

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

FILED

at 12 O'clock & 43 min. P.M.
Date 9/29/94

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia JB

In the matter of:)
CLIFFORD THOMAS FARRIS)
Debtor)

Chapter 7 Case

Number 94-40882

MEMORANDUM AND ORDER
ON UNITED STATES TRUSTEE'S MOTION TO DISMISS

Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code on May 26, 1994. On June 27, 1994, the United States Trustee filed a Motion to Dismiss Debtor's case, alleging that the grant of a discharge in this case would constitute a "substantial abuse" under 11 U.S.C. Section 707(b).¹ The matter came on for a hearing on August 18, 1994, at which time the Debtor made an oral motion to dismiss or to deny the Motion of the United States Trustee for failure to state a claim. In support of his Motion, Debtor asserted that his debts are not primarily "consumer

¹ Section 707(b) provides:

After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, but [and] not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.

debts" as that term is defined in 11 U.S.C. § 101(8) and used in 11 U.S.C. § 707(b). In response, the Trustee stipulated that, if the Court concludes that income tax obligations owed to the Internal Revenue Service are not consumer debts, then Debtor's obligations would not be primarily "consumer debts" as required by Section 707 for the Court to entertain the Motion to Dismiss for Substantial Abuse. If, however, the Court concludes that Internal Revenue Service obligations are in the nature of "consumer debt," then the United States Trustee will have made a sufficient showing to overcome the Motion to Dismiss and the matter should be set for a hearing to consider the of other issues bearing on the question of substantial abuse.

Thus, the following question of law is presented to the Court: Are federal income taxes to be construed as "consumer debt" for the purposes of determining "substantial abuse" under section 707(b) of the Code? Consumer debt is defined in 11 U.S.C. Section 101(8) as a "debt incurred by an individual primarily for a personal, family, or household purpose." The courts which have considered the precise question of whether income taxes fall within this definition have uniformly concluded that it does not.² "[A] tax liability is in no way a consumer debt because it originates from the earning of income not in the course of a consumption activity

² See e.g., In re Traub, 140 B.R. 286, 288 (Bankr. D.N.M. 1992); In re Reiter, 126 B.R. 961 (Bankr. W.D.Tex. 1991); In re Gault, 136 B.R. 736, 738 (Bankr. E.D. Tenn. 1991); In re Harrison, 82 B.R. 557, 558 (Bankr. D.Colo. 1987); In re Pressimone, 39 B.R. 240, 244-45 (D.C.N.Y. 1984).

. . ." In re Harrison, 82 B.R. 557, 558 (Bankr. D.Colo. 1987). "Taxes may be personally owed . . . but that does not render them debts incurred for a personal, family or household purpose. Tax debt is involuntarily imposed for a public purpose." In re Reiter, 126 B.R. at 964. Although Harrison and Reiter dealt with the question of whether income taxes are consumer debt in the context of the co-debtor stay under 11 U.S.C. § 1301, section 101(8), as one court has observed, "is an omnibus section which applies to all sections of the Code." In re Traub, 140 B.R. at 288.

In view of above-cited case law, I conclude that Debtor's federal income tax obligations are not "consumer debt" as that term is defined in section 101(8) and used in section 707(b). Accordingly, Debtor's motion to dismiss or deny the U.S. Trustee's Motion to Dismiss his case is hereby GRANTED.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 29th day of September, 1994.