ORDERED.

Dated: September 27, 2024

Tiffany P. Geyer
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

Kevin Charles Feltmann,

Debtor.
_____/

Case No. 6:18-bk-03551-TPG
Chapter 13

ORDER DENYING DEBTOR'S MOTION TO REOPEN CASE TO DETERMINE STATUS OF TAX CLAIMS AND TO REQUEST SANCTIONS AGAINST THE FRANCHISE TAX BOARD

The Debtor moves to reopen his Chapter 13 case to request a determination that he satisfied certain nondischargeable tax and related interest claims of the Internal Revenue Service ("IRS") and the Franchise Tax Board ("FTB") as provided for in his completed plan, and for sanctions against the FTB for continuing to pursue collection of post-petition interest on its claim (the "Motion"). (Doc. No. 46.) The Chapter 13 Trustee and the IRS filed oppositions to the Motion (Doc. Nos. 47, 54), and the Debtor filed a reply (Doc. No. 56). Following a hearing to consider the issues (Doc. No. 57) and after analyzing the arguments of the parties and the law, the Motion is denied.

BACKGROUND

On June 14, 2018, the Debtor filed a Chapter 13 case. (Doc. No. 1.) The claims register reflects certain tax obligations. The IRS filed amended claim 2-2 for $21,203.15, comprised of a $17,258.36 priority claim for the tax periods ending 2015, 2016, and 2017, and a related pre-petition unsecured penalty claim of $3,944.79 (the "IRS Claim"). (Claim 2-2 at 4.) The FTB filed amended claim 6-2 for $3,517.26, asserting a $2,481.58 unsecured priority claim for the tax periods ending 2015 and 2016, and a general unsecured claim of $1,035.68 for these same tax periods (the "FTB Claim"). (Claim 6-2 Part 2 at 1.) Neither the IRS Claim nor the FTB Claim included post-petition interest, only interest accruing up to the petition date.

On November 13, 2018, the Court entered an order (the "Confirmation Order") (Doc. No. 16) confirming the Debtor's plan (the "Plan") (Doc. No. 13) containing the Debtor's proposed treatment of the IRS Claim and the FTB Claim (collectively, the "Tax Claims"). The IRS Claim was allowed at $17,258.36 with 3% interest for an $18,606.60 unsecured priority claim, and $3,944.79 was allowed as a general unsecured claim. (Doc. No. 16 at 8, 9.) The FTB Claim was allowed as a $2,481.58 unsecured priority claim and a $1,035.68 general unsecured claim. (Doc. No. 16 at 8.) So, the Tax Claims were allowed as filed, and the Debtor independently allocated 3% interest to the priority portion of the IRS Claim. The Debtor did not allocate interest to the priority portion of the FTB Claim.

The Debtor successfully completed the Plan (Doc. No. 39), paying the Tax Claims as proposed. The IRS received $18,606.60 on its unsecured priority claim, and $108.03 on its $3,944.79 general unsecured claim, paid pro rata. (Doc. No. 40 at 2.) The FTB received $2,481.58 on its unsecured priority claim, and $28.36 on its $1,035.68 general unsecured claim, also paid pro rata. (*Id.*) On September 20, 2023, the Court entered an order granting the Debtor a

discharge under 11 U.S.C. § 1328(a) (Doc. No. 43) (the "Discharge Order"), and subsequently closed the case. The Discharge Order provides examples of debts that are not discharged, including "debts for certain types of taxes specified in 11 U.S.C. §§ 507(a)(8)(C), 523(a)(1)(B), or 523(a)(1)(C) to the extent not paid in full under the plan . . . ." (*Id.* at 1.) Because portions of the Debtor's tax liabilities were paid only in a pro rata percentage under the Plan, they were not paid in full.

In November 2023, the FTB notified the Debtor of an outstanding indebtedness relating to the FTB Claim treated in the Plan. (Doc. No. 46 ¶ 15.) The Debtor's 2016 Tax Accounting Transcript reflects that the Debtor owes $561.24, described as "additional, post-petition interest that accrued during the life of the plan" (Doc. No. 54 ¶ 2) "for the tax period ending December 31, 2016" (*Id.* ¶ 1).

THE DEBTOR ASKS TO REOPEN
HIS CHAPTER 13 CASE TO REQUEST SANCTIONS

Because the Debtor paid the Tax Claims as he proposed in the Plan and received a discharge, he now asks the Court to reopen his case so he can seek sanctions against the FTB, claiming it violated the discharge injunction by attempting to collect post-petition interest. (Doc. No. 46 at 3-4.)[1] In response, the Trustee and the IRS argue that, based upon the petition date and the date the Debtor's 2016 tax liability was assessed, 11 U.S.C. § 523(a)(1)(B)(ii)[2] precludes discharge of the Tax Claims and the related post-petition interest, including the $561.24 in interest on the FTB Claim that accrued during the life of the Plan. (Doc. No. 54 ¶ 2; Doc. No.

[1] Though the Debtor initially requested a status as to the dischargeability of the 2015 and 2016 taxes treated in his plan, he ultimately concedes that the remaining amounts owed on these taxes are not dischargeable (Doc. No. 56 ¶ 3) because they relate to late-filed returns.

[2] Pursuant to 11 U.S.C. § 523(a)(1)(B)(ii), a tax with respect to which a return, or equivalent report or notice, was filed or given after the date on which such was last due under applicable law or any extension, and after two years before the filing of the petition, is not discharged under 11 U.S.C. § 1328(b).

47.) Although the Debtor does not dispute that the tax debt itself is nondischargeable (Doc. No. 56 ¶ 3), he argues that the IRS and the FTB failed to include interest as a part of their proofs of claim, failed to object to the 3% interest rate he provided in the Plan, and failed to suggest he pay anything more than the 3% interest rate he proposed. (*Id.*) In essence, the Debtor claims he was blindsided by the government's attempt to collect post-petition interest that he did not and could not have anticipated because neither the IRS nor the FTB amended their claims or otherwise notified him that post-petition interest was accruing, and in a far higher amount than he anticipated. (Though again, the Debtor did not pay the FTB Claim with any interest, just the IRS Claim at 3%.) The Debtor argues that having to guess at what interest rate may be required deprived him of the opportunity to amend his confirmed plan to include a higher interest rate, resulting in a substantial hardship post-discharge. (*Id.* ¶¶ 5-6). In addition, the Debtor argues the government's failure to object to his treatment of post-petition interest on the Tax Claims in the Plan should preclude it from asserting claims for post-petition interest now.

THE DEBTOR'S ARGUMENTS ARE WITHOUT MERIT

A Chapter 13 discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). But the injunction, of course, does not apply to nondischargeable debts. *Fla. Dep't of Revenue v. Diaz (In re Diaz)*, 647 F.3d 1073, 1088 (11th Cir. 2011). Thus, when a discharge is granted, "holders of nondischargeable debts generally may attempt to collect from the debtor personally for such debts." *Id.*

Here, the Debtor does not dispute that, to the extent his taxes were not fully satisfied under the Plan, he remains obligated on any remaining amounts post-discharge. The problem

from the Debtor's perspective is the unanticipated interest on those claims. But controlling law does not favor the Debtor on this point. In *Bruning v. United States*, 376 U.S. 358, 363, 84 S. Ct. 906, 909, 11 L. Ed. 2d 772 (1964), some 60 years ago, the United States Supreme Court explained that "post-petition interest on an unpaid tax debt not discharged . . . remains, after bankruptcy, a personal liability of the debtor." In *Bruning*, after the government received a small distribution from the bankruptcy estate for unpaid taxes and the debtor received a discharge, the Court concluded that the government could still seek to collect accrued post-petition interest on the tax claim from the debtor. Twenty-five years later, in *Burns v. United States (In re Burns)*, 887 F.2d 1541, 1543 (11th Cir. 1989), the Eleventh Circuit confirmed *Bruning* continued to apply after adoption of substantial revisions to the Code.[3] In *Burns*, the Court concluded that post-petition interest on a nondischargeable tax debt was not dischargeable in a Chapter 7 case and remained nondischargeable in the debtor's subsequent Chapter 13 case.

