



FILED
GA. TAX TRIBUNAL

JUL 02 2014

BEFORE THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

Yvonne Bouras
Yvonne Bouras
Tax Tribunal Administrator

LORRAINE L. HUNTER,

Petitioner,

DOUGLAS J. MACGINNITIE,
Commissioner, Georgia Department of
Revenue,

Respondent.

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**TAX TRIBUNAL DOCKET
NO.: TAX-IIT-1406330**

DECISION

2014 – 11 Ga. Tax Tribunal, July 2, 2014

I. INTRODUCTION

This case illustrates some of the complexities that can arise from the intersection of the Federal Bankruptcy Code with liabilities for state taxes.

In her case, Petitioner Lorraine L. Hunter (“Petitioner”) disputes (i) the position of the Department of Revenue (“Department”) that Petitioner has a balance due for taxes owing for 2012 and (ii) the Department’s denial of Petitioner’s claims for refunds for 2008, 2009, 2010, and 2011. Respondent and Petitioner have both moved for summary judgment on all issues remaining in this case.

For the reasons discussed below, Respondent’s Motion for Summary Judgment is **GRANTED** and Petitioner’s Motion for Summary Judgment is **DENIED**. Petitioner is accordingly liable to the Department for income taxes, penalties, and interest in the amount of \$611.65 for the taxable year 2012, plus interest on such amount accruing after the date of this Order. Furthermore, the Department properly offset part of Petitioner’s 2011 income tax refund to satisfy Petitioner’s outstanding income tax liabilities for prior periods. Finally, the

Department is not liable to Petitioner for income tax refunds for the taxable years 2008, 2009, 2010, and 2011.

II. FINDINGS OF FACT

A. Prior History of this Case

On August 19, 2013, Petitioner filed her Petition with the Tax Tribunal, designating her case to proceed as a Small Claims Division case. In addition to tax issues, Petitioner raised a number of other non-tax issues in her Petition.

In the prior decision in this case, the Tax Tribunal and the Attorney General were dismissed as parties from this action and Petitioner's non-tax claims were dismissed for lack of subject matter jurisdiction. See Lorraine L. Hunter v. Georgia Tax Tribunal, et al., 2014-6 Ga. Tax Tribunal, March 13, 2014. Petitioner's tax claims are thus the only issues remaining for decision and are now before us for disposition.

B. Current Motions

In her original Petition, Petitioner appealed a Notice of Proposed Assessment dated July 30, 2013, issued by the Department in which the Department had proposed to assess income taxes against Petitioner for the year 2012. Petitioner also alleged that the Department owes her income tax refunds for the taxable years 2008, 2009, 2010, and 2011.

The Department subsequently issued an Official Assessment and Demand for Payment Letter to Petitioner with respect to 2012.

On May 13, 2014, Respondent filed his State Revenue Commissioner's Motion for Summary Judgment ("Respondent's Summary Judgment Motion") along with a supporting affidavit and attached documentation ("Carmichael Affidavit"). With Respondent's consent, Petitioner was given an extended period of time to respond to Respondent's Summary Judgment

Motion. Petitioner then filed Petitioner's Motion for Summary Judgment and Answer to State Revenue Commissioner's Motion for Summary Judgment (*sic*) with attachments ("Petitioner's Summary Judgment Motion") on June 22, 2014. In response to Petitioner's Summary Judgment Motion, Respondent filed Commissioner's Supplemental Brief in Support of Motion for Summary Judgment and Response to Petitioner's Motion for Summary Judgment ("Respondent's Supplemental Brief") and an additional supporting affidavit ("Second Carmichael Affidavit") on June 27, 2014. Copies of Petitioner's Georgia tax returns for the years in issue are attached as exhibits to the Second Carmichael Affidavit.

In Respondent's Supplemental Brief, Respondent also moved that certain allegations contained in Petitioner's Summary Judgment Motion be stricken from the record pursuant to O.C.G.A § 9-11-12(f).

C. Material Facts

The underlying core issue in this case is Petitioner's contention that certain of her tax liabilities were discharged as a result of various bankruptcy filings. For the reasons discussed below, Respondent has demonstrated those liabilities were not discharged and that the Department acted properly in offsetting against Petitioner's refunds to satisfy those liabilities.

Petitioner filed her Georgia income tax return for the taxable year 2008 but Petitioner did not remit full payment of the tax due totaling \$829.00. See Carmichael Affidavit, ¶ 4; Second Carmichael Affidavit, Exhibit A. On January 26, 2010, the Department received Petitioner's check # 1013 in the amount of \$200.00 and credited that payment to Petitioner's 2008 tax account. Id. On February 9, 2010, the Department received check # 1015 dated February 7, 2010 in the amount of \$300.00 and credited that payment to Petitioner's 2008 tax account. Id.

