No. 14-1328

United States Court of Appeals for the First Circuit

IN RE: BRIAN S. FAHEY
Debtor

BRIAN S. FAHEY
Appellant,

v.

MA DEPARTMENT OF REVENUE,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
CASE NO. 13-11875-WGY

BRIEF OF NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AS AMICUS CURIAE IN SUPPORT OF APPELLANT, ADVOCATING REVERSAL OF THE DISTRICT COURT

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July 7, 2014

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Fahey v. MA Dept. of Revenue, No. 14-1328.

Pursuant to FRAP 26.1 and First Circuit Local Rule 26.1(a), *Amicus Curiae,* the National Association of Consumer Bankruptcy Attorneys, makes the following disclosure:

1) Is party/amicus a publicly held corporation or other publicly held entity? **NO**

2) Does party/amicus have any parent corporations? **NO**

3) Is 10% or more of the stock of party/amicus owned by a publicly held corporation or other publicly held entity? **NO**

4) Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? **NO**

5) Is the party a trade association? **NOT APPLICABLE**

6) Does this case arise out of a bankruptcy proceeding? **YES**

If yes, identify any trustee and the members of any creditors' committee.

CHAPTER 7 TRUSTEE, Joseph Braunstein

THERE IS NO CREDITORS' COMMITTEE

Dated: July 7, 2014

/s/ Tara Twomey

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STATEMENT OF INTEREST

The National Association of Consumer Bankruptcy Attorneys, or NACBA, is a non-profit organization of more than 3,000 consumer bankruptcy attorneys practicing throughout the United States. Incorporated in 1992, NACBA is the only nationwide association of attorneys organized specifically to protect the rights of consumer bankruptcy debtors. NACBA has filed amicus curiae briefs in various courts seeking to protect the rights of consumer bankruptcy debtors. *See*, *e.g.*, *United Student Aid Funds v. Espinosa*, 559 U.S. 260 (2010); *In re Puffer*, 674 F.3d 78 (1st Cir. 2012); *In re Traverse*, -- F.3d --, 2014 WL 214521 (1st Cir. May 23, 2014).

The resolution of the question presented in this case is of substantial importance to NACBA. Many thousands of debtors represented by NACBA and its members depend on the Bankruptcy Code's longstanding principle to grant the debtor a discharge from his or her debts to achieve a "fresh start" after declaring bankruptcy. NACBA believes the District Court reached the incorrect result in holding that late-filed state tax returns do not constitute "returns" for discharge purposes. In so ruling, the District Court inappropriately

accepted the Appellee's overly restrictive, unsupported interpretation of the Bankruptcy Code provisions governing the definition of a "tax return." NACBA files this brief to show why the District Court's decision was incorrect and to address the various unpersuasive arguments the Appellee has advanced to the contrary.

CERTIFICATION OF AUTHORSHIP

Pursuant to FRAP 29(c)(5), the undersigned counsel of record certifies that this brief was not authored by a party's counsel, nor did a party or party's counsel contributed money intended to fund this brief and no person other than NACBA contributed money to fund this brief.

SUMMARY OF ARGUMENT

By enacting section 523(a)(*)[1] of title 11 of the United States Code[2] as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Congress sought to harmonize the bankruptcy definition of "tax return" with the applicable nonbankruptcy meaning of tax return (including satisfaction of any applicable filing requirements necessary for a document to qualify as a return under applicable nonbankruptcy law). Massachusetts law does not require a tax return to be timely filed in order to qualify as a tax return. Therefore, Debtor's late-filed Massachusetts income tax returns do not fail to qualify as "tax returns" for purposes of Bankruptcy Code section 523(a) solely because of their tardiness.

Appellee Massachusetts Department of Revenue's ("MDOR") interpretation of section 523(a)(*) effectively renders Bankruptcy Code section 523(a)(1)(B)(ii) a nullity. Because MDOR's interpretation would effect a wide-ranging change in pre-BAPCPA practice without any supporting legislative history, it should be rejected under *Dewsnup v.*

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[1] Note that this reference to the Bankruptcy Code refers to the "hanging paragraph" at the end of section 523(a).

[2] The "Bankruptcy Code."

