SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: September 26, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

TOMMY NGUYEN AND CHAM T. LAM,	**CASE NO. 10-50640-NPO**
DEBTORS.	**CHAPTER 12**

ORDER GRANTING IN PART AND
DENYING IN PART TRUSTEE'S MOTION TO MODIFY

This matter came before the Court for hearing on July 25, 2016 (the "Hearing"), on the Trustee's Notice and Motion to Modify (the "Motion") (Dkt. 309) filed by Harold J. Barkley, Jr., the standing chapter 12 trustee (the "Trustee"), and the Response to Trustee's Motion to Modfiy [*sic*] (the "Response") (Dkt. 311) filed by Cham T. Lam in the above-referenced bankruptcy case

(the "Bankruptcy Case"). At the Hearing, Todd S. Johns represented the Trustee, and Robert Gambrell represented Cham T. Lam and Tommy Nguyen (the "Debtors").[1]

Jurisdiction

This Court has jurisdiction over the subject matter of and the parties to this proceeding pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding arising under 28 U.S.C. § 157(b)(2)(A) and (O). Notice of the Motion was proper under the circumstances.

Facts

The facts of this matter are not in dispute. The sole issue before the Court is a question of law—whether post-petition federal and state income taxes of approximately $200,955.00 may be paid from settlement proceeds consistent with a series of prior agreements between the Debtors and the Trustee. (Resp. Exs. A & B).

The Debtors filed a petition for relief (the "Petition") under chapter 12 of the Bankruptcy Code on March 19, 2010. (Dkt. 1). The Debtors are the owners and captain of a shrimp vessel called the *Sally Kim IV*. One month after the Petition was filed, on April 20, 2010, an explosion and fire destroyed the Deepwater Horizon drilling rig, causing millions of barrels of oil to spill into the Gulf of Mexico. *See Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prod., Inc. (In re Deepwater Horizon)*, 732 F.3d 326, 329 (5th Cir. 2013). The oil spill caused the Debtors to lose substantial shrimping revenue. Numerous lawsuits, many of them styled as class actions, were brought against BP (the lessor of the drilling rig) in federal courts in Alabama, Florida, Mississippi, South Carolina, and Texas by businesses and individuals who, like the Debtors,

[1] Tommy Nguyen died during the pendency of the Bankruptcy Case. Rule 1016 of the Federal Rules of Bankruptcy Procedure provides that upon the death of a debtor, a chapter 12 bankruptcy case may proceed, so far as possible, as though the death had not occurred. *See* FED. R. BANKR. P. 1016. Because the precise date of Tommy Nguyen's death is unknown and it is irrelevant to the issue presented, the Court continues to refer to both Debtors in this Order.

sustained economic damages as a result of the Deepwater Horizon disaster. (Dkt. 174). The U.S. Judicial Panel on Multidistrict Litigation (the "MDL Panel") centralized many of these lawsuits in the U.S. District Court for the Eastern District of Louisiana (the "District Court") in *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* (Dkt. 1), 731 F. Supp. 2d 1352 (J.P.M.L. 02179 Aug. 10, 2010).

In February 2011, BP began compensating individuals and businesses with spill-related losses through a claims process administered by the Gulf Coast Claims Facility ("GCCF"). *In re Deepwater Horizon*, 732 F.3d at 329-30. BP then began negotiating a class settlement in which all pending and unresolved GCCF claims would be transferred to a new court-supervised settlement program. *Id.* at 329. To that end, BP entered into the Economic and Property Damages Settlement Agreement (the "BP Settlement") (J.P.M.L. 02179, Dkt. 6276-1), which the District Court preliminarily approved in early 2012. Consistent with the BP Settlement, the MDL Panel created a transition claims process for the evaluation and eventual transfer of GCCF claims to the Deepwater Horizon Economic Claims Center ("the "DHECC"). (Dkt. 174).

