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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

ROBERT and DEBORAH BROOKS,

No. 97-11728

Debtor(s).

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Memorandum re Discharge of Tax Debt

The debtors filed their Chapter 13 petition on May 8, 1997. Their plan was confirmed on August 25, 1997. About a year later, the California Franchise Tax Board made an additional assessment against the debtors for the tax year 1995. The assessment was based on information the FTB had received from the IRS that there had been an additional federal tax assessment for that year. The debtors had an obligation to report the IRS assessment to the state within six months but failed to do so. Neither the debtors nor the FTB filed a claim for the newly-assessed taxes, and the debtors were discharged and the case closed upon completion of their plan in October, 2000. The issue now before the court is whether the postpetition assessment by the FTB is subject to the discharge.

Taxes become debts when they are assessed, regardless of the tax year from which they arise. *In re Bracey*, 77 F.3d 294, 295 (9th Cir. 1996). The taxes in question are accordingly postpetition taxes, governed by § 1305(a)(1) of the Bankruptcy Code. That section allows a claim to be filed “for taxes that become payable to a governmental unit while the case is pending.”

The FTB did not file a claim for the postpetition taxes, nor did the debtors as they could have under § 501(c) of the Code. Had such a claim been filed, it could have been paid through the debtor’s plan. However, when a claim for postpetition taxes is not filed the debt passes through Chapter 13 undischarged. *In re Chavis*, 47 F.3d 818, 819 n4 (6th Cir.1995). When a government possesses a

1 postpetition tax claim, it has a choice between voluntary participation in the wage-earner plan under
2 section 1305 or going directly against the debtor pursuant to applicable nonbankruptcy law. *In re*
3 *Ripley*, 926 F.2d 440, 443n11 (5th Cir. 1991).

4 For the foregoing reasons, the debtor's motion for a finding of civil contempt against the
5 Executive Officer of the FTB will be denied.¹ Counsel for the FTB shall submit an appropriate form of
6 order.

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10 Dated: April 23, 2003

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Alan Jaroslovsky
U.S. Bankruptcy Judge

¹By separate memorandum, the court has rejected respondent's claim that the doctrine of sovereign immunity bars the court from adjudicating this matter.