Timm, 502 U.S. 410 (1992) since another reasonable interpretation is available. The word "requirement," as applied to tax returns, has at least two clear meanings in applicable nonbankruptcy law — a narrow meaning and a broad meaning. Under the narrow meaning, a condition is a "requirement" with respect to a tax return if a document cannot qualify as a tax return unless it meets such condition. *Beard v. Commissioner*, 82. T.C. 766 (U.S. Tax Ct. 1984) and *Swanson v. Commissioner*, 121 T.C. 111 (U.S. Tax Ct. 2003) adopt this use. Under the broad meaning, "applicable requirements" may include non-essential requirements, including timeliness and completion of every single required line and schedule, without which a document may still qualify as a tax return under applicable law even though such failure may trigger other consequences (*e.g.*, nonbankruptcy penalties or extended limitations periods). Because section 523(a)(*) is a definitional provision, the narrow meaning (under which a return need only satisfy those requirements necessary for it to qualify as a valid return under nonbankruptcy law) is more appropriate.

Finally, MDOR's interpretation is inconsistent with the policies underlying the Bankruptcy Code. In particular, the Code seeks to make

a "fresh start" available to "honest but unfortunate" debtors. Frequently, honest debtors whose financial affairs are in disarray find it hard to keep up with tax filings on a timely basis, and find themselves making an honest attempt to catch up by filing their returns late. The two-year limitation in section 523(a)(1)(B)(ii) was intended to benefit precisely such debtors. MDOR's interpretation would largely eliminate the benefit of this provision and is therefore contrary to the policies underlying the Bankruptcy Code.

ARGUMENT

A. Exceptions to Discharge Should Be Narrowly Construed

The principal goal of most bankruptcy cases is the entry of a discharge, a purpose that is consistent with the policy of providing debtors with an opportunity for a fresh start. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). The availability of a discharge is not absolute; there are certain limited categories of debts that the Bankruptcy Code deems to be excepted from discharge. 11 U.S.C. § 523(a). However, a well-established doctrine in bankruptcy law provides that exceptions to discharge should be narrowly construed. *Gleason v. Thaw*, 236 U.S. 558,

562 (1915) ("In view of the well-known purposes of the bankrupt law, exceptions to the operation of a discharge thereunder should be confined to those plainly expressed...."); *Rutanen v. Baylis (In re Baylis)*, 313 F.3d 9, 17 (1st Cir. 2002); Century *21 Balfour Real Estate v. Menna* (*In re Menna*), 16 F.3d 7, 9 (1st Cir.1994). *See* 4 COLLIER ON BANKRUPTCY ¶ 523.05 (16th ed. 2012) ("In determining whether a particular debt falls within one of the exceptions of section 523, the statute should be strictly construed against the objecting creditor and liberally in favor of the debtor.").

B. The Appellant Filed a Tax "Return" According to the Relevant Bankruptcy Code Statutory Provisions.

Bankruptcy Code section 523 provides for several exceptions to the discharge authorized by section 727 for individual debtors. More specifically, section 523(a)(1) excludes from discharge those debts

> "for a tax or a customs duty with respect to which a return, or equivalent report or notice, if required (i) was not filed; or (ii) was filed or given after the date on which such return report or notice was last due, under applicable law, including any extension, and after two years before the date of the filing of the petition."

11 U.S.C. §523(a)(1)(B)(ii) (emphasis added). In other words, under section 523(a)(1)(B)(ii), a debt for a tax related to a return that was filed

past the due date *and* less than two years prior to the bankruptcy filing is nondischargeable. The key issue in this case is the effect of the 2005 amendment to Bankruptcy Code section 523(a) which added (as a hanging paragraph) the following definition of "return" for purposes of this exception:

> 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)(*).

The Debtor's argument is simple: the Code of Massachusetts Regulations defines a "return" as a "taxpayer's signed declaration of the tax due, if any, properly completed by the taxpayer or the taxpayer's representative on a form prescribed by the Commissioner and duly filed with the Commissioner." 830 Mass. Code Regs. §62C.26.1(2). As such, because the return filed by the Debtor met these aforementioned requirements (none of which have a temporal element), the Debtor filed a "return" within the meaning of Bankruptcy Code section 523(a)(*).

