

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

HENRY MARTIN THOMPSON,

Debtor.

CASE NO. 99-12603-WSS

Chapter 7

HENRY MARTIN THOMPSON,

Plaintiff/Debtor

v.

ADV. PROC. NO. 99-1174

UNITED STATES OF AMERICA,

Defendant.

**ORDER ON DEBTOR’S COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT**

This matter came before the Court on the Debtor’s complaint to determine dischargeability of debt. Robert E. McDonald, Jr. represented the Debtor, and Charles Baer represented the Defendant, the United States of America (IRS) (hereinafter “the United States”). 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 matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). After due consideration of the pleadings, testimony, evidence and briefs of the parties, the Court makes the following findings of fact and conclusions of law:

The Debtor, Henry Martin Thompson (hereinafter “Thompson”), filed a previous Chapter 13 petition (Case no. 95-11035) on May 3, 1995. This Court dismissed the previous Chapter 13 case on January 6, 1999 for failure to make payments. Thompson filed the present Chapter 13 case on July

29, 1999, approximately six months after the previous case was dismissed.¹ During Thompson's previous Chapter 13 case, the automatic stay prevented the United States from collecting the delinquent taxes.

Thompson lists federal income tax liabilities for 1983, 1986, 1987, 1989, 1990, 1993, 1994 in his Chapter 13 petition.² The parties do not dispute that the federal income tax liabilities for 1983, 1986, 1987, 1989, and 1990 are dischargeable. The tax years 1993 (\$1,000.00) and 1994 (\$1,872.00) are in dispute.

The United States maintains that the priority and dischargeability provisions of §507(a)(8)(A) and §523(a)(1)(A) should be tolled during Thompson's previous Chapter 13 case under the authority of In re Morgan, 182 F.3d 775 (11th Cir. 1999). In Morgan, the Eleventh Circuit held that a bankruptcy court had the equitable authority under 11 U.S.C. §105 to toll the priority period during a debtor's Chapter 13 case, and that the equities generally favored the Government in such situations. Thompson distinguished his case from Morgan on grounds that the decision dealt only with tolling of the priority period, and did not apply to the issue of dischargeability.

The Eleventh Circuit in Morgan recognized that priority tax claims under §507(a)(8)(A)(i) also receive protection against discharge under §523(a)(1). Morgan, 182 F.3d at 777. Allowing the priority status to be tolled but not allowing tolling of the dischargeability under §523(a)(1) would defeat the purpose of the priority status. "Congress realized that '[a]n open-ended dischargeability policy would provide an opportunity for tax evasion through bankruptcy, by permitting discharge of

¹The Court's order dismissing Thompson's previous case included a 180-day injunction.

²It was uncertain at trial whether Thompson has unpaid taxes for 1995. Counsel for the United States stated that the United States was not aware that the 1995 taxes were at issue, and therefore was not prepared to litigate the dischargeability of any 1995 federal taxes owed. Thompson did not list personal income taxes for 1995 on schedule E of his petition.

tax debts before a taxing authority has an opportunity to collect any taxes due.” Morgan, 182 at 780, quoting In re Waugh, 109 F.3d 489, 492 (8th Cir. 1997), which quoted H.R. Rep. No. 95-595, at 190 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 5963, 6150.

The Courts finds that equity favors the United States under the present fact situation.

Thompson received the benefit of the automatic stay under 11 U.S.C. §362 to bar any collection efforts by the IRS from May 1995 to January 1999. As the United States pointed out in its post-trial brief, the six month period between the dismissal of Thompson’s first Chapter 13 case and the filing of his second Chapter 13 case did not give the IRS sufficient time to collect the taxes at issue. The Court finds that the priority provisions under §507(a)(8)(A)(i) were tolled during Thompson’s prior Chapter 13 case from May 3, 1995 until January 6, 1999. As a result, Thompson’s tax liability for 1993 and 1994 are nondischargeable as priority tax claims under §523(a)(1). It is hereby

ORDERED that the relief sought in the Debtor’s complaint to determine dischargeability of debt is **DENIED**, and the Debtor’s tax liability for 1993 and 1994 is **NONDISCHARGEABLE**.

DATED: January ____, 2000

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE