

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

In re:

CHARLES ELBERT THOMSON,

Case No. 6:11-bk-00224-ABB

Chapter 7

Debtor.

\_\_\_\_\_ /

CHARLES ELBERT THOMSON,

Plaintiff,

Adv. Pro. No. 6:11-ap-00115-ABB

vs.

INTERNAL REVENUE SERVICE,

Defendant.

\_\_\_\_\_ /

**ORDER**

This matter came before the Court on the Complaint (Doc. No. 1) filed by the *pro se* Plaintiff/Debtor Charles Elbert Thomson (“Plaintiff”) seeking to have federal income tax debts for various years deemed dischargeable pursuant to 11 U.S.C. Section 523(a)(1). The final evidentiary hearing was held on July 11, 2012, at which Plaintiff/Debtor and counsel for Defendant Internal Revenue Service (IRS) appeared.

The Court directed supplemental submissions from the parties (Doc. No. 27). The IRS was ordered to designate evidence in the record establishing the dates and amounts of tax penalties or fines assessed against Plaintiff and legal authority supporting its assertion those penalties or fines are nondischargeable. Plaintiff was ordered to provide all evidence and legal authority supporting his assertion any fines and penalties are dischargeable. These submissions were to be filed and served by July 27, 2012.

Plaintiff filed a statement in compliance with the Court's order on July 25, 2012 (Doc. No. 29). Defendant IRS filed its untimely submission on July 30, 2012 (Doc. No. 30). IRS's submission concedes the record does not contain evidence to support factual findings or legal conclusions regarding fines or penalties; it states, "defendant will file a separate motion to supplement the record to present the evidence, [summarized in the submission], as to the assessment dates and amounts for penalties." (Doc. No. 30 ¶ 6). IRS has not filed a motion to supplement the evidentiary record.

Judgment is due to be entered in favor of Plaintiff Thomson and against Defendant IRS on all tax liabilities for tax years 1987 through 2002; any tax debt for those tax years is dischargeable.

Judgment is due to be entered in favor of Plaintiff Thomson and against IRS as to all tax penalties and fines for tax years 2003, 2004, 2005, 2006, and 2007.<sup>1</sup>

The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing live testimony and argument, and being otherwise fully advised in the premises.

### **FINDINGS OF FACT**

Plaintiff filed his bankruptcy case on June 10, 2011 ("Petition Date"). Plaintiff filed tax returns for tax years 2003, 2004, 2005, 2006, and 2007 after the Petition Date.

Counsel for Defendant represented in open court at the evidentiary hearing IRS will not pursue Plaintiff/Debtor for any tax debt for tax years 1987 through 2002. IRS agreed to a judgment of dischargeability as to those years.

---

<sup>1</sup> Judgment has already been entered in favor of Defendant IRS and against Plaintiff Thomson as to all tax liabilities, exclusive of penalties and fines, arising out of tax years 2003, 2004, 2005, 2006, and 2007 (Doc. No. 23).

This Court already granted Defendant summary judgment as to Plaintiff's income tax liabilities for tax years 2003, 2004, 2005, 2006, and 2007, exclusive of any fines or penalties assessed or imposed by the IRS (Doc. Nos. 22 & 23). Those debts are nondischargeable pursuant to 11 U.S.C. Section 523(a)(1).

The IRS has surrendered its claim to penalties arising out of tax years 2003, 2004, and 2006 (Doc. No. 30 at 3).

At issue are fines and penalties arising out tax years 2005 and 2007 only. IRS argues it assessed penalties for those years after the Petition Date; but IRS has not presented evidence to establish any fines or penalties were assessed or imposed less than three years before the Petition Date.

The final evidentiary hearing in this proceeding was held on July 11, 2012. The evidentiary record does not contain any evidence regarding fines or penalties assessed against Defendant.

### **CONCLUSIONS OF LAW**

A discharge pursuant to Section 727 "does not discharge an individual debtor from any debt—"

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required—

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.

11 U.S.C. § 523(a)(1).

Section 523(a)(7) of the Bankruptcy Code addresses the dischargeability of fines, penalties, or forfeitures payable to and for the benefit of governmental units. 11 U.S.C. Section 523(a)(7). Tax penalties related to income taxes generally are not dischargeable unless imposed with respect to a transaction or event that occurred more than three years before the petition date. 11 U.S.C. Section 523(a)(7)(B). Fines and penalties assessed or imposed more than three years from the petition date are dischargeable. Id.

IRS is not pursuing Plaintiff for any tax debt for tax years 1987 through 2002. Any tax debt for those years is dischargeable.

Judgment has already been entered in favor of Defendant IRS and against Plaintiff Thomson as to all tax liabilities, exclusive of penalties and fines, arising out of tax years 2003, 2004, 2005, 2006, and 2007. Those debts are nondischargeable.

IRS did not establish whether or when it assessed or imposed any fines or penalties against Plaintiff. IRS argues it assessed taxes and penalties for tax years 2005 and 2007 less than three years before the Petition Date. The evidence does not establish those facts. Judgment is due to be entered in favor of Plaintiff Thomson and against IRS on all tax penalties and fines for tax years 2003, 2004, 2005, 2006, and 2007. Debts for any such penalties and fines are dischargeable pursuant to 11 U.S.C. Section 523(a)(7)(B).

**Accordingly, it is**

**ORDERED, ADJUDGED and DECREED** that judgment is due in favor of Plaintiff/Debtor Charles Elbert Thomson and against Defendant Internal Revenue Service with respect to all tax liabilities arising from tax years 1987 through 2002. These debts are DISCHARGEABLE; and it is further

**ORDERED, ADJUDGED and DECREED** that judgment is due in favor of Plaintiff/Debtor Charles Elbert Thomson and against Defendant Internal Revenue Service with respect to all liabilities arising from tax fines and penalties regarding tax years 2003, 2004, 2005, 2006, and 2007. These debts are DISCHARGEABLE pursuant to 11 U.S.C. Section 523(a)(7).

Dated this 23rd day of August, 2012

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