

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
OCT 21 2002
CLERK, U.S. BANKRUPTCY
COURT, TAMPA, FL

In re:)	
)	
ALFRED WILLIAMSON,)	Case No. 02-09938-8W7
)	
Debtor.)	
_____)	
)	
ALFRED WILLIAMSON,)	
)	
Plaintiff,)	
)	
v.)	Adv. No. 02-530
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT

This matter came before the Court for hearing on October 11, 2002, upon the Motion to Dismiss filed by the United States of America. Scott M. Grossman, counsel for the defendant, appeared by video conference. No one entered an appearance on behalf of the plaintiff.

The plaintiff filed an adversary proceeding seeking a determination that his assessed, unpaid 1998 federal income tax liability was dischargeable. The defendant filed a Motion to Dismiss, which the Court will treat as a motion for summary judgment under Federal Rule of Civil Procedure 12(b) and Federal Rule of Bankruptcy Procedure 7012(b), because matters outside the pleading were presented to and not excluded by the

Court. Specifically, the Court takes judicial notice of the fact that on February 28, 2000, the plaintiff filed a bankruptcy petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nebraska, Case No. 00-40372; that on August 14, 2000 the case was dismissed; and that this previous bankruptcy case was pending for 167 days.

Ordinarily, Alfred Williamson's assessed unpaid federal income tax liabilities for 1998, the return for which was due to be filed on April 15, 1999, would be dischargeable if Williamson had filed his bankruptcy petition after April 15, 2002. 11 U.S.C. § 523(a)(1)(A); 507(a)(8)(A)(i). In this case, however, these tax liabilities are not dischargeable under Young v. United States, 122 S. Ct. 1036 (2002), because the three-year look-back period of section 507(a)(8)(A)(i) is tolled during the 167 days of Williamson's previous Chapter 13 bankruptcy case in the District of Nebraska.

Williamson filed his present Chapter 7 petition on May 21, 2002. When the 167 days which have been tolled are added to the three years set forth in section 507(a)(8)(A)(i), the relevant look-back period becomes three years and 167 days. Here, Williamson filed his petition only three years and 36 days after his 1998 federal income

tax return was due. This liability is therefore not dischargeable under Young and Bankruptcy Code sections 523(a)(1)(A) and 507(a)(8)(A)(i). It is therefore

ORDERED:

1. The defendant's motion to dismiss, which shall be treated as a motion for summary judgment, is **GRANTED**.
2. The plaintiff's assessed, unpaid federal income tax liability for 1998 is excepted from the discharge granted the plaintiff under 11 U.S.C. § 727.

DONE and ORDERED this 21st day of October, 2002, in

Tampa, Florida.


MICHAEL G. WILLIAMSON
United States Bankruptcy Judge

Copies to:

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CERTIFY THAT THIS ORDER WAS SERVED BY
U.S. MAIL TO PARTIES AS LISTED ON

10/21/02 (Date)
By Deputy Clerk PR