Since the return was filed more than two years prior to the bankruptcy filing date, the debts that arose with respect to such returns should not be exempt from discharge under section 523(a)(1)(B)(ii) .

MDOR takes the position that the "requirements of applicable nonbankruptcy law (including applicable filing requirements)" must necessarily include the "timeliness" requirement — *i.e.*, that the return is filed on time according to Massachusetts law. Because the return was filed after the due date provided by Massachusetts law, MDOR argues that no "return" was filed within the meaning of section 523(a)(*). MDOR reasons that since no return was filed, the debts that arose with respect to such "returns" should be exempt from discharge under Bankruptcy Code section 523(a)(1)(B)(i).

As the Appellant's brief outlines in detail, accepting MDOR's position would render Bankruptcy Code section 523(a)(1)(B)(ii) void and section 523(a)(*) superfluous. On the other hand, Debtor's argument that a "return" was filed according to the requirements of the Code of Massachusetts Regulations, and therefore in compliance with Bankruptcy Code section 523(a)(*) and 523(a)(1)(B)(ii) , leaves intact

the pre-2005 rule without trivializing any part of section 523. Debtor's argument should therefore be accepted.

C. "Applicable Filing Requirements" is Ambiguous and thus *Dewsnup* Applies.

The District Court held that the hanging paragraph's reference to "applicable filing requirements" *unambiguously* requires a putative return to be timely filed under applicable nonbankruptcy law in order to constitute a "return" for purposes of Bankruptcy Code section 523(a). Order at p.18. Based on this conclusion, the District Court determined that it could therefore ignore the lack of legislative history on whether Bankruptcy Code section 523(a)(*) was intended to (circuitously) cause a sweeping limitation in the application of Bankruptcy Code section 523(a)(1)(B)(ii) . Quoting *Dewsnup v. Timm*, 502 U.S. 410 (1992), the District Court observed that "where the language is unambiguous, silence in the legislative history cannot be controlling." Order at p.19, citing *In re Pendergast*, 494 B.R. 8, (Bankr. D. Mass. 2012), quoting *Dewsnup*, 502 U.S. at 419-420.

The District Court's conclusion that the statutory language is "clear" and "straightforward" is surprising in light of its own observations that "[f]ar from achieving its clarifying purposes, the

paragraph stirred more controversy about whether a document qualifies as a return" and that the new paragraph merely "purport[s]" to define what qualifies as a return for bankruptcy discharge purposes. Order at pp.10, 14 and 21. It also is incorrect. As discussed below, because the statute's reference to "requirements of applicable nonbankruptcy law (including applicable filing requirements)" is highly ambiguous, the general rule under *Dewsnup* applies. As articulated by the Supreme Court, that rule declares a reluctance "to accept arguments that would interpret the Code, however vague the particular language under consideration might be, to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history." *Dewsnup*, 502 U.S. at 419.

The reference to "requirements of applicable nonbankruptcy law (including applicable filing requirements") is highly ambiguous in light of the dual usage of the concept of "requirements" under nonbankruptcy law. The Merriam-Webster Dictionary (online edition) provides the following definitions for "requirement": "something that is needed or wanted" and "something that is necessary for something else to happen or be done." The latter definition logically suggests that calling

something a "requirement" also requires specifying the outcome *for which* that thing is a requirement (*i.e.*, for "x" to occur, "y" is a requirement). This is a narrow use of the term "requirements" (also referred to as the "necessary condition" or *sine qua non*). The former definition of requirement (*i.e.*, as something that is needed *or wanted*) hints at the term's more common usage, in which the outcome is commonly left unstated. This more common usage employs "requirement" in a much looser sense — *i.e.*, "requirement" may be used in relation to an activity or outcome but is only a "necessary condition" with respect to some unstated aspect of such activity or outcome (*e.g.*, the avoidance of late fees or penalties). The nonbankruptcy law governing federal income[3] tax returns uses "requirement" in both the loose and narrow senses.

