UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:	Case No. 3:11-bk-5114-PMG
Stewart M. Bell,	
Debtor.	Chapter 7
Stewart M. Bell,	
Plaintiff,	
vs.	Adv. No. 3:12-ap-693-PMG
United States of America (Treasury Department, Internal Revenue Service)	
Defendant.	

ORDER ON (1) UNITED STATES' MOTION FOR SUMMARY JUDGMENT, AND (2) PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS CASE came before the Court for hearing to consider the Motion of the United States of America for Summary Judgment (Doc. 16), and the Motion of the Plaintiff for Partial Summary Judgment (Doc. 17).

Stewart M. Bell (the Debtor), filed a Complaint seeking a determination that certain tax debts were dischargeable in his Chapter 7 case. Under §523(a)(1)(B)(i) of the Bankruptcy Code, tax liabilities are

not dischargeable if the debtor failed to file a return that satisfied the requirements of applicable nonbankruptcy law. "Applicable nonbankruptcy law" for purposes of determining whether a document is a "return" consists of a four-part analysis known as the *Beard* test.

In this case, the Internal Revenue Service (IRS) asks the Court to determine that filings made by the Debtor did not constitute "returns" as a matter of law, because they were submitted after the Debtor's taxes had been assessed.

The *Beard* test does not include a timeliness requirement for a document to qualify as a return, and a post-assessment document may constitute a return, as long as it otherwise satisfies the four elements of the test. Consequently, the IRS's Motion for Summary Judgment should be denied.

To satisfy the fourth prong of the *Beard* test, however, a debtor's untimely filing must "represent an honest and reasonable attempt to satisfy the requirements of the tax law." An evaluation of a debtor's efforts to satisfy the tax laws involves the circumstances surrounding the late filing, and is not generally suitable for determination by summary judgment. In this case, therefore, further proceedings should be conducted to determine whether the Debtor's post-assessment filings satisfied the fourth prong of the *Beard* test.

Background

The Debtor, Stewart M. Bell, is self-employed. He did not file federal income tax returns for the 2001, 2002, 2003, or 2004 tax years on or before April 15 of the year following any of the tax years at issue. (Doc. 15, Joint Stipulation of Facts, ¶ 4).

Because the Debtor did not file the returns by their respective due dates, the IRS determined the Debtor's tax liabilities for the years in question, and issued Notices of Deficiency pursuant to §6212 of the Internal Revenue Code. (Doc. 15, ¶ 5).

The Debtor did not challenge the Notices of Deficiency. On January 8, 2007, therefore, the IRS assessed the Debtor's income tax liabilities for 2001, 2002, 2003, and 2004. The total amount of the liability, as assessed, was $207,378.00. (Doc. 15, ¶ 6).

On February 20, 2007, after the assessments had been made, the Debtor submitted a Form 1040, U.S. Individual Income Tax Return, to the IRS for each of the tax years at issue. (Doc. 15, ¶ 7).

On September 10, 2007, the IRS abated or reduced a portion of the Debtor's tax liability for 2001, 2002, 2003, and 2004, based on the returns submitted by the Debtor. The total amount of the Debtor's tax liability, after abatement, was $105,577.00. (Doc. 15, ¶ 8).

On July 12, 2011, the Debtor filed a petition under Chapter 7 of the Bankruptcy Code. On his schedule of liabilities, the Debtor listed the IRS as a creditor holding an unsecured priority claim in the amount of $230,217.00. (Main Case, Doc. 1, Schedule E).

The Debtor received his Chapter 7 Discharge on November 9, 2011. (Main Case, Doc. 8).

The Debtor subsequently filed a Complaint and Amended Complaint against the United States of America. (Doc. 8). In Count I of the Amended Complaint, the Debtor asserts that the scheduled income tax liabilities are not excepted from discharge under §523(a)(1)(A), §523(a)(1)(B), or §523(a)(1)(C) of the Bankruptcy Code, and therefore seeks a determination that the tax liabilities were discharged in his Chapter 7 case. Count II of the Amended Complaint is an action for violation of the

discharge injunction, and Count III of the Amended Complaint is an action for administrative/litigation costs and fees.

The IRS filed an Answer to the Amended Complaint, and asserts that the Debtor's federal income tax liabilities for 2001, 2002, 2003, and 2004 are excepted from discharge pursuant to §523(a)(1)(B)(i) of the Bankruptcy Code. (Doc. 13).

Discussion

The Debtor and the IRS have filed separate Motions for Summary Judgment in this adversary proceeding. (Docs. 16, 17). The primary issue in the Motions is whether the Debtor's income tax liabilities for the 2001, 2002, 2003, and 2004 tax years were discharged in the Debtor's Chapter 7 case, or whether the liabilities were excepted from discharge under §523(a)(1)(B)(i) of the Bankruptcy Code. More precisely, the issue is whether the Form 1040's filed by the Debtor after his tax liabilities had been assessed constitute "returns" as that term is defined for dischargeability purposes in §523(a).

Section 523(a)(1)(B)(i) provides:

> **11 U.S.C. §523. Exceptions to discharge**
>
> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> (1) for a tax or a customs duty—
>
> . . .
>
> (B) with respect to which a return, or equivalent report or notice, if required—
>
> (i) was not filed or given;

11 U.S.C. §523(a)(1)(B)(i). Thus, "Section 523(a)(1)(B)(i) provides that a debtor is not discharged from any debt for a tax with respect to which a return was not filed." In re Wogoman, 475 B.R. 239, 241 (10th Cir. BAP 2012).

Prior to 2005, the Bankruptcy Code did not define the term "return" as found in §523(a). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, however, amended §523 by adding an unnumbered paragraph at the end of subsection (a). The unnumbered paragraph provides:

> For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

11 U.S.C. §523(a)(Emphasis supplied). Under this section, "a 'return' for purposes of 11 U.S.C. §523(a) is defined by reference to nonbankruptcy law." In re Pendergast, 494 B.R. 8, 13 (Bankr. D. Mass. 2013).

A. "Applicable nonbankruptcy law" is the *Beard* test.

The Internal Revenue Code does not provide a definition of "return." In re Hindenlang, 164 F.3d 1029, 1033 (6th Cir. 1999)("The Internal Revenue Code, which liberally uses the concept of returns, does not formally define 'return.'"). See also In re Mallo, 2013 WL 4873057, at 10 (D. Colo.)(The Internal Revenue Code contains no definition of "return.").

Under "applicable nonbankruptcy law," the standard for determining whether a document is a return consists of a four-part analysis known as the *Beard* test. Under the *Beard* test:

> In order for a document to qualify as a return: "(1) it must purport to be a return; (2) it must be executed under penalty of perjury; (3) it must contain sufficient data to allow

> calculation of tax; and (4) it must represent an honest and reasonable attempt to satisfy the requirements of the tax law." *Hindenlang*, 214 B.R. at 848.

In re Hindenlang, 164 F.3d 1029, 1033 (6th Cir. 1999). As explained by the Sixth Circuit Court of Appeals in Hindenlang, the test was derived from two decisions of the United States Supreme Court, and later articulated by the Tax Court in Beard v. Commissioner, 82 T.C. 766, 1984 WL 15573, *aff'd*, 793 F.2d 139 (6th Cir. 1986). In re Hindenlang, 164 F.3d at 1033.

Prior to BAPCPA, the *Beard* test was generally accepted as the standard for determining whether a document was a "return" for purposes of the dischargeability provisions in §523(a). In re Colsen, 446 F.3d 836, 839 (8th Cir. 2006).

After BAPCPA, Courts have continued to apply the test as the "applicable nonbankruptcy law" that must be satisfied under the definition of return that was added to §523(a). In In re Mallo, 2013 WL 4873057, at 12 (D. Colo.), for example, the Court concluded "that the Beard test is the applicable nonbankruptcy law to be used to determine whether a filing constitutes a 'return' – for purposes of applying the dischargeability exception to a tax debt set forth in §523(a)(1)(B)(i)." See also In re Martin, 2013 WL 5323350, at 7 (D. Colo.); In re Moffitt, 2013 WL 3294898, at 3 n.1 (Bankr. W.D. Ky.)(The Court found that the four-part *Beard* test and the definition of "return" provided by §523(a) "work perfectly well together," and that the test remains authoritative with respect to the definition of a return under the dischargeability provision.); In re Rhodes, 2013 WL 5291400, at 5 (Bankr. N.D. Ga.)(The Court concluded that the four-part *Beard* test remained applicable after BAPCPA to determine whether the debtor filed a "return."); and in In re Brown, 489 B.R. 1, 5-6 (Bankr. D. Mass. 2013)(The Court determined that the definition of return added by BAPCPA extended the analytical approach of the *Beard* test to tax returns evaluated under §523(a)).

B. Timeliness is not an express requirement under the *Beard* test.

Under the *Beard* analysis, a debtor's untimely tax document may constitute a return, as long as it satisfies the four elements of the test. As shown above, for a document to qualify as a return under the *Beard* analysis, it must purport to be a return, it must be signed under penalty of perjury, it must contain sufficient data to allow calculation of the tax, and it must represent an honest and reasonable attempt to satisfy the tax laws. In re Hindenlang, 164 F.3d at 1033.

The timeliness of the document is not an express requirement under the *Beard* test. While the four-part *Beard* test is the applicable analysis after BAPCPA, the test "does not incorporate a timeliness requirement." In re Rhodes, 2013 WL 5291400, at 11 (Bankr. N.D. Ga.).

In In re Mallo, 2013 WL 4873057, at 8 (D. Colo.), for example, the District Court applied the four-part *Beard* test to determine whether a late filing was a return for purposes of the dischargeability provision, and expressly rejected "a *per se* rule that *any* late-filed return is not a 'return' for purposes of assessing the dischargeability of its related tax liability." (Emphasis in original). See also In re Martin, 2013 WL 5323350, at 7 (D. Colo.), in which the Court declined to adopt the position that the lateness of a return rendered the related tax debt nondischargeable.

As long as an untimely filing satisfies the four elements of the *Beard* test, it may constitute a return under the definition provided by §523(a). See In re Brown, 489 B.R. 1, 6 (Bankr. D. Mass. 2013)(A late-filed state tax return was a "return" under applicable nonbankruptcy law, and §523(a) did not provide any basis to except the tax liability from discharge solely because the return was late.). See also In re Pitts, 2013 WL 4170000, at 7 (Bankr. C.D. Cal.)(adopting the position taken in Brown).

The timeliness of the filing is not an express requirement for a particular document to constitute a return under the *Beard* test.

C. A post-assessment filing does not fail the *Beard* test as a matter of law.

In fact, even the IRS does not view all untimely filings as failing to satisfy the definition of "return" under §523(a). In this case, for example, the IRS asserts that "a per se rule that any debt from an untimely return cannot be discharged is too harsh." Instead, the IRS asks the Court to determine that the Debtor's tax documents fail to qualify as returns, not simply because they were filed late, but because they were filed after the IRS had assessed his tax liabilities. (Doc. 19, pp. 11-12). The "official IRS position" is that "read as a whole, §523 does not provide that every tax for which a return was filed late is nondischargeable, [but rather] whether a return is filed after assessment should be the critical inquiry." In re Mallo, 2013 WL 4873057, at 6.

The date of assessment, of course, does not appear in §523(a) as the pivotal date for determining whether a document constitutes a return. See In re Martin, 2013 WL 5323350, at 6 (D. Colo.)(The statute does not contemplate that the dischargeability of a tax debt depends on whether a debtor's return was filed before or after assessment.). Rather, the IRS's position that assessment is a "dividing line" for a document to qualify as a return is based on its own statutory interpretation of §523(a)(1)(B)(i), without regard to the definition of "return" provided by BAPCPA. In re Wogoman, 475 B.R. 239, 250 (10th Cir. BAP 2012).

Essentially, the IRS asserts that a post-assessment document can never constitute a return for dischargeability purposes under §523(a)(1)(B)(i). The IRS's position is not supportable because (1) a post-assessment return may serve a valid tax purpose, (2) the effect of a return's untimeliness is

addressed in a separate section of §523(a), and (3) the definition of "return" that was added to §523(a) focuses on the debtor's participation in the process rather than the timeliness of his filing.

1. A valid tax purpose

First, a post-assessment return may serve a valid tax purpose. Specifically, a post-assessment return may alter the amount of the taxpayer's liability. In Pitts, for example, the Court found:

> DIR's return, however, reported a FUTA liability greater than what had previously been assessed based on the substitute return. This return therefore served a purpose under the fourth prong of the *Beard* test because it reported a liability greater than what the IRS had already assessed.

In re Pitts, 2013 WL 4170000, at 8 (Bankr. C.D. Cal.). Although Pitts may represent the rare case where a taxpayer filed a return that actually increased his assessed liability, it should make no difference under the *Beard* test whether the taxpayer's post-assessment return reports an increased liability or a decreased liability. In In re Rhodes, 2013 WL 5291400, at 11 (Bankr. N.D. Ga.), for example, the Court rejected the IRS's position that the debtor's returns had served no tax purpose, where the post-assessment returns were sufficient to permit a further assessment for one year and a partial abatement for another year.

