UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGE	Janet S. Baer	**Case No.**	14 B 23125
DATE	January 28, 2025	**Adversary No.**	23 A 00239
CASE TITLE	Sarah Morris v. United States of America, Department of the Treasury, Internal Revenue Service (In re Sarah Morris)		
TITLE OF ORDER	Amended Order Denying Sarah Morris's Motion for Summary Judgment on Her Adversary Complaint and Count II of the United States' Counterclaim (ECF No. 36) and Granting the United States' Motion for Summary Judgment on Count II of Its Counterclaim (ECF No. 46).		

DOCKET ENTRY TEXT

On the parties' cross motions for summary judgment, the Court finds in favor of defendant United States and against plaintiff Sarah Morris. Accordingly, Sarah Morris's Motion for Summary Judgment on her adversary complaint and on Count II of the United States' counterclaim is denied. The United States' Motion for Summary Judgment on Count II of its counterclaim is granted.
[For further details see text below.]

STATEMENT

This matter is before the Court for ruling on cross motions for summary judgment filed by plaintiff Sarah Morris (the "Debtor") and defendant United States of America (the "U.S.").[1] The Debtor moves for summary judgment on her adversary complaint,[2] requesting a determination that her debts for tax years 2003, 2005, and 2006 are dischargeable under 11 U.S.C. § 523(a)(1).[3] (Adv. Dkts. 36–38.[4]) She also seeks summary judgment in her favor on Count II of the U.S.'s

[1] In its answer to the Debtor's complaint in the above-captioned adversary proceeding, the U.S. notes that it is incorrectly identified by the Debtor as "Internal Revenue Service Centralized Insolvency Operations" and that the complaint itself uses the wrong caption. (Adv. No. 23 A 00239, Dkt. 12 at 1.) The correct defendant, the U.S. says, is the United States of America because the alleged tax debts at issue are owed to the United States. (*Id.*)

[2] On July 29, 2024, the parties filed a stipulation and joint motion to dismiss Count I of the U.S.'s counterclaim under 11 U.S.C. § 523(a)(1)(C). (*Id.*, Dkt. 45.) Accordingly, although the Debtor titles her brief as a memorandum of law in support of her motion for *partial* summary judgment on the adversary complaint, resolution of Count II of the U.S.'s counterclaim will resolve all remaining issues before the Court.

[3] Unless otherwise noted, all statutory and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101 to 1532, and the Federal Rules of Bankruptcy Procedure, respectively.

[4] Unless otherwise noted, all docket references are to docket entries in Adv. No. 23 A 00239 ("Adv. Dkt. __") or the Debtor's bankruptcy case, 14 B 23125 ("Bankr. Dkt. __").

counterclaim (Adv. Dkt. 12), in which the U.S. requests a determination that the Debtor's tax debts for 2005 and 2006 are nondischargeable pursuant to section 523(a)(1)(B) of the Bankruptcy Code. In turn, the U.S. has filed a cross motion for summary judgment, seeking a nondischargeability determination on the same basis as to the Debtor's 2005 and 2006 taxes. (Adv. Dkt. 46.)

For the reasons stated below, the Court finds that the portions of the Debtor's unpaid tax liability for 2005 and 2006 that were assessed before she filed her tax returns are excepted from discharge under section 523(a)(1)(B)(i). As such, the Court grants summary judgment in favor of the U.S. on its cross motion. The Debtor's motion for summary judgment is denied.

JURISDICTION

The Court has jurisdiction over these matters pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

FACTUAL BACKGROUND

The material facts in these matters are undisputed. Those facts, gleaned from the docket, the parties' papers, and the exhibits attached thereto, are as follows.

History of the Debtor's Bankruptcy Case and This Adversary Proceeding

The Debtor filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code on June 21, 2014 (the "Petition Date"). (Bankr. Dkt. 1.) The case was closed on August 22, 2019 (Bankr. Dkt. 86), after the Debtor successfully completed payments pursuant to her sixty-month chapter 13 plan (Bankr. Dkts. 42, 49, 80). A discharge was issued in the Debtor's case on July 11, 2019. (Bankr. Dkt. 82.)