On August 13, 2010 Petitioner filed a Georgia income tax return for the taxable year

2009. See Carmichael Affidavit, ¶ 5. Petitioner did not remit full payment of the tax due of \$75.00. Id.; Second Carmichael Affidavit, Exhibit B. The Department received a payment of \$21.00 with respect to this return, leaving an unpaid balance of \$54.00. Id.

Petitioner timely filed a Georgia income tax return for the taxable year 2010. See Carmichael Affidavit, ¶ 6. Petitioner did not remit full payment of the tax due, however. Id. The tax due of \$609 was ultimately paid by Petitioner with her check # 1479. See Copy of check # 1479, attached to Petitioner’s Summary Judgment Motion; Second Carmichael Affidavit, Exhibit C. But Petitioner’s check # 1479 was not paid until after April 12, 2012.

Because the outstanding balances for the years 2008, 2009 and 2010 had not been paid in full when due, the Department assessed late payment penalties, interest, fi.fa. costs, and fi.fa. interest against Petitioner, resulting in balances due of \$881.23, \$135.50, and \$109.60, respectively, for the years 2008, 2009, and 2010. See Carmichael Affidavit, ¶¶ 4, 5, and 6.

Petitioner filed a Georgia income tax return for the taxable year 2011 requesting a refund of \$1,365.00. See Carmichael Affidavit, ¶ 7; Second Carmichael Affidavit, Exhibit D. The Department offset against Petitioner’s income tax refund and applied part of the refund to satisfy Petitioner’s outstanding tax liabilities for the years 2008 through 2010. Id. To that end, the Department first applied the amount of \$1,016.50 to Petitioner’s outstanding tax liabilities, leaving no balances due and no refunds due for those years, as reflected below:

<u>Tax Period</u>	<u>Offset Amount</u>	<u>Balance Due After Offset</u>	<u>Refund Due</u>
2008	\$771.40	\$0.00	\$0.00
2009	\$135.50	\$0.00	\$0.00
2010	\$109.60	\$0.00	\$0.00

Then on April 25, 2012, the Department issued a refund to Petitioner for \$348.50, representing the balance of Petitioner's refund remaining after the offset. See Carmichael Affidavit, ¶ 7.

Petitioner filed her Georgia income tax return for the taxable year 2012 but she did not remit payment of the tax due totaling \$1,277. See Carmichael Affidavit, ¶ 8 and Exhibit 1. The Department then issued an Official Assessment and Demand for Payment Letter to Petitioner. See Carmichael Affidavit, ¶ 8 and Exhibit 2.

After Petitioner filed this action claiming that her 2008 tax liability had been discharged in bankruptcy, the Department abated the liability for 2008 and transferred the \$771.40 previously applied to the 2008 tax liability to Petitioner's income tax account for the year 2012.¹ This transfer left a balance due from Petitioner of \$577.30 for 2012 as of the date of the filing of Respondent's Summary Judgment Motion. See Carmichael Affidavit, ¶ 9 and Exhibit 3. Due to the accrual of additional interest, this balance has now grown to \$611.65 as of June 27, 2014. Second Carmichael Affidavit, ¶ 3.

The Department's records thus reflect that: (i) Petitioner currently does not owe any taxes to the Department for the years 2008 through 2011; (ii) the Department does not owe Petitioner any refunds; and (iii) Petitioner owes the Department \$611.65 for the year 2012. See Carmichael Affidavit, ¶¶ 9, 10, and Exhibit 3; Second Carmichael Affidavit, ¶ 3.

III. CONCLUSIONS OF LAW

A. Standard of Review on Summary Judgment

The standards governing summary judgment are well established. To prevail at summary judgment under O.C.G.A. § 9-11-56, the moving party must demonstrate that there is no genuine

¹ The Department explains that it made this adjustment even though the 2008 tax liability was not discharged in bankruptcy, because, in theory Petitioner could have: (1) re-opened her Chapter 7 Bankruptcy (discussed *infra.*), (2) instituted an adversary proceeding, and (3) filed a motion to determine dischargeability of the 2008 taxes. Rather than sending Petitioner down this long and winding road, the Department transferred the \$771.40 to avoid the unnecessary cost and delay that would result in order to address the question. See State Revenue Commissioner's Response to Petitioner's Objection to the Tax Tribunal's March 13, 2014 Decision filed April 15, 2014.

issue of material fact as to each element of its claim and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. O.C.G.A. § 9-11-56(c). Lau's Corp., Inc. v. Haskins, 261 Ga. 491 (1991); Gail K. and Paul T. Zantzing, 2014-2 Ga. Tax Tribunal, January 31, 2014; Alice D. Doby, 2014-3 Ga. Tax Tribunal, February 17, 2014.

