IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: March 15, 2023.

Craig A. Gargotta

CRAIG A. GARGOTTA
CHIEF UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:	§	CASE NO. 21-51507-CAG
MICHAEL ZEPH ROUQUETTE AND, ETTA DAWN ROUQUETTE,	§	CHAPTER 7
Debtors.	§	
JOHN PATRICK LOWE CHAPTER 7 TRUSTEE, Plaintiff.	§	
v.	§	ADVERSARY NO. 22-05033-CAG
INTERNAL REVENUE SERVICE OF UNITED STATES OF AMERICA, Defendant.	§	

ORDER DENYING UNITED STATES OF AMERICA'S MOTION TO RECONSIDER (ECF NO. 26)[1]

Came on to be considered the United States of America's Motion to Reconsider Orders Granting Trustee's Motion For Summary Judgment (ECF No. 22) and Denying United States'

[1] "ECF" denotes the electronic case filing number in Adversary Proceeding 22-05033-cag.

Cross Motion for Summary Judgment (ECF No. 23)(the "Motion")(ECF No. 26); Plaintiff's Amended Objection (the "Objection")(ECF No. 29); the United States of America's Notice of Recent Filing (ECF No. 46); and the Trustee's Amended Response ("Response")(ECF No. 48).[2]

The Court has carefully considered the United States' Motion, the Trustee's Objection, the United States' Notice of Recent Filing, the Trustee's Amended Response; and has reviewed the transcript of the oral argument on the United States' Motion. (ECF No. 49). For the reasons herein, the Court finds that United States' Motion should be DENIED.

JURISDICTION

The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This Motion involves the Court reconsidering its Order. The Court finds that this is a core proceeding under 28 U.S.C. § 157(b)(2)(A)(matters affecting the administration of the estate) and that this Court has the inherent authority to reconsider its Order under Fed. R. Civ. P. 59 and Fed. R. Bankr. P. 9023. Trustee has consented to this Court's jurisdiction to enter a final order. (ECF No. 7). The United States has consented to this Court's jurisdiction to enter a final order. (ECF No. 9). As such, the Court finds that it has the requisite statutory authority to enter an order on this Motion.

APPLICABLE STANDARD FOR RECONSIDERATION OF A JUDGMENT

The United States filed this Motion without citing to any rule or statutory basis in support of reconsideration. As such, the Court will construe the Motion under Federal Rule of Bankruptcy Procedure 9023 and Federal Rules of Civil Procedure 59. Bankruptcy Rule 9023 provides that a party may file a motion "to alter or amend a judgment" and that Rule 59 of the Federal Rules of

[2] The Court will use the convention of "Trustee" for Plaintiff John Patrick Lowe, Trustee and "United States" for Defendant United States of America, Internal Revenue Service.

Civil Procedure applies in cases under the Code. "A Rule 59(e) motion [made applicable through Bankruptcy Rule 9023] is a motion that calls into question the correctness of a judgment." ***In re Transtexas Gas Corp.***, 303 F.3d 571, 581 (5th Cir. 2002). "Rule 59(e) is properly invoked 'to correct manifest errors of law or fact or to present newly discovered evidence.'" ***Id.*** (quoting ***Waltman v. Int'l Paper Co.***, 875 F.2d 468, 473 (5th Cir. 1989)).

To prevail on a motion to alter or amend, the movant has the burden of establishing one of the following: 1) "the motion is necessary to correct manifest errors of law or fact upon which the judgment is based," 2) there is "newly discovered or previously unavailable evidence," 3) an alteration of the judgment is "necessary to prevent manifest injustice," or, 4) there has been "an intervening change in controlling law." ***In re Save Our Springs (S.O.S.) Alliance, Inc.***, No. 07-10642-CAG, slip op. at 4 (Bankr. W.D. Tex. June 13, 2008) (quoting 11 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2810.1 (2008)); *see also* ***In re Camp Arrowhead, Ltd.***, 451 B.R. 678, 691 (Bankr. W.D. Tex. 2011) (quoting ***In re Benjamin Moore & Co.***, 318 F.3d 626, 629 (5th Cir. 2002)).

