

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

**Lesley Bell and Mary Bell, Plaintiffs, v. State of Wisconsin,
Department of Revenue, Defendant**
(In re Lesley Bell and Mary Bell, Debtors)
Bankruptcy Case No. 90-03474-7, Adv. Case. No. A91-1077-7

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

October 1, 1991

Michael Inglimo, for the plaintiffs.
Linda M. Mintener, for the defendant.

Thomas S. Utschig, United States Bankruptcy Judge.

**MEMORANDUM OPINION, FINDINGS OF FACT,
AND CONCLUSIONS OF LAW**

This matter comes before the Court on the motion of the defendant State of Wisconsin, Department of Revenue, for summary judgment. The defendant is represented by Linda M. Mintener. The plaintiffs are Lesley and Mary Bell and they are represented by Michael Inglimo.

The relevant facts can be briefly stated. The plaintiffs are indebted to the State of Wisconsin, Department of Revenue, for delinquent tax warrants stemming from taxes owed for the years 1979 through 1983. The tax periods, warrant numbers, and amounts due are as follows:

<u>Tax Period</u>	<u>Warrant No.</u>	<u>Amount Due</u>
1979-82	16-00152597	\$ 5,101.31
1981-83	16-00153390	11,006.40
1983	16-00154811	<u>4,626.89</u>
	Total:	\$ 20,734.60

The total amount due includes interest calculated to April 17, 1991. These taxes are based solely on income earned by the plaintiff Lesley Bell prior to his marriage to plaintiff Mary Bell.

The plaintiffs ask this court to discharge these delinquent taxes in their bankruptcy on the basis of 11 U.S.C. § 507(a)(7). That provision provides in relevant part:

[(a) [t]he following expenses and claims have priority in the following

order:]

. . .

(7) Seventh, 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--

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

. . .

11 U.S.C. § 507(a)(7)(A)(i) (West 1991). The plaintiffs assert that since the tax years in question are 1979-83, the tax returns for those years were due more than three years before they filed bankruptcy on December 11, 1990. Pursuant to § 507(a)(7)(A)(i), therefore, those delinquent taxes are alleged to be dischargeable.

The defendant responds by alleging that the debtors were required to file tax returns for the tax years at issue, they failed to do so, and the taxes are therefore nondischargeable pursuant to 11 U.S.C. § 523(a)(1)(B)(i). That 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--

(1) for a tax on a customs duty--

. . .

(B) with respect to which a return, if required--

(i) was not filed; . . .

11 U.S.C. § 523(a)(1)(B)(i) (West 1991).

Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. F.R.C.P. 56(c).

The plaintiffs admit that no tax returns were filed by them for the relevant years. See Plaintiffs' Response to Motion for Summary Judgment at 2. They contend, however, that certain negotiations between themselves and the defendant, coupled with a written assignment by the plaintiff Lesley Bell to the defendant of the proceeds of a personal injury award are sufficient to constitute a "filing" of a return to overcome the statutory exception in § 522(a)(1)(B)(i). The plaintiffs further allege that the amount of taxes due was reduced to writing and signed by Lesley Bell and that both he and the defendant were aware of the exact amount due because of assessments performed by the defendant.

For support, the plaintiffs cite In re Carapella, 84 B.R. 779 (Bankr. M.D. Fla. 1988), a case involving the collection of federal taxes. The Carapella court held that the filing of a form titled "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment" signed by the debtor was sufficient to constitute "filing" for purposes of § 523(a)(1)(B)(i). 84 B.R. at 782.

Finally, the plaintiffs allege that the State of Wisconsin does not require all taxpayers to file a return; some taxes are paid pursuant to agreement without returns ever being filed.

The defendant State of Wisconsin, Department of Revenue, has submitted a lengthy brief in support of its summary judgment motion in which it challenges and denies the plaintiffs' assertions and arguments.

The Court has examined the documents and exhibits before it as well as the written arguments of the parties, and has decided to grant the defendant State of Wisconsin, Department of Revenue's motion for summary judgment. This result is mandated in this case by the clear and unequivocal language of 11 U.S.C. § 523(a)(1)(B)(i) -- "[a] discharge . . . does not discharge an individual debtor from any debt with respect to which a return, if required, was not filed" As noted, the plaintiffs here acknowledge that no tax returns were filed by Lesley Bell for 1979-83, the years at issue.

The plaintiffs have raised numerous arguments seeking to avoid the harsh application of § 523(a)(1)(B)(i) in this case, but the Court is not persuaded by their efforts. First, the case cited by the plaintiffs, In re Carapella, is very different factually from the present case. That case involved federal taxes which were assessed against the debtor therein. The taxes had been computed in detail, moreover, and the debtor signed IRS Form 870 which confirmed that the tax assessments were correct. 84 B.R. at 782. Here, as noted by the defendant, the Wisconsin Department of Revenue made estimates of the debtors' tax liability -- but they remained just that -- estimates. Unlike the Carapella case, there is no document before this Court signed by the debtors which indicates and acknowledges the proper amount of tax due for the years in question. The Carapella case is therefore inapplicable to the present facts.

Second, the plaintiff-debtors' effort to assert that the assignment of the personal injury proceeds by Lesley Bell to the defendant constitutes "filing" for purposes of § 523(a)(1)(B)(i) fails to persuade this Court. A copy of the assignment form was submitted by both parties in their written submissions to the Court. The assignment form does not contain any of the detailed information required for a tax return -- adjusted, gross and taxable income for each of the years in question, or exemptions, exclusions, or deductions. As noted by the defendant in its brief, the assignment form does not even contain the taxpayer's address or social security number, nor even the relevant tax years at issue here. On its face, the form is merely an assignment of \$4,600.00 in personal injury proceeds by the plaintiff Lesley Bell to the defendant Wisconsin Department of Revenue. At most this form would establish that the plaintiff Lesley Bell was indebted to the defendant. The plaintiffs' attempt to classify the execution of this assignment as a "filing" of a state income tax return is therefore meritless.

Third, and finally, the plaintiffs have submitted no other authority, be it statutory or judicial precedent, which would support a colorable claim that the taxes in question are dischargeable. As noted, the mandate of 11 U.S.C. § 523(a)(1)(B)(i) is clear -- the plaintiff Lesley Bell did not file the required tax returns for the years in question, he has acknowledged this, and the taxes are therefore nondischargeable as to him pursuant to that provision.

There are no issues of material fact outstanding and the defendant is entitled to judgment as a matter of law. Accordingly, the defendant State of Wisconsin, Department of Revenue's motion for summary judgment is granted.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.