

JUDGE BUCHANAN SUMMARY

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June 21, 2016

In re Earls, Case No. 13-14649; Adv. Pro. 14-1043 Earls vs. USA (April 15, 2016)

The question addressed by the Court is whether a federal tax return filed after the IRS has assessed a taxpayer's liability pursuant to 26 U.S.C. Section 6020(b) qualifies as a "return" for purposes of 11 U.S.C. Section 523(a) relating to the discharge of tax debts. The Court found that it did not qualify as a "return" in a ruling based on cross-motions for summary judgment.

The debtors failed to file returns for 2000-2005. In 2005 the debtors engaged a professional to prepare the returns but the returns were not filed with the IRS until 3 years later - April 2008.

The IRS in the interim invoked its "substitute for return" (SFR) procedure based on the failure to file the returns. Deficiency notices were mailed to the debtors. The debtors did not file a petition with the Tax Court within 90 days. The IRS then assessed tax, interest and penalties. The IRS did not use an SFR for 2005 and did use the procedure for Mrs. Earls for the years in question.

The 2008 filings showed a liability of \$126,492 versus the IRS calculation of \$214,492. The debtors offer in compromise was rejected. The debtors made two payments on an installment agreement before filing their Chapter 13. The IRS filed a claim for \$333,994.62. The Plan proposed to pay \$123,090.19 as secured and 1% on the unsecured portion.

The unsecured portion of the claim was \$77,839.50 in taxes, \$52,492.38 in interest and \$80,572.55 in penalties. No dispute that the penalties were dischargeable.

The Court relied on the 6th Circuit case of Hindenlang for its 4 part test on what is a "return". The 4th prong of the test is whether the debtor failed to respond to the deficiency letters. The taxpayer must make an honest and reasonable attempt to comply with the tax laws. The Court found that the 3 year delay in filing returns (which were 3-7 years delinquent themselves) was not a "reasonable" attempt to satisfy the requirement of the tax laws. The taxes and interest were held not dischargeable. The Court later amended its decision to correct the amounts involved.