ORDERED in the Southern District of Florida on August 28, 2007

Robert A. Mark, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re: ANTONIO H. SILVA and LACEY M. SILVA, Debtors.	CASE NO. 02-19085-BKC-RAM CHAPTER 13

ORDER (1) DETERMINING THAT
TAX DEBT WAS DISCHARGED; AND (2) FINDING
THAT UNITED STATES WILFULLY VIOLATED DISCHARGE INJUNCTION

The Court conducted a hearing on August 27, 2007, on Debtors' Motion to Reopen Case to Enforce the Discharge Injunction, to Find the IRS in Civil Contempt of Same, and for Sanctions Against the IRS, Including Attorney's Fees, Court Costs and Compensatory Damages (the "Motion") (CP# 42). The hearing was scheduled by this Court's July 27th Order Reopening Case and Setting Further Hearing on Motion to Enforce Discharge Injunction

the "July 27th Order") (CP# 53).

The Motion arises from a January 1, 2007 assessment against the Debtor husband, Antonio Silva, for taxes, interest and penalties for the years 1986 through 1990 (the "Tax Debt"). The Debtors argue that the Tax Debt is an unsecured claim which arose prior to the filing of the Debtors' Chapter 13 case on August 30, 2002 and was therefore discharged when the Debtors completed their Plan and obtained their discharge on January 27, 2006 (CP# 36).

In its July 27th Order, the Court found that the Debtors must first exhaust administrative remedies as required by 28 U.S.C. §7433(d) before seeking damages against the IRS in this Court under 26 U.S.C. §7433(e). However, the Court found that it had jurisdiction to determine whether the Tax Debt was discharged and, if so, whether the United States ("IRS") wilfully violated the discharge injunction in 11 U.S.C. §524.

With respect to discharge of the Tax Debt, the IRS filed a response, as required by the July 27th Order, stating that it is "unaware of any legal or factual arguments to support a claim that the Tax Debt was not subject to or was otherwise excepted from the discharge Order entered in [this case]" (United States Resp. ¶3, CP# 56) (the "IRS Response"). Based upon the IRS Response and the Court's review of the record, including the Debtors' Chapter 13 Plan, the Court finds that the Tax Debt was discharged.

With respect to whether the IRS wilfully violated the discharge injunction in 11 U.S.C. §524, the Court heard testimony at the August 27, 2007 hearing from Vivian Rodriguez, an Assistant U.S. Attorney with knowledge of the case, and heard argument from counsel for the Debtors and Counsel for the IRS. For the reasons stated more fully on the record at the conclusion of the hearing, which are incorporated here by reference, the Court finds that the IRS did wilfully violate the discharge injunction.

The IRS knew about this bankruptcy case and knew that the Debtors completed their plan payments and received a discharge. Despite that knowledge, the IRS issued the January 1, 2007 assessment and pursued collection of the Tax Debt. The court rejects the IRS' argument that it did not wilfully violate the discharge injunction because it believed in good faith that the Tax Debt was not discharged. As described above, the IRS Response acknowledges that it had no legal or factual basis to contest discharge. Its earlier misapprehension of the law does not excuse its wrongful attempts to collect a discharged debt. See In re Lowthorp, 332 B.R. 656, 659-60 (Bankr. M.D.Fla. 2005).

For the foregoing reasons, and consistent with the findings and conclusions in the Court's July 27th Order, it is -

ORDERED as follows:

1. The Motion is granted in part and denied without prejudice, in part.

2. The Tax Debt was discharged in this Chapter 13 case on January 27, 2006.

3. The January 1, 2007 assessment of the Tax Debt and efforts thereafter to collect the Tax Debt were wilful violations of 11 U.S.C. §524.

4. Upon finality of this Order, the IRS shall abate the Tax Debt, adjust its records to reflect a zero balance on the Tax Debt, and undertake no further efforts to collect the Tax Debt.

5. Before seeking any damages against the IRS in this Court under 26 U.S.C. §7433(e), the Debtors must first exhaust administrative remedies as required by 26 U.S.C. §7433(d). Lothorp, 332 B.R. at 660.

6. The Debtors' request for attorneys fees in the Motion is denied without prejudice to the Debtors seeking fees under 26 U.S.C. §7430.

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COPIES TO:

James Schwitalla, Esq.
Richard D. Euliss, Trial Attorney - U.S. Dept. of Justice