B. Jurisdiction

Even though the Tax Tribunal does not have jurisdiction to address the original Notice of Proposed Assessment issued to Petitioner that was appended to her Petition, see Moon v. Commissioner of Georgia Department of Revenue, 2013-2 Ga. Tax Tribunal, December 13, 2013, the Department subsequently issued an Official Assessment and Demand for Payment Letter to Petitioner. Accordingly, this Tribunal has jurisdiction to address Petitioner's 2012 income tax liability under O.C.G.A § 50-13A-9(a).

C. The Department properly offset Petitioner's 2011 income tax refund to satisfy Petitioner's outstanding tax liabilities.

Petitioner filed Georgia income tax returns for the years 2008 through 2010 but did not remit full payment of the taxes owed. Petitioner then filed a Georgia income tax return for the year 2011 requesting an income tax refund. The Department offset part of that refund and applied it to the tax liabilities for the years 2008 through 2010 and refunded the balance of \$348.50 to Petitioner. The Department had the authority to do so.

O.C.G.A. § 48-2-35(d) provides as follows:

In the event any taxpayer's claim for refund is approved by the commissioner or the commissioner's delegate and the taxpayer has not paid other state taxes which have become due, the commissioner or department may offset any existing liabilities against the refund. Once the offset authorized by this subsection occurs, the refund shall be deemed granted and the amount of the offset shall be considered for all purposes as a payment toward the particular tax liabilities at

issue. Any excess refund amount after any offsets have been applied shall be refunded to the taxpayer at the same time the offset is taken.

D. The taxes owed to the Department for the years 2008 through 2012 were not discharged in the bankruptcy cases filed by Petitioner.

Petitioner argues vehemently that the Department's offsets were improper because these tax liabilities had been discharged in the bankruptcy proceedings. A close examination shows, however, that Petitioner's position does not have legal merit.

Petitioner has filed three bankruptcy petitions in the Northern District of Georgia.² The first bankruptcy proceeding was filed on December 29, 2010, as a Chapter 13 proceeding. See SRC Response, Exhibit 3. The court dismissed that bankruptcy case on February 23, 2011 due to the Debtor's failure to comply with 11 U.S.C. § 109(b) and 11 U.S.C. § 521(b). See SRC Response, Exhibit 4. Because the case was dismissed without a discharge order, the taxes for the years 2008 and 2009 were not discharged. Furthermore, the taxes for the year 2010 were not discharged because the 2010 tax return was not due to be filed until April 15, 2011.³

On March 1, 2011, Petitioner filed a second Chapter 13 bankruptcy proceeding. See SRC Response, Exhibit 5. This second bankruptcy case was dismissed on February 16, 2012 at the Debtor's request, without a discharge order. See SRC Response, Exhibit 6. The taxes for the years 2008, 2009 and 2010 were also not discharged in this second bankruptcy proceeding.

Petitioner's return for the taxable year 2011 was required to be filed by April 15, 2012⁴, which was after the second bankruptcy case was dismissed and before Petitioner filed the third bankruptcy petition, discussed *infra*. After the 2011 return was filed, the Department used the refund amount to satisfy Petitioner's liability for the taxes owed for the years 2008 through 2010.

² See Exhibits 3 through 8 of the State Revenue Commissioner's Response to Petitioner's Objection to the Tax Tribunal's March 13, 2014 Decision ("SRC Response").

³ O.C.G.A. § 48-7-56(a) provides that returns of taxpayers other than corporations shall be filed with the commissioner on or before April 15 in each year.

⁴ See O.C.G.A. § 48-7-56(a).

It then issued a refund to Petitioner on April 25, 2012 for the balance not used to satisfy these prior tax liabilities.

On June 25, 2012, after the tax liabilities for the years 2008 through 2010 had been paid, Petitioner filed a third bankruptcy proceeding under Chapter 7 of the Bankruptcy Code. The Department was not listed as a creditor. See SRC Response, Exhibit 7, Creditors Matrix. When Petitioner filed the third bankruptcy case, she did not have a reason to list the Department as a creditor because her taxes for the years 2008 through 2010 had been paid, Petitioner had been issued a refund for 2011, and the 2012 tax return was not due until the following year. Petitioner filed her 2012 income tax return with the Department the following year, or in 2013, but again failed to remit full payment of the tax owed.

