UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:	)	
	)	**JUDGE RICHARD L. SPEER**
Jeffrey Links	)	
	)	Case No. 08-3178
Debtor(s)	)	
	)	(Related Case: 07-31728)
Jeffrey Links	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	
United States of America	)	
	)	
Defendant(s)	)	

MEMORANDUM OPINION AND DECISION

This cause comes before the Court on the Motion for Summary Judgment filed by the Defendant, the United States of America. This motion is brought against the Plaintiff/Debtor's Complaint to Determine the Dischargeability of federal income tax liabilities. The Court has now had the opportunity to review the evidence and arguments submitted by the Parties, as well as the entire record in this case. Based upon this review, the Court finds, for the reasons set forth in this Decision, that Summary Judgment should be Granted in Part and Denied in Part.

FACTS

For the tax years of 2000 through 2006, the Plaintiff/Debtor, Jeffery T. Links, (hereinafter the "Plaintiff") worked as a self-employed realtor. While working as a realtor, the Plaintiff failed

to pay federal income taxes or have deductions withheld from his earnings. His outstanding tax debt, inclusive of interest and penalties, now exceeds $191,000.00. As represented to the Court by the Defendant, the following is a breakdown of the Plaintiff's outstanding tax obligations for the tax years 2000 through 2006:

Tax Year	Type of Assessment	Date of Assessment	Assessment Amount
2000	Tax	11/19/2001	$17,639.00
	Estimated Penalty	11/19/2001	$336.05
	Fail to Pay Penalty	11/19/2001	$705.56
	Interest	11/19/2001	$791.34
	Interest	11/26/2001	$26.16
2001	Tax	08/05/2002	$30,396.00
	Estimated Penalty	08/05/2002	$775.64
	Fail to Pay Penalty	08/05/2002	$597.92
	Interest	08/05/2002	$564.75
2002	Tax	05/31/2004	$17,578.00
	Estimated Penalty	05/31/2004	$587.40
	Late Filing Penalty	05/31/2004	$3,955.05
	Fail to Pay Penalty	05/31/2004	$1,230.46
	Interest	05/31/2004	$1,033.69
2003	Tax	06/14/2004	$10,590.00
	Estimated Penalty	06/14/2004	$273.23
	Fail to Pay Penalty	06/14/2004	$105.90
	Interest	06/14/2004	$87.15
2004	Tax	07/11/2005	$22,195.00
	Estimated	07/11/2005	$337.19
	Fail to Pay Penalty	07/11/2005	$332.92
	Interest	07/11/2005	$319.67
2005	Tax	11/06/2006	$18,538.07
	Estimated Penalty	11/06/2006	$743.58
	Fail to Pay	11/06/2006	$648.83
	Interest	11/06/2006	$811.52
2006	Tax	05/28/2007	$3,670.00
	Estimated Penalty	05/28/2007	$170.10
	Fail to Pay Penalty	05/28/2007	$36.02
	Interest	05/28/2007	$34.10

For many of the above tax years, the Plaintiff repeatedly requested and was granted extensions to file his tax returns. The following, as represented by the Defendant, constitutes the record of the extensions afforded to the Plaintiff and the date on which his return was filed:

Tax Year	Number of Extensions	Date of Extensions	Date Return was Filed
2000	2	First Extension From April 15, 2001 to August 15, 2001 Second Extension From August 10, 2002 to October 15, 2001	October 17, 2001 (2 Days Late)
2001	0	n/a	April 15, 2002
2002	2	First Extension From April 15, 2003 to August 15, 2003 Second Extension From August 15, 2003 to October 15, 2003	April 18, 2004 (more than six months late)
2003	0	n/a	April 15, 2004
2004	1	From April 15, 2005 to August 15, 2005	June 6, 2005
2005	1	From April 15, 2006 to October 15, 2006	October 10, 2006
2006	0	n/a	April 15, 2007

