SO ORDERED.

SIGNED this 7 day of September, 2016.

Austin E. Carter
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

In re:	)	
	)	
Gordon R. Chapman,	)	Case No. 15-11583
	)	
Debtor.	)	Chapter 7
	)	
Guy G. Gebhardt, Acting United States Trustee for Region 21,	)	
	)	
Movant,	)	
	)	
v.	)	Contested Matter
	)	
Gordon R. Chapman,	)	
	)	
Respondent/Debtor.	)	

ORDER ON MOTION TO DISMISS

Before the Court is the Motion of the United States Trustee seeking dismissal of the above-styled case pursuant to 11 U.S.C. §§ 707(b)(2) and 707(b)(3), and the response in opposition of the Debtor, which came on for hearing. The Court has considered the parties' pleadings, the remainder of the record, and the arguments of counsel.

I. Question Presented.

This case presents a straightforward question: Under the "means test" employed in Chapter 7 cases, may a debtor include deductions for payments on his pre-petition tax debt both on line 16 of Official Form 122A-2, for "the total monthly amount you will actually owe for federal, state and local taxes, such as income taxes" and also on line 33d for other secured debts?

Because, as outlined below, the Court answers this question in the negative, the Court considers it unnecessary to address the Trustee's secondary argument, that the Debtor's payment to the Internal Revenue Service of $2,955.58 per month without paying general unsecured creditors constitutes an abuse under 11 U.S.C. § 707(b)(3).

II. Facts.

The material facts are not in dispute.

On October 22, 2015, before the filing of his bankruptcy case, the Debtor entered into an Installment Payment Agreement with the Internal Revenue Service ("IRS") to address outstanding income taxes from the years 2008 to 2011. The total amount of these taxes (as shown on Schedule D filed in this case) is $78,566.19. A significant portion of this amount is secured by a tax lien, and is thus secured debt. The Agreement requires the Debtor to make monthly payments of $3,783.00, commencing November 28, 2015, and continuing until the tax amount is paid.

The Debtor filed this case on November 30, 2015. As required in Chapter 7 cases, the Debtor filed his "Chapter 7 Means Test Calculation" on Official Form 122A-2 (as amended, Dkt. 19). On this form, the Debtor deducted the $3,783.00 monthly payment in two sections: Line 16--"Taxes"--and also Line 33d--"other secured debts."

As part of the "Other Necessary Expenses" section of the means test form, Line 16 provides:

> 16. **Taxes**: The total monthly amount that you will actually owe for federal, state and local taxes, such as income taxes, self-employment taxes, Social Security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. However, if you

> expect to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes.

In the "Deductions for Debt Payment" section of the means test form, Line 33d provides:

> 33. **For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33e.**
>
> *** * ***
>
> 33d. List other secured debts:

The inclusion of this tax payment in both sections of the form is critical for the Debtor—without it, the presumption of abuse arises under 11 U.S.C. § 707(b)(2)(A). The Debtor has not argued any "special circumstances" as contemplated under 11 U.S.C. § 707(b)(2)(B) to rebut the presumption of abuse, but requests the right to make such a showing at a future hearing.

III. Analysis.

The Trustee argues that the Debtor should not be allowed to list the same monthly tax payment in two different sections on the means test form, suggesting that doing so is an improper "double dip" or benefiting twice from a single monthly obligation. The Debtor argues that he is entitled to take a deduction for the monthly tax payment in both of the sections on the means test form (although he protests the use of the phrase "double dip" because he believes it has an improper connotation, arguing that his deduction in two places is proper).

In support of his argument, the Trustee cites to the plain language of Line 16, in that it seeks the amount of taxes that the debtor "*will* actually owe" for taxes (emphasis added). Second, the Trustee argues that case law recognizes that the Expenses section of the means test form, in which Line 16 resides, should not include any payments for debts, citing *In re Katz*, 451 B.R. 512 (Bankr. C.D. Cal. 2011). The Trustee further argues that allowing the inclusion of the tax payment twice works against one of the most well-known policies behind the inclusion of the means test in the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), to help ensure debtors pay as much of their debts as they can.

The Debtor argues that the plain language of Line 16 allows him to utilize the monthly tax debt payment in both sections. He argues that Line 16 specifically invites a debtor to include monthly withholding amounts, even though such amounts are not yet actually owed to the IRS at the time they are withheld.

The Trustee responds to this by suggesting that the reference in Line 16 to the inclusion of withholding amounts (and deducting therefrom anticipated refunds) was adopted to make clear that the deduction should be for actual tax debt, and not simply the amount that a debtor has withheld from his paycheck to address income taxes.

The Court finds in the Trustee's favor, and holds that the plain language of Line 16—seeking taxes that "will" be owed—plainly excludes a pre-existing tax obligation such as that of the Debtor under the Debtor's pre-petition Installment Payment Agreement. Furthermore, the Court agrees with the Trustee's suggestion that the new language in Line 16 is intended to clarify for debtors that the actual tax obligation should be used, rather than simply the amount withheld for taxes from paychecks. Several cases addressed this issue, which arose under the previous wording of the statute. *See, e.g.*, *In re Rudnik*, 435 B.R. 613 (Bankr. D. Minn. 2010); *In re Woodruff*, 416 B.R. 369 (Bankr. D. Mass. 2009); *In re Bernard*, 397 B.R. 605 (Bankr. D. Mass. 2008). Therefore, the Trustee's suggestion is reasonable.

Although the parties cited to no case directly on point, the Court has found a case dealing with a similar question in the context of a Chapter 13 disposable income test. That case makes clear that a debtor may not include a tax expense in two different places when completing the disposable income test. *See In re Moore*, 446 B.R. 458, 464 (Bankr. D. Colo. 2011).

For all of these reasons, the Court holds that the Debtor cannot include his $3,783.00 monthly tax payment under his pre-petition Installment Payment Agreement in Line 16 of his means test form. Once that amount is removed, the presumption of abuse arises under 11 U.S.C. § 707(b)(2)(A). Accordingly, the Court shall enter an Order dismissing this case unless, **on or before September 22, 2016**, the Debtor files a motion to convert this case to one under Chapter

13 of title 11 or files a request for an evidentiary hearing to show "special circumstances" under 11 U.S.C. § 707(b)(2)(B) to rebut the presumption of abuse.

END OF DOCUMENT