In her chapter 13 schedules, the Debtor listed most of her income tax liabilities as unsecured debt. (Bankr. Dkt. 18 at 2.) The IRS filed a proof of claim for those unpaid taxes on June 27, 2014. (Bankr. Claims Reg., POC #1-1.) But for a very small portion of her 2003 income taxes that were paid in full through her chapter 13 plan, all of the Debtor's 2003, 2005, and 2006 taxes remained unpaid as of the closing of her chapter 13 case. While the case was open, the Debtor did not seek a determination of the dischargeability of those tax debts, nor did the IRS seek a nondischargeability determination.

In November 2019, after a discharge was granted to the Debtor and her chapter 13 case was closed, the Internal Revenue Service (the "IRS") issued several notices alleging that the Debtor remained liable for unpaid taxes for 2003, 2005, and 2006. Thereafter, the IRS seized various overpayments and refunds to which the Debtor was otherwise entitled, applying them to the balance due for tax year 2003.[5] Over the years that followed, the Debtor and the IRS engaged in various communications and proceedings. Ultimately, the IRS refused to refund amounts seized and applied to tax year 2003 and continues to show balances owed for tax years 2005 and 2006.

[5] The Debtor alleges that the IRS also applied $787 of the funds seized to the balance due for tax year 2005. (Adv. Dkt. 1 at 8.)

On July 8, 2023, the Debtor filed a motion to reopen her chapter 13 case (Bankr. Dkt. 87) so that she could file an adversary proceeding against the IRS. That motion was granted on August 8, 2023. (Bankr. Dkt. 91.) Subsequently, on August 12, 2023, the Debtor filed the instant adversary proceeding, seeking, *inter alia*, a determination that her liability for 2003, 2005, and 2006 taxes, to the extent not paid as of the Petition Date, was and is fully discharged. (Adv. Dkt. 1.) The Debtor also requests return of certain post-petition income tax overpayments that were seized by the IRS. (*Id.*)

On October 9, 2023, the U.S., on behalf of the IRS, filed an answer to the adversary complaint, as well as a counterclaim against the Debtor. (Adv. Dkt. 12.). In Count II of the counterclaim, the U.S. seeks a determination that the Debtor's income tax liabilities for 2005 and 2006 are nondischargeable pursuant to section 523(a)(1)(B). (*Id.* at 17.)

History of the Debtor's Tax Filings and Assessments

During the ten years leading up to her chapter 13 bankruptcy filing in June 2014, the Debtor failed to timely file federal tax returns for all years other than 2008, 2009, and 2013. The Debtor also generally had insufficient W-2 withholdings; failed to make any estimated pre-payments or payments with a return; and failed to make any voluntary payments, except for tax year 2003 which will be discussed *infra*.

The subject of the adversary complaint at issue is the Debtor's tax debt for tax years 2003, 2005, and 2006. With respect to those years, the Debtor's tax filing history is as follows:

Tax Year 2003. The Debtor did not timely file an income tax return for 2003. (*See* Adv. Dkt. 37 at 2.) As a result, in 2007 the IRS initiated a substitute-for-tax-return investigation pursuant to 26 U.S.C. § 6020(b).[6] Subsequently, the IRS issued a statutory notice of deficiency, filed a section 6020(b) return, and assessed $9,212 in tax owing by the Debtor. (Adv. Dkt. 12 at 14.) During the investigation, the Debtor voluntarily paid $7,744 (having had $4,398 in W-2 withholdings). (*Id.*)

After the IRS's initial assessment for tax year 2003, the Debtor finished paying the assessed tax, penalties, and interest by making a voluntary payment of $410.46 in September 2007. (*Id.*) Two years later, in August 2009, the Debtor filed a return for tax year 2003, reporting an additional $8,972 in tax, for a total tax of $18,184 on adjusted gross income of $61,954. (*Id.*) The additional tax was not paid until the chapter 13 trustee made several payments over the course of the Debtor's bankruptcy case. (*Id.*; Adv. Dkt. 47 at 13.)