On April 30, 2007, the Plaintiff filed a petition in this Court for relief under Chapter 7 of the United States Bankruptcy Code. On August 31, 2007, a discharge order was entered by the Court. Subsequently, the Plaintiff brought this action against the Defendant seeking a dischargeability determination for his 2000 through 2006 federal tax liabilities. Against this action, the Defendant filed a Motion for Summary Judgment seeking to have the Plaintiff's tax obligations for the years 2000 through 2006 adjudicated to be nondischargeable debts. (Doc. No. 15). The Plaintiff, who is unrepresented by legal counsel, thereafter submitted two responses, in letter form, to the Defendant's Motion. (Doc. No. 17 & 19).

DISCUSSION

Before this Court is the Motion of the Defendant for Summary Judgment. This Motion is brought against the Plaintiff's Complaint to determine the dischargebility of his 2000 through 2006 federal income tax liabilities. Proceedings brought to determine the dischargeability of particular debts are deemed core proceedings under 28 U.S.C. § 157(b)(2)(I). Accordingly, this Court has the jurisdictional authority to enter final orders and judgments in this matter. 28 U.S.C. § 157(b)(1); § 1334.

The standard for summary judgment is set forth in Federal Rule of Procedure 56(c), which is made applicable to this proceeding by Bankruptcy Rules 7056. It provides for in part: A party will prevail on a motion for summary judgment when "[t]he pleadings, depositions, answers to interrogatories, and admission on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2252, 91 L.Ed.2d 265 (1986). With respect to this standard, the moving party must demonstrate all the elements of the cause of action. *R.E. Cruise Inc. v. Bruggeman*, 508 F.2d 415, 416 (6th Cir. 1975). In making this determination, the Court is directed to view all the facts in a light most favorable to the party opposing the motion.

Matsushita v. Zenith Radio Corp., 475 U.S. 574, 586-588, 106 S.Ct. 1348, 1348, 1356, 89 L.Ed.2d 538 (1986).

The Defendant's basis for Summary Judgment is presented in three overall parts. First, it asserts that the Plaintiff's federal tax liabilities for the years 2004 through 2006 are excepted from discharge pursuant to § 523(a)(1)(A). Second, it contends that the Plaintiff's federal tax debt for the year 2002 is excepted from discharge pursuant to § 523(a)(1)(B). Third, it asserts that the Plaintiff's 2000 through 2003 federal tax debts are excepted from discharge pursuant to § 523(a)(1)(C). The Court will now address each of these points in order.

In seeking to establish the nondischargeablity of the Plaintiff's 2004 through 2006 tax liabilities, the Defendant relies on § 523(a)(1)(A). This provision states:

> (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)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed[.]

Pursuant to subparagraph (A), the nondischargeability of a debt under this provision is dependent upon whether the tax obligation falls within the class of debts specified in either, (1) § 507(a)(3), concerning gap claims in involuntary cases, or (2) § 507(a)(8), pertaining to unsecured tax claims of government entities. In this case, only § 507(a)(8) is at issue. Specifically, subparagraph (A)(i) of § 507(a)(8) which states:

> (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 for a taxable year ending on or before the date of the filing of the petition–
>
> > (i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition[.]

The effect of these provisions, § 523(a)(1)(A) and § 507(a)(8)(A)(i), is to exclude from discharge tax liabilities which are less than three years old. For purposes of this determination, there are two relevant dates: (1) the date on which the tax return was last due; and (2) the date of the filing of the bankruptcy petition. If the time between these two dates is calculated to be less than three years, the debt will then be excepted from discharge by virtue of §§ 523(a)(1)(A) and 507(a)(8). Otherwise, the debt, unless another exception to dischargeability is applicable, will be subject to a court's order of discharge.