The rule applied in these decisions is that a return serves a valid tax purpose if it contains sufficient information to allow the IRS to determine the accurate amount of the debtor's tax liability.

In In re Colsen, 446 F.3d 836, 840-41 (8th Cir. 2006), the debtor had filed a post-assessment return that resulted in a significant abatement of his tax liability, and the Eighth Circuit Court of Appeals recognized the tax purpose served by the return. According to the Eighth Circuit, the accurate calculation of a taxpayer's obligations is a valid purpose that satisfies the tax laws, regardless of whether the IRS collects additional taxes as a result of the return. Where the IRS is able to calculate a

tax liability more accurately based on the data contained in a taxpayer's return, the return has served a valid tax purpose under the dischargeability provisions of the Bankruptcy Code.

In the case under consideration, the IRS stipulated that it "abated a portion of the tax it assessed against the Taxpayer for the 2001, 2002, 2003, and 2004 tax years" after reviewing the Debtor's Form 1040's for those years. (Doc. 15, 8).

The Debtor's filings served a valid tax purpose, in that they allowed his tax liability to be calculated more accurately, which resulted in a decrease in his total liability from $207,378.00 to $105,577.00, a decrease of approximately $102,000.00.

2. Late returns under §523(a)(1)(B)(ii)

Second, a post-assessment document should not fail the *Beard* test as a matter of law, because the effect of a return's untimeliness is dealt with in a separate section of §523(a) of the Bankruptcy Code.

Specifically, §523(a)(1)(B)(ii) provides for the nondischargeability of taxes for which a return was filed or given after the date on which the return was last due, and after two years before the date of the bankruptcy petition. 11 U.S.C. §523(a)(1)(B)(ii). Under this provision, a debtor must generally wait two years after filing late returns for the related tax liability to be dischargeable in a bankruptcy case. In re Fernandez, 2012 WL 5289916, at 6 (Bankr. W.D. Tex.).

> The provision appears to serve two purposes. First, the requirement of a two-year waiting period after filing a late return but before seeking discharge prevents a debtor who has ignored the filing requirements of the Internal Revenue Code from waiting until the eve of bankruptcy, filing a delayed but standard tax return form, and seeking discharge the next day. It is, in a sense, a provision affording notice and an opportunity to act, giving the IRS time to seek payment by levy or court proceeding.

In re Hindenlang, 164 F.3d 1029, 1032 (6th Cir. 1999). A central policy underlying §523(a)(1)(B)(ii), therefore, is to allow the IRS a reasonable period of time within which to collect a tax debt before it

may be discharged in bankruptcy. In re Ridgeway, 322 B.R. 19, 30-31 (Bankr. D. Conn. 2005); In re Tibaldo, 187 B.R. 673, 674 (Bankr. C.D. Cal. 1995).

Additionally, pursuant to §523(a)(1)(A) and §507(a)(8), a tax liability that was assessed within 240 days of the filing of a bankruptcy petition is nondischargeable. In re Newman, 399 B.R. 541, 544 (Bankr. M.D. Fla. 2008). "Congress enacted section 523(a)(1)(A) and section 507(a)(8) to give taxing authorities time to pursue delinquent income tax debtors and to obtain secured status before the debtor can discharge his tax liability in bankruptcy." In re Turner, 195 B.R. 476, 489 (Bankr. N.D. Ala. 1996).

In other words, as a matter of policy the IRS should receive a reasonable opportunity to collect the associated tax after a late return is filed, and the two-year waiting period in §523(a)(1)(B)(ii) promotes that policy. It is not necessary to include the timeliness of the filing in the definition of return to provide the collection opportunity. In re Martin, 2013 WL 5323350, at 4, 6 (D. Colo.). "The plain language of clause (i) of §523(a)(1)(B) does not support the creation of a definition of 'return' that contains a timeliness element or a determination of subjective intent. Other provisions of §523(a)(1) address issues of timeliness or bad motive." In re Rhodes, 2013 WL 5291400, at 11 (Bankr. N.D. Ga.)(Emphasis supplied). See also In re Brown, 489 B.R. 1, 5 (Bankr. D. Mass. 2013)(Adding a timeliness requirement to the definition of return would render §523(a)(1)(B)(ii) "virtually meaningless.").

In this case, for example, the IRS assessed the Debtor's taxes for 2001, 2002, 2003, and 2004 on January 8, 2007. The tax obligations became enforceable, and the IRS could pursue its claims against the Debtor, at the time that they were assessed. In re Smythe, 2012 WL 843435, at 3 (Bankr. W.D.