A Rule 59 motion "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." ***Templet v. HydroChem, Inc.***, 367 F.3d 473, 478-79 (5th Cir. 2004) (citations and internal quotations omitted). As this Court stated in ***In re Save Our Springs (S.O.S.) Alliance, Inc.***, in cases where a Rule 59 motion is brought after a "full, evidentiary bench trial, if one assumes that the court's original decision correctly reflects its considered judgment on the applicable law and facts, a Rule 59 motion in essence merely asks the court to change its mind." Order Denying Debtor's Motion for New Trial or to Amend Order Denying Confirmation or, in the Alternative, to Present Additional Evidence on Confirmation, ***In re Save Our Springs***, at 6 n.1.

In the Fifth Circuit, "relief under Federal Rule 59(e) is an 'extraordinary remedy that should be used sparingly.'" ***In re Hence***, 358 B.R. 294, 308 (Bankr. S.D. Tex. 2006) (quoting ***Templet***, 367 F.3d at 479)). A trial court has "considerable discretion" in deciding a motion to alter or amend and "the trial court must strike the proper balance between . . . (1) finality, and (2) the need to render just decisions on the basis of all the facts." ***Edward H. Bohlin Co., Inc. v. Banning Co., Inc.***, 6 F.3d 350, 355 (5th Cir. 1993).

Aside from clerical corrections, Rule 60(b) provides the following grounds for relief from a final judgment, order or proceeding:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under rule 59(b);
>
> (3) fraud ..., misrepresentation, or misconduct by the opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

Rule 60(b)(6)'s catch-all provision is "a grand reservoir of equitable power to do justice in a particular case when relief is not warranted by the preceding clauses." ***Hesling v. CSX Transp., Inc.***, 396 F.3d 632, 642 (5th Cir. 2005) (citations omitted). A grant of relief under the catch-all provision, however, requires "extraordinary circumstances." ***Id.*** Although the United States has not specifically identified how Rule 9023 and Fed. R. Civ. P. 59 apply, the Court finds that the United States' Motion has raised the following grounds for reconsideration of the Order Granting

Plaintiff John Patrick Lowe, Chapter 7 Trustee's Motion for Summary Judgment Against Defendant Internal Revenue Service. (ECF No. 22):

(1) 11 U.S.C. § 548 (a)(1)(B)(i) and (d)(2)(A) definition of "value" and "property" includes giving Debtors credit for Debtor's estimated tax payments on Debtors' 2021 individual income tax liability.[3]

(2) The Court improperly imposed a presumption of constructive fraud in determining reasonably equivalent value and improperly evaluated the benefit to the bankruptcy estate and not the Debtors.

(3) Even if the Court is correct that Debtors' estimated tax payments are subject to turnover, the United States is protected under § 548(c) as a good faith transferee. The Court will not consider this argument because it was not raised in the United States' Answer or any other pleadings prior to hearing and judgment. Therefore, the Court finds that the United States argument under § 548 (c) is waived.

At the hearing on the United States' Motion, counsel argued that:

(4) The Court failed to consider that Debtors received non-employee income in the amount of roughly $154,000. (Tr. of Oral Argument at 6.)(ECF No. 49).

(5) Debtors are not required, nor should the Court find that individual debtors in bankruptcy must exercise their right to make a short year election under 26 U.S.C. § 1398. (Tr. of Oral Argument at 12, 21).

(6) Section 548 definition of property rights includes a finding that the Debtors' estimated tax payments are a dollar-for-dollar credit on Debtors' tax liability and the payment of a present debt. (Tr. of Oral Argument at 7, 9).

(7) The Court should reconsider its analysis of ***In re Weir***, No. 85-40456-7, 1990 WL 63072, at *4 (Bankr. D. Kan. Apr. 3, 1990) and find that Debtors' estimated tax payments was not a fraudulent transfer. (Tr. of Oral Argument at 10).

(8) The Court should consider and apply another bankruptcy judge's order granting in part, denying in part summary judgment in ***Satija v. United States of America (In re Wodarsky)***, Adv. No. 22-01042-TMD (Bankr. W.D. Tex. Jan. 31, 2023)(ECF No. 27).

FACTUAL AND PROCEDURAL BACKGROUND

[3] Unless otherwise noted, all statutory references are to Title 11, 11 U.S.C. _ et seq.

The parties stipulated as to the operative facts in this proceeding. The United States asks the Court to reconsider that the Debtors had a significant increase in income for tax year 2021 due to non-employee earnings, non-employee compensation, and unemployment income (ECF No. 5-2)(attached to the United States' Answer) in the amount of $177,443. The Court will consider this evidence. Also, the United States asks that the Court recognize that Debtors did file their 2021 individual income tax return (Form 1040) for 2021. The Court noted in its Order that at the time of the transfers the Debtors had not yet filed their return. Nonetheless, the Court agrees that Debtors did file their 2021 income tax return.

Debtors made five transfers to the Defendant in the six months before the chapter 7 petition was filed. All five transfers were for estimated tax payments for the Debtors' year 2021 individual income tax liability. Trustee argued that the transfers removed assets from the bankruptcy estate that could have paid claims of the Debtors' bankruptcy estate because Debtors' 2021 tax liability was not yet due on the date of Debtors' chapter 7 petition. Therefore, the effect of the transfers was to reduce estate assets, and not to reduce the Debtors' liabilities.

STIPULATION OF FACTS

The parties entered into a Joint Stipulation of Facts. (ECF No. 11). The Joint Stipulation stipulates to the following facts for purposes of summary judgment:

1. Debtors Michael and Etta Dawn Rouquette filed a chapter 7 bankruptcy petition on December 8, 2021.

2. Between June 15, 2021 and December 6, 2021, Debtors made estimated tax deposits totaling $26,000.00 toward their expected 2021 tax year Form 1040 individual income tax liability. Specifically, the Debtors made deposits of:

   a. $2,000.00 on or about June 15, 2021;

b. $4,000.00 on or about July 15, 2021;

c. $5,000.00 on or about October 15, 2021;

d. $4,995.00 on or about December 6, 2021; and

e. $10,005.00 on or about December 6, 2021.

3. All five transfers were made from the Debtors' account xxxx-8169 at Randolph Brooks Federal Credit Union containing the Debtors' property.

4. Based on Debtors' representations in their bankruptcy petition, Debtors were insolvent at the time of the transfers.

5. 26 U.S.C. § 6654(d) requires estimated tax payments in the lesser of 90% of the current year's (2021) tax liability or 100% of the previous year's liability. The Debtors' previous year's liability, for the year 2020, was $8,552.00.

DISCUSSION

Section 548(a)(1)(B) provides in relevant part that:

> (1) The trustee may avoid any transfer . . . of an interest of the debtor in property . . . that was made . . . within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily— . . .
> (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
> (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred[.]

"'Section 548 and fraudulent transfer law generally attempt to protect creditors from transactions which are designed, or have the effect, of unfairly draining the pool of assets available to satisfy creditors' claims, or which dilute legitimate creditor claims at the expense of false or lesser claims.'" ***Redmond et al v. SpiritBank (In re Brooke Corp.)***, 541 B.R. 492, 507 (Bankr. D. Kan. 2015) (quoting 5 COLLIER ON BANKRUPTCY, ¶ 548.01[1][a] at 548–11 (Alan N. Resnick & Henry J. Sommer, eds. in-chief, 16th ed. 2015)). "Section 548 covers two classes of transactions.

'The first class of improper transactions—those made with actual intent—have been condemned for over 450 years.' In the second class, the 'unfairness stems from a disparity of exchange coupled with the debtor's lack of other assets. . . . In these cases, fraud is presumed.'" ***Id.*** (quoting 5 COLLIER ON BANKRUPTCY, ¶ 548.01 at 548–10).