On November 1, 2022, after having previously abated the penalties and related interest on the Debtor's 2003 tax account in late 2019, the IRS ultimately abated an unpaid assessed balance

[6] Subsection (b) of section 6020 of the Internal Revenue Code provides, in relevant part, that "[i]f any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, . . . the Secretary [of the Treasury] shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise." 26 U.S.C. § 6020(b)(1).

of tax and interest of $10,802.06 as a result of an administrative appeal. (*Id.*) The current account balance owing by the Debtor for tax year 2003 is zero.[7] (*Id.*)

Tax Year 2005. Likewise, the Debtor failed to timely file a return for tax year 2005. (*See* Adv. Dkt. 37 at 3–4.) For that reason, the IRS launched a substitute-for-tax-return investigation under 26 U.S.C. § 6020(b) on June 10, 2008, issued a statutory notice of deficiency on September 16, 2008, filed a section 6020(b) return on February 5, 2009, and assessed $5,053 in tax owing by the Debtor on February 23, 2009. (Adv. Dkt. 12 at 14.) The W-2 or 1099 withholding reported for the Debtor in 2005 was only $1,100, and no estimated pre-payments had been made. (*Id.*)

The Debtor filed an income tax return for 2005 over three years late, on July 17, 2009. (*Id.*) She reported adjusted gross income of $29,602 and additional tax of $2,286, for a total tax liability of $7,339. (*Id.* at 14–15.) The Debtor made no payments on either the original tax assessed by the IRS or the additional amount that she reported owing before her bankruptcy filing. (*Id.* at 15.) In 2019, the IRS abated the penalties and adjusted the interest owing by the Debtor for 2005. (*Id.*)

Tax Year 2006. The Debtor also did not timely file a tax return for 2006. (*See* Adv. Dkt. 37 at 4.) As such, the IRS opened a substitute-for-tax-return investigation pursuant to section 6020(b) of the Internal Revenue Code on June 10, 2008. (Adv. Dkt. 12 at 15.) Thereafter, on September 16, 2008, the IRS issued a statutory notice of deficiency, filed a section 6020(b) tax return on February 5, 2009, and assessed $5,820 in tax on February 23, 2009. (*Id.*) There were no withholdings reported for the Debtor for 2006, and she had made no estimated pre-payments for the year. (*Id.*)

The Debtor filed her tax return for 2006 over two years late, on July 11, 2009, reporting adjusted gross income of $37,654 and additional tax of $3,522, for a total tax liability of $9,342. (*Id.*) The Debtor failed to make any payments on the initial tax assessed by the IRS or the additional amount that she reported as owing. (*Id.*) In 2019, the IRS abated the penalties and adjusted the interest owing by the Debtor for tax year 2006. (*Id.*)

DISCUSSION

Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a) (made applicable to adversary proceedings by Fed. R. Bankr. P. 7056). In this adversary proceeding, the parties have filed cross motions for summary judgment—the Debtor seeking judgment in her favor as a matter of law on both her complaint and Count II of the U.S.'s counterclaim, and the U.S. requesting judgment in its favor solely on Count II of the counterclaim. At bottom, the parties are pursuing opposing determinations as to the dischargeability of the Debtor's unpaid federal income taxes for 2003, 2005, and 2006. The Debtor seeks a determination that the tax debts are not excepted from

[7] The U.S. states that the Debtor's remaining liability for 2003 was abated and thus discharged and that, accordingly, there is no live case or controversy as to dischargeability of her taxes for that year. Although some of the Debtor's post-petition refunds were applied to her 2003 tax liability prior to abatement, the U.S. says that it will reapply those refunds to tax years 2005 and 2006. The Debtor admits that the IRS's account transcript provides for a current balance of zero for her 2003 taxes. However, the Debtor argues that the IRS unilaterally and improperly applied post-petition federal and Illinois overpayments to the 2003 account. As a result, the Debtor seeks return of all post-petition amounts seized by the IRS for the 2003 taxes—not merely reapplication of the funds to other tax years.

discharge pursuant to section 523(a)(1)(B)(i), and the U.S. seeks a determination that they are. The parties agree that the dispute before the Court is purely a matter of law.

