

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

In the Matter of:	:	Chapter 7
	:	
JOSEPH E. HENDRIX and	:	
DEBRA M. HENDRIX,	:	
	:	
Debtors	:	Case No. 02-51326 RFH
	:	
JOSEPH E. HENDRIX and	:	
DEBRA M. HENDRIX,	:	
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
GEORGIA DEPARTMENT OF	:	
REVENUE,	:	
	:	
Defendant	:	Adversary Proceeding No. 02-5062

BEFORE

ROBERT F. HERSHNER, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Plaintiffs:

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For Defendant:

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MEMORANDUM OPINION

Georgia Department of Revenue, Defendant, filed a motion for summary judgment on May 3, 2002. Joseph E. Hendrix and Debra M. Hendrix, Plaintiffs, filed a response on May 29, 2002. The Court, having considered the record, publishes this memorandum opinion.

Plaintiffs filed a petition under Chapter 7 of the Bankruptcy Code on March 27, 2002. Plaintiffs filed this adversary proceeding on April 10, 2002. Plaintiffs contend that their state income tax obligations for 1991 through 1998 are dischargeable in bankruptcy. Defendant filed a response on April 17, 2002.

Section 523(a)(1)(B)(i) of the Bankruptcy Code provides:

§ 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, if required—

(i) was not filed; or

11 U.S.C.A. § 523(a)(1)(B)(i) (West 1993 & Supp. 2002).

Simply stated, Plaintiffs' tax obligations are nondischargeable if they

failed to file tax returns.

Defendant offers the affidavit of Oscar Felton, an agent in the Bankruptcy Section of the Compliance Division of the Georgia Department of Revenue. Mr. Felton states that he has personal knowledge of Plaintiff's state income tax obligations. Mr. Felton states that Plaintiffs have not filed state income tax returns for 1992 through 1998. Defendant concedes that Plaintiffs' state income tax obligation for 1991 is dischargeable in bankruptcy.¹

Plaintiffs concede that they have no grounds to oppose Defendant's motion for summary judgment. Plaintiffs state that they have been unable to locate documents that would conclusively establish that they filed tax returns for the years at issue.

The Court can only conclude that Plaintiffs' state income tax obligations for 1992 through 1998 are nondischargeable in bankruptcy.

An order in accordance with this memorandum opinion will be entered this date.

DATED the 3rd day of June, 2002.

ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court

¹ Defendant's Memorandum of Law, p. 4 (filed May 3, 2002).