Wash.). The IRS acknowledges that "the collection period for those liabilities began to run on the date of the IRS's assessments – January 8, 2007," and that, as of that date, the IRS could use the administrative remedies authorized by the Internal Revenue Code to collect the taxes. (Doc. 16, p. 6).

The Debtor filed his returns on February 20, 2007, and the Debtor's petition under Chapter 7 of the Bankruptcy Code was filed on July 12, 2011, more than four years after the taxes were assessed and became enforceable by the IRS. Consequently, the dischargeability of the tax liabilities may be determined in accordance with the language and collection policies of §523(a)(1)(B)(ii). It is unnecessary to determine whether the post-assessment filing was disqualified from the definition of "return" in §523(a)(1) on the basis of its untimeliness.

3. The taxpayer's participation

Third, the definition of "return" that was added to §523(a) by BAPCPA focuses on the taxpayer's participation in the process rather than the timeliness of the filing. The second sentence of definition states:

> Such term ["return"] includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

11 U.S.C. §523(a). Generally, "Section 6020(a) of the Internal Revenue Code ("IRC") refers to a return prepared by the IRS with the assistance of the taxpayer, and when signed by the taxpayer, may be treated as a return filed by the taxpayer. On the other hand, IRC §6020(b) refers to a return prepared by the IRS without the assistance of the taxpayer and executed by the IRS." In re Wogoman, 475 B.R. 239, 243-44 (10th Cir. BAP. 2012). See also In re Mallo, 2013 WL 4873057, at 3 (D. Colo.).

From the definition of return in §523(a), therefore, it appears that a document that is prepared with the taxpayer's assistance is a "return," and that a document that is prepared by the IRS without the taxpayer's assistance is not a "return." For definitional purposes, the distinction between a "return" and a document that is not a "return" is the degree of the taxpayer's participation in the process, rather than the timeliness of the document. See In re Martin, 2013 WL 5323350, at 2 (D. Colo.)(The definition of "return" added by BAPCPA says only that a document prepared with the assistance of the taxpayer is a return and the debt can be discharged, but that a document prepared by the IRS on behalf of a taxpayer is not a return and the debt cannot be discharged.).

The definition of "return" that is provided by §523(a) for dischargeability purposes emphasizes the debtor's participation in the process, rather than the timing of the tax document. The emphasis is consistent with the concept of self-assessment or self-reporting that is the foundation of the taxation scheme embodied by the Internal Revenue Code. Commissioner v. Lane-Wells Co., 321 U.S. 219, 223 (1994).

D. To satisfy the *Beard* test, a post-assessment return must represent an honest and reasonable attempt to satisfy the requirements of the tax laws.

The timeliness of a tax document is not an express requirement to qualify as a "return" under the *Beard* test, and a post-assessment filing does not fail the *Beard* test as a matter of law. For the reasons discussed above, a post-assessment document may constitute a return, as long as it otherwise satisfies the four components of the *Beard* analysis.

To satisfy the fourth prong of the test, the document must "represent an honest and reasonable attempt to satisfy the requirements of the tax law." In re Hindenlang, 164 F.3d 1029, 1033 (6th Cir. 1999). See In re Rhodes, 2013 WL 5291400, at 9-11 (Bankr. N.D. Ga.)(The issue was whether the

debtor's post-assessment filings represented an "honest and reasonable attempt to satisfy the requirements of the tax law" under the fourth prong of the *Beard* test.)

In In re Mallo, 2013 WL 4873057, at 12 (D. Colo), the District Court concluded that the *Beard* test was the applicable nonbankruptcy law to determine whether a filing constituted a return, and that the issue in that case was whether the post-assessment filing negated "an honest and reasonable attempt to comply with tax law." See also In re Martin, 2013 WL 5323350, at 7 (D. Colo.)(The Court determined whether the post-assessment filings constituted "returns" under §523(a)(1)(B)(i), by determining whether they were reasonable attempts to comply with the tax law.). Similarly, in In re Wogoman, 475 B.R. 239, 246 (10th Cir. BAP 2012), the Court found that the "critical requirement in the context of the dischargeability exception for taxes is whether there has been an honest and reasonable attempt to satisfy the requirements of the tax law."

