

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

CASE NO. 02-22247

CHARLES W. HARTFORD,

Debtor.

DECISION & ORDER

CHARLES W. HARTFORD,

Plaintiff,

v.

AP #02-2187

THE INTERNAL REVENUE SERVICE and
THE NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE,

Defendants.

BACKGROUND

On June 10, 2002, Charles W. Hartford (the "Debtor") filed a petition initiating a Chapter 7 case (the "Chapter 7 Case"). On the Schedules and Statements required to be filed by Section 521 and Rule 1007, the Debtor indicated that: (1) on March 22, 1999, he had filed a Chapter 13 case in the Western District of New York that had been designated Case No. 99-21216 (the "Prior Chapter 13 Case"); (2) he had calendar year 1999 federal income taxes due in the amount of \$4,374.96, which was an unsecured priority claim; and (3) he had calendar year 1998 federal taxes

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due in the amount of \$10,108.62 (the "'98 Tax Liability"), which was an unsecured nonpriority claim.

On July 18, 2002, the Debtor commenced an adversary proceeding against the United States Government, which requested the Court determine that: (1) the '98 Tax Liability was a nonpriority dischargeable unsecured debt because it was last due more than three years prior to the filing of the Chapter 7 Case; and (2) the IRS must return the Debtor's 2001 federal income tax refund in the amount of \$689.00 which it offset against the '98 Tax Liability.

On October 15, 2002, the United States of America interposed an Answer in the adversary proceeding which alleged that: (1) a return for the '98 Tax Liability was last due on April 15, 1999; (2) the three-year look-back period provided for in Sections 523(a)(1)(A) and 507(a)(8)(A),¹ which may result in a tax debt

¹ Section 523 provides, in part, that:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

(1) for a tax or a customs duty -

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed[.]

Section 507 provides, in part, that:

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being treated as a priority, nondischargeable debt, is tolled during the pendency of any prior bankruptcy proceeding, as decided by the United States Supreme Court in *Young v. United States*, 122 S.Ct. 1036 (2002) ("Young"); (3) the Debtor's Prior Chapter 13 Case, filed on April 23, 1999, before the three-year look-back period had expired for the '98 Tax Liability, was dismissed on January 14, 2000, eight months and twenty-two days after its commencement; (4) in accordance with the decision in *Young*, the three-year look-back period for the '98 Tax Liability

(a) The following expenses and claims have priority in the following order:

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for -

(A) a tax on or measured by income or gross receipts -

(i) 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;

(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case[.]

11 U.S.C. §§ 523 and 507 (2002).

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is extended for the eight months and twenty-two days that the Prior Chapter 13 case was open, or until January 6, 2003; and (5) the Debtor's Chapter 7 Case was filed on June 10, 2002, prior to the expiration of the three-year look-back period as extended to January 6, 2003, so that the '98 Tax Liability remains a nondischargeable unsecured priority debt.

At a January 22, 2003 Trial Calendar Call, the attorney for the Debtor argued that the holding in *Young* was not applicable in the Debtor's Chapter 7 Case because: (1) the confirmed plan in the Debtor's prior Chapter 13 case was a 100% plan that would have paid the IRS in full if it had been completed; and (2) the Chapter 7 Case was not a back-to-back filing with the Prior Chapter 13 Case, but was filed on June 10, 2002, more than two years after the Prior Chapter 13 Case was dismissed on January 14, 2000.²

DISCUSSION

The decision of the Supreme Court in *Young* could not be more clear in holding that the three-year look-back period of Section

² In a February 24, 2003 Memorandum, the attorney for the Debtor alleged that the decision in *Young* supported his interpretation because in the decision the Court stated, "tolling is in our view appropriate regardless of petitioners intentions when filing back-to-back Chapter 13 and Chapter 7 petitions - -." See *Young*, 122 S.Ct. at 1041.

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507(a)(8)(A)(i) is equitably tolled during the pendency of any prior bankruptcy case.³ As a result, to the extent that the three-year look-back period is interrupted by any bankruptcy case, the period is extended for whatever time the intervening bankruptcy case was pending. Therefore, if a subsequent bankruptcy case is filed before the expiration of the three-year look-back period plus the period during which any intervening bankruptcy case was pending, the unpaid tax liability is a nondischargeable priority claim.

Although the decision in *Young* is based upon the principals of equitable tolling, the rule that the three-year look-back period is tolled during the pendency of a prior bankruptcy case when a subsequent case is filed functions as a *per se* rule and is not dependent upon any actual equitable considerations that may be advanced by the debtor, such as the debtor's intentions or the length of time between the bankruptcy cases. The mere fact that the government was disabled from protecting its rights during the pendency of a previous bankruptcy petition results in

³ "We conclude that the look back period of 11 U.S.C. § 507(a)(8)(A)(i) is tolled during the pendency of a prior bankruptcy petition." See *Young*, 122 S.Ct. at 1043.

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a tolling of the three-year look-back period. See Young, 122 S.Ct. at 1041.

CONCLUSION

Since the three-year look-back period as extended by the eight months and twenty-two days that the Debtor's Prior Chapter 13 Case was pending had not expired on June 10, 2002, the '98 Tax Liability is excepted from the September 30, 2002 discharge entered in the Debtor's Chapter 7 Case, and the offset of the Debtor's 2001 income tax liability cannot be avoided.

IT IS SO ORDERED.

HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE

Dated: March 24, 2003