The specific portion of the BP Settlement covering claims for economic losses related to seafood is the aptly named Seafood Compensation Program ("SCP"),[2] which consists of a $2.3 billion capped fund. (Dkt. 174; Ex. 1).[3] These funds are to be distributed to eligible claim members in "rounds" of payment. (Ex. 1). A claimant who receives a distribution in "Round One," will receive another distribution in "Round Two," absent unusual circumstances. (Dkt.

[2] Compensation received under the SCP is generally subject to reduction by the amount of any prior payments by the GCCF. (J.P.M.L. 02179, Dkt. 6276-22 at 5).

[3] Introduced into evidence at the Hearing by the Debtors, "Exhibit 1" consists of excerpts from the BP Settlement, notice of the SCP, and instructional sheet on completing the SCP claim form.

271). Distributions are affected by the number of qualified participants in the SCP, and so far there have been only two rounds of payments.

Under the DHECC protocol, there are numerous categories of claims, and a claimant may seek compensation under more than one. (Ex. 1). For example, an individual who owns a shrimp vessel and is also its captain may be eligible to receive compensation under both a vessel claim as well as a captain's claim. (Dkt. 174; Ex. 1). With regard to the payment of income taxes, the BP Settlement provides, in pertinent part:

> Each Economic Class Member's tax obligations, and the determination thereof, are his, her, or its sole responsibility, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Economic Class Member.

(BP Sett. ¶ 32.1).

With the Court's approval, the Debtors retained Judy M. Guice, P.A. ("Guice") and Corban, Gunn & Van Cleave ("Corban" or, together with Guice, "Guice/Corban"), *nunc pro tunc*, to pursue a cause of action against BP for recovery of their economic damages caused by the Deepwater Horizon incident. (Dkt. 130). In the same order approving Guice/Corban's employment as special counsel, the Court authorized the Debtors to accept a transitional offer of settlement from the GCCF in the amount of $302,684.69, less six percent (6%) as required by the MDL Panel to be held back,[4] resulting in a transitional payment of $242,147.75 to the bankruptcy estate after deducting attorneys' fees of $42,375.86. (*Id*.) The Court reserved ruling on the disbursement of the remaining net proceeds. Later, the Debtors and the Trustee reached a compromise on the payment of these net proceeds. Pursuant to the Agreed Order (Dkt. 137), the

[4] In late 2011, the MDL Panel established a "common benefit" reserve account requiring defendants to hold back six percent (6%) of any gross settlement amount (J.P.M.L. 02179, Dkt. 5022, 5064).

Court authorized the Debtors to retain $121,073.87 to continue their shrimping operation, and the Trustee to hold the balance of $121,073.87.

On January 17, 2013, the Debtors substituted the law firm of Watzer, Wiygul & Garside ("WWG") (Dkt. 159) in place of Guice/Corban. All firms were employed on a contingent fee basis, and provisions were made for the allocation of their fees in the order approving the substitution of counsel. (*Id*.). At some point, the Debtors were classified as members of the BP Settlement (Dkt. 246).

A. Captain's Claim-Round One

An Agreed Order Authorizing Motion to Compromise and to Approve Fees of Special Counsel to Debtor (Dkt. 185) was entered on October 7, 2013, in which the parties agreed that the Debtors could accept an interim settlement of the "Round One" captain's claim from the DHECC of $140,850.00 (the "Captain's Claim-Round One"). The parties further agreed that the Trustee would pay attorneys' fees to Guice/Corban and WWG and retain the balance of $112,680.00 pending a ruling by the Court on the proper distribution of these funds. On November 18, 2013, the Court entered the Agreed Order Resolving Remaining Issues on Motion to Compromise and Approve Fees of Special Counsel to the Debtor (Dk# 174) (Dkt. 193). The parties agreed that the Trustee would distribute $9,905.00 to allowed general unsecured claims, less the Trustee's statutory fee of $990.50. The balance of the settlement proceeds would be used to make repairs to the *Sally Kim IV*.

