11 USC §507(a)(7)(A)(ii)
11 USC §108(c)
26 USC §6503(b)

In re West/Worthen

Cases Nos. 391-33988/89-H13 USDC # 92-59/60-Fr 2-19-92
9th Cir. No. 92-35286 9-21-93
Affirming USDC's Reversal of Bankruptcy Court (HLH)

West and Worthen were married debtors who filed a joint chapter 13 petition 193 days after an assessment of Federal income tax liabilities. The case was dismissed on the debtors' motion. Shortly thereafter, the debtors were divorced. Fifty-eight days after the first chapter 13 case was dismissed, the debtors filed separate chapter 13 petitions. The IRS claimed the tax debts were entitled to priority under 11 USC §507(a)(7)(A)(ii) and objected to confirmation of the plans on the ground the plans did not provide for payment in full of the tax liabilities that were allegedly entitled to priority.

The IRS argued that 11 USC §108(c) [tolling of nonbankruptcy collection law periods of limitation until the later of the end of such period or 30 days after notice of termination of automatic stay] in conjunction with 26 USC §6503(b) [extension of the 6 year statute of limitations for collecting tax debts by the time a debtor's assets are under federal court control plus 6 months] extended the 240 day period for determining priority described in 11 USC §507(a)(7)(A)(ii) by 6 months. Thus, according to the IRS, once the first case was dismissed, the tax debts were entitled to priority for at least 6 months thereafter. Since the subsequent petitions were filed only 2 months after dismissal of the first petition, the IRS concluded that the debts were entitled to priority.

The bankruptcy court ruled that the 240 day priority period described in §507(a)(7)(A)(ii) was unrelated to §108(c) and the statute of limitations for collecting tax debts outside bankruptcy. Even if the 240 day period described in 11 USC §507(a)(7)(A)(ii) was tolled during the time the stay was in effect from the prior case, the IRS had a total of 251 days (193 days before the first case + 58 days after dismissal of the first case before filing of the second cases = 251 days) after assessment to collect while the debtors were not in bankruptcy . The IRS had at least 240 days after assessment of the liabilities to pursue collection from the debtors without impediment. Since this is what was intended by Congress in enacting §507(a)(7(A)(ii), the bankruptcy court overruled the IRS's objections.

The US District Court reversed the bankruptcy court and the matter was appealed to the 9th Circuit. The 9th Circuit Court of Appeals held that this was a "rare case" that required the court to ignore the plain meaning of the Bankruptcy and Internal Revenue Codes in order to fulfill what the court perceived to be a legislative intent to extend the priority period for certain income tax obligations.

The court held that the 240 day priority period in §507(a)(7)(A)(ii) in a given debtor's case is extended by 6 months