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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:)
DANIEL RAYMOND and MARIE)
ESTHER BLACK,)
Debtors.)
_____)
UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
DANIEL RAYMOND and MARIE)
ESTHER BLACK,)
Defendants.)
_____)

No. 10-05902-PCW7

Adv. No. 11-80011-PCW

MEMORANDUM DECISION RE:
DEFENDANTS' MOTION TO DISMISS
WITH PREJUDICE PURSUANT TO
RULE 12(b)(1) OF THE FED. R. CIV. PRO.

This adversary was commenced January 18, 2011, by the Internal Revenue Service of the United States of America (hereinafter "IRS") against the debtors. The complaint alleges that certain pre-petition federal tax obligations are not subject to discharge in Chapter 7 case No. 10-05902-PCW7 commenced by the debtors on October 18, 2010.

The grounds for the non-discharge are alleged as follows: 1) 11 U.S.C. § 727(a)(2) concealment of property of the estate; 2) 11 U.S.C. § 727(a)(4) making of false oath; 3) 11 U.S.C. § 523(a)(1)(C) willful attempt to evade assessment and collection of tax; and 4) 11 U.S.C. § 523(a)(1)(B) failure to file tax returns. The debtor defendants seek dismissal of the adversary pursuant to Bankruptcy Rule 7012(b), incorporating Fed. R. Civ. P. 12(b)(1). The debtor defendants allege this court lacks subject-matter jurisdiction as the adversary complaint had not been commenced in accordance with 26 U.S.C. § 7401. The relevant section of that statute reads:

No civil action for the collection or recovery of taxes, or any fine, penalty, or forfeiture, shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

MEMORANDUM DECISION RE: . . . - 1

1 Motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) are to be granted only if allegations in
2 the complaint fail to state a basis for subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1) requires the
3 pleading provide notice of the subject-matter of the suit and the relief sought so that subject-matter
4 jurisdiction may be addressed. Bankruptcy Rule 7008, incorporating Fed. R. Civ. P. 8. Paragraph 4 of
5 the adversary complaint alleges that the Secretary has authorized and the Attorney General has directed
6 the commencement of the action as required by 26 U.S.C. § 7401 and that jurisdiction exists in this
7 court. Although motions to dismiss may be decided based solely upon the allegations in the complaint,
8 both parties have submitted additional evidence regarding the current motion.

9 The plaintiff IRS has submitted the Declaration of Alexis V. Andrews, which attaches a copy
10 of certain letters purporting to evidence the authority and direction referenced in 26 U.S.C. § 7401.
11 There is a letter dated January 14, 2011 from the Department of the Treasury, Internal Revenue Service,
12 Office of the Chief Counsel to an Assistant Attorney General of the Tax Division of the Department of
13 Justice requesting that the recipient object to the discharge of the debtors' tax obligations under 11
14 U.S.C. § 523. A supplemental letter dated January 18, 2011 was also submitted from the same office
15 to the same recipient confirming that the request is to oppose discharge of the tax liability under both
16 11 U.S.C. § 727 and 11 U.S.C. § 523(a)(1) of the Bankruptcy Code. Also submitted by plaintiff IRS
17 is a letter dated January 18, 2011 from the United States Department of Justice, Tax Division, Civil Trial
18 Section, Western Region, to Area Counsel stating that pursuant to 26 U.S.C. § 7401 the Chief Counsel
19 of the Internal Revenue Service has directed the commencement of the adversary.

20 The debtor defendants have submitted a response to a public record request made by the debtors
21 which response states that the database searched has no documentation evidencing the authorization and
22 direction reference in 26 U.S.C. § 7401. No copy of the request which precipitated the response was
23 provided. The response suggests that the requests for such documentation be made to the Tax Division
24 and/or the Executive Office for United States Attorneys.

25 In Hughes v. U.S., 953 F.2d 531 (9th Cir. 1992), the Ninth Circuit held that delegation down the
26 chain of command from the Secretary of Treasury to the Commissioner of the Internal Revenue Service
27 to local Internal Revenue Service employees was sufficient to meet the requirements of 11 U.S.C. §
28 7401. The court stated at page 536:

1 Relevant statutes and regulations demonstrate, however, that the Secretary does have the
2 power to collect taxes, and that such power can be delegated to local IRS agents. 26
3 U.S.C. § 6301 provides that “[t]he Secretary shall collect the taxes imposed by the
4 internal revenue laws.” The actual task of collecting the taxes, however, has been
5 delegated to local IRS directors. “The taxes imposed by the internal revenue laws shall
6 be collected by district directors of internal revenue.” 26 C.F.R. § 301.6301-1. District
7 directors in turn are authorized to redelegate the levy power to lower level officials such
8 as collection officers. See IRS Delegation Order 191. The delegation of authority down
9 the chain of command, from the Secretary, to the Commissioner of Internal Revenue, to
10 local IRS employees constitutes a valid delegation by the Secretary to the Commissioner,
11 and a re-delegation by the Commissioner to the delegated officers and employees. See
12 26 C.F.R. § 301.7701-9. Therefore, the agents involved in the case at bar were acting
13 within their authority when they collected taxes from the Hugheses.

14 The United States Attorney, as the delegate of the Attorney General, has statutory authority to
15 institute collections actions. U.S. v. Walters, 638 F.2d 947 (6th Cir. 1981).

16 The current case is not a collection action, but an action to declare the tax liability not subject
17 to discharge under the Bankruptcy Code. 28 C.F.R. § 0.70(a) authorizes the Tax Division of the
18 Department of Justice to conduct “litigation resulting from the taxing provisions of other Federal
19 statutes.” 11 U.S.C. § 523(a) (1) of the Bankruptcy Code is such a federal statute. Thus the C.F.R. itself
20 provides authority for this adversary action.

21 Although the debtor defendants provided evidence in the form of a response to a public record
22 request, that evidence does not negate the evidence submitted by the IRS. The plaintiff IRS has
23 submitted persuasive evidence that the appropriate authority has been granted under 11 U.S.C. § 7401
24 for the commencement of this adversary proceeding. Therefore, debtor defendants’ Motion to Dismiss
25 filed on March 9, 2011 is **DENIED**.

26 
27 Patricia C. Williams
28 Bankruptcy Judge

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