Section 1328(a) excepts from a chapter 13 discharge any tax debt specified in section 523(a)(1)(B). 11 U.S.C. § 1328(a)(2). That statute provides, in turn, that a chapter 13 debtor may not discharge any debt "for a tax . . . with respect to which a return . . . was not filed or given." 11 U.S.C. § 523(a)(1)(B)(i). Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), the term "return" has been specifically defined in the following "hanging paragraph" (referred to as "section 523(a)(*)"):

> 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.

11 U.S.C. § 523(a)(*).

Prior to the effective date of the BAPCPA definition of "return" under section 523(a)(*), the Seventh Circuit decided *In re Payne*, 431 F.3d 1055 (7th Cir. 2005). The issue presented in *Payne* was "whether a debtor may obtain a discharge in bankruptcy from a tax debt owed to the [IRS] if he failed to file a return until after the IRS assessed the tax that he owed." *Id.* at 1056. In that case, Payne failed to file his 1986 tax return until 1992. *Id.* By then, the IRS had already conducted an investigation and assessed Payne $20,000 in tax liability. *Id.* Subsequently, after the IRS rejected Payne's offer to compromise his tax liability, Payne filed for bankruptcy, seeking a discharge of that liability. *Id.*

At the time that *Payne* was decided, the Bankruptcy Code did not define the term "return." *Id.* at 1057. Thus, the Seventh Circuit turned for guidance to the case law, which provides that, "to be deemed a return, a document filed with the IRS must (1) purport to be a 'return,' (2) be signed under penalty of perjury, (3) contain enough information to enable the taxpayer's tax liability to be calculated, and (4) 'evince[ ] an honest and [reasonable] endeavor to satisfy the law.'" *Id.* (citing*, inter alia*, *Beard v. Commissioner*, 82 T.C. 766, 779 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986[8])). According to the *Payne* court, a purported return not satisfying all four conditions could not fulfill the intended role for which a tax return serves in the federal tax system, that of self-assessment. *Id.* Thus, the court said, "while a 'return' that satisfies the first three conditions comports with the literal meaning of the word, it does not comport with the functional meaning." *Id.*

The *Payne* court found that the fourth condition had not been satisfied. Specifically, the court stated that the debtor's late-filed return "was not a reasonable effort to satisfy the

[8] First set forth in the United States Tax Court case *Beard v. Commissioner*, this four-prong test is generally referred to as the "*Beard* test."

requirements of the tax law, namely, the requirements of filing a timely return and paying the amount of tax calculated on the return." *Id.* Because the IRS had already calculated the tax owed, Payne had defeated the main purpose of self-filed returns: "to spare the tax authorities the burden of trying to reconstruct a taxpayer's income and income-tax liability without any help from him." *Id.* Thus, the Seventh Circuit held that the document at issue was not a "return" for purposes of allowing the debtor to discharge his tax liabilities in bankruptcy. *Id.* at 1058. In so holding, the court noted that its finding was consistent with all of the appellate decisions that have dealt "with untimely tax returns brandished in the bankruptcy court in an effort to obtain a discharge." *Id.* (citing *Moroney v. United States (In re Moroney)*, 352 F.3d 902, 907 (4th Cir. 2003); *United States v. Hatton (In re Hatton)*, 220 F.3d 1057, 1060–61 (9th Cir. 2000); *United States v. Hindenlang (In re Hindenlang)*, 164 F.3d 1029, 1032–34 (6th Cir. 1999)); *see also Beard*, 82 T.C. at 778–79.

