

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
RONALD FLETCHER	:	DETERMINATION DTA NO. 821093
for Redetermination of Deficiencies or for Refund of New York State Personal Income Tax, City of Yonkers Resident Income Tax Surcharge and New York City Personal Income Tax under Articles 22 and 30-A of the Tax Law and the Administrative Code of the City of New York for the Years 1995 through 1998.	:	

Petitioner, Ronald Fletcher, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax, City of Yonkers resident income tax surcharge and New York City personal income tax under Articles 22 and 30-A of the Tax Law and the Administrative Code of the City of New York for the years 1995 through 1998.

A hearing was held before Winifred M. Maloney, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on February 1, 2007 at 11:15 A.M., with all briefs to be submitted by May 23, 2007, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Kevin R. Law, Esq., of counsel).

ISSUE

Whether petitioner's New York State personal income tax liabilities for the years 1995, 1996, 1997 and 1998 were discharged pursuant to a Discharge of Debtor order of the United States Bankruptcy Court dated May 11, 2004.

FINDINGS OF FACT

1. On May 13, 1999, petitioner, Ronald Fletcher, filed his Federal income tax returns for the 1995, 1996 and 1997 tax years with the Internal Revenue Service's Manhattan District Branch 2-2 Collection Division ("IRS's Manhattan Collection Division"). Petitioner filed his Federal income tax return for the 1998 tax year with the IRS's Manhattan Collection Division on July 8, 1999. All four Federal returns showed amounts due. Petitioner signed and dated all four Federal income tax returns on May 13, 1999.

2. By letter dated April 17, 2003, the Division of Taxation ("Division") notified petitioner that a search of its files did not locate New York State income tax returns for the years 1997, 1998, 1999 and 2000 filed under his name and social security number. This letter further requested that copies of the returns for those years, along with copies of all applicable wage and tax statements, and copies of any cancelled checks reflecting payments made with any of the returns or information about any refunds which petitioner may have received for those years, be submitted to the Division's Filing and Systems Services Bureau.

3. On October 1, 2003, petitioner filed New York State and City resident personal income tax returns for the 1995, 1996, 1997 and 1998 tax years but did not remit payments of the amounts shown to be due on such returns. Specifically, the returns for each of the years showed tax due in the amounts of \$1,181.00 for 1995, \$343.00 for 1996, \$313.00 for 1997 and \$1,300.00 for 1998. The correctness of the amount of tax shown to be due on the returns is not disputed by either party. Petitioner's undated signature appeared on his 1995 State and City income tax return. A date of May 11, 1999 appeared next to petitioner's signature on both his 1996 and 1998 State and City income tax returns, while February 9, 1999 appeared next to petitioner's signature on his 1997 State and City income tax return.

4. On December 8, 2003, the Division issued to petitioner three notices and demands for payment of tax due. The first Notice and Demand for Payment of Tax Due (“Notice and Demand”) asserted New York State personal income tax due for the year 1996 in the amount of \$343.00 plus penalty (for late filing and payment) and interest. The second Notice and Demand asserted New York State personal income tax due for the year 1997 in the amount of \$313.00 plus penalty (for late filing and payment) and interest. The third Notice and Demand asserted New York State and City personal income tax due for the year 1998 in the amount of \$1,291.00 plus penalty (for late filing and payment) and interest. On December 11, 2003, the Division issued to petitioner a Notice and Demand which asserted New York State and City personal income tax due for the year 1995 in the amount of \$1,181.00 plus penalty (for late filing and payment) and interest.

5. Petitioner filed a Chapter 7 bankruptcy petition in United States Bankruptcy Court, Southern District of New York, on November 26, 2003.

6. Petitioner’s bankruptcy petition listed the Division of Taxation as a creditor holding unsecured nonpriority claims with respect to income tax liabilities for the 1995, 1996, 1997 and 1998 tax years totaling \$6,500.00.¹ His bankruptcy petition also listed the IRS as a creditor holding an unsecured nonpriority claim with respect to a Federal income tax liability for the years 1990 through 1999 in the amount of \$76,000.00.

7. The bankruptcy court issued a Discharge of Debtor order dated May 11, 2004 with respect to petitioner’s bankruptcy petition. This order provides, in part:

¹ The Division is listed as a creditor holding a total of seven unsecured nonpriority claims with respect to income tax liabilities for the years 1995 through 1998, which claims total \$18,095.00. However, three of the claims reference assessment no. E-000979098 and state that taxes are owed to the government as follows: \$9,025.00 for 1996, \$70.00 for 1998 and \$2,500.00 for 1996. Assessment document no. E-000979098 is not part of the record.