Respecting the Debtor's tax liabilities for the years 2004 through 2006, simple math shows that each of the liabilities falls within the three-year time frame set by § 507(a)(8)(A)(i). First, the Plaintiff's 2004 federal tax return, representing the oldest of the tax debts sought be held nondischargeable under § 507(a)(8)(A)(i), was last due on August 15, 2005. The Debtor then filed his petition for bankruptcy relief on April 30, 2007, an interval of time spanning less than two years. Carried a step further, the Debtor's tax liabilities for the years 2005 and 2006 would also fall within the three-year window of § 507(a)(8)(A)(i), given that empirically the due date for the returns for each of these tax years would be even closer in proximity to the Debtor's bankruptcy filing than the 2004 tax obligation. Accordingly, the Defendant's Motion for Summary Judgment must be granted on the issue of the nondischargeability of the Plaintiff's tax obligations for the years 2004 through 2006.

The Defendant next argues that the Debtor's 2002 year tax obligation should be held to be a nondischargeable debt because the Debtor never filed a tax return for that year. For its position, the Defendant cites to § 523(a)(1)(B)(i) which provides:

> (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–
>
> (B) with respect to which a return, or equivalent report or notice, if required–
>
> (i) was not filed or given[.]

This provision, by excepting from discharge a tax debt for which no return was filed, is "meant to encourage honest and self-generated reporting taxpayers, not to immunize non-reporting debtors who, once caught, seek to discharge their discovered tax obligations along with other debts in bankruptcy." *In re Mickens*, 214 B.R. 976, 978 (N.D.Ohio 1997), *aff'd*, 173 F.3d 855 (6th Cir. 1999) (table).

For the 2002 tax year, the Debtor twice requested and was granted extensions – first to August 15, 2003, then until October 15, 2003 – to file his federal tax return. No return for the 2002 tax year, however, was filed by the Debtor until approximately six months later, on April 18, 2004. In this return, the Debtor reported an adjusted gross income of $73,374.00 and a taxable income of $39,271.00. Based on this return, the Debtor was assessed a tax obligation of $17,578.00. To date, this obligation, together with accruing interest and penalties, remains outstanding.

It is the position of the Defendant that a tax "return submitted after the relevant due date does not meet the definition of 'return' and is non-dischargeable under 11 U.S.C. § 523(a)(1)(B)(i)." (Doc. No. 15). Thus, the Defendant maintains that because the Debtor, even after accounting for extensions, submitted his 2002 tax return six months late, his federal tax obligation for that year is

a nondischargeable debt. As authority for this position, the Defendant relies on the definition of 'return' set forth in § 523(a) and the case of *In re Creekmore*, 401 B.R. 748 (Bankr. N.D.Miss. 2008).

In 2005, a substantial change to the Bankruptcy Code was effectuated through the Congressional Act known as BAPCPA.[1] As a part of this change, Congress added to § 523(a), in an undesignated paragraph, a statutory definition for the meaning of a tax return in the context of a nondischargeability proceeding. The undesignated paragraph, located at the end of subsection (a), provides:

> For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

In the case of *In re Creekmore*, as cited by the Defendant, the applicability of this provision was addressed under the same circumstance presented in this matter – where a debtor, although ultimately filing a tax return, does so outside the applicable time limit. The Court in *In re Creekmore* stated, the "definition of 'return' in amended § 523(a) apparently means that a late filed income tax return, unless it was filed pursuant to § 6020(a) of the Internal Revenue Code, can never qualify as a return for dischargeability purposes because it does not comply with the 'applicable filing requirements' set forth in the Internal Revenue Code." *Id*. at 751.

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[1] BAPCPA stands for the Congressional Act entitled Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law 109-8, 119 Stat. 23.

Having not been presented with any argument to the contrary, the Court finds the conclusion reached in *In re Creekmore* to be sound. The term "applicable filing requirements," as set forth in the parenthetical of the undesignated paragraph of § 523(a), necessarily includes those provisions contained in Chapter 61 of the Internal Revenue Code, entitled "Information and Returns." Under this Chapter of the Internal Revenue Code, §§ 6072(a) and 6081(a) operate together to require that individual taxpayers must file an income tax return before April 15 of the year following the taxable year or within a period of time granted by an extension not to exceed six months. The definition of 'return' under § 523(a), thus, necessarily encompasses the filing deadlines for submitting returns contained in the Internal Revenue Code so that a late filed return cannot qualify as a return for purposes of a dischargeability determination.