Payne himself cited to cases holding that "a fraudulent tax return is a return for purposes of criminal and civil fraud statutes even though such a return is worse than useless to the taxing authorities." *Id.* In response, the Seventh Circuit explained that "there is no reason why the word 'return,' undefined in either the Bankruptcy Code or the Internal Revenue Code, should carry the same meaning regardless of context." *Id.* In the context of a bankruptcy case, the court said, "a return that does not meet the 'honest and reasonable endeavor' standard is denied the status of a return in order to discourage people from using bankruptcy law to avoid having to satisfy their tax liabilities." *Id.*

In her motion for summary judgment here, the Debtor argues that, prior to BAPCPA and the addition of the hanging paragraph in section 523(a), bankruptcy courts applied the four-prong *Beard* test recognized by the Seventh Circuit in *Payne*. (Adv. Dkt. 38 at 6–7 n.5.) Now, she argues, because the hanging paragraph provides a statutory definition of "return," bankruptcy courts cannot continue to apply that test in a manner that imposes requirements beyond those in "applicable nonbankruptcy (i.e., tax) law." (*Id.*) According to the Debtor, filing in a timely manner was a pre-BAPCPA "non-tax law" requirement created by bankruptcy case law decisions, not by "applicable nonbankruptcy law." (*Id.* at 2–3.) Such requirements and decisions, the Debtor says, have been rendered "immaterial" and "improper" with the addition of section 523(a)(*). (*Id.* at 6–7 n.5.)

In support of her argument, the Debtor sets forth five categories of post-BAPCPA decisions which, she alleges, provide guidance on the issue before the Court of whether her tax debt is dischargeable under section 523(a)(1)(B). In conducting her analysis, the Debtor discusses, in great detail, the various approaches that might guide the Court's decision, the logic and shortcomings of each approach, the U.S.'s position, and her preferred approach. She even provides a decision tree for the Court to consider in reviewing the approaches.

The Debtor ultimately endorses the "Category 5" approach, which provides that a return—filed both late and after the IRS has made an assessment following the deficiency procedures under section 6020(b)—*always* precludes a nondischargeability determination under section 523(a)(1)(B)(i) if the late-filed return indicates a materially *greater* amount of tax than the amount assessed under the section 6020(b) process. (*Id.* at 10.) According to the Debtor, this approach is appropriate as a bright line test and also "implicitly demonstrate[s] the taxpayer's good faith and honest subjective intent for the late filing of the return because it serves the tax law purpose of

. . . correcting the [IRS's] understatement of the correct amount of tax liability." (*Id.*) In furtherance of her position, the Debtor directs the Court to excerpts attached to her brief from three post-BAPCPA bankruptcy cases, which, she argues, "capture[] . . . the reasoning" of the Category 5 approach. (*Id.* at 11–13.) *See Briggs v. United States (In re Briggs)*, 511 B.R. 707, 714–15 (Bankr. N.D. Ga. 2014); *Martin v. Internal Revenue Service (In re Martin)*, 508 B.R. 717, 731–33 (Bankr. E.D. Cal. 2014), *vacated*, 542 B.R. 479 (9th Cir. 2015); *Rhodes v. United States (In re Rhodes)*, 498 B.R. 357, 365–67 (Bankr. N.D. Ga. 2013).

Although her arguments and analyses are thorough and creative, the Debtor fails to sufficiently address the Seventh Circuit's *Payne* decision or reasons that the Court should now ignore what is otherwise clearly controlling precedent in this circuit. For her part, the Debtor acknowledges that the Seventh Circuit adopted the *Beard* test in *Payne*. She attempts to distinguish her case from *Payne*, however, by explaining that reporting a greater amount of tax on her late-filed return than the amount reflected in the IRS's section 6020(b) assessment serves a tax law purpose. (Adv. Dkt. 38 at 12.) The Debtor also suggests that *Payne* ceased to be controlling precedent in the Seventh Circuit once the BAPCPA amendments took effect. The Debtor's arguments are without merit.