IT IS ORDERED THAT:

1. The Debtor [petitioner] is released from all dischargeable debts.
2. Any judgment not obtained in this court is null and void as to the personal liability of the Debtor(s) regarding the following:
 - (a) debts dischargeable under 11 U.S.C. § 523(a);
 - (b) debts alleged to be excepted from discharge under 11 U.S.C. § 523(a)(2), (4), (6) or (15) unless determined by this court to be nondischargeable;
 - (c) debts determined by this court to be discharged.
3. All creditors whose debts are discharged by this order or whose judgments are declared null and void in 2 above, are enjoined from instituting or continuing any action, employing any process or engaging in any act to collect such debts as personal liabilities of the Debtor(s).
8. Subsequent to the issuance of the order of discharge of the bankruptcy court on May 11, 2004, the Bankruptcy Unit of the Division's Tax Compliance Division cancelled balances due on assessments against petitioner for the years 1991, 1992, 1993 and 1994, while assessments against petitioner for the years 1995, 1996, 1997 and 1998, i.e., the notices and demands identified in Finding of Fact "4," were not adjusted except to cancel penalties asserted for those years.
9. The IRS issued a Certificate of Release of Federal Tax Lien dated May 26, 2004 for income tax assessments due for the years 1995, 1996 and 1997 in the total amount of \$19,378.36.
10. The Division has no record of receiving petitioner's New York State personal income tax returns for the years 1995, 1996, 1997 and 1998 before October 1, 2003.
11. Petitioner did not produce any documentary evidence corroborating his claim that his New York State personal income tax returns for the years 1995 through 1998 were filed with the Division before October 1, 2003.

SUMMARY OF THE PARTIES' POSITIONS

12. At the hearing, petitioner asserted that he mailed both his Federal and New York State income tax returns for the years 1995 through 1998 by ordinary mail on May 13, 1999. He claims that the evidence clearly shows that the IRS received his Federal income tax returns for the years at issue in 1999, and, as a result, his Federal income tax liabilities for the years 1995 through 1998 were discharged pursuant to the bankruptcy court's order. Since he filed his New York State income tax returns at the same time as he filed his Federal income tax returns, petitioner contends that his New York State tax liabilities for the years 1995 through 1998 were discharged pursuant to the bankruptcy court's order of May 11, 2004.

13. The Division asserts that documentation submitted at the hearing contradicts petitioner's testimony. Specifically, the Division points out that the record clearly shows that the IRS received three of the tax returns for the years at issue on May 13, 1999, the same date that petitioner signed and allegedly mailed them. The Division further points out that the fourth return, signed by petitioner on May 13, 1999 and allegedly mailed on the same date, was received by the IRS on July 8, 1999. It is the Division's position that petitioner's New York State tax returns for the years 1995 through 1998 were all filed without remittance of tax due on October 1, 2003 based upon a search of its official records. Accordingly, it contends that these taxes were exempt from the general discharge ordered by the bankruptcy court on May 11, 2004 because these late filed returns were filed within two years of the filing of the bankruptcy petition.

CONCLUSIONS OF LAW

A. 11 USC § 523(a)(1)(B) provides that a discharge under Chapter 7 does not discharge an individual debtor from a tax debt with respect to which a required return was either (i) not filed, or (ii) was late-filed less than two years before the filing of the bankruptcy petition. Therefore,

petitioner must show that his New York State returns for the years 1995 through 1998 were filed before November 26, 2001, i.e., more than two years before the filing of the bankruptcy petition, in order to prove that his New York income tax debts for the years 1995 through 1998 were discharged in bankruptcy.

B. In the instant matter, petitioner claims that he filed his New York State income tax returns for the years 1995 through 1998 at the same time he filed his Federal income tax returns for the same years, to wit: May 13, 1999. However, there is no evidence that petitioner's New York returns for the years 1995 through 1998 were received by the Division before October 1, 2003 (*see*, Findings of Fact "3", and "10"). The evidence submitted to prove mailing of the New York returns for the years 1995 through 1998 consists solely of petitioner's testimony that he mailed both his Federal and New York State income tax returns for the years at issue by ordinary mail in separate envelopes, by depositing them in a mailbox near where he was living in the Bronx, on May 13, 1999. Petitioner's testimony is insufficient to establish that his New York State personal income tax returns for the years 1995 through 1998 were filed more than two years prior to the filing of the bankruptcy petition (*see, Matter of Levin*, Tax Appeals Tribunal, April 16, 1998; *Matter of Schumacher*, Tax Appeals Tribunal, February 9, 1995; *Matter of Savadjian*, Tax Appeals Tribunal, December 28, 1990).

C. Since the Division did not receive petitioner's New York State income tax returns for the years 1995 through 1998 until October 1, 2003, less than two months before the petition in bankruptcy was filed on November 26, 2003, the exception of 11 USC § 523(a)(1)(B)(ii) must be applied. Consequently, petitioner's New York State tax debts for the years 1995 through 1998 were not discharged by the bankruptcy court. In addition, the order of discharge issued by the bankruptcy court discharged debts alleged to have been excepted from discharge pursuant to

section 523(a)(2), (4), (6) or (15) of the Bankruptcy Code (*see*, Finding of Fact “7”). As noted above, the exception relevant to this matter is 11 USC § 523(a)(1) and is therefore not covered by this part of the bankruptcy court’s order.²

D. As noted in Finding of Fact “8,” subsequent to the issuance of the order of discharge of the bankruptcy court, the Bankruptcy Unit of the Division’s Tax Compliance Division canceled the penalties asserted on the notices and demands for payment of tax due issued to petitioner for the years 1995 through 1998.

E. The petition of Ronald Fletcher is granted to the extent indicated in Conclusion of Law “D,” but, in all other respects is denied, and the notices and demands for payment of tax due, dated December 8, 2003 and December 11, 2003, as modified, are sustained.

DATED: Troy, New York
October 18, 2007

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE

² If petitioner believes that this determination violates the order of discharge of the bankruptcy court, his remedy is to apply to the bankruptcy court for relief.