Beard v. Commissioner, 82 T.C. 766 (1986), *aff'd* 793 F.2d 139 (6th Cir. 1986) identified the four *necessary conditions* for a filing to

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[3] While the instant case concerns Massachusetts state tax returns, the statute at issue applies to both federal and state tax returns and, indeed, directly references two federal tax return statutes (sections 6020(a) and 6020(b) of the IRC). Thus, the meaning of the word "requirement" in pre-BAPCPA law dealing with federal income tax returns is highly relevant in determining how to interpret section 523(a)(*).

constitute a "tax return" for purposes of sections 6011, 6012, 6072, and 6651(a)(1) of the IRC. In *Swanson v. Commissioner*, 121 T.C. 111 (2003), the United States Tax Court specifically referred to the four *Beard* prongs as "requirements" in determining whether a return prepared by the IRS under section 6020(b) of the IRC constituted a "return" for purposes of section 523(a)(1)(B)(ii) . Under *Beard*, "in order to qualify as a return, a document must meet the following requirements: (1) Purport to be a return; (2) be executed under penalty of perjury; (3) contain sufficient data to allow calculation of tax; and (4) represent an honest and reasonable attempt to satisfy the requirements of the tax law." *Swanson,* 121 T.C. at 123. Under the narrow meaning, a late-filed federal income tax return satisfying the *Beard* factors meets all the "requirements" (*i.e.*, necessary conditions) to constitute a tax return under applicable nonbankruptcy law.

The IRC and its accompanying Treasury regulations use derivatives of "require" and similar mandatory language (*e.g.*, "shall" and "must") in the looser sense in those provisions governing the preparation and filing of federal tax returns. For example, IRC section 6072(a) provides that individual income tax returns made on the basis

of the calendar year "shall be filed" on or before the 15th day of April following the close of the calendar year. Similarly, IRC section 6011(a) provides that "[e]very person required to make a return or statement shall include therein the information required by . . . forms or regulations." Treasury Regulation section 1.6011-1(b)(2) amplifies this apparent requirement of perfection: "Each taxpayer should carefully prepare his return and set forth fully and clearly the information required to be included therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the Code."

The above sources demonstrate that the meaning of the statutory language "a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements)" is far from clear. While the District Court's interpretation -- requiring a return to have been filed prior to any applicable deadlines for the avoidance of late penalties -- is reasonable and consistent with the more colloquial meaning of "applicable filing requirement," it is not the *only* reasonable interpretation. Thus, its reliance on the exception to the general *Dewsnup* rule (*i.e.*, the exception for unambiguous statutory language) is misplaced. Accordingly the violence done by the District

Court's interpretation of section 523(a)(*) to pre-BAPCPA section 523(a)(1)(B)(ii) — in conjunction with the silence in the legislative history concerning this provision — cannot be properly ignored.

D. "Applicable Filing Requirements" Means Filing Requirements Necessary for a Filing to Constitute a Tax Return under Applicable Nonbankruptcy Law.

Although applicable nonbankruptcy law governing federal income tax returns uses the term "requirements" in both the narrow and looser senses, the contextual background of section 523(a)(*) overwhelmingly indicates that in determining whether something constitutes a valid "return" under such provision, the narrow usage controls. First, section 523(a)(*) is concerned with *defining* tax returns rather than specifying what the "requirements" (in the looser sense) are for tax returns. Thus, it is natural to read "requirement" in the *sine qua non* sense of the word. Second, the phrasing of the statute is highly suggestive of a Congressional desire to *conform* the bankruptcy law meaning of "tax return" to the applicable nonbankruptcy law meaning. That is, as a matter of drafting, it would be odd to seek to adopt an entirely different definition for bankruptcy purposes by defining tax return *by direct reference to* (rather than in contradistinction to) nonbankruptcy rules.