Neither party in the competing Motions for Summary Judgment nor the United States in its Motion dispute that three of four elements necessary to prove a fraudulent transfer are met. The only element at issue is whether the estimated tax payments were for an antecedent debt or credit on the Debtors' 2021 individual income tax liability. If, as the Trustee alleged, the payments were for a future debt, then the fourth element has been met and the Trustee is correct in his claim under § 548. As an initial matter, the United States is correct in its assertion that § 548 examines if a fraudulent transfer occurs as to a debtor, not the debtor's estate. The Court regrets its error and agrees that an analysis regarding whether a fraudulent transfer occurred is from the perspective of a debtor. Further, the Court agrees with the United States that there should not be a presumption of constructive fraud applied in this adversary proceeding. That said, the United States raises two points and relies on an unpublished opinion from another circuit in support of its position.

The two operative provisions that the Court must examine are § 548(a)(1)(B)(i) which discusses that a transfer must be for "reasonably equivalent value" and § 548(d)(2)(A) which states that "value" means property that satisfies a present or antecedent debt. At the hearing, the United States appeared to have conceded that the estimated tax payments were not for an antecedent debt. (Tr. of Oral Argument at 18). Rather, as the United States has maintained before, estimated tax payments are at least payments on a present debt because they are a dollar-for-dollar credit on a debtor's tax liability, and that the Debtors received reasonably equivalent value in exchange for the transfers. The Trustee argues that because there is no debt (because the Debtors did not

make a short year election), the only debt that exists is a future debt. As such, the estimated tax payments can only be credited against a future debt.

The Bankruptcy Code does not define "reasonably equivalent value," as used in §§ 548(a)(1)(B)(i). While § 548(d)(2)(A) does define "value" as "property, or satisfaction or securing of a present or antecedent debt of the debtor," courts have been left to judicially define what constitutes "reasonably equivalent value" for purposes of § 548. To determine whether reasonably equivalent value was provided, many courts have adopted a two-step process.

First, a court determines whether the debtor received an economic benefit at the time of the transfers or obligations. *See* ***Butler Aviation Int'l, Inc. v. Whyte (In re Fairchild Aircraft Corp.)***, 6 F.3d 1119, 1127 (5th Cir.1993); ***Brandt v. Charter Airlines, LLC (In re Equipment Acquisition, Inc.)***, 511 B.R. 527, 534 (Bankr. N.D. Ill. 2014). Second, the value provided must be "reasonably equivalent" to what the debtor received. *See* ***Think3 Litigation Trust v. Zuccarello et al. (In re Think3, Inc.)***, 529 B.R. 147, 200 (Bankr. W.D. Tex. 2015); *see also* ***Abramoff v. Life Ins. Co. of Georgia (In re Abramoff)***, 92 B.R. 698, 703–04 (Bankr. W.D. Tex. 1988). This two-step inquiry considers the value of what was transferred and what was received at the time of the transfer. *See* ***Gutierrez v. Lomas Mortgage, et al. (In re Gutierrez)***, 160 B.R. 788, 790 (Bankr. W.D. Tex. 1993) (finding that value must be determined on the date of the transfer).

The United States asserts that the estimated tax payments provided Debtors an economic benefit at the time of the transfers in that Debtors received a credit on their 2021 individual income tax liability. Second, the United States argues that the estimated tax payments were payments on a present debt at the time of the transfers. The Court disagrees.

The Trustee has consistently argued that because Debtors did not make a short year

election under 26 U.S.C. § 1398(d), Debtors did not have a tax liability at the time of the transfers because there was no liability or claim. The Trustee is correct. The Court agrees with the Trustee that at the time Debtors made their estimated tax payments, it was a credit against a future obligation, and not a payment for value on a present or antecedent debt. The satisfaction of Debtors' tax liability was not with "property" or "value" on antecedent or present debt, but a credit against a future debt.

The Court's prior discussion on the effect of not making a short year election proves this point that Debtors' 2021 individual income tax liability was a future debt. 26 U.S.C. § 1398(d) states:

> (d) Taxable year of debtors –
>
> (1) General Rule – Except as provided in paragraph (2), the taxable year for the debtor shall be determined without regard to the case under title 11 of the United States Code to which this section applies.
>
> (2) Election to terminate debtor's year when case commences
>
> (A) In general – Notwithstanding section 442, the debtor may (without the approval of the Secretary) elect to treat the debtor's taxable year which includes the commencement date as 2 taxable years–
>
> (i) the first of which ends on the day before the commencement date, and
>
> (ii) the second of which begins on the commencement date.

There is no dispute that Debtors did not make a short year election for the year 2021. That is, Debtors did not make an election to break the calendar year 2021 into two tax years, the first beginning January 1, 2021 and ending December 7, 2021 with the second beginning on December 8, 2021 and ending on December 31, 2021. As such, because Debtors did not make a short year election, no part of the year 2021 Form 1040 liability may be paid from assets of the estates. 26 U.S.C. § 1398(d)(2). The court in ***In re Turboff*** described the effect of not making a short year election under 26 U.S.C. § 1398(d):

> If the Debtor does not make the election, no part of the debtor's tax liability from

> the year in which the bankruptcy case commences is collectible from the estate, but is collectible directly from the individual debtor. Thus, the taxable year of the debtor is determined without regard to the bankruptcy proceeding. . .

93 B.R. 523, 526 (Bankr. S.D. Tex. 1988).

Moreover, where there is no short year election, there is no "claim" against the estate. ***Turboff***, 93 B.R. at 525. Where there is no "claim" there is no "debt" within the meaning of § 101(12).[4]

The United States misconstrues the Court's Order granting summary judgment in favor of Trustee. The Court did not say anywhere in its Order that Debtors must make a short year election under 26 U.S.C. § 1398(d), but rather explained what happens when a debtor fails to make a short year election. The effect on not making a short year election in this instance shifted Debtors' tax liability from an antecedent or present debt to a future debt.

The Court's reconsideration of ***In re Weir***, No. 85-40456-7, 1990 WL 63072 (Bankr. D. Kan. Apr. 3, 1990) does not change the Court's Order granting summary judgment. The Court agrees with the United States that factually ***Weir*** is analogous to the case at bar because both cases involve a debtor making significant estimated tax payments for an anticipated future tax liability. ***Weir*** involved a debtor selling stock pre-petition, resulting in a significant capital gain of $150,000.00. ***Id.*** at *1. Debtor, on the advice of counsel, made an estimated tax payment to the IRS to avoid any penalty for underestimating his 1985 tax liability. ***Id.*** Roughly a month later in May 1985, debtor filed a chapter 7 petition. ***Id.*** Debtor did not make an election under 26 U.S.C. § 1398(d). ***Id.*** The chapter 7 trustee filed a complaint seeking various claims for relief, including that the estimated tax payment was a fraudulent transfer under § 548. ***Id.*** at *2. The court noted that by not making the election, "no part of the debtor's tax liability from the year in

[4] The term "debt" means liability on a claim. § 101(12).

which the bankruptcy case commences is collectible from the estate, but is collectible directly from the individual debtor." ***Id.***

At oral argument, United States' counsel suggested that this Court reconsider its ruling in light of the ***Weir*** court's discussion of § 547. (Tr. of Oral Argument at 9-10, 21). Counsel suggested that this Court consider the ***Weir*** court's conclusion that the estimated tax payments could be construed as payments in "ordinary course of business" which would be an exception to a preference under § 547(c)(2). The United States suggests that if the Court consider the payments as "in the ordinary course", the Court could conclude that the estimated tax payments were made for a present debt. The Court disagrees for at least two reasons. First, there is no proof that Debtors' estimated tax payments made in the case at bar were made in the ordinary course other than for the 2021 individual income tax liability. Moreover, the ***Weir*** court noted, like the case at bar, that there was insufficient evidence to find that the estimated tax payments were made in the ordinary course of business or ordinary business terms. ***Id.*** at *3.

Further, the ***Weir*** court compared when the estimated tax payments were made as to when the estimated tax payments were due, and concluded that because the estimated tax payments were made before the tax was due the following year, the payments could not be for an antecedent debt, but apparently for a future debt. ***Id.*** This is a departure from what the United States argued in its moving papers to the Court, which was that the Court could compare the amount of estimated tax due versus the amount of estimated tax payments made. The United States argued that the Court follow its decision in ***Satija v. United States (In re Colliau)***, 584 B.R. 812 (Bankr. W.D. Tex. 2017).[5] The ***Colliau*** court observed that one way to determine reasonably equivalent

[5] The ***Colliau*** decision resulted in the Court denying summary judgment. The Court questions what persuasive value an order denying summary judgment has in the case at bar.

value was to prorate the prior year's tax liability on a quarterly basis and compare that amount to the amount of each estimated tax payment. ***Id.*** at 816. If the estimated tax payment was roughly the same amount as the prorated amount of the prior year's tax, then there would be a dollar-for-dollar payment and the estimated tax payments would be for reasonably equivalent value. ***Id.*** at 815-16. The United States argues that the Court adopt ***Weir's*** conclusion that there is no fraudulent transfer if the estimated tax payments were made prior to the tax liability being due. ***Weir*** at *4 ("the government gave him [debtor] credit, dollar for dollar, against that *potential* tax liability and the right to a refund if he [debtor] ultimately owed less")(emphasis added).

After a careful review of the ***Weir*** decision, this Court finds that while ***Weir*** considered if there was a fraudulent transfer as to a potential liability, ***Weir*** simply concluded that to hold that the estimated tax payments to be fraudulent transfers would effectively subject all withholding for taxes arguably to being a fraudulent transfers. ***Id.*** Further, ***Weir*** concluded that the failure to make a short year election could have grave consequences to a debtor for not exercising a short year election, would penalize a debtor for not making the election, and require a debtor to funnel a debtor's income through a chapter 7 case. ***Id.*** While the Court respects the ***Weir*** court's analysis, the Court disagrees that the consequence of finding that the estimated tax payments in this case are fraudulent transfers, does not mean this is the rule in other cases. Finally, Congress passed 26 U.S.C. § 1398(d) to give debtors an option of how to treat their tax liability in or out of bankruptcy case. The failure to exercise that option does not penalize a debtor. As this Court noted in its Order, this conclusion ignores that 26 U.S.C. § 1398(a) specifically states the tax consequences for individual debtors who file either a chapter 7 or 11 petition.

Finally, after the Court held argument on the United States' Motion, the United States filed its Notice of Recent Filing, asking the Court to consider the Court's order in ***Satija v. United***

States of America (In re Wodarski), Adv. No. 22-01042, (Bankr. W.D. Tex. Jan. 31, 2023). The Court in ***Wodarski*** considered how to allocate an estimated tax payment attributable to debtors' pre-transfer tax liability and the portion of the estimated payment already refunded to the debtors. The adversary proceeding does not involve a short year election under 26 U.S.C. § 1398(d). As the Trustee correctly notes, the issue in ***Wodarski*** is different than what is at issue in this Court. As such, the Court finds that the ***Wodarski*** order inapplicable to the issues in this case.[6]

Although the Court does find that the transfers at issue were fraudulent transfers, the Court finds it prudent to repeat an earlier word of caution: the Court's prior Order is limited to the facts of this case and should not be construed to hold that every estimated tax payment without a debtor making a 26 U.S.C. § 1398 election is a basis for a fraudulent transfer.

CONCLUSION

The Court, having reviewed the facts of the case and reconsidered the arguments of the parties, finds that the United States Motion is DENIED. All other relief requested is DENIED.

###

[6] An Agreed Motion to Dismiss Trustee's Original Adversary Complaint was filed on March 8, 2023. (ECF No. 32).