It is clear that this reading, by effectively denominating a late filed return as an unfiled return, will broaden the scope of debts that may be found to be nondischargeable under § 523(a)(1)(B)(i). However, as the court in *In re Creekmore* went on to observe:

> Congress has now definitively addressed this issue. While some may think that this policy presents an insurmountable disincentive for the dilatory taxpayer to come forward to assist the IRS, the court would hasten to point out the "safe harbor" that can be found in § 6020(a) of the Internal Revenue Code. Under that exception, now specifically mentioned in the "dangling paragraph" of amended § 523(a), the untimely filing taxpayer can disclose all the information necessary for the preparation of the return to the IRS, the "Secretary" may prepare the return, and, if signed by the taxpayer, it may be received by the "Secretary" as a timely return.

A debtor, therefore, when confronted with a late filed return, may still receive a discharge of the underlying tax debt by availing themselves to the "safe harbor" provision set forth in § 6020(a) of the Internal Revenue Code. In this matter, however, there is no evidence that the Debtor availed himself to the "safe harbor" provision of § 6020(a). Accordingly, given the new definition

of return set forth in § 523(a),[2] the Court finds that the Plaintiff's 2002 tax obligation is a nondischargeable debt pursuant to § 523(a)(1)(B)(i).

The third component of the Defendant's Motion for Summary Judgment seeks to except from discharge the Plaintiff's 2000-2003 federal tax liabilities on the basis that the Plaintiff willfully evaded his tax obligations pursuant to § 523(a)(1)(C). This statute provides:

> (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
>
> (C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax[.]

This discharge exception encompasses two distinct grounds for nondischargeability: (1) the filing of a fraudulent tax return; and (2) a willful attempt to evade or defeat such tax. *In re Riley*, 202 B.R. 169, 174 (Bankr. M.D.Fla. 1996). The existence of either ground will warrant a finding of nondischargeability. The arguments presented by the Defendant focused on the latter ground, a willful attempt to evade or defeat a tax.

A willful evasion of a tax under § 523(a)(1)(C) is composed of both a conduct and a mental state element. *Stamper v. United States of America (In re Gardner)*, 360 F.3d 551, 558 (6th Cir. 2004). The conduct requirement looks to whether the debtor engaged in affirmative acts to avoid

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[2] Pointing to the lack of a bankruptcy definition, a four-part test was adopted by the Sixth Circuit Court of Appeals in *In re Hindenlang*, 164 F.3d 1029 (6th Cir. 1999), to determine whether a filing with the IRS constituted a 'return' for purposes of § 523(a)(1). It would appear that the Bankruptcy Code's new definition of return displaces this four-part test.

payment or collection of the taxes. *Id*. Acts of omission may also be considered to establish a pattern of conduct, although merely failing to file a tax return or failing to pay a tax does not, by itself, rise to the requisite level to establish a tax debt nondischargeable under § 523(a)(1)(C). *Toti v. United States (In re Toti)*, 24 F.3d 806 (6th Cir. 1994); 4 Lawrence P. King, Collier on Bankruptcy ¶ 523.07[4] (15th ed. 2009). The mental state element is established by means of a three-pronged test: (1) the debtor had a duty to pay taxes; (2) the debtor was aware of that duty; and (3) the debtor intentionally and consciously breached that duty. *In re Gardner*, 360 F.3d at 558.

In its effort to establish the requirements of § 523(a)(1)(C), the Defendant relies on an admission made by the Plaintiff, whereby he acknowledged an awareness of his tax obligations and his duty to satisfy those obligations. (Doc. No. 15, at pg. 13). The Defendant also relied on the totality of the circumstances, noting that the Plaintiff, on a continuing and ongoing basis, failed to pay the vast majority of his income taxes. *Id*. at 14.

In retort, the Plaintiff offered a number of reasons for failing to pay to his taxes. For example, the Plaintiff explained:

> As I have said on a number of occasions, I never had the intentions [sic] of not paying my tax liabilities. All my problems stem from a crime I was convicted of in the mid 1980's for smuggling marijuana. My taxes were amended back to about the yr 1980. When I did make payment this amount went back to years that were amended.
>
> I always had full intentions of paying my tax bill when a sizeable real estate sale happened. None did. I have borrowed money extensively from my employer, friends and family over the years to keep going and I do have an obligation to repay them.

(Doc. No. 17). Other statements made to the Court by the Plaintiff follow this same course.

Determinations concerning a party's culpable state of mind, such as that required to have a debt held nondischargeable under § 523(a)(1)(C), will often necessitate that the trier-of-fact assess the party's credibility. Determinations of a party's credibility will, in turn, often necessitate that the trier-of-fact be afforded the opportunity to observe the party's demeanor during direct and cross-examination. By definition, however, the entry of summary judgment deprives the trier-of-fact of this opportunity.

A ruling on summary judgment is, therefore, generally considered inappropriate when resolution of the substantive claim, as is the case for § 523(a)(1)(C), requires a determination of a person's state of mind. 10B Wright, Miller & Kane, Fed. Practice and Proc. § 2730 at 6-7 (3d ed.1998); *see also Hunt v. Cromartie*, 526 U.S. 541, 553, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999) ("Summary judgment in favor of the party with the burden of persuasion, however, is inappropriate when the evidence is susceptible of different interpretations or inferences by the trier of fact."). To be sure, nothing specifically precludes the entry of summary judgment on matters involving a party's state of mind, and in appropriate circumstances it may be warranted. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989). But this is not the situation here.

The exculpatory statements made by the Plaintiff, while conjectural, are sufficient to cast doubt on his culpability. The Defendant, in fact, partially acknowledged this point, recognizing that "the plaintiff has not engaged in any single instance of conduct to evidence willful evasion . . . ." (Doc. No. 15, at pg. 14). Accordingly, the Defendant's Motion for Summary Judgment, as pertaining to the nondischargeability of the Plaintiff's 2000 through 2003 tax liabilities, must be denied.

In addition to the three primary matters just discussed, the Defendant also sought two additional forms of relief in its Motion for Summary Judgment. First, the Defendant seeks to substitute the United States as the proper defendant in place of the Internal Revenue Service. Second, the Defendant seeks a determination that for the 2004, 2005 and 2006 tax years, the

penalties assessed against the Debtor are nondischargeable pursuant to § 523(a)(7). (Doc. No. 15). Both these requests are supported by law.

First, the Internal Revenue Service has no capacity to be sued. *Blachy v. Butcher*, 221 F.3d 896 (6th Cir. 2000), *cert. denied*, 532 U.S. 994, 909-910, 121 S.Ct. 1653, 149 L.Ed.2d 636 (2001). It is established in this respect that a party wishing to bring suit against the Internal Revenue Service must bring its complaint against, and name as a party, the United States of America. *Id*. Naming the Internal Revenue Service as a party, however, is not a fatal defect. *Id*. In this case, therefore, the Court will, as the Defendant requests, substitute the United States as the proper defendant in place of the Internal Revenue Service.

The Defendant's second position, that the tax penalties assessed against the Debtor for the 2004, 2005 and 2006 tax years are nondischargeable, relies on § 523(a)(7). This provision provides:

> (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–
>
> > (7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty–
> >
> > > (A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or
> > >
> > > (B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition[.]

This provision functions to except from discharge any penalty, including a tax penalty, owed to a government so long as the penalty is truly punitive in nature. And consistent with § 523(a)(7), no

indication was given that the tax penalties assessed against the Plaintiff were imposed for non-punitory reasons.