Petitioner's taxes were not discharged in bankruptcy. A discharge under the Bankruptcy Code does not extinguish certain tax liabilities for which a return was due within three years before the filing of an individual debtor's petition. 11 U.S.C. §§ 523(a)(1)(A), 507(a). The provisions of 11 U.S.C. § 507(a)(8)(A)(i) give eighth priority to allowed unsecured claims of governmental units, only to the extent that such claims are for a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition. This is commonly known as the "three-year look-back period." All tax debts falling within the terms of the three-year look-back period are non-dischargeable in bankruptcy. 11 U.S.C. §§ 523(a)(1)(A)⁵ and 507(a)(8)(A)(i). Even if a tax debt falls outside the terms of the look-back period, it is nonetheless non-dischargeable if it pertains to an untimely

⁵ Under 11 U.S.C. § 523(a)(1), a discharge under sections 727 or 1328(b) of Title 11 of the United States Code does not discharge an individual debtor from any debt for a tax that has priority under section 507(a)(8) of the Bankruptcy Code, whether or not a claim for such tax was filed or allowed.

return filed within two years before the bankruptcy petition.⁶ 11 U.S.C. § 523(a)(1)(B)(ii).

In the Chapter 7 case, the bankruptcy court issued a discharge order on October 18, 2012, but the taxes for the years 2008 through 2011 were no longer owed so they could not have been discharged. In any event, the liabilities for the years 2009 and 2010 were exempt from discharge by virtue of 11 U.S.C. §§ 523(a)(1)(A), 507(a)(8)(A)(i) under the three-year look back rule. The liability for 2009 was also non-dischargeable because it pertained to an untimely return that Petitioner had filed within two years of the bankruptcy petition. 11 U.S.C. § 523(a)(1)(B)(ii). The liability for the year 2012 could not have been discharged because the 2012 return was not due until April 15, 2013. Taxes that have not been assessed but are assessable are not dischargeable and have priority status. See 11 U.S.C. §§ 507(a)(8)(A)(iii) and 523(a)(1)(A).

E. Petitioner owes the Department \$ 611.65 for the taxable year 2012.

Even though Petitioner's 2008 tax liability was not discharged in bankruptcy, after Petitioner filed this lawsuit, the Department transferred \$771.40 of the refund for 2011 into Petitioner's account for 2012, thereby reducing her 2012 tax liability to the amount of \$611.65 for taxes and interest.⁷ That amount remains unpaid and is still owed.

F. Respondent's Motion to Strike

This is not a simple case either legally or factually. From personal observation, we note that Respondent's representatives and counsel have worked diligently and professionally in an attempt to reach the correct result in this matter. They have done yeoman work to develop the record and to complete the calculations in order to arrive at the correct amount of Petitioner's net balance owing for 2012. The Department could have "played hardball" procedurally and refused

⁶ Petitioner did not timely file her 2009 return. It was filed on August 13, 2010. See O.C.G.A. § 48-7-56(a).

⁷ See supra note 1.

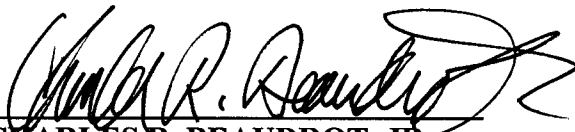
to give credit for Petitioner's 2008 tax balance.⁸ But it did not do so and, instead, gave Petitioner credit for that amount. By contrast, Petitioner has not aided her case by including vituperative and baseless allegations in her pleadings. Respondent's motion to strike such allegations from the record pursuant to O.C.G.A. § 9-11-12(f) is granted.

CONCLUSION

Petitioner owes the Department \$611.65 for the taxable year 2012 and Petitioner is not entitled to a refund for the taxable years 2008, 2009, 2010 and 2011. The baseless allegations contained in Petitioner's Summary Judgment Motion are struck pursuant to O.C.G.A. § 9-11-12(f).

Judgment is rendered in favor of Respondent accordingly.

SO ORDERED, this 2nd day of July, 2014.


CHARLES R. BEAUDROT, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL

LORRAINE L. HUNTER, *PRO SE*

PETITIONER

SAMUEL S. OLENS, Attorney General, W. WRIGHT BANKS, JR., Deputy Attorney General, WARREN R. CALVERT, Senior Assistant Attorney General, LOURDES G. MENDOZA, Senior Assistant Attorney General

ATTORNEYS FOR RESPONDENT, DOUGLAS J. MACGINNITIE, Commissioner, Georgia Department of Revenue

⁸ See *supra* note 1.