

DOCKET NUMBER: 96-14020

ADV. NUMBER: 97-1032

JUDGE: M. A. Mahoney

PARTIES: Aristide Robert Minnis, Jr., State of Alabama, Department of Revenue

CHAPTER: 7

ATTORNEYS: E. R. Tibbetts, D. R. Crow

DATE: 6/13/97

KEY WORDS:

PUBLISHED: No

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

Aristide Robert Minnis, Jr.,  
Debtor.

Case No. 96-14020

Aristide Robert Minnis, Jr.,  
Plaintiff,

vs.

Adv. No. 97-1032

State of Alabama,  
Department of Revenue  
Defendant.

ORDER AND JUDGMENT

Edward R. Tibbetts, Mobile, Alabama, Attorney for Plaintiff  
Duncan R. Crow, Mobile, Alabama, Attorney for Defendant

This matter is before the Court on the complaint of Aristide Minnis to determine the dischargeability of his state income tax debt. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the 1972, 1973, 1974, and 1975 state income tax debt of Aristide Minnis is dischargeable in his Chapter 7 bankruptcy case.

Aristide Minnis filed Chapter 7 on October 31, 1996. The State of Alabama, Department of Revenue (State) is listed as a creditor in his schedules. The State claims an indebtedness owing by Minnis which includes individual income taxes, penalties, and interest for the following years: 1972, 1973, 1974 and 1975. In 1986, tax liabilities were assessed for the years in question. The issue presented by this case is whether the liens are still valid.

Subsequent to the hearing, the State submitted the following information to the Court:

Alabama Code § 40-29-50 Code of Alabama 1975 states that a lien for state taxes is valid (i.e., the Department may initiate collection activity) for ten years after a final assessment is entered. Each of the years in question was assessed on April 7, 1986.

Section 40-29-51(a) suspends this period of limitations for any period during which the Department is prohibited from collection by a court proceeding, and for 60 days thereafter; § 40-29-51(b) suspends the time limits where the assets of the taxpayer are under the control or custody of the court, and for six months thereafter; § 40-29-51(c) tolls the period of limitations when the taxpayer is outside the state for a continuous six month period; and §40-29-51(d) tolls the running of the period of limitations where the taxpayer is in bankruptcy, plus six months.

Following the general rule set forth in § 40-29-50, the liens in this case would be valid through April 7, 1996. None of the exceptions in § 40-29-51 seem to apply.

Pursuant to §§ 40-29-50 and 40-29-51, the State of Alabama's liens have lapsed.

Therefore, it is ORDERED and ADJUDGED that the complaint of Aristide Robert Minnis, Jr., for a declaration of the dischargeability of his 1972, 1973, 1974 and 1975 state income tax liabilities is granted and the debt is declared to be dischargeable.

Dated: June 13, 1997

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MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE