assessment. The debtor did not sign the SFRs or the notices of deficiency for 1987, 1988, and 1989. Therefore, there is no dispute that the debtor did not cooperate with the IRS in the preparation of the notices of deficiency.

The debtor takes the position that since the debtor consented to the IRS's computation of the 1989 liabilities and signed the consent form that the debtor should, at the very least, be deemed to have filed a return for 1989 under Section 523(a)(1)(B)(i). In support of this conclusion, the debtor relies upon Carapella v. United States (In re Carapella), 84 B.R. 779 (Bankr. M.D. Fla. 1988). In Carapella, the taxpayer had executed a Form 870, which is a form to consent to a waiver of statutory rights to a notice of deficiency and assessment. The form was signed after the IRS had already determined and assessed the debtor's tax liability. The court held in granting the debtor's summary judgment motion, that the Form 870, even though the debtor did not attach schedules to help the IRS compute the tax, constituted a return under 26 U.S.C. § 6020(a) because the IRS's Revenue Ruling 74-203 specifically treated Form 870 as a return filed by the taxpayer. 84 B.R. at 782. Later in the trial on remaining issues, the tax liability was found to be non-dischargeable under Section 523(a)(1)(c) because the debtor did not cooperate with the IRS or consent to the prepared tax forms by the IRS until after the IRS had already prepared the tax liabilities. Carapella v. United States (In re Carapella), 105 B.R. 86, 90 (Bankr. M.D. Fla. 1989).

The IRS has represented that the consent form signed by the debtor in this case is not a Form 870. The consent form is not identified as a Form 870 and bears the identification of "Letter 2566SC/CG (ASFR - 910) (REV. 01/90)." Carapella was distinguished by the United States District Court of Nebraska in Arenson v. United States, 145 B.R. 310, 311 (D. Neb. 1992), which noted that Revenue Ruling 74-203 specifically provided that Form 870 constituted a return under Section 523(a)(1)(B)(i), but that no other rulings or regulations had been promulgated to permit a finding that other substitute returns constituted returns filed by the debtor under Section 523(a)(1)(B)(i). 145 B.R. 310, 311 (D. Neb. 1992). But see Berard v. United States (In

re Berard), 181 B.R. 653, 655 n. 5 (Bankr. M.D. Fla. 1995) (finding that Revenue Ruling 74-203 permits the same conclusion to be applied to Form 4549). Arenson affirmed the bankruptcy court's determination that amended tax returns filed by the debtor, after the IRS had prepared SFRs and assessed the delinquent tax years, were not returns as required under Section 523(a)(1)(B)(I). 145 B.R. at 311. The citation in Gless II to Revenue Ruling 74-203 reflects the finding in that case that the substitute for return at issue satisfied 26 U.S.C. § 6020(a) as "return filed by the debtor" because the debtor participated in and provided information to the IRS while the tax liabilities were being investigated and calculated by the IRS and because the debtor ultimately signed the return put together by the IRS. Gless II, 179 B.R. at 653 (finding that the debtor consented to disclose information necessary for the preparation of a tax return and that debtor signed the return, and therefore, the debtor was deemed to have filed a § 6020(a) return for § 523(a)(1)(B)(I) purposes).

In the present case, even though the debtor consented to the 1989 tax liabilities calculated by the IRS, the evidence is uncontroverted that the debtor did not provide any information to the IRS that was necessary for the IRS to compute the tax liabilities contained in the notices of deficiency and that the debtor did not sign the SFRs or notices of deficiency prepared by the IRS. Even if this court were to find that the consent form signed by the debtor was the equivalent of a Form 870, there are several problems with the analysis in Carapella and with the nature of the consent form signed by the debtor in this case.

Revenue Rule 74-203 provides that an executed Form 870 qualified as a return under 26 U.S.C. § 6020(a) if the form was executed and included accompanying schedules:

Even though a document is not in a form prescribed for use as the appropriate return, it may constitute a return if it discloses the data from which the tax can be computed, is executed by the taxpayer, and is lodged with the Internal Revenue Service. See *Germantown Trust Co. v. Commissioner*, 309 U.S. 304 [60 S. Ct. 566, 84 L. Ed. 770] (1940).

