**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

        Case No. 6:07-bk-02502-ABB
        Chapter 7

MARK JOSEPH DONAHUE, SR., and
KAREN LEE DONAHUE,

        Debtors.
_____/

MARK JOSEPH DONAHUE, SR. and
KAREN LEE DONAHUE,

        Plaintiffs,
vs.
        Adv. Pro. No. 6:07-ap-00163-ABB

DEPARTMENT OF REVENUE,
INTERNAL REVENUE SERVICE,

        Defendant.
_____/

ORDER

        This matter came before the Court on the Motion to Alter or Amend Judgment (Doc. No. 29) ("Motion") filed by the IRS seeking reconsideration of the Memorandum Opinion and Judgment entered on August 25, 2008 (Doc. Nos. 23, 24) determining the dischargeability of alleged tax liabilities for various tax years.

        The Motion is governed by Federal Rule of Civil Procedure 59(e), which is made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 9023. FED. R. CIV. P. 59(e) ("A motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment."); FED. R. BANKR. P. 9023. The only grounds for granting a motion for reconsideration "are newly-discovered evidence or manifest errors of law or fact." Kellogg v. Schreiber (In re Kellogg), 197 F.3d 1116, 1119 (11th Cir. 1999).

        The IRS seeks reconsideration of the Court's ruling regarding the dischargeability of alleged tax debt for tax year 2004. The IRS had the burden to establish by a preponderance of the evidence the alleged tax year 2004 debt is nondischargeable pursuant to Section 523(a).

U.S. v. Fretz (In re Fretz), 244 F.3d 1323, 1327 (11th Cir. 2001). The IRS did not meet its burden:

> The IRS asserts the Debtors owed on the Petition Date taxes of $1,856.95, interest of $314.96, and penalties of $629.36 for tax year 2004. The IRS contends the "Debtors['] 2004 taxes are nondischargeable priority taxes." The IRS provided no basis for such contention and no documentation regarding tax year 2004, including when such penalties were assessed or imposed.

Memorandum Opinion at p. 7.

> The IRS did not establish its asserted tax debt for tax year 2004 is nondischargeable. Any and all tax liabilities, interest, and penalties relating to the Debtors, either individually or jointly, for tax year 2004 are dischargeable pursuant to 11 U.S.C. Sections 523(a)(1), 523(a)(7)(B), and 727(b).

Id. at pp. 10-11.

        The IRS asserts the "Plaintiffs' counsel conceded, and the Court seemed to agree," the Debtors' liability for the 2004 tax debt and stipulated to its nondischargeability. It contends the Court "erred as a matter of law" in determining the 2004 tax liability dischargeable.

        The IRS bases its contention upon a portion of the transcript of the May 8, 2008 evidentiary hearing in which a colloquy between IRS counsel and Debtors' counsel took place with some interjections by the Court. The exchange does not constitute evidence nor does it constitute a ruling by the Court as to the 2004 tax liability.

        The IRS was provided ample opportunity to meet its evidentiary burden in this adversary proceeding. The trial was commenced on May 8, 2008 at which the IRS presented a revenue officer who was unable to explain the

content of the Literal Transcripts. The trial was continued to July 14, 2008 to allow the IRS an opportunity to explain the Literal Transcripts and to address whether its records reflect returns were received. The IRS was also provided an opportunity to submit post-trial supplemental documentation. The Memorandum Opinion and Judgment were rendered based upon the Court's review of all the evidence presented by the parties.

The IRS has presented no newly-discovered evidence or manifest error of law or fact warranting the reconsideration or amendment of the Memorandum Opinion and Judgment. No basis for reconsideration or amendment of the Memorandum Opinion and Judgment has been established pursuant to Federal Rule of Civil Procedure 59(e).

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the IRS' Motion (Doc. No. 29) is hereby **DENIED**.

Dated this 12th day of September, 2008.

> */s/Arthur B. Briskman*
> *ARTHUR B. BRISKMAN*
> *United States Bankruptcy Judge*