The Debtors' three (3)-year chapter 12 plan had been confirmed (the "Confirmed Plan") (Dkt. 81) on December 22, 2010, and the Debtors were near completion of their plan payments when Robert Wiygul of WWG advised the Court that he was unable to predict the date the BP

Settlement funds would actually be received.[5] The Court entered the Agreed Order (Dkt. 233) on December 12, 2014, authorizing the Trustee "to file his Final Account" so that the Debtors could receive their discharge, and the Bankruptcy Case could be closed in a timely manner. Importantly, the Agreed Order (Dkt. 233) included the following reservation: "[T]he Discharge and Closing of the case shall not preclude the Trustee from exercising his rights to the recovery of the Debtors' or the Estate's BP Settlement proceeds with the limits set forth herein." (*Id*.). Those limits included payment of the BP Settlement funds pursuant to the Agreed Order (Dkt. 193) dated November 18, 2013.

On January 7, 2015, the Debtors received a discharge under 11 U.S.C. § 1228 (Dkt. 236), and the Bankruptcy Case was closed on January 12, 2015 (Dkt. 238). At the Trustee's request, the Bankruptcy Case was reopened on March 9, 2015, "for the purpose of the BP Settlement." (Dkt. 243).

B. Vessel Claim-Round One

By Agreed Order (Dkt. 254), the Court approved the Debtors' acceptance of the settlement of the "Round One" vessel claim in the amount of $259,807.00 (the "Vessel Claim-Round One"). From this settlement, the Court authorized the Trustee to disburse $40,357.96 to Guice/Corban and $11,603.44 to WWG. The Court set a hearing to determine how the

[5] The delay in payment was due in part to the length of the administrative process, the suspension of payment by the DHECC for investigation, and the filing of numerous administrative and court appeals. On January 10, 2014, for example, the Fifth Circuit Court of Appeals affirmed the District Court's order approving the BP Settlement, *In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014), and on May 19, 2014, denied a petition for rehearing and rehearing *en banc*, *In re Deepwater Horizon*, 756 F.3d 320 (5th Cir. 2014). The U.S. Supreme Court declined a request for further review on December 8, 2014. *BP Exploration and Prod. Inc. v. Lake Eugenie Land & Dev., Inc*., 135 S. Ct. 754 (2014). There were other appeals as well.

remaining funds should be disbursed, including whether they should be used to pay for repairs to the *Sally Kim IV*.

Pursuant to the Agreed Order (Dkt. 277) dated August 26, 2015, the Debtors agreed to provide documents to the Trustee substantiating current repairs to the *Sally Kim IV*, business losses sustained as a result of the Deepwater Horizon disaster, and "taxes which will need to be paid as a result of the Deepwater Horizon oil spill settlement." (*Id*.). Additionally, the Trustee was authorized to pay $24,777.29 directly to the IRS for 2012 income taxes incurred as a result of the first disbursement of the BP Settlement funds. Other than the 2012 taxes, the Trustee has not sought permission to pay any other taxes from BP Settlement funds and opposed any such further payment to the IRS in the Motion.

An Agreed Order (Dkt. 305) was entered on April 11, 2016, constituting the parties' final agreement as to the disbursement of Vessel Claim-Round One. They agreed that the amount of the settlement proceeds carved out for repairs to the *Sally Kim IV* would be $150,000.00. After the disbursement of $24,777.29 to the IRS for the 2012 taxes, the Trustee was authorized to pay the balance of the settlement funds to unsecured creditors. Also, the parties agreed to extend the deadline for the Debtors to file 2015 tax returns from April 15, 2016, to October 15, 2016.

C. Vessel Claim-Round Two & Captain's Claim-Round Two

On March 28, 2016, the Trustee filed the Amended Trustee's Application to Approve Round Two Deepwater Horizon and BP Settlement and Approval to Pay Attorneys['] Fees (Dkt. 300). An order (Dkt. 307) was entered on April 22, 2016, approving settlements of the "Round Two" vessel claim in the amount of $236,325.35 (the "Vessel Claim-Round Two") and the "Round Two" captain's claim in the amount of $117,098.15 (the "Captain's Claim-Round

Two"). In the same order, attorneys' fees to WWG were approved in the amount of $70,684.70. (*Id*.).