Rev. Rul. 74-203. Revenue Ruling 74-203 was promulgated in the wake of the Supreme Court's decision in Germantown, where the Supreme Court held that a deficient return filed by a fiduciary was appropriate if it was filed in good faith and "discloses all of the data from which the tax can be computed." Carapella, 84 B.R. at 782. Another case upon which Revenue Ruling 74-203 is based, United States v. Olgeirson, 284 F. Supp. 655 (D.N.D. 1968), specifically held that a signed Form 870, which "*disclosed all the information necessary for the preparation of a return* satisfied the requirements of § 6020(a)." Carapella, 84 B.R. 782 (emphasis added by Carapella). Even assuming that the consent form signed by the debtor is the equivalent of a Form 870, the debtor did not comply with the express requirement that the taxpayer must

provide schedules from which the tax liability may determined by the IRS with Form 870 (or its equivalent)). This court holds that a Form 870 consent, (or its equivalent), which is signed after the IRS has already determined the liability of the debtor and has issued a statutory notice of deficiency and the 90-day statutory appeal period has passed so the tax is immediately assessable, and the debtor provides no information to the IRS to compute the tax liability, is not return under 26 U.S.C. § 6020(a). See Gushue v. Internal Revenue Service (In re Gushue), 126 B.R. 202, 204 & n. 5 (Bankr. E.D. Pa. 1991) (noting that the conclusion in Carapella, permitting a Form 870 to qualify as a § 6020(a) return even though the IRS had already assessed the tax, was a deviation from the approach taken by other courts, but also noting that in Carapella the facts suggested that the debtor displayed some willingness to cooperate with the IRS in the preparation of the tax returns). "26 U.S.C. § 6020(a) was designed to benefit a taxpayer who, after failing to file a return, cooperates with the IRS and provides all information necessary to enable the IRS to prepare the return for the taxpayer." Gushue, 126 B.R. at 204-05.

The plain language of the Revenue Ruling requires that the debtor cooperate with the IRS during the preparation stage of the tax liability, and merely signing a Form 870, (or its equivalent), after the fact, is not substantial compliance with the Revenue Ruling procedure. This conclusion is supported in Berard v. United States (In re Berard), which thoroughly analyzed case law on this issue, and found:

Courts appear to place credence upon the cooperation in the auditing process, consent to immediate assessment and the acknowledgment of acceptance by the Internal Revenue Service when determining if a tax return has been filed by other than conventional means. . . . Cases finding a tax return has not been filed suggest the Debtors were uncooperative, and in fact ... did not supply the Internal Revenue Service with the information necessary to determine tax liability.

181 B.R. 653, 657 (Bankr. M.D. Fla. 1995) (citations omitted).

The cover letter accompanying the consent form for the 1989 taxes, dated March 19, 1992 (the same date as the preparation of the consent form) notified the debtor that the consent form had to be signed and returned to the IRS within 30 days and provided: "IF WE DO NOT HEAR FROM YOU WITHIN 30 DAYS, WE WILL BEGIN ASSESSMENT OF TAX AND PENALTIES." By signing the consent form, the debtor waived any statutory appeal right he had to contest the computations made by the IRS. However, when the debtor signed and returned the consent form on October 6, 1992, the 90-day statutory appeal period had already expired because it began to run on June 30, 1992. Notice of the 90-day appeal period was provided in the notice of deficiency for the 1989 taxes. Thus, the consent form signed by the debtor was of no effect because it was signed and submitted after the IRS had already assessed the taxes.

Therefore, as a matter of law, this court concludes that the tardiness of the signature and of returning the consent to the IRS, prevents the consent form from being treated as a return filed by the debtor under 26 U.S.C. § 6020(a). This conclusion is supported by the observation made in Berard that Form 870 is treated as a filed return because the IRS is relieved of its duties to issue the notice of deficiency and to assess the tax, and thus, the debtor in essence cooperated with the IRS's computation of the tax liability to some degree. See Berard, 181 B.R. at 656. The IRS has taken the position in a Written Determination that a 26 U.S.C. § 6020(a) return is not filed until "the date the return is received by the Service." W.D. 90220022 (June 1, 1990). The mere signature of a debtor on a statement which acknowledges outstanding taxes does not constitute a tax return, nor does it convert the IRS's preparation of an SFR into an "official" federal return. Eastwood, 164 B.R. at 992. The court does not question that the debtor was attempting to honestly settle his tax problems at the time he signed the consent form, but such good intentions at such a late date do not convert the consent form into a valid return under 26 U.S.C. § 6020(a) for the purposes of Section 523(a)(1)(B)(I).

2. Taxpayers' Bill of Rights

Even though the debtor has not filed a tax return for 1987, 1988 and 1989, the debtor is requesting that he be treated as having filed a tax return because the IRS allegedly violated its own statutory duty of informing the debtor during the collection process of the taxpayer's obligation to file a tax return in order to receive a discharge of the tax obligation in a future bankruptcy case. The debtor claims that this duty is part of "The Taxpayers' Bill of Rights," which is the popular name of legislation passed in 1988 to increase taxpayer awareness of rights during the audit and the collection process of the IRS, and to provide a cause of action for damages for certain Internal Revenue Code violations by the IRS. Creighton R. Meland, Jr., Note, *Omnibus Taxpayers' Bill of Rights Act: Taxpayers' Remedy or Political Placebo?*, 86 MICH. L. REV. 1787, 1788 (1988) . The specific part of this legislation pertinent to the present cause of action provides:

Procedures involving taxpayer interviews.

(b) Safeguards --

(1) Explanation of processes. -- An officer or employee of the Internal Revenue Service shall before or at an initial interview provide to the taxpayer

--

(B) in the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process.

26 U.S.C. § 7521(b)(1)(B).

The debtor's summary judgment motion must be denied because there is a material issue of fact regarding whether an in-person interview took place between the taxpayer and the IRS agent as required under Section 7521(b)(1)(B). The IRS takes the position that no interview took place because the IRS has no record of the meeting and that the debtor's recollection is vague to the point of suspicion. On the other hand, the debtor has submitted letters from the Ogden, Utah IRS office acknowledging that the debtor requested an in-person interview and that the local IRS office would contact the debtor to set up "a convenient time and place for an appointment."

Having decided that the debtor's motion for summary judgment must be denied, the court will now turn to the IRS's motion for summary judgment. Assuming for the purposes of the IRS summary judgment motion that there was an in-person meeting between the debtor and the IRS agent and that the IRS agent did tell the debtor that he was not obligated to file an additional tax return, the IRS's motion for summary judgment must be sustained on the issue as to whether 26 U.S.C. § 7521(b)(1)(B) creates a duty of disclosure regarding the discharge process under the Bankruptcy Code.

According to the debtor, October 6, 1992 was the date of the "in-person interview." If so, such a meeting occurred during the collection process because the "determination phase" ends and the "collection phase" begins after the 90-day statutory appeal period from the notice of deficiency expires. V-1 Oil Co. v. United States, 813 F. Supp. 730, 731-32 (D. Idaho 1992). But see Miller v. United States, 763 F. Supp. 1534, 1543 (N.D. Cal. 1991) (holding that mere assessment is not "collection action" under section of The Taxpayers' Bill of Rights providing a cause of action for damages, but notice and a demand for payment did constitute a collection practice). Therefore, the IRS was obligated to comply with Section 7521(b)(1)(B), but it does not necessarily follow that Section 7521(b)(1)(B) was intended to require the IRS to discuss anything concerning a taxpayer's right to a discharge in a future bankruptcy case.

The legislative history surrounding the statute is absolutely silent on the issue of a discharge in bankruptcy. See 134 CONG. REC. S15073-79 (daily ed. Oct. 7, 1988 & H10119-21 (daily ed. Oct. 12, 1988)). Specifically, the portions of the Congressional Record which discuss the intent of The Taxpayers' Bill of Rights concerning collection actions of the IRS address the need to provide more information and greater protection to the taxpayer regarding the taxpayer's rights to notices, the taxpayer's rights during a levy, protection to the taxpayer from unlawful lien practices, and the rights and alternatives of the taxpayer during a sale of the property. Id. at S15076. Nothing in the legislative history even minutely implicates the right of a taxpayer to information regarding the taxpayer's rights or remedies outside of the Internal Revenue Code, including the right to a discharge under the Bankruptcy Code. This court will not impose such a duty upon the IRS absent a statutory directive. Section 7521(b)(1)(B) is not such a directive, as the debtor's interpretation goes beyond the scope of the plain language of the statute and the statute's expressed legislative intent.

The debtor may not be deemed to have filed a tax return under 11 U.S.C. § 523(a)(1)(B)(I) even if the IRS has violated 26 U.S.C. § 7521(b)(1)(B), but an issue of fact does remain as to whether the IRS did advise the debtor that he was not obligated to file a tax return after the IRS filed its 26 U.S.C. § 6020(b) SFR and assessed the taxes. The law provides that the debtors are still obligated to file a tax return, even if the IRS has filed a 26 U.S.C. § 6020(b) return. Bergstrom, 949 F.2d at 343; United States v. Stafford, 983 F.2d 25, 27 (5th Cir. 1993); Eastwood, 164 B.R. at 991. The IRS admits, and this court has found, that the IRS filed a Section 6020(b) return. Therefore, if the IRS agent did advise the debtor not to file a return, the IRS may have caused damages in the amount of the debtor's lost Section 523(a)(1)(B)(I) discharge under the Bankruptcy Code. Congress created a remedy provision at 26 U.S.C. § 7433 in The Taxpayers' Bill of Rights to address reckless or intentional disregard of the laws under the Internal Revenue Code and its regulations by IRS agents during the collection process. The debtor's cause of action and remedy, if any, arise from The Taxpayers' Bill of Rights, not the Bankruptcy Code discharge provisions. Any complaint for damages is separate from, and does not arise in, nor is it related to the bankruptcy case. The appropriate forum apparently is the United States District Court, not the bankruptcy court.

Separate journal entry to be filed.

DATED: July 30, 1996

BY THE COURT:

Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:
JAMES WOODRUFF 402-471-5608
THOMAS STALNAKER 393-2374
JAMES BACHMAN 391-6921

Copies mailed by the Court to:
LOREN MARK, P.O. BOX 1500 DTS, OMAHA, NE 68101
United States Trustee

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
RANDY K. SHANNON,	)	CASE NO. BK95-80024
	)	A95-8012
_____ DEBTOR(S))	
	)	CH. 7
RANDY K. SHANNON,	)	Filing No. 31, 40, 42, 43
Plaintiff(s))	
vs.	)	<u>JOURNAL ENTRY</u>
)	
UNITED STATES OF AMERICA,)	
DEPARTMENT OF TREASURY,)	
INTERNAL REVENUE SERVICE,)	
NEBRASKA DEPARTMENT)	
OF REVENUE)	
	)	DATE: July 30, 1996
_____ Defendant(s)	)	HEARING DATE: May 21, 1996

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion of Debtor for Summary Judgment Against the United States of America, Department of Treasury and Internal Revenue Service.

APPEARANCES

James Bachman, Attorney for plaintiff
Loren Mark, Attorney for USA

IT IS ORDERED:

1. Summary judgment is granted in favor of the debtor on the issue of the dischargeability of the 1990 taxes, interest and penalties thereon.
2. The dischargeability of the 1991 taxes, interest and penalties thereon, was not pled in the adversary complaint, and therefore, is not properly raised in the summary judgment motion. Summary judgment is denied.
3. Summary judgment is granted in favor of the debtor on the issue of whether the penalty claims for 1987, 1988, and 1989 are dischargeable.
4. Summary judgment is granted in favor of the IRS regarding the non-dischargeability of the interest and taxes due for the 1987, 1988 and 1989 tax years. The debtor failed, as a matter of law, to file a tax return for these years as required

under 11 U.S.C. § 523(a)(1)(B)(I). The debtor's motion for summary judgment on the dischargeability of the 1987, 1988 and 1989 tax years for taxes and interest is denied.

5. The Taxpayers' Bill of Rights, codified at 26 U.S.C. § 7521(b)(1)(B), does not create a duty requiring the IRS to disclose to taxpayers during in-person meetings the right that the taxpayer may have to a discharge of the tax claims under the Bankruptcy Code.

See separate memorandum entered this day.

BY THE COURT:

Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

JAMES WOODRUFF	402-471-5608
THOMAS STALNAKER	393-2374
JAMES BACHMAN	391-6921

Copies mailed by the Court to:

LOREN MARK, P.O. Box 1500 DTS, Omaha, NE 68101
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.