

In the United States Bankruptcy Court

for the Northern District of Iowa

DONALD J. PIERCE, MARY ANN PIERCE
Debtors.

Bankruptcy No. 93-61552KW
Chapter 7

ORDER RE: MOTION FOR DETERMINATION OF TAX LIABILITY AND MOTION FOR PARTIAL SUMMARY JUDGMENT AND REQUEST FOR ABSTENTION

This matter came on for hearing on January 13, 1994 on Debtor's Motion for Determination of Tax Liability and the United States' Motion for Partial Summary Judgment and Request for Abstention. The Court took the matter under advisement. The time for filing briefs has now passed.

Debtors Donald and Mary Ann Pierce initially sought a determination of their liability for 1) income tax from 1978 through 1982 and 1986, 2) FICA tax for 1980 through 1982 and 3) FUTA tax for 1981 and 1982. They also argued that these taxes and related penalties and interest are dischargeable debts. The United States asserted that liability for most of these taxes had been determined by the Court in Debtors' previous Chapter 13 case which was dismissed in March 1992. It argued that the doctrine of res judicata bars Debtors from relitigating these issues. The United States requested that the Court abstain from making other determinations of tax liability to the extent that the doctrine of res judicata does not apply. It also noted that dischargeability determinations should be made in adversary proceedings.

Debtors filed a brief on January 28, 1994 which concedes that binding determinations have been made regarding the liability for FICA and FUTA taxes for 1980 through 1982 and liability for all income taxes except for the 1986 tax year. Therefore, the United States' motion for partial summary judgment should be granted on those issues. Debtors, however, continue to contest the dischargeability of such tax liability and of the related interest and penalties. Also, the issue of 1986 income tax liability has not been previously determined.

The Court's order filed January 14, 1994 taking this matter under advisement indicates that Debtors' attorney would file adversary proceedings relating to dischargeability of the taxes, interest and penalties and relating to the 1986 income taxes still at issue. Debtors' brief states that they have agreed not to file adversary proceedings until the United States had twenty days in which to decide whether it will dispute the dischargeability questions raised. That twenty days has now run and no adversary proceedings have yet been commenced.

Bankruptcy Rule 7001 states that a proceeding to determine the dischargeability of a debt is an adversary proceeding. The United States notes that the issue of dischargeability of Debtors' tax liability, penalties and interest is not procedurally before the court by adversary proceeding. See Gould v. Gregg, Hart, Farris & Rutledge, 137 B.R. 761, 766 (W.D. Ark. 1992). Generally, dischargeability determinations must be made by adversary proceedings, which have delineated

burdens of proof and rules of procedure, unless the parties have waived the right to adversary proceedings. In re Torres, 117 B.R. 379, 383 (Bankr. N.D. Ill. 1990). The United States has not waived procedural infirmities on the dischargeability issues. Therefore, the Court will not consider the dischargeability of Debtors' tax liability, penalties and interest outside of a regularly commenced adversary proceeding.

The United States urges that the Court should abstain from determining Debtors' liability for 1986 income taxes. The Bankruptcy Court may determine the amount or legality of any tax under § 505(a). The exercise of such authority is within the discretion of the court. In re Queen, 148 B.R. 256, 259 (S.D.W. Va. 1992). Some factors to be considered in exercising this discretion include

the complexity of the tax issues to be decided, the need to administer the bankruptcy case in an orderly and efficient manner, the burden on the Bankruptcy Court's docket, the length of time required for trial and decision, the asset and liability structure of the debtor, and the prejudice to the debtor and potential prejudice to the taxing authority.

Id. Queen held that abstention from determining the propriety of a tax penalty assessment was appropriate where it would have no effect on the Chapter 7, no-asset bankruptcy estate. Id. The debtor can seek such determination in another appropriate forum without involving the Bankruptcy Court in a decision that will serve no bankruptcy purpose. In re Starnes, 159 B.R. 748, 751 (Bankr. W.D.N.C. 1993).

"[W]here there is no need for a determination of the amount of the tax for estate administration purposes, Congress did not intend or foresee that the bankruptcy court would be the forum for this litigation." Id., citing In re Millsaps, 133 B.R. 547, 555 (Bankr. M.D. Fla. 1991). The purposes of § 505(a)(1) to provide for ready determination of tax liability and to avoid delay in the administration of the estate have no application in a no-asset case involving no parties other than the debtor and the taxing authority. In re Cain, 142 B.R. 785, 789 (Bankr. W.D. Tex. 1992).

In Starnes, Queen, Cain and Millsaps, the bankruptcy courts abstained from determinations of tax liability where the taxing authority had not filed a claim, there were no assets to be administered and no assets would be distributed to any creditor. The facts of Debtors' case are sufficiently similar. The United States points out that it has not filed a claim. This has been a no asset case. Recently-amended schedules do not demonstrate that sufficient assets exist which would be impacted by a determination of Debtors' 1986 income tax liability, especially in light of the earlier determinations of tax liability for other years and other taxes. A determination of 1986 income tax liability would serve no bankruptcy purpose. In these circumstances, abstention is appropriate.

WHEREFORE, the United States' Motion for Partial Summary is GRANTED as to issues relating to Debtors' liability for all income taxes except 1986 and for FICA and FUTA taxes for 1980 through 1982.

FURTHER, the Court will not determine dischargeability of taxes, interest or penalties at this time. Such matters are appropriately addressed in adversary proceedings.

FURTHER, the Court abstains from determining Debtors' liability for 1986 income taxes.

SO ORDERED this 4th day of March, 1994.

Paul J. Kilburg, Judge

U.S. Bankruptcy Court