E. A summary final judgment is not appropriate.

In this case, the IRS filed a Motion for Summary Judgment, and asked the Court to determine that the Debtor's "tax liabilities for the 2001 through 2004 tax years are debts for which returns were not filed because the IRS assessed the tax debts against him before he belatedly filed his Forms 1040 for those years," and that the tax liabilities are therefore nondischargeable under §523(a)(1)(B)(i) as a matter of law. (Doc. 16, p. 3)(Emphasis in original).

Conversely, the Debtor filed a Motion for Partial Summary Judgment, and asked the Court to determine that he "was not barred, as a matter of law, from filing proper Forms 1040, U.S. Individual Income Tax Returns, after SFR tax assessments were made against him for tax years 2001, 2002, 2003, and 2004, respectively." (Doc. 17, p. 29).

The IRS's Motion for Summary Judgment should be denied. The Debtor's Motion for Partial Summary Judgment should be granted to the extent set forth in this Order, and otherwise denied.

Section 523(a)(1)(B)(i) of the Bankruptcy Code provides that a debtor does not receive a discharge for a tax debt for which no return was filed. 11 U.S.C. §523(a)(1)(B)(i). To qualify as a "return" for purposes of §523(a), a document must satisfy the requirements of applicable nonbankruptcy law. 11 U.S.C. §523(a). Under "applicable nonbankruptcy law," the standard for determining whether a document is a return consists of the four-part analysis known as the *Beard* test. The timeliness of a document is not an express requirement to qualify as a return under the test, and a post-assessment filing does not fail the *Beard* test as a matter of law.

To satisfy the fourth prong of the *Beard* test, however, a post-assessment return must represent an honest and reasonable attempt to satisfy the requirements of the tax laws. A debtor who did not file a return until after his taxes were assessed faces a difficult burden under the test. See In re Mallo, 2013 WL 4873057, at 12 (D. Colo.)(A post-assessment return cannot, as a general rule, rise to the level of an honest and reasonable effort to satisfy the tax law, where the debtor does not show that circumstances existed that were beyond his control, and that such unique or special circumstances prevented him from filing a timely return.). In re Martin, 2013 WL 5323350, at 7 (D. Colo.)(The Court "agreed with the majority of the Circuits applying the Beard test to conclude that returns filed after IRS assessment—absent evidence of circumstances beyond a taxpayer's control that prevented him or her from filing a timely return—failed the fourth element of the test because such filings 'were not reasonable attempts to comply with the tax law.'")(Emphasis supplied). See also In re Wogoman, 475 B.R. 239, 251 (10th

Cir. BAP 2012)(In the case of a post-assessment return, the inquiry under the fourth prong of the *Beard* test involved whether the debtors had provided any "justifiable reason for the delay.").

The issue of whether the Debtor's post-assessment returns represented "an honest and reasonable effort to satisfy the tax laws" is not suitable for resolution by summary judgment in this case. To evaluate whether a document satisfies the fourth prong of the *Beard* test, the Court should consider the facts and circumstances surrounding the belated filing, and the nature of the financial information disclosed in the return. In re Martin, 2013 WL 5323350, at 7 (D. Colo.)(In determining the dischargeability of a debt under §523(a)(1)(B)(i), the Court considered whether there were "claims of unique or special circumstances that occurred beyond the Debtor's control that would excuse the belated filing.). See In re Rhodes, 2013 WL 5291400, at 10-11 (Bankr. N.D. Ga.)(citing In re Moroney, 352 F.3d 902, 907 (4th Cir. 2003); United States v. Klein, 312 B.R. 443, 449 (S.D. Fla. 2004); and In re Rushing, 273 B.R. 223, 227 (Bankr. D. Ariz. 2001)). Such factual inquiries are not generally appropriate for determination under the summary judgment standard. F.R.Civ.P. 56(a).

In this case, the record does not establish the circumstances surrounding the Debtor's post-assessment filing. Consequently, the Court cannot determine as a matter of law whether the documents represented an honest and reasonable attempt to satisfy the tax laws.

Accordingly:

IT IS ORDERED that:

1. The Motion of the United States of America for Summary Judgment is denied.

2. The Motion of the Plaintiff for Partial Summary Judgment is granted to the extent set forth in this Order.

3. Post-assessment documents filed or given to the Internal Revenue Service do not fail, as a matter of law, to qualify as "returns" under the *Beard* test.

4. The Motion of the Plaintiff for Partial Summary Judgment is otherwise denied.

DATED this 11 day of October, 2013.

BY THE COURT

Paul M. Glenn

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PAUL M. GLENN
United States Bankruptcy Judge