Since the addition of the hanging paragraph defining the term "return" in section 523, none of the circuit courts applying the *Beard* test prior to the enactment of BAPCPA have reversed their decisions. *See Payne*, 431 F.3d at 1057[9]; *Moroney v. United States (In re Moroney)*, 352 F.3d 902, 905–07 (4th Cir. 2003) (holding that "income tax forms unjustifiably filed years late, where the IRS has already prepared substitute returns and assessed taxes, do not constitute 'returns' for purposes of [section] 523(a)(1)(B)(i)"); *United States v. Hatton (In re Hatton)*, 220 F.3d 1057, 1060–61 (9th Cir. 2000) (finding that an installment agreement between the debtor and the IRS did not "represent an honest and reasonable attempt to satisfy the requirements of the tax law," where the debtor elected to cooperate "only after the IRS threatened to levy his wages and bank account and seize his personal property"); *United States v. Hindenlang (In re Hindenlang)*, 164 F.3d 1029, 1034 (6th Cir. 1999) (holding that "a Form 1040 is not a return if it no longer serves any tax purpose or has any effect under the Internal Revenue Code" and that such a return does not constitute "an honest and reasonable attempt to satisfy the requirements of the tax law").

Moreover, no circuit court has found, post-BAPCPA, that a post-assessment, late-filed return constitutes a "return" under section 523(a)(*) for purposes of section 523(a)(1)(B)(i). Revisiting the issue in *Smith v. United States (In re Smith)*, the Ninth Circuit held that the *Beard* test still applies, despite the addition of section 523(a)(*). 828 F.3d 1094, 1097 (9th Cir. 2016). Likewise, the Third and Eleventh Circuits have found that the *Beard* test is applicable when determining whether a purported return satisfies the requirements of "applicable nonbankruptcy law (including applicable filing requirements)" pursuant to section 523(a)(*). *Giacchi v. United States (In re Giacchi)*, 856 F.3d 244, 247–48 (3d Cir. 2017) (applying the *Beard* test and holding that a Form 1040 filed after both its due date and assessment of a tax is not a "return" under that test); *Justice v. United States (In re Justice)*, 817 F.3d 738, 746–47 (11th Cir. 2016) (same). Addressing the same issue, the First, Fifth, and Tenth Circuits have held that post-assessment filings are not "returns" under section 523(a)(*)—not through application of the *Beard* test, but

[9] In fact, in his dissent in *Payne*, Judge Easterbrook stated that as a result of the BAPCPA legislation (which did not apply in *Payne*), "an untimely return [cannot] lead to a discharge." *Payne*, 431 F.3d at 1060.

simply because filing deadlines themselves are "applicable filing requirements." *Fahey v. Massachusetts Dep't of Revenue (In re Fahey)*, 779 F.3d 1, 4–5 (1st Cir. 2015); *Mallo v. Internal Revenue Service (In re Mallo)*, 774 F.3d 1313, 1320–21 (10th Cir. 2014); *McCoy v. Mississippi State Tax Comm'n (In re McCoy)*, 666 F.3d 924, 931–32 (5th Cir. 2012).[10]

Justice v. United States (In re Justice) is one of most recent cases on the issue before a circuit court. 817 F.3d 738 (11th Cir. 2016). In that case, the Eleventh Circuit observed that "the BAPCPA definition . . . demands that a return satisfy 'the requirements of applicable nonbankruptcy law'" and that "all courts to consider the issue[] agree that th[at] term . . . incorporates the *Beard* test." *Id.* at 743. Declining to follow the Eighth Circuit's decision in *Colsen v. United States (In re Colsen)*, 446 F.3d 836 (8th Cir. 2006), the *Justice* court chose to "join the majority of federal appeals courts in holding that the fourth *Beard* factor requires analysis of the entire time frame relevant to the taxpayer's actions."[11] *Id.* at 744. "Failure to file a timely return," the court said, "at least without a legitimate excuse or explanation, evinces the lack of a reasonable effort to comply with the law." *Id.*