More recently, in *United States v. Monahan (In re Monahan)*, 497 B.R. 642 (B.A.P. 1st Cir. 2013), the Bankruptcy Appellate Panel for the First Circuit also relied on *Bruning* when it reversed a bankruptcy court's determination that the IRS violated the discharge injunction by seeking to collect post-petition interest that had accrued on priority tax claims which were fully paid in the debtor's Chapter 13 plan. *Id.* at 644. In sum, *Bruning* and *Burns* are controlling and address the issue raised, and *Monahan* lines up with this authority. Any post-petition interest accruing on the Debtor's Tax Claims here is not discharged. Accordingly, this case will not be reopened to permit the Debtor to seek sanctions against the FTB for its collection efforts.

[3] The Bankruptcy Code was extensively revised in 1978, *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 238, 109 S. Ct. 1026, 1029, 103 L. Ed. 2d 290 (1989), and is referred to herein as the "Code."

Furthermore, the Debtor's complaints that neither the IRS nor the FTB alerted the Debtor to the accrual of post-petition interest also fall flat. As noted in *Monahan*, pursuant to 11 U.S.C. § 502(b)(2), a claim is not allowed to the extent it is for unmatured interest, *Monahan*, 497 B.R. at 647, and certainly interest accruing post-petition is unmatured on the petition date. As *Monahan* explains, "[A] chapter 13 plan must provide for the payment of priority tax claims in the full amount of the allowed claim, *without post-petition interest*, in order to comply with the requirements of the Code and satisfy the confirmation standard in § 1325(a)(1)." *Id.* at 647-48 (emphasis added).[4]

Nor will the Court give any weight to the Debtor's argument that the government's failure to object to its treatment under the Plan should prevent it from pursuing these unpaid amounts now. *See In re Brown*, 533 B.R. 344, 347, 349 (Bankr. M.D. Fla. 2015) (Chapter 13 hardship discharge did not prevent IRS collection efforts on nondischargeable general unsecured debt notwithstanding that IRS failed to object to plan treating its unsecured claim in the same manner as other general unsecured claims, and rejecting application of *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272-76, 130 S. Ct. 1367, 1380, 176 L. Ed. 2d 158 (2010), pertaining to student loan debt, as distinguishable from tax debt at issue);[5] *In re Gill*, 343 B.R. 732 (Bankr. M.D. Fla. 2006) (IRS did not violate Chapter 11 discharge injunction by seeking to

[4] The Debtor observes that the Orlando Division of the Middle District of Florida may permit a debtor to include interest payments on tax claims under the plan, even though the government "rarely, if ever, files a claim with stated interest" (Doc. No. 56 ¶ 4) and here such was permitted, as the confirmed Plan allocated interest to the IRS Claim at 3%. The Court will not address such practice as the issue has not been expressly raised.

[5] But see *Reuland v. Internal Revenue Serv. (In re Reuland)*, 591 B.R. 342, 351–52 (Bankr. N.D. Ill. 2018), in which the court observed discharge may be possible if a plan contains express, specific language notifying a particular creditor its debt would be discharged, supplying sufficient notice above and beyond mere boilerplate language. In *Reuland*, the court deemed it unreasonable to expect the IRS to object to mere boilerplate language impairing its rights where "nearly all plans contain a similar provision about general unsecured claims." *Id.*

collect nondischargeable tax obligations that included post-petition interest on unsecured nondischargeable taxes); *In re Newman*, 402 B.R. 908, 916 (Bankr. M.D. Fla. 2009) (rejecting debtor's argument that the IRS's failure to object to Chapter 11 plan treatment prevented it from pursuing collection efforts on nondischargeable debt).

To conclude, the unpaid amounts from the Debtor's late-filed taxes are nondischargeable pursuant to 11 U.S.C. § 523(a)(1)(B)(ii). Pursuant to *Bruning*, *Burns*, and *Monahan*, the FTB will not be sanctioned for seeking to collect post-petition interest as such remains a nondischargeable personal liability of the Debtor. Finally, neither the IRS nor the FTB is precluded from asserting claims for post-petition interest by failing to object to the Debtor's Plan or by otherwise not noticing the Debtor of the post-petition accruals; unmatured interest is not properly included in a proof of claim per 11 U.S.C. § 502(b)(2), and the Code does not appear to impose affirmative obligations on the government to notify the Debtor of the rate of interest in effect post-petition.

Accordingly, it is **ORDERED** that the Motion (Doc. No. 46) is **DENIED**.

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Winston Cuenant is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within three days of entry of this order.