On May 24, 2016, the Trustee filed the present Motion seeking approval to disburse the funds from both the Vessel Claim-Round Two and the Captain's Claim-Round Two in the total amount of $353,423.50 (the "BP Settlement Funds-Round Two"), less payment of attorneys' fees, to unsecured creditors. *See* 11 U.S.C. § 1229(a). On June 14, 2016, the Debtors filed the Response, asking the Court to order the Trustee to hold in reserve sufficient funds to pay income taxes owed from the distribution of the BP Settlement Funds-Round Two, as the Trustee had done for the first disbursement of the BP Settlement funds. The Debtors estimated a 2015 tax liability of $55,894.00 (federal) and $7,727.00 (state) and a 2016 tax liability of $119,813.00 (federal) and $17,521.00 (state), for a total of $200,955.00 for the 2015-2016 tax years.

Discussion

The issue before the Court is how to treat the significant tax obligations generated from the BP Settlement Funds-Round Two. The Trustee contends that chapter 12 does not authorize him to pay post-petition income taxes from the BP Settlement Funds-Round Two, a change in his previous position. According to the Trustee, the change was prompted by his recent review and study of the United State Supreme Court's decision in *Hall v. United States*, 132 S. Ct. 1882 (2012).[6] *Hall* is a chapter 12 case involving family farmers who proposed a plan of reorganization that invoked § 1222(a)(2)(A), a provision that would have allowed them to treat post-petition capital gains taxes as dischargeable, unsecured debts. *Hall*, 1325 S. Ct. at 1885-86. The Debtors maintain that notwithstanding the Supreme Court's decision in *Hall*, the 2015 and

[6] *Hall* was decided on May 14, 2012, years before the Trustee initially agreed to pay taxes from the BP Settlements funds. *Hall*, 132 S. Ct. at 1882; (Dkt. 277).

2016 income tax claims in the Bankruptcy Case are payable as administrative expenses of the bankruptcy estate. The Court begins its discussion with a brief history of chapter 12 and § 1221(a)(2)(A).

A. Bankruptcy & Family Fishermen

Since 1986, family farmers with regular annual income have been able to reorganize their farming operations under chapter 12 of the Bankruptcy Code.[7] 11 U.S.C. § 1201 *et seq*. Closely modeled after chapter 13, chapter 12 was created to "aid financially troubled family farmers . . . [by] curb[ing] the recent frequency of family farm foreclosures and remedy[ing] the shortcomings of Chapter 11 and 13 as they apply to the family farm." William W. Horlock, Jr., *Chapter 12: Relief for the Family Farmer*, 5 BANKR. DEV. J. 229 (1988). Family farmers who attempted to fund their chapter 12 bankruptcy plans by selling farm land or assets found themselves burdened with significant tax obligations from the gains realized on those sales, particularly if the family had held the land or assets for many years. Laura Jones, Notes, *Did Bad Debtors Influence the Tenth Circuit to Make an Unfortunate Decision? Making Reorganization More Difficult for Farmers in United States v. Dawes*, 2012 B.Y.U.L. Rev. 575, 577 (2012). Before 2005, any tax obligations were entitled to priority under § 507 and had to be paid in full through a chapter 12 plan pursuant to § 1222(a)(2), without exception. 11 U.S.C. § 1222(a)(2). Such large priority tax claims, it was believed, essentially allowed the IRS "to veto a farmer's reorganization plan." *In re Schilke*, 379 B.R. 899, 902 (Bankr. D. Neb. 2007) (citing 145 Cong. Rec. 1113 (1999) (statement of Sen. Charles Grassley)).

[7] Originally enacted in 1986 as a temporary provision, Congress made chapter 12 a permanent part of the Bankruptcy Code as a component of the Bankruptcy Abuse Prevention Consumer Protection Act ("BAPCPA") of 2005, Pub. L. No. 109-8, § 101, 119 Stat. 23 (2005). From this point forward, all references to code sections are to the Bankruptcy Code found at title 11 of the U.S. Code unless otherwise noted.

Congress made two amendments to the Bankruptcy Code in 2005 that are relevant to the Motion. First, Congress extended chapter 12 eligibility to family fishermen[8] like the Debtors. 11 U.S.C. § 109(f). Second, Congress carved out an exception for taxes that arise "as a result of the sale . . . of any farm asset used in the debtor's farming operation."[9] 11 U.S.C. § 1222(a)(2)(A). Tax claims that fall within the exception lose their priority status and are paid only to the extent funds might be available—and any unpaid portion is eligible for discharge. Thus, the benefit afforded chapter 12 debtors, to the extent that § 1222(a)(2)(A) applies, is significant.

By its own terms, § 1222(a)(2)(A) applies to "all claims entitled to priority under section 507." 11 U.S.C. § 1222(a)(2)(A). Section 507, in turn, grants priority status to certain "expenses and claims," including two categories of taxes. 11 U.S.C. § 507. The first category, § 507(a)(2),

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[8] The term "family fishermen" is defined, in pertinent part, as "an individual or individual and spouse engaged in a commercial fishing operation." 11 U.S.C. § 101(19A). The term "commercial fishing operation" means, in pertinent part, "the catching or harvesting of . . . shrimp." 11 U.S.C. § 101(7A).

[9] Before 2005, § 1222(a)(2) stated that "[t]he plan shall . . . provide for the full payment in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim." As a result of BAPCPA, § 1222(a)(2)(A) now provides:

> (a) The plan shall—
>
> * * *
>
> (2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—
>
> (A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge.

11 U.S.C. § 1222(a)(2)(A).

consists of "administrative expenses allowed under section 503(b) . . . ." 11 U.S.C. § 507(a)(8). Under § 503(b), administrative expenses include taxes "incurred by the estate, whether secured or unsecured." 11 U.S.C. § 503(b). The second category that includes taxes, § 507(a)(8), consists of "allowed unsecured claims of governmental units . . . for a tax on . . . income or gross receipts for a taxable year ending on or before the date of the filing of the [bankruptcy] petition. . . ." 11 U.S.C. § 507(a)(8).

B. *Hall v. United States*

After § 1222(a)(2)(A) was enacted, a split of authority arose among the Circuit Courts as to whether the exception applies only to gains taxes arising from pre-petition sales of farm assets under § 507(a)(8) or includes post-petition sales under § 507(a)(2). *Compare Dawes v. Dawes (In re Dawes)*, 652 F.3d 1236, 1239 (10th Cir. 2011) (holding that capital gains taxes from the post-petition sale of farmland were incurred by the debtors, rather than the bankruptcy estate, and, therefore, were not subject to § 1222(a)(2)(A)) *with Knudsen v. IRS (In re Knudsen)*, 581 F.3d 696, 706 (8th Cir. 2009) (interpreting "incurred by the estate" as meaning "incurred post-petition" and allowing hog farmers to treat taxes from post-petition sales as unsecured under § 1222(a)(2)(A)), *abrogated by Hall*, 132 S. Ct. at 1886 n.1. In *Hall*, the Supreme Court resolved the question in favor of the IRS, holding that capital gains taxes arising from post-petition sales do not qualify for § 1222(a)(2)(A) treatment. *Hall*, 132 S. Ct. at 1893-94. In sustaining the IRS's objection to the debtors' plan, the *Hall* Court interpreted § 503(b) in such a way that, according to the Trustee in this Bankruptcy Case, prevents him from paying post-petition income taxes from estate assets. *Id.*

In *Hall*, the debtors sold their farm shortly after filing for bankruptcy under chapter 12. *Id.* The sale of the farm generated a $29,000.00 capital gains tax. When the debtors proposed a

chapter 12 plan using the proceeds from the farm sale to satisfy all of their debts, the IRS objected on the ground that the debtors failed to account for the federal tax liability on the capital gains from that sale. The debtors then amended their plan to treat the tax as a general, unsecured claim pursuant to § 1222(a)(2)(A). The IRS again objected to the plan but this time argued that § 1222(a)(2)(A) applied only to pre-petition sales of farm assets.

In support of their amended plan, the debtors maintained that gains taxes from post-petition sales were "incurred by the estate" within the meaning of § 503(b) and, thus, subject to special treatment under § 1222(a)(2)(A). The debtors relied on the legislative history of an amendment to § 1222(a)(2) that was proposed in 1999 but was never enacted. *Hall*, 132 S. Ct. at 1893, 1896. Statements by a major sponsor of the 1999 legislation, which was similar in language to § 1222(a)(2)(A), demonstrated a clear congressional intent to provide family farmers relief from post-petition tax liabilities. *Hall*, 132 S. Ct. at 1893, 1896. Applying the exception only to farmers who liquidated their farm assets before filing for bankruptcy would be contrary to the objective of the amendment to § 1222(a)(2), according to the debtors.

In a 5-4 opinion, the Supreme Court in *Hall* held that post-petition gains taxes cannot be "incurred by the estate" within the meaning of § 503(b) because the Internal Revenue Code (the "IRC") does not recognize a separate taxable estate in chapter 12. *Hall*, 132 S. Ct. at 1887. Under IRC § 1398 and § 1399, "no separate taxable entity shall result from the commencement of a [bankruptcy] case" except when an individual files a petition for relief under chapter 7 or 11. 26 U.S.C. §§ 1398-1399; *see* 11 U.S.C. § 346.

As additional support for its holding, the *Hall* Court noted certain similarities between chapter 12 and chapter 13. *Hall*, 132 S. Ct. at 1889. In a chapter 13 case, taxes on income earned after the debtor files for bankruptcy are not obligations of the estate and are not ordinarily

included in a chapter 13 plan. 8 COLLIER ON BANKRUPTCY ¶ 1305.02[1] (16th ed. 2016). Because chapter 13 served as the model for chapter 12, the Supreme Court reasoned, the law should treat post-petition taxes in both chapters in the same way. The *Hall* Court also identified a significant difference between chapter 12 and chapter 13. Unlike chapter 12, chapter 13 contains § 1305(a)(1), which provides that "[a] proof of claim may be filed by any entity that holds a claim against the debtor . . . for taxes that become payable to a government unit while the case is pending." 11 U.S.C. § 1305(a)(1). If post-petition taxes were automatically incurred by the estate, then their optional inclusion under § 1305(a)(1) would serve no purpose. The absence of a chapter 12 corollary to § 1305(a)(1) "allowing [post-petition] taxes to be brought inside the plan only clarifies that such taxes fall outside the plan." *Hall*, 182 S. Ct. at 1886.

In the end, the *Hall* Court concluded that the mechanism chosen by Congress failed to "enable postpetition income taxes to be collected in the Chapter 12 plan in the first place." *Id.* at 1893. "Certainly, there may be compelling policy reasons for treating postpetition income tax liabilities as dischargeable. But if Congress intended that result, it did not so provide in the statute. Given the statute's plain language, context, and structure, it is not for us to rewrite the statute. . . . " *Id.*

C. Debtors' Position

The Debtors assert that *Hall* is factually distinguishable and, therefore, inapplicable to the present dispute.[10] Unlike the debtors in *Hall*, they do not seek to invoke § 1222(a)(2) in order to discharge their income tax obligations but to modify their Confirmed Plan to pay their income

[10] Although the Debtors commenced their Bankruptcy Case before the Supreme Court rendered its decision in *Hall*, they did not oppose its retroactive application. *See Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993) ("When [the Supreme] Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review . . . .") (citation omitted).

taxes in full from the BP Settlement funds. The Debtors compared the BP Settlement funds to crop insurance proceeds; both of which are meant to replace lost income. Because the issue here involves ordinary income taxes, not capital gains taxes arising from the sale of farm assets, the Debtors assert that *Hall* does not apply.

The Debtors also argue that payment of the income taxes satisfies the "best interest of the creditors' test." 11 U.S.C. § 1225(a)(4).[11] In a hypothetical liquidation under chapter 7 for which there is a separate taxable estate, unsecured creditors would receive at least as much as they would under a chapter 12 plan providing for full payment of all post-petition tax obligations.[12] Finally, the Debtors make a practical argument; they do not have sufficient funds to pay the income taxes unless the taxes are paid from the BP Settlement funds. As a consequence, they will not be able to continue shrimping unless the taxes are paid from the BP Settlement Funds-Round Two.

D. Trustee's Position

In response to the Debtor's argument, the Trustee cited *In re Ferguson*, No. 10-81401, 2013 WL 28694 (Bankr. C.D. Ill. Jan. 2, 2013), for its holding that *Hall* proscribes paying post-petition ordinary income taxes as well as gains taxes from estate assets. In *Ferguson*, the chapter 12 debtors downsized their farming operation by selling certain farm machinery and equipment at a public auction. *Id.*, at *1. As in *Hall*, the sale created a significant tax liability for capital

[11] Section 1225(a)(4) requires that as of the plan's effective date, the value of property to be distributed under the plan on account of each allowed unsecured claim be not less than the amount that the creditor would receive if the case was liquidated under chapter 7 on the plan's effective date. 11 U.S.C. § 1225(a)(4).

[12] Under § 348(d), "[a] claim against the estate or the debtor that arises after the order for relief but before conversion . . . , other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition. 11 U.S.C § 348(d).

gains. The debtors' chapter 12 plan proposed to pay the post-petition tax liability using funds from the post-confirmation sale of their 48-acre farm. *Id*. at, *2. The chapter 12 trustee objected on the ground that the use of estate assets to pay the taxes conflicted with the Supreme Court's ruling in *Hall*. The debtors in *Ferguson* argued that *Hall* was irrelevant because they did not seek to treat priority capital gains taxes as unsecured debt under § 1222(a)(2)(A).

Rejecting the debtors' argument as too narrow a view of *Hall*, the bankruptcy court in *Ferguson* denied confirmation of the debtor's chapter 12 plan.[13] "While *Hall*'s holding was issued in the context of capital gains tax liability, the Supreme Court's rationale, that a chapter 12 estate is not a taxable entity and cannot incur income tax liability, is broader and covers ordinary income taxes as well as capital gains taxes." *Ferguson*, 2013 WL 28694, at *2.

E. Analysis

The Court agrees with the Trustee that the Supreme Court's interpretation of "incurred by the estate" in *Hall* generally precludes payment through a chapter 12 plan of post-petition income tax liability as an administrative expense under § 503(b)(1). The Court, however, finds that the facts here are distinguishable from those in *Hall*. The tax dispute arose in both *Hall* and *Ferguson* in the bankruptcy case before plan confirmation. The tax question in this Bankruptcy Case, however, arose after the Debtors had completed their plan payments pursuant to the Confirmed Plan and received a discharge. In other words, the Debtors here, unlike the debtors in *Hall* and *Ferguson*, are not proposing to pay income taxes through a plan of reorganization, but from settlement proceeds received after confirmation and discharge.

[13] Being unable to propose a confirmable plan, the debtors voluntarily converted their chapter 12 case to chapter 7. *In re Ferguson*, 2013 WL 4482445, at *1 (Bankr. C.D. Ill. Aug. 20, 2013). In contrast, the Debtors here not only proposed a confirmable plan but they also have made all payments under the Confirmed Plan and received a discharge of their debts.

Section 1227(b) states that "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." 11 U.S.C. § 1227(b). The order confirming the Debtors' Confirmed Plan (Dkt. 81) "otherwise provided": It stated that "[a]ll property shall remain[] property of the estate and shall vest in the Debtor[s] only upon dismissal, discharge or conversion." (Dkt. 81 at 2). Thus, when the Debtors received a discharge on January 7, 2015 (Dkt. 236), all property of the estate, including the BP Settlement funds—to the extent they constituted estate property—vested in the Debtors, limited only by the reservation of rights set forth in the Agreed Order (Dkt. 233) entered on December 12, 2014. The Court finds that these facts sufficiently distinguish this Bankruptcy Case from the aforementioned precedent applying § 1221(a)(2)(A) and § 503(b) before property of the estate vested in the debtors.

Additionally, under § 1229, a plan that has been confirmed may be modified only before the completion of plan payments. This provision would have prevented the Trustee from disbursing BP Settlement funds after the closure of the Bankruptcy Case except that the parties entered into the Agreed Order (Dkt. 233) reserving the Trustee's right to reopen the Bankruptcy Case for that express purpose. It is undisputed that before any monies were actually received, the parties reached an understanding that income taxes would be withheld from any BP Settlement funds. Although that understanding was not specifically included in the Order (Dkt. 243) reopening the Bankruptcy Case, the Debtors apparently were operating under that assumption. Otherwise, why would they agree to allow the Trustee to reopen their Bankruptcy Case and disburse the BP Settlement funds post-discharge if they knew that doing so would result in a significant personal tax liability that would end their livelihood as fishermen? In the Motion, the Trustee asked the Court for permission to change his position *after* obtaining the

Debtors' commitment to pay all BP Settlement funds to their unsecured creditors, less the cost of repairs, attorney's fees, and taxes. The Court finds that such a result would be inequitable.

Moreover, the Trustee had agreed until now to pay all income taxes from the BP Settlement funds. This agreement is encompassed in two of this Court's orders (Dkt. 277, 305), entered post-confirmation and post-discharge, in which: (1) the Debtor agreed to provide documents substantiating the amount of income taxes that would need to be paid from the BP Settlement funds (Dkt. 277); (2) the Trustee agreed to pay the IRS $24,777.29 for the 2012 taxes incurred as a result of the first disbursement of BP Settlement funds (*Id*.); and (3) the Debtor agreed at first to file tax returns by April 15, 2016, (*Id*.) and later by the extended deadline of October 15, 2016 (Dkt. 305). No one appealed the agreed orders at Dkt. 277 and 305, and they became final.

Under the "law of the case" doctrine, a court follows its prior final decisions in the case as the law of that case. *See Alberti v. Klevenhagen*, 46 F.3d 1347, 1351 n.1 (5th Cir. 1995). 18B C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE & PROCEDURE § 4478, at 637-38 (2d ed. 2002) (noting that the doctrine grew out of the need to "maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit"). The doctrine includes matters "decided by necessary implication as well as those decided explicitly." *Dickinson v. Auto Ctr. Mfg. Co.*, 733 F.2d 1092, 1098 (5th Cir. 1983). The Court finds that the Agreed Orders (Dkt. 277, 305), together with the prior actions of the Trustee, settled the tax question in favor of the Debtors, and the "law of the case" doctrine, to the extent that *Hall* is not binding in the Bankruptcy Case, prevents the Trustee from relitigating that issue.

Conclusion

Based on the foregoing, the Court finds that the post-petition income taxes of approximately $200,955.00 for the 2015-2016 tax years should be paid from the BP Settlement funds. Thus, the Motion should be granted in part and denied in part. The Confirmed Plan should be modified to allow the Trustee to disburse the BP Settlement Funds-Round Two, less the estimated taxes for the 2015-2016 tax years, to unsecured creditors.

IT IS, THEREFORE, ORDERED that the Motion is hereby granted in part and denied in part. The Motion is granted to the extent that the Confirmed Plan is hereby modified to authorize the Trustee to disburse the BP Settlement funds to unsecured creditors, less $200,955.00, the estimated 2015-2016 income taxes. The Motion is hereby denied in all other respects.

##END OF ORDER##