Third, the close similarity of the issues addressed in the *Swanson* Tax Court case (decided in 2003, two years before the enactment of BAPCPA) and the text of section 523(a)(*) provide strong evidence that Congress sought to codify pre-existing case law on the application of nonbankruptcy law to the interpretation of section 523. In *Swanson*, the Tax Court applied the *Beard* test and held that a tax return prepared by the IRS pursuant to IRC section 6020(b) that was not signed or filed by the taxpayer did not constitute a "tax return" for purposes of section 523(a)(1)(B)(ii) . *Swanson*, 121 T.C. at 123-25. The *Swanson* Court suggested the taxpayer's failure to sign the IRS-prepared return was effectively a failure to satisfy a tax return *filing* requirement: "the return prepared by the Secretary must be signed by the delinquent taxpayer before it can be accepted as the *filed* return of the taxpayer. Sec. 6020(a)." *Swanson*, 121 T.C. at 124 (emphasis added). Thus, the *Swanson* Court distinguished between tax returns prepared by the IRS and signed by the taxpayer under IRC section 6020(a) and tax returns prepared by the IRS under IRC section 6020(b) based on the fact that a section 6020(b) return could not constitute a "filed" return because of its failure to meet the second *Beard*

requirement (execution under penalties of perjury). Given this context, the hanging paragraph's reference to "applicable filing requirements" plus its inclusion of IRC section 6020(a) returns (whether or not timely filed) but *exclusion* of IRC section 6020(b) returns strongly suggests Congress intended to parallel the reasoning and holding of *Swanson*, rather than effect a major change in the law.

Fourth, if the word "requirements" is read expansively, as MDOR proposes, there would appear to be no textual reason to distinguish between late-filed returns and returns not meeting the demanding content "requirements" specified under IRC section 6011(a) and Treasury Regulation section 1.6011-1(b)(2) . Under MDOR's expansive reading of the phrase "requirements of applicable nonbankruptcy law (including applicable filing requirements)," an income tax return filed one day late and an income tax return filed on time but missing a single item of "required" information or a single schedule or attachment (even if ultimately unnecessary for the determination of the taxpayer's tax liability) would each fail to meet all applicable "requirements" and would therefore not constitute valid "returns" under section 523(a)(1)(B)(ii).

MDOR's position would establish a much higher perfection standard for "returns" under bankruptcy law as compared to nonbankruptcy law. While the timely filing and exacting accuracy provisions purport to establish "requirements" for tax returns, it is clear that a failure to comply with those provisions does not result in invalidation of the tax return. The IRC itself (even without the strictures of *Beard*) recognizes that returns that fail either the timely filing requirement or the exacting accuracy requirement can still constitute tax returns. For example, sections 6501(e) and 6653(b) of the IRC impose consequences (an extended statute of limitations on assessment) for returns that understate gross income by 25% or are prepared fraudulently, respectively; this penalty itself confirms that these filings constitute tax returns, since taxes for which a return is not filed generally are subject to an indefinite statute of limitations. Similarly, the penalty for a late-filed return is an accruing penalty, capped at 25% of the underlying tax liability. IRC section 6653(a). Thus, the IRC is clear that the unstated outcome for a failure to comply with either the timely filing requirement or the exacting accuracy requirement is the avoidance of penalties or an extended statute of

limitations for assessment and not the qualification *vel non* of the deficient filings as valid tax returns.

It seems unlikely that Congress would intend to adopt a stricter standard for tax filings to constitute valid "returns" for bankruptcy discharge purposes than for purposes of the applicable tax laws without substantially greater clarity. This is particularly where, as here, the stricture standard would have the harsh and absurd result of causing the majority of tax returns filed and accepted as tax returns by the IRS to fail to qualify as tax returns for bankruptcy purposes

Fifth, and finally, limiting "applicable filing requirements" to refer only to those filing-related *conditions* that are *necessary* for qualification as a valid tax return does not require the Court to "read out" or override any part of section 523(a)(*) (as theorized by the District Court). As suggested by *Swanson*, several "applicable filing requirements" may rise to the level of necessary conditions. While this interpretation somewhat limits the scope of "applicable filing requirements," it is far less violent to section 523(a) as a whole than MDOR's proffered interpretation. And, as noted above, it is a

reasonable interpretation of the statutory text as written and not a request for a judicial override.

E. The Appellee's Position is Contrary to Fundamental Bankruptcy Principles.

Debtors who file for bankruptcy do so as a last resort, as their obligations to their creditors have become too burdensome. The bankruptcy system does not pass judgment on the individuals who end up in this situation, other than to limit the benefits of the regime to those who do not act fraudulently in incurring their debts or shielding their assets. The Supreme Court has repeatedly emphasized, "[t]he principal purpose of the Bankruptcy Code is to grant a fresh start to [this] honest but unfortunate debtor." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 365 (2007) (internal quotations omitted).

The debtor who happens to untimely file his or her tax return and who does not fall within the exception to discharge in Bankruptcy Code section 523(a)(1)(B)(ii) is precisely the type of "honest but unfortunate" debtor of which the Supreme Court speaks. First, in this scenario (as in the present case), the debtor has not filed a return after the tax has

already been assessed; rather, the debtor merely missed the filing date.[4] Assessments in Massachusetts without the filing of a tax return are reserved for cases of fraud or deceit.[5] That the commissioner of revenue did not find the need to make such an assessment serves as evidence of the Debtor's honest but unfortunate circumstances.

Second, the Debtor fits within the two-year rule of Bankruptcy Code section 523(a)(1)(B)(ii) , which is designed to exclude dishonest debtors from the limitation of the discharge exception for late-filed tax returns. This is not a case where the Debtor filed for bankruptcy shortly after filing his tax returns past the due date. To the contrary, the Debtor attempted to catch up on his tax return filing obligations more than two years prior to filing for bankruptcy.

Third, the Debtor filed his tax return absent any allegations of fraud or deceit. Dishonest debtors are addressed specifically by

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[4] 830 Mass. Code Regs. §62C-26(a) provides that a tax is deemed to be assessed "at the time when the return is filed or required to be filed, whichever occurs later." As such, the only way a late-filed return does not serve as the tax assessment under Massachusetts law is when the commissioner of revenue assesses the tax first.

[5] 830 Mass. Code Regs. §62C-26(d) states that the commissioner may make an assessment of tax at any time "in the case of a false or fraudulent return filed with intent to evade a tax or of a failure to file a return . . . ."

Bankruptcy Code section 523(a)(1)(C), which exempts from discharge tax liabilities with respect to which the debtor made a fraudulent return.

Accepting MDOR's position that the term "requirements" must necessarily include a timeliness element would disallow a discharge of debts with respect to nearly *all* late-filed tax returns. This would hold true even for debtors who file a late return but who also file (A) before an assessment by the commissioner of revenue, (B) more than two years prior to the bankruptcy filing and (C) absent any fraud or deceit. In the absence of clear statutory language, taking such a position would clearly violate the fundamental bankruptcy principle of giving a fresh start to an honest but unfortunate debtor.

It is true that under the MDOR's argument, tax returns filed under IRC section 6020(a) would still avoid the discharge exception in Bankruptcy Code section 523(a)(1)(B)(ii) (assuming such return was also filed more than two years prior to the bankruptcy filing). However, such a reading also cuts against the notion of a fresh start for an honest debtor: in brief, the utilization of the section 6020(a) safe harbor is entirely out of the debtor's control: first, Massachusetts does not have a

similar state law, and second, the Internal Revenue Service admits that the safe harbor is itself "illusory" because the taxpayer has no right to demand that the Service prepare a return for them under that provision. Internal Revenue Service Office of Chief Counsel *Notice CC-2010-016* (September 2, 2010).

For all of these reasons, Bankruptcy Code section 523(a)(*) should not be read to limit "returns" to only those which were filed either on time or through the IRC section 6020(a) safe harbor and subject to the two-year rule. To do so would leave the "honest but unfortunate" debtor in the same position as the dishonest one: without a true fresh start.

CONCLUSION

The legal position advanced by the Appellee and sustained by the District Court in this case is premised on an incorrect interpretation of an (at best) ambiguous statute and would overturn longstanding bankruptcy practice in a manner inconsistent with Supreme Court precedent and fundamental principles of bankruptcy. For these reasons, and the reasons stated above, amicus curiae asks this court to reverse the judgment of the District Court below.

July 7, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

The undersigned certifies that the foregoing brief has been prepared in a proportionately spaced 14-point typeface, using Microsoft Word, and contains 4,138 words (excluding the portions of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(*iii*)).

Dated: July 7, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2014, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

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