IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number 91-12356
ELLIS R. GARNETT	)	
	)	
Debtor	)	
	)	
ELLIS R. GARNETT	)	
	)	
Movant	)	
	)	
vs.	)	FILED
	)	at 10 O'clock & 31 min. A.M.
STATES OF GEORGIA DEPARTMENT OF REVENUE	)	Date: 12-22-92
	)	
Respondent	)	

ORDER

Debtor, Ellis R. Garnett objects to two proofs of claim filed by the State of Georgia Department of Revenue (the "Department of Revenue"). Based on evidence presented at hearing and relevant legal authorities, I make the following findings.

FINDINGS OF FACT

By order dated July 22, 1991, Mr. Garnett received a discharge pursuant to 11 U.S.C. §727(a) in Chapter 7 case No. 9110549. Mr. Garnett filed for protection under Chapter 13 of the Bankruptcy Code on December 17, 1991. The Georgia Department of

Revenue filed two proofs of claim in this case: claim No. 7 reflects its claim for withholding taxes due from debtor for the fourth quarter of 1990 in the amount of Five Hundred Fifty-Two and 86/100 ($552.86) Dollars and interest thereon in the amount of Fifty-Eight and 76/100 ($58.76) Dollars; claim No. 8 reflects a penalty on the withholding tax in the amount of One Hundred SixtyThree and 22/100 ($163.22) Dollars. Debtor does not contest the correctness of the Department of Revenue's assessment of the 1990 withholding tax, interest or penalty, but contends his prior Chapter 7 case discharged this debt.

CONCLUSIONS OF LAW

"A claim or interest, proof of which is filed under section 501 of this title [11], is deemed allowed, unless a party interest . . . objects." 11 U.S.C. §502(a). In a hearing on an objection to claim, the burden is initially on the objecting party to put forth sufficient evidence to overcome the prima facie correctness of the claim. In re: The Securities Groups, 116 B.R. 839, 845 (Bankr. M.D. Fla. 1990). Once the objecting party comes forth with sufficient evidence to place the claim's allowability as filed at issue, the burden of going forward with evidence to sustain the claim shifts to the claimant. In re: Cherry, 116 B.R. 315, 316 (Bankr. M.D. Ga. 1990). The ultimate burden of persuasion rests with the claimant. Id.

The debtor has failed to put forth sufficient evidence to

overcome the correctness of the claim as filed. Claims Nos. 7 and

8 are allowed. Although 11 U.S.C. §727(a) provides for a discharge in Chapter 7 cases, §727(b) subjects the discharge to §523(a), which provides in pertinent part:

> a discharge under section 727 . . . of this title [11] does not discharge an individual debtor from any debt --
> (1) for a tax . . .
> (A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(7) of this title. . . .

Section 507(a)(7)[1]0.Section 507(a)(2) does not apply to this case.[2] provides that the following claims are priority claims in bankruptcy cases:

> [a]llowed unsecured claims of governmental units, only to the extent that such claims are for -
> (C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity. . . .

Pursuant to §523(a)(1)(A), debts underlying such priority claims are nondischargeable. The Georgia Department of Revenue's claim is for withholding tax, and thus is a §507(a)(7) priority claim. Accordingly, Mr. Garnett's tax liability for 1990 is a nondischargeable debt under 11 U.S.C. §523(a)(1)(A).

Section 523(a)(7) provides that a discharge under §727 does not discharge a debt

> to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation

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[1]Section 507(a)(2) does not apply to this case.

> for actual pecuniary loss, other than a tax penalty -
> (A) relating to a tax of a kind not specified in paragraph (1) of this subsection [523(a)]; or
> (B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition.

Under §523(a)(7) a tax penalty is nondischargeable if the tax to which it relates is nondischargeable. See generally In re: Burns, 887 F.2d 1541 (11th Cir. 1989); In re: Hopkins, 131 B.R. 308 (Bankr. N.D. Tex. 1991). The tax penalty in question relates to a nondischargeable tax liability and is therefore also nondischargeable. Additionally, whatever interest accrues on a nondischargeable tax debt pursuant to applicable law is also nondischargeable. See In re: Burns, supra, at 1543 (post petition interest); Matter of Larson, 862 F.2d 1112, 119 (7th Cir. 1988) (prepetition interest).

It is therefore ORDERED that debtor's objection to the proofs of claim filed by the State of Georgia Department of Revenue are overruled.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 21st day of December, 1992.