Yet, even if punitive in nature, penalties imposed with respect to a tax obligation will still be dischargeable insofar as it concerns § 523(a)(7) if, as set forth in subparagraphs (A) and (B): (1) the underlying tax debt is dischargeable; or (2) the penalty is imposed with respect to a transaction or event occurring more than three years before the bankruptcy case is commenced. Neither of these limited exceptions to nondischargeability, however, will operate in favor of the Plaintiff as a basis to discharge his tax penalties for the years 2004, 2005 and 2006. First, it has already been determined that the underlying tax obligations for these years are nondischargeable debts in bankruptcy. Similarly, as also set forth, the penalties assessed for the 2004, 2005 and 2006 tax years all occurred with respect to transactions that took place within three years of April 30, 2007, the date on which the Plaintiff filed for bankruptcy relief. Consequently, the penalties imposed with respect to these tax years are nondischargeable debts pursuant to § 523(a)(7)(B).

In summary, the Court finds as follows: First, the Plaintiff's federal tax liabilities for the tax years of 2004 through 2006 are nondischargeable pursuant to 11 U.S.C. § 523(a)(1)(A) and § 507(a)(8) for the reason that the debts are not yet three years old. Second, the Plaintiff's tax obligation for the year 2002 is nondischargable pursuant to § 523(a)(1)(B)(i) because the return for that year was filed late, and thus does not comply with the definition of a return set forth in § 523(a). Third, for the tax years 2000 through 2003, insufficient evidence exists to make a ruling on summary judgment that, for purposes of § 523(a)(1)(C), the Plaintiff willfully attempted to evade a tax. Fourth, the defendant originally named in the Plaintiff's complaint, the Internal Revenue Service, has no capacity to be sued. Accordingly, the Court finds it proper to substitute the United States of America as the proper party-defendant. Finally, the penalties assessed against the Plaintiff for the tax years of 2004 through 2006 are not yet three years old and are based on debts that are themselves

nondischargeable. Therefore, these penalties are held to be nondischargeable pursuant to § 523(a)(7).

One final note. In his last response to the Defendant's Motion for Summary Judgment, the Plaintiff wrote, "at least give me a chance through a jury trial." (Doc. No. 19). The Court must deny this request. It is precedent in this judicial circuit that questions regarding the dischargeability of particular debts involve issues with an equitable history for which there is no entitlement to a jury trial. *In re McLaren*, 3 F.3d 958, 960 (6th Cir.1993).

In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Opinion.

Accordingly, it is

ORDERED that, regarding the Plaintiff's tax liabilities for the years 2002 and 2004 through 2006, the Defendant's Motion for Summary Judgment, be, and is hereby, GRANTED; and that, regarding the Plaintiff's tax liabilities for the years 2000 through 2003, the Defendant's Motion for Summary Judgment, be, and is hereby, DENIED.

IT IS FURTHER ORDERED that, pursuant to 11 U.S.C. § 523(a)(1)(A), § 507(a)(8) and § 523(a)(7), the Plaintiff's income tax liabilities, including all penalties, for the tax years 2004, 2005, and 2006, be, and are hereby, determined to be NONDISCHARGEABLE DEBTS.

IT IS FURTHER ORDERED that, pursuant to 11 U.S.C. § 523(a)(1)(B)(i), the Plaintiff's income tax liability for the tax year 2002, be, and is hereby, determined to be a NONDISCHARGEABLE DEBT.

IT IS FURTHER ORDERED that, in place of the Internal Revenue Service, the United States of America is hereby substituted as the sole party/defendant.

IT IS FURTHER ORDERED that, concerning the dischargeability of the Plaintiff's tax liabilities for the tax years 2000, 2001 and 2003, a continued PreTrial is hereby set for Wednesday, September 23, 2009, at 1:00 P.M., in Courtroom No. 1, Room 119, United States Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio.

Dated: August 21, 2009

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Richard L. Speer
United States
Bankruptcy Judge