

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: June 30 2011

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re: Michael M. Hensen,)	Case No. 10-37183
)	
Debtor(s).)	Chapter 7
)	
Michael M. Hensen,)	Adv. Pro. No. 11-3030
)	
Plaintiff(s),)	Hon. Mary Ann Whipple
)	
v.)	
)	
United States of America,)	
)	
Defendant(s).)	
)	
)	
)	

ORDER GRANTING MOTION TO DISMISS

The court conducted a further pretrial scheduling conference on June 29, 2011, on Plaintiff's Complaint to Determine Dischargeability of 1995 Income Taxes ("Complaint"), pursuant to Fed. R. Bankr. P. 7016 and Fed. R. Civ. P. 16. Attorney for Plaintiff appeared in person and an Attorney for Defendant United States of America appeared by telephone. The court also heard Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction [Doc. #15] at the same time.

Defendant argues in its motion that there is no actual case or controversy raised by the Complaint for this court properly to consider. In its motion, Defendant states that “[t]he Service does not contest the dischargeability of Plaintiff’s 1995 and 1996 income tax liability” but asserts that a declaratory judgment is not appropriate relief within the court’s subject matter jurisdiction under these circumstances because there is no actual dispute between the parties. Since there is no dispute the court’s judgment would be purely advisory. The court agrees. The exception to discharge relating to tax debts in 11 U.S.C. § 523(a)(1) is wholly self-executing. If a tax debt is not within § 523(a)(1), upon entry of the order of discharge it is discharged without further action by or order of the court. An example of where there could be an actual case or controversy around the tax debt addressed in the Complaint would be post-discharge collection efforts by Internal Revenue Service the propriety of which Plaintiff would contest on the basis that that the tax debt has been discharged. And while Plaintiff would understandably prefer the comfort of such a finding by the court now, such comfort orders are not actual cases or controversies within the judicial power of the court.

For good cause shown,

IT IS SO ORDERED that Defendant’s Motion to Dismiss for Lack of Subject Matter Jurisdiction [Doc. #15] is **GRANTED**, without prejudice; and

IT IS FURTHER ORDERED that this adversary proceeding and the Complaint are dismissed, without prejudice.