Based on the foregoing discussion and analysis, the Court joins the majority and finds that there is no compelling reason to conclude that *Payne* has been abrogated or otherwise altered by section 523(a)(*). When a taxpayer files a return after the IRS has completed deficiency procedures and created an enforceable debt without a return, the subsequent self-filed Form 1040 cannot meet the "applicable filing requirements" of self-reporting the already assessed debt, even if such a document reports additional tax. Here, it is not just the tardiness of the Debtor's 1040 forms that makes her filings noncompliant with "applicable filing requirements," but rather the fact that the documents were filed after the IRS completed its investigation and assessed the Debtor's taxes without receiving any returns from her. Filing a return late but enabling the IRS to make a quick assessment is different from filing a return after the IRS has already determined income and tax debt, has issued a notice of deficiency, and is merely waiting for the time to petition the Tax Court to expire. A return that is simply filed late does not necessarily fail the "applicable filing requirements" of self-reporting income and tax. However, a return that is filed after a deficiency assessment has been made and a section 6020(b) return has been filed does fail that requirement.

Considering section 523(a)(1)(B) and the hanging paragraph together, the Court holds that the tax debt at issue is not dischargeable in bankruptcy, because the IRS filed section 6020(b) returns for the tax years in question and assessed the corresponding taxes owing by the Debtor,

[10] The only court in the Seventh Circuit to address the issue post-BAPCPA is the Bankruptcy Court for the Central District of Illinois in the case *Shinn v. Internal Revenue Service (In re Shinn)*, Bankr. No. 10-83750, Adv. No. 10-8139, 2012 WL 986752 (Bankr. C.D. Ill. Mar. 22, 2012). Persuaded by Judge Easterbrook's dissent in *Payne* and the Fifth Circuit's opinion in *McCoy,* the *Shinn* court found that the BAPCPA definition abrogated the *Beard* test and that "the new definition of 'return' . . . means that an untimely filed 1040 cannot be considered to be a return for dischargeability purposes, unless the narrow exception in [section] 6020(a) [of the Internal Revenue Code] applies." *Id.* at *6.

[11] In *Colsen*, the Eighth Circuit held that "the honesty and genuineness of the filer's attempt to satisfy the tax laws should be determined from the face of the form itself, not from the filer's delinquency or the reasons for it." 446 F.3d at 840.

with no tax returns filed by the Debtor in connection with that debt. Although the Debtor later filed returns for the same tax years to report additional tax, she missed the opportunity to self-report the part of the tax already assessed, which is the most important function of a return (self-assessment). The Debtor's late returns neither override the IRS's section 6020(b) assessments nor convert them retroactively into debt for which returns were filed under "applicable filing requirements." The Debtor did not make an honest and reasonable attempt to comply with the tax laws by self-reporting her income and debt, forcing the IRS to bear that burden itself without the Debtor's cooperation. Finding otherwise would be contrary to BAPCPA's section 6020(b) carveout, the principles and holding in *Payne*, and simple policy considerations.

CONCLUSION

For the reasons discussed above, the Court concludes that the Debtor's unpaid tax liabilities for tax years 2005 and 2006 that were assessed before she filed her tax returns are nondischargeable pursuant to section 523(a)(1)(B)(i). Accordingly, the Debtor's motion for summary judgment on her adversary complaint and Count II of the United States' counterclaim is denied, and summary judgment is granted in favor of the U.S. on its cross motion.

DATED: January 28, 2025

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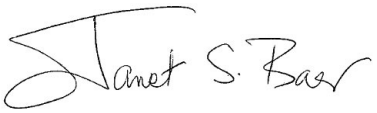

Janet S. Baer
United States Bankruptcy Judge