

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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In re:

SPENCER WADE THOMAS, SR. and  
AUDREY LYNETTE HIGGINS-THOMAS,

Case No. DG 06-06701  
Chapter 7  
Hon. Scott W. Dales

Debtors.

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**MEMORANDUM OF DECISION AND ORDER**

PRESENT: HONORABLE SCOTT W. DALES  
United States Bankruptcy Judge

*Pro se* Debtors Spencer W. Thomas and Audrey L. Higgins-Thomas sent a letter to the court dated October 23, 2008, in which they request an order reopening their case to amend their bankruptcy schedules to list income tax debts attributable to the cancellation of debt.<sup>1</sup> The court treated the letter as a motion under 11 U.S.C. § 350(b), to reopen their case, and set the matter for a hearing on December 18, 2008 in Grand Rapids. The Debtors appeared at the hearing, and offered additional information in support of their request.

Based on the court's docket, the Debtors' letter-motion and their statements in open court, the following facts appear reasonably certain. The Debtors originally commenced this bankruptcy case on December 21, 2006 ("Petition Date") by filing a voluntary petition under Chapter 7. It appears that sometime in 2004 the Debtors

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<sup>1</sup> For convenience, I will refer to the cancellation of debt as "COD," and the resulting income as "COD income."

compromised a debt with the lender on their car loan, and the lender filed an IRS Form 1099-C, reporting the cancellation of \$9,328 in car debt. At the time of the compromise, the Debtors were having difficulty making ends meet. Indeed, the COD occurred shortly before the Petition Date.

Because the Debtors did not receive a copy of the Form 1009-C prior to filing their 2004 tax returns, and were unaware that the compromise of the debt gave rise to a reportable tax event, they did not report the supposed income on their 2004 tax returns. The Debtors have since learned that the taxing authorities are seeking to recover \$2,564 in federal taxes and \$776 in state taxes as a result. Because they say they cannot pay these tax debts, they seek an order reopening their case, presumably to list the tax debt and have it included within the scope of their discharge.

After a bankruptcy case is closed, the court retains the authority to reopen it for a variety of reasons, including to “accord relief to the debtor.” 11 U.S.C. § 350(b). The question that the Debtors’ letter-motion presents, therefore, is whether reopening the case will give the Debtors any relief.

Because the taxable event occurred in 2004, a return reflecting the income was required to be filed within three years before the Petition Date. Given this timing, the tax attributable to the COD income would more than likely be excepted from discharge under 11 U.S.C. § 507(a)(8)(A) and § 523(a)(1). Therefore, reopening the case and listing the debt would not by itself discharge the tax debts attributable to the COD income. Nevertheless, the court may have authority under 11 U.S.C. § 505 to determine the amount or legality of the tax debt. Accordingly, I will grant the letter-

motion and reopen the case to permit the Debtors to take steps to resolve this tax issue within the bankruptcy forum, provided they file some further request for relief within 120 days after entry of this order.

Having said this, I would urge the debtors to get some tax advice because it is conceivable that they could file amended tax returns reporting the COD income, but claiming an exclusion if they qualify under 26 U.S.C. § 108(a)(1) or some other tax code provision.<sup>2</sup> Today, I conclude only that reopening the case under 11 U.S.C. § 350(b) may provide the Debtors with a forum for resolving their prepetition tax debts related to the COD income, and thereby permit me to accord some relief to the Debtors.

Because the court has already approved an order of final distribution, I do not believe that the circumstances warrant the appointment of a trustee to protect creditors or insure the efficient administration of the case. See Fed. R. Bankr. P. 5010.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Clerk shall reopen this case under 11 U.S.C. § 350(b);

IT IS FURTHER ORDERED that if the Debtors do not file a motion for relief related to the COD income tax debt within 120 days after the entry of this Memorandum of Decision and Order, the Clerk shall close the case;

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum of Decision and Order pursuant to Fed. R. Bankr. P. 9022 and LBR

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<sup>2</sup> I note that 26 U.S.C. § 108(a)(1) may provide an exclusion from income if the COD occurred when the Debtors were insolvent, or in other specified circumstances. Their report of financial difficulties at the time they compromised the car loan suggests that they may be able to support an exclusion from income resulting from the COD. I make no findings in this regard at this time.

5005-4 upon Spencer Wade Thomas, Sr., Audrey Lynette Higgins-Thomas, and the United States Trustee.

END OF ORDER