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JUDGE: M. A. Mahoney

PARTIES: William Earle Ramsey, Norma Lee Ramsey, State of Alabama Department of Revenue

CHAPTER: 7

ATTORNEYS: R. McDonald, D. Crow

DATE: 11/18/99

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

WILLIAM EARLE RAMSEY
NORMA LEE RAMSEY

Case No. 99-11852-MAM-7

Debtors.

WILLIAM EARLE RAMSEY and
NORMA LEE RAMSEY,

Plaintiffs,

vs.

Adv. No. 99-1123

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

Defendant.

**ORDER AND JUDGMENT DECLARING CERTAIN TAXES
OWED TO THE STATE OF ALABAMA NONDISCHARGEABLE**

Robert McDonald, Mobile, Alabama, Attorney for the Plaintiffs
Duncan Crow, Mobile, Alabama, Attorney for the State of Alabama

This case is before the Court on the debtors' complaint to determine the dischargeability of taxes owed to the state of Alabama for the years 1988-1998. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This case is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the debts owed to the State of Alabama for taxes for the years 1988-1993 and 1998 are not dischargeable. The complaint as to the tax years 1994-1997 is moot.

FACTS

The parties stipulated to the facts of the case. The debtors did not file tax returns for the years 1988-1993. The State of Alabama determined the estimated amount of taxes due based upon information submitted to the State from the debtors' employers and other sources. The State in effect places in the debtors' records a substitute for a return. The debtors did file tax returns for the years 1994-1997 and were entitled to refunds for those years. The State of Alabama captured those refunds and applied them to the unpaid taxes for 1988-1993. The Ramseys filed a tax return for 1998. Some amount is due for those taxes and has not been paid.

LAW

The State of Alabama and the debtors agree that the taxes for the years 1994-1997 were paid and therefore the issue of their dischargeability is moot. There is no need to seek a dischargeability determination since there is no debt to be discharged.

Section 523(a)(1)(B)(i) states that "a discharge under 727 . . . of this title does not discharge an individual debtor from any debt . . . for a tax . . . with respect to which a return, if required . . . was not filed." As to the years 1988-1993, the issue is whether the substitute for a return which the State of Alabama calculates constitutes a filed return for dischargeability purposes. If it does, then some or all of the taxes for the years 1988-1993 of the debtors might be dischargeable. If the substitutes are not filed returns, then the debtors have never filed returns for those years and the debts are not dischargeable.

The law is clear that substitutes for returns prepared by the Internal Revenue Service do not constitute filed returns for purposes of Section 523(a)(1) of the Bankruptcy Code. *Bergstrom v. United States (In re Bergstrom)*, 949 F.2d 341 (10th Cir. 1991); *Gentry v. United States*, 223 B.R. 127 (Bankr. M.D. Tenn. 1998); *In re Gushue*, 126 B.R. 202 (Bankr. E.D. Pa. 1991);

In re Hofmann, 76 B.R. 853 (Bankr. S.D. Fla. 1987); *see also* footnote 4 in case attached, *Campbell v. United States*, (Bankr. N.D. Fla., April 18, 1995), unpublished decision. The only instances where substitutes for return might constitute a “filed return” are when the debtor signs the substitutes or works with the government entity to prepare them.

The State of Alabama follows a procedure very similar to the one utilized by the United States when it files substitutes for returns. “If a taxpayer fails to file returns or provide the Department [of Revenue] with adequate records, the Department is authorized to compute liability using the best information available. *See*, Code of Ala. 1975, 40-18-49 and also *United States v. Firtel*, 446 F.2d 1005, and *Denison v. C.I.R.*, 689 F.2d 771.” *State of Alabama v. ****, *Auburn, Al 36830*, 1991 WL 214519 (Ala. Dept. Rev. 1991); *State of Alabama v. ****, *P.O. Box 135 Florala, Al 36442*, 1990 WL 293816 (Ala. Dept. Rev. 1990). The State provides no relief to taxpayers not afforded to taxpayers at the federal level in its statutory scheme. Therefore the failure to file state income tax returns clearly yields the same result--nondischargeability. *See Semenek v. Department of Revenue of the State of Illinois*, 166 B.R. 327 (N.D. Ill. 1994) (holding that audit papers prepared by the State Department of Revenue do not constitute constructive filing of tax returns for dischargeability purposes).

As to the tax year 1998, even if the return has been filed, the return was first due on April 15, 1999, and does not qualify for nondischargeability under Section 523(a)(1).

THEREFORE IT IS ORDERED AND ADJUDGED that the taxes owed by the Plaintiffs, William Earle Ramsey and Norma Lee Ramsey, for the tax years 1988, 1989, 1990, 1991, 1992, 1993, and 1998 are NONDISCHARGEABLE in this bankruptcy case and the issue of the dischargeability of the taxes for the tax years 1994,1995,1996, and 1997 is MOOT.

Dated: November 18, 1999

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE