IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LINDSEY KENT SPRINGER,	)	
	)	
Appellant/Debtor,	)	
	)	**Case No. 23-CV-373-GKF-MTS**
v.	)	
	)	**Bankruptcy Case No. 22-11209-M**
UNITED STATES OF AMERICA, et al.,	)	
	)	
Appellees.	)	

REPORT AND RECOMMENDATION

Before the undersigned United States Magistrate Judge is *pro se* Appellant/Debtor Lindsey Kent Springer's ("Appellant") appeal of the United States Bankruptcy Court for the Northern District of Oklahoma's Order denying his Motion to Reopen Bankruptcy Case. (R. 4, 164-68).[1] On August 29, 2023, Appellant filed a Notice of Appeal of the Bankruptcy Court's denial of his Motion, electing to proceed with the appeal before the district court within the time prescribed by 28 U.S.C. § 158(c)(1). (R. 8, 375-77). The appeal was referred to the undersigned for a Report and Recommendation pursuant to LCvR72-1(b) and 28 U.S.C. § 636(b)(1). For the reasons detailed below, the undersigned **RECOMMENDS** that the District Court **AFFIRM** the Bankruptcy Court's Order denying Appellant's Motion to Reopen Bankruptcy Case.

Background and Procedural History

Appellant filed a Chapter 7 petition for bankruptcy in the Bankruptcy Court on December 19, 2022. (R. 10-105). The Chapter 7 Trustee filed a Report of No Distribution on January 23, 2023 (R. 2), and the Bankruptcy Court issued an Order of Discharge on March 28, 2023. (R. 158-59). The Order of Discharge specifically provided that certain of Appellant's debts were not

[1] The Record on Appeal is contained at Docket No. 9-1.

discharged, including "debts for most taxes[.]" (R. 159). On April 13, 2023, the Bankruptcy Court entered its Final Decree, noting the estate "ha[d] been fully administered" and the case was therefore closed. (R. 4).

On May 25, 2023, Appellant filed his Motion to Reopen Bankruptcy Case (R. 164-68) "in order to address [his] Adversary Complaint seeking to find the . . . Internal Revenue Service ["IRS"] in violation of the discharge order entered March 23, 2023 and made final on April 13, 2023[.]" (R. 164). Appellant summarized the issues in support of reopening his case as follows:

> Springer seeks to file his Adversary Complaint regarding the [IRS's] violation of the discharge injunction, that the persons violating the discharge order are not appointed in accordance with the United States Constitution's Appointment[s] Clause with no political accountability, and that the Treaties between the Creek Nation and United States control what laws of the United States apply inside the 1866 Treaty Boundaries.

(R. 164-65). The United States ("Appellee") responded on June 15, 2023. (R. 169-77). The Bankruptcy Court held a hearing on Appellant's Motion on June 20, 2023, at which time it allowed supplemental briefing. (R. 4-5, 178, 180-291, 292-318, 319-35). As part of his discharge argument in the supplemental briefing, Appellant challenged the Commissioner's reliance on the Bureau of Labor Statistics ("BLS") for calculating his income. (R. 182-84, 320-23). On August 16, 2023, the Bankruptcy Court held a second hearing, during which it heard arguments from both parties. (R. 5, 356-73).

At the hearing, the Bankruptcy Court noted the reopening of a bankruptcy case is governed by 11 U.S.C. § 350(b), which provides that "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause[,]" and the pertinent case law supported that the "reopening is left to the court's discretion and the court should make an inquiry as to whether substantive relief can be afforded." (R. 369). Based upon the parties' arguments, its review of the briefing, and prior judicial decisions involving Appellant of

which the Bankruptcy Court took judicial notice, it determined there was no relief to be afforded Appellant and denied the Motion. (R. 369-71). Addressing Appellant's specific arguments on the record, the Bankruptcy Court first concluded that the February 10, 1997, decision of the United States Tax Court ("Tax Court") was binding, as the Tax Court previously determined Appellant owed certain income taxes for tax years 1990-1995. [2] *See Springer v. Comm'r*, No. 26045-96 (T.C. Feb. 10, 1997) (unpublished) (R. 308-10). The Bankruptcy Court concluded that "[t]here's a final judgment saying you owe income taxes. I'm bound to respect that judgment . . . and that finds expressly that [Appellant] is liable for income taxes, ordered and decided[.]" (R. 369-70).

Second, the Bankruptcy Court addressed and rejected Appellant's arguments pertaining to the use of the BLS as a method of calculating his income and whether its use resulted in the discharge of his tax debt:

> The [BLS] argument to me is circular. I mean, the argument is you can't use that because it's not my actual income and it's not an income tax. The reason they, the IRS uses that is 'cause you didn't file a return plain and simple.
>
> But there is a finding that you owe income taxes and those income taxes for those years are not dischargeable if a return was not filed. I mean, that's it. That's the end of the law. So there's no relief to be granted there.

(R. 371).

Third, the Bankruptcy Court found no merit to Appellant's argument that the IRS employees continuing to seek the payment of taxes from Appellant were required to be identified and officially appointed pursuant to the Appointments Clause of the United States Constitution. It noted that "I don't think whoever's working for the IRS on your claim needs to be appointed by

[2] In its Order of Dismissal and Decision, the Tax Court determined Appellant was "liable for deficiencies in and additions to his Federal income taxes" in specific amounts for tax years 1990-1995. (R. 310). Additionally, Appellant was ordered to pay a penalty of $4,000.00 pursuant to 26 U.S.C. § 6673(a)(1). *Id.*

Congress or go through that. . . . I reject that argument for the reason that the United States gives." (R. 369).

Finally, the Bankruptcy Court rejected Appellant's arguments under *McGirt v. Oklahoma*, 591 U.S. __, 140 S. Ct. 2452 (2020), that federal tax laws should not apply to him because he lived within the boundaries of the Muscogee (Creek) Nation. The Bankruptcy Court entertained argument from Appellant at length on the issue, and at one point advised Appellant that "*McGirt* on its face applies to states, not the Federal Government and the Supreme Court in the last 60 days ruled that it doesn't affect this type of thing." (R. 364) (italics added). After additional argument by Appellant on the issue, the Bankruptcy Court concluded that "the idea that *McGirt* somehow opens a can of worms and precludes the IRS from proceeding, a federal agency from proceeding, I reject that. I just reject that argument." (R. 371) (italics added).

The Bankruptcy Court concluded the hearing by stating on the record that the Motion to Reopen was denied, and the ruling would be memorialized by text order. (R. 371). Following the hearing, the Bankruptcy Court entered a text order denying the Motion. (R. 5, 336).

Appellant timely filed this appeal on August 29, 2023. (R. 375-77). Appellant filed an opening brief (Docket No. 12), Appellee responded (Docket No. 14), and Appellant replied (Docket No. 15). Thus, the matter is fully brief and ripe for consideration.

Issues on Appeal

The main issue on appeal is whether the Bankruptcy Court erred in denying Appellant's Motion to Reopen his bankruptcy case pursuant to 11 U.S.C. § 350(b). Appellant also asserts several additional issues: (1) whether the Bankruptcy Court correctly determined that the Tax Court's holding that Appellant was responsible for certain tax liabilities was binding; (2) whether the Bankruptcy Court correctly concluded that the Tax Court's reliance on the BLS to determine

Appellant's income was proper and that Appellant's tax deficiencies were not exempt from discharge; (3) whether the Bankruptcy Court correctly determined that the employees of the IRS involved in the collection of Appellant's tax debts were not required to be officially appointed in accordance with the Appointments Clause of the United States Constitution; and (4) whether the Bankruptcy Court correctly determined that the Supreme Court's holding in *McGirt* did not create an issue as to whether federal tax laws apply to individuals living within the boundaries of the Muscogee (Creek) Nation. (*See* Docket Nos. 12, 14).

Standard of Review

"Section 350(b) of the Bankruptcy Code provides that '[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.'" *In re Petroleum Prod. Mgmt., Inc.*, 282 B.R. 9, 13 (B.A.P. 10th Cir. 2002), quoting 11 U.S.C. § 350(b). A bankruptcy court's decision whether to reopen a case is reviewed under an abuse of discretion standard. *In re Woods*, 173 F.3d 770, 778 (10th Cir. 1999). "Under the abuse of discretion standard: 'a trial court's decision will not be disturbed unless the appellate court has a definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances.'" *Moothart v. Bell*, 21 F.3d 1499, 1504 (10th Cir. 1994), quoting *McEwen v. City of Norman*, 926 F.2d 1539, 1553-54 (10th Cir. 1991).[3]

However, a bankruptcy court's underlying rulings and legal determinations are reviewed under a *de novo* standard of review. *In re Jester*, Bankr. No. 11-80627, 2015 WL 6389290, at *4 (B.A.P. 10th Cir. Oct. 22, 2015), quoting *Santander Consumer, USA, Inc. v. Houlik*, 481 B.R. 661, 668 (B.A.P. 10th Cir. 2012) (For instance, "[w]hether a creditor's actions violated the discharge

[3] The Court notes that it will "review [Appellant's] pleadings and other papers liberally and hold them to a less stringent standard than those drafted by attorneys." *Trackwell v. United States*, 472 F.3d 1242, 1243 (10th Cir. 2007), citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

injunction is also a question of law subject to *de novo* review."). A "[d]e novo review requires an independent determination of the issues, giving no special weight to the bankruptcy court's decision." *Id.*, citing *Salve Regina Coll. v. Russell*, 499 U.S. 225, 238 (1991).

Analysis

A. Res Judicata

Appellant argues that the doctrine of *res judicata* should not apply to the Motion to Reopen because, when reaching its 1997 decision, the Tax Court utilized the BLS to determine the taxes owed by Appellant and did not consider whether such tax liabilities were exempt as a "tax on or measured by income or gross receipts" under the bankruptcy provisions of 11 U.S.C. § 507(a)(8) and § 523(a)(1)(B)(i). (Docket No. 12 at 21-23). Appellee, however, asserts the Bankruptcy Court correctly construed the Tax Court's 1997 decision as a binding determination of Appellant's underlying tax liabilities for tax years 1990-1995. (Docket No. 14 at 18-21).

The doctrine of *res judicata* "prevent[s] a party from relitigating a legal claim that was or could have been the subject of a previously issued final judgment." *MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir. 2005). For *res judicata* to apply, three elements must be present: "(1) a final judgment on the merits in an earlier action; (2) identity of the parties in the two suits; and (3) identity of the cause of action in both suits." *Id.*, citing *Wilkes v. Wyo. Dep't of Emp't Div. of Labor Standards*, 314 F.3d 501, 504 (10th Cir. 2003). Additionally, if these elements are met, "res judicata is appropriate unless the party seeking to avoid preclusion did not have a 'full and fair opportunity' to litigate the claim in the prior suit." *Id.*, citing *Yapp v. Excel Corp.*, 186 F.3d 1222, 1226 n.4 (10th Cir. 1999) (noting the "full and fair opportunity to litigate" should be "treated as an exception to the application of claim preclusion when the three referenced requirements are otherwise present") (citation omitted). For purposes of tax liability, if a final judgment on the

merits was reached, further challenges to those same liabilities would be barred as *res judicata*. *See United States v. Annis*, 634 F.2d 1270, 1272 (10th Cir. 1980) ("Annis is barred by the doctrine of res judicata from relitigating his liability for taxes, the issue having been previously decided against him by the Tax Court."), citing *Comm'r v. Sunnen*, 333 U.S. 591, 598 (1948) ("[I]f a claim of liability or non-liability relating to a particular tax year is litigated, a judgment on the merits is res judicata as to any subsequent proceeding involving the same claim and the same tax year.").

The undersigned finds that the Bankruptcy Court did not abuse its discretion in rejecting any challenge by Appellant to his underlying tax liabilities for tax years 1990-1995, as the doctrine of *res judicata* applies. In its 1997 decision, the Tax Court reviewed Appellant's petition for redetermination based upon his allegations that the IRS erred in determining his tax deficiencies in the notices of deficiency issued to Appellant. (R. 308-10). It made specific findings that "[p]etitioner did not maintain adequate books and records during the years in issue and *did not file Federal income tax returns* . . . [and that] [r]espondent determined the amount of petitioner's unreported income by use of applicable schedules of the [BLS] for the years in issue." (R. 308) (emphasis added). Concluding Appellant's arguments were "nothing but tax protester rhetoric and legalistic gibberish," the Tax Court ultimately dismissed his petition and decided Appellant "[was] liable for deficiencies in and additions to his Federal income taxes" for the tax years 1990-1995 as set forth by the notices of deficiency. (R. 309-10).[4] Subsequently, Appellant appealed the Tax Court's decision to the Tenth Circuit Court of Appeals, which later dismissed the appeal for Appellant's failure to pay prior imposed sanctions. *See Springer v. Comm'r*, No. 97-9008 (10th

[4] Implicit in the Tax Court's 1997 decision is a finding that Appellant was required to file tax returns for the relevant tax years, as the Tax Court applied the penalties under 26 U.S.C. § 6651 for failing to file a required return, and as noted herein, the Tax Court explicitly found Appellant did not file returns for the pertinent tax years. (R. 308-10).

Cir. Oct. 15, 1997) (R. 311). Thus, all three elements of *res judicata* are satisfied, as the Tax Court's 1997 decision was a final judgment as to Appellant's tax liabilities, the actions involve the same parties – Appellant and Appellee, and to the extent Appellant continues to challenge his underlying tax liabilities for tax years 1990-1995, the actions involve the same claims. Moreover, the record wholly demonstrates that Appellant was afforded a "full and fair opportunity to litigate" his challenges to his tax liabilities for tax years 1990-1995 before the Tax Court. (R. 308-10).

Further, as acknowledged by the Bankruptcy Court (R. 370-71) and addressed by Appellee in its briefing (Docket No. 14 at 21), this is not the first time Appellant has raised a legal challenge to his underlying tax liabilities. Each time, courts have applied *res judicata* to Appellant's arguments. *See Springer v. Comm'r*, No. 17707-06L (T.C. Nov. 14, 2007) (R. 317) (noting Appellant was precluded "from raising issues relating to his underlying tax liability . . . by the doctrine of res judicata"), *affirmed by Springer v. Comm'r*, 580 F.3d 1142 (10th Cir. 2009), *cert. denied*, 559 U.S. 1017 (2010); *Springer v. IRS*, 231 F. App'x 793, 803 (10th Cir. May 1, 2007) (discussing the preclusive effect of "the Tax Court's determination in *Springer v. Comm'r*, No. 26045-96 (T.C. Feb. 10, 1997)" and noting "the fact of Springer's liability for federal income taxes, penalties, and interest for 1990-1995 and the government's right to collect that liability [are] matters that are not subject to further litigation"); *United States v. Springer*, No. 08-CV-278-TCK-PJC, 2010 WL 830614, at *15 (N.D. Okla. Mar. 3, 2010) (discussing doctrine of *res judicata* and finding that "[t]o the extent Springer's arguments herein challenge his liability for the taxes assessed, the doctrine of res judicata bars his efforts"); *United States v. Springer*, 427 F. App'x 650, 653 (10th Cir. 2011) (noting "Springer continues to dispute the underlying tax assessment," and quoting the Tenth Circuit's 2007 decision that "the underlying tax assessment 'is no longer open to challenge'"), quoting *Springer*, 231 F. App'x at 801. The undersigned therefore finds the

Bankruptcy Court did not abuse its discretion by also applying the doctrine of *res judicata* to Appellant's underlying tax liabilities for tax years 1990-1995 when considering the Motion to Reopen.

B. Use of the BLS

Appellant seemingly argues that, because the Commissioner used the BLS to determine his income and the Tax Court relied upon said determination to compute Appellant's income taxes, his "tax liabilities [] were not based upon items of income or gross receipts," as defined in 11 U.S.C. § 507(a)(8). (Docket No. 12 at 17). Therefore, the Bankruptcy Court erred in its determination regarding Appellant's exemptions from discharge pursuant to 11 U.S.C. § 523(a)(1)(B)(i) because he "was not required by law to file a tax return using the BLS" and did not "willful[ly] attempt to evade or defeat any tax imposed." *Id.* In response, Appellee contends the Tax Court did not err in its determination of Appellant's tax liabilities and, given the Tax Court's judgment is binding, the Bankruptcy Court correctly determined that Appellant's tax debts are not subject to discharge under 11 U.S.C. § 523. (Docket No. 14 at 13, 22).

Pursuant to 26 U.S.C. § 6012, "[e]very individual having for the taxable year gross income which equals or exceeds the exemption amount" shall file a tax return unless otherwise specified by statute. 26 U.S.C. § 6012(a)(1)(A). "If the taxpayer fails to keep adequate records, the Commissioner [of Internal Revenue] is entitled to use any reasonable means to reconstruct the taxpayer's income[,]" including the BLS. *Anaya v. Comm'r*, 983 F.2d 186, 188 (10th Cir. 1993), citing *Jones v. Comm'r*, 903 F.2d 1301, 1303 (10th Cir. 1990); *see Wallace v. Comm'r*, 124 F.3d 218 (10th Cir. 1997) (noting that the Commissioner used the BLS, among other things, to establish gross income to compute tax deficiencies); *Tinsman v. Comm'r*, 12 F. App'x 431, 432 (8th Cir. 2001) (finding no error in the Tax Court's decision that the Commissioner's use of the BLS was a

reasonable method of income reconstruction). Furthermore, "[t]he reviewing court must accept the Commissioner's method of reconstruction of income so long as it has a rational basis." *Wallace*, 124 F.3d 218; *see Boisselier v. Comm'r*, 6 F. App'x 452, 453 (7th Cir. 2001), citing *Welch v. Helvering*, 290 U.S. 111, 115 (1933); *Pittman v. Comm'r*, 100 F.3d 1308, 1313 (7th Cir. 1996); *Gold Emporium, Inc. v. Comm'r*, 910 F.2d 1374, 1378 (7th Cir. 1990) ("The Commissioner's determination of a tax deficiency is ordinarily entitled to a presumption of correctness.").

Because Appellant failed to file tax returns for the years 1990-1995, the Commissioner estimated Appellant's income using the BLS in lieu of the information Appellant would have provided via his tax returns. The Tax Court determined Appellant's tax deficiencies for those years based on the Commissioner's approximation of Appellant's income. (R. 308-10). The Bankruptcy Court then correctly concluded that, in accordance with 11 U.S.C. § 523(a)(1)(B)(i), Appellant's tax deficiencies were not discharged in bankruptcy. (R. 158-59). The Commissioner, and subsequently the Tax Court, did not err in using the BLS to determine Appellant's income tax, as courts have routinely deemed the use of the BLS to approximate income as reasonable. As such, the Bankruptcy Court's determination that Appellant's tax deficiencies, which were based on an approximation of Appellant's income, were not exempt from discharge was proper. Thus, the undersigned finds that the Bankruptcy Court did not abuse its discretion.

C. IRS Employees & the Appointments Clause

Appellant argues that "[i]t is clearly error for anyone to conclude that lessor functionaries of the IRS are authorized by law and the Constitution to determine whether a discharged debt by a properly appointed Bankruptcy Judge is exempt from discharge." (Docket No. 12 at 26). Appellee responds that "IRS employees engaged in collection actions are just that: employees, to

whom the Appointments Clause has 'no application.'" (Docket No. 14 at 24), citing *Tucker v. Comm'r*, 676 F.3d 1129, 1132-35 (D.C. Cir. 2012).

The Appointments Clause of Article II, Section 2 of the United States Constitution states, in relevant part, that:

> [The President] shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper in the President alone, in the court of law, or in the heads of departments.

U.S. Const. art. II, § 2, cl. 2.

The Constitution differentiates between "principal" and "inferior" officers and establishes particularized appointment procedures. *Tucker*, 676 F.3d at 1132, citing *Freytag v. Comm'r*, 501 U.S. 868, 880-81 (1991). However, individuals not classified as officers, but as employees, are not subject to the requirements of the Appointments Clause. *See Freytag*, 501 U.S. at 880-81 ("'[L]esser functionaries' need not be selected in compliance with the strict requirements of Article II."); *Tucker*, 676 F.3d at 1132 ("[The Appointments Clause's] requirements have no application to employees falling below the 'officer' threshold."). To distinguish between inferior officers and employees, courts look to whether an individual occupies "a 'continuing' position established by law," and "the extent of power an individual wields in carrying out his assigned functions." *Lucia v. S.E.C.*, 585 U.S. 237, 245 (2018), citing *United States v. Germaine*, 99 U.S. 508, 511 (1879); *Buckley v. Valeo*, 424 U.S. 1, 126 (1976).

Appellant does not dispute that IRS employees engaged in collection actions are employees and not officers. (*See* Docket No. 12 at 29) ("The IRS Commissioner and the IRS Chief Counsel are the only appointees under the Secretary of the Treasury with constitutional credentials. All other employees are career civil servants and lessor functionaries."). Rather, Appellant incorrectly

asserts that the IRS employees at issue here exceeded their authority as employees by attempting to collect Appellant's tax debts and thus disregarding the Bankruptcy Court's discharge order. (Docket No. 12 at 24) (referencing R. 158-59). As established above, the Tax Court found that Appellant owed income tax for tax years 1990-1995. (R. 308-10). Several years later, after filing for Chapter 7 bankruptcy, the Bankruptcy Court issued a general discharge order. (R. 158-59). Importantly, this order did not discharge Appellant's "debts for most taxes," including the income taxes assessed by the Tax Court. *Id.* Therefore, the IRS employees did not disregard the Bankruptcy Court's discharge order, nor did they exercise significant authority in attempting to collect Appellant's remaining tax liabilities. The undersigned finds that the Bankruptcy Court did not abuse its discretion in so determining.

D. McGirt*'s Application*

In his final ground of error, Appellant contends the Bankruptcy Court abused its discretion by rejecting his argument that federal tax laws do not apply to those individuals born and/or living within the boundaries of the Muscogee (Creek) Nation because the application of such laws is in violation of the controlling treaties between the Muscogee (Creek) Nation and the United States. (Docket No. 12 at 30-37). He asserts that such treaties, whose applicability to the Muscogee (Creek) Nation was affirmed in *McGirt*, control what laws govern the Muscogee (Creek) Nation and its occupants. (Docket No. 12 at 23-26). In response, Appellee asserts that Appellant's being born or living within Indian country does not exclude him from applicable federal tax laws, and his reliance on *McGirt* for the proposition is "nonsensical." (Docket No. 14 at 25-28).

Unless subject to an express exemption, "Indians are citizens and that in ordinary affairs of life, not governed by treaties or remedial legislation, they are subject to the payment of income taxes as are other citizens." *Squire v. Capoeman*, 351 U.S. 1, 6 (1956) ("We also agree that, to be

valid, exemptions to tax laws should be clearly expressed."); *see also Barrett v. United States*, 561 F.3d 1140, 1145 (10th Cir. 2009) (relying on *Squire* and noting "American Indians, as United States citizens, generally are subject to the federal income tax") and *United States v. Billey*, No. 17-CR-108-CVE, 2021 WL 3519279, at *3 (N.D. Okla. Aug. 10, 2021) (noting that "[a]bsent express exemption, courts hold that federal tax laws, including those with criminal penalties, apply to Native Americans") (citation omitted). For an exemption to apply, however, "'the income must have been derived 'directly' from the [tax-exempt] land.'" *United States v. Willie*, 941 F.2d 1384, 1400 (10th Cir. 1991), quoting *Saunooke v. United States*, 806 F.2d 1053, 1056 (D.C. Cir. 1986). Although treaties may also provide exemptions, they too must be explicit, as a treaty's silence does not create an exemption. *See Red Lake Bank of Chippewa Indians v. United States*, 861 F. Supp. 841, 845-46 (D. Minn. 1994) ("The only other source of exemption language identified by plaintiffs is the treaty language which the Court of Appeals has already found to be insufficient to create a federal tax exemption. No exemption may be found in a treaty's silence."), *affirmed by* 62 F.3d 1421 (8th Cir. 1995), citing *Confederated Tribes of Warm Springs Reservation of Oregon v. Kurtz*, 691 F.2d 878, 882 (9th Cir. 1982).

Appellant asserts that because certain treaties "remain the highest law of the land inside the Creek Nation boundaries[,]" and he was born or lives in the Muscogee (Creek) Nation,[5] he is not subject to federal income taxes. (Docket No. 12 at 34-35).[6] Nowhere in his briefing, however,

[5] The undersigned could only locate one reference by Appellant that he is a member of a tribe. *See* Docket No. 12 at 34 ("Appellant-Debtor clearly claims the Treaties between Mus[c]ogee (Creek) Nation and the President of the United States govern what either party can do within the boundaries of the Mus[c]ogee (Creek) Nation. Creditor takes no exception to the treaties governing the natural born citizens of the Creek Nation for which Appellant-[D]ebtor is one of.").

[6] Appellant contends that "the Treaties of 1856 and 1866 guarantee the United States will never allow the Mus[c]ogee (Creek) Nation lands to be included within any State or Territory of the United States. Mus[c]ogee (Creek) Nation is a foreign country to the United States hence the

does Appellant allege that his federally taxed income was "derived 'directly' from [tax-exempt] land" nor does he assert such income is expressly exempted by statute or treaty. *Willie*, 941 F.2d at 1400, quoting *Saunooke*, 806 F.2d at 1056. In fact, Appellant seems to acknowledge that the treaties upon which he relies are in fact silent on the issue. (Docket No. 15 at 18) ("Nowhere in the treaty does it say the United States, to guarantee the treaty in perpetuity, shall collect taxes therein or anything like that.").

Moreover, Appellant's reliance on *McGirt* is also misplaced. Although the Supreme Court ruled that the Muscogee (Creek) Nation in Oklahoma had never been disestablished, *McGirt*, 140 S. Ct. at 2459 ("Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government at its word."), the primary issue in *McGirt* was whether Oklahoma had jurisdiction to prosecute Native Americans for criminal offenses committed in the Muscogee (Creek) Nation (or "Indian county") under federal law, or more specifically, the Major Crimes Act ("MCA"), 18 U.S.C. § 1153. *Id*. at 2459-60. Ultimately, the Supreme Court determined Oklahoma did not have jurisdiction to prosecute such crimes. *Id*. at 2478 ("But Oklahoma doesn't claim to have complied with the requirements to assume jurisdiction voluntarily over Creek lands. Nor has Congress ever passed a law conferring jurisdiction on Oklahoma. As a result, the MCA applies to Oklahoma according to its usual terms: Only the federal government, not the State, may prosecute Indians for major crimes committed in Indian country."); *see Billey*, 2021 WL 3519279, at *2 (discussing federal charges, and that "in the absence of any state charges or state jurisdiction, *McGirt*, which ruled on the reach of state jurisdiction over Native Americans on established

existence of the treaties. The United States is without power to apply its 'federal laws' inside the foreign Creek Nation by force." (Docket No. 12 at 35).

reservations, is inapplicable.") (italics added). Further, contrary to Appellant's arguments, even though the treaties remain controlling in certain areas, they do not destroy the IRS's power to collect federal taxes from him. *See United States v. McGirt*, 71 F.4th 755, 773 (10th Cir. 2023) ("Mr. McGirt's second claim, that the federal courts lack jurisdiction to prosecute because exercise of such jurisdiction violates a series of nineteenth-century treaties between the federal government and the Mvskoke (Muskogee Creek) Nation, also fails. The Supreme Court's decision in *McGirt* both acknowledges that the [MCA] violates promises of tribal self-governance made to the Mvskoke and upholds federal jurisdiction over Mr. McGirt.").

Thus, *McGirt* has no bearing on whether Appellant is subject to federal tax laws. Therefore, the undersigned finds there was no abuse of discretion by the Bankruptcy Court in denying Appellant's Motion to Reopen based upon the Supreme Court's decision in *McGirt*.

Conclusion and Recommendation

The undersigned Magistrate Judge finds that the Bankruptcy Court did not abuse its discretion in denying Appellant's Motion to Reopen Bankruptcy Case, as Appellant's points of error raised herein are without merit. For the reasons discussed herein, the undersigned **RECOMMENDS** that the District Court **AFFIRM** the Bankruptcy Court's Order denying Appellant's Motion to Reopen Bankruptcy Case.

In accordance with 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b)(2), a party may file specific written objections to this Report and Recommendation. Such specific written objections must be filed with the Clerk of the District Court for the Northern District of Oklahoma on or before May 3, 2024. If specific written objections are timely filed, Rule 72(b)(3) directs the district judge to:

> determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the

> recommended disposition; receive further evidence; or return the matter to the magistrate with instructions.

Id.; *see also* 28 U.S.C. § 636(b)(1). The Tenth Circuit has adopted a "firm waiver rule," which "provides that the failure to make timely objections to the magistrate's findings or recommendations waives appellate review of both factual and legal questions." *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1059 (10th Cir. 1996), quoting *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). Only a timely specific objection will preserve an issue for *de novo* review by the district court or for appellate review.

DATED this 19th day of April, 2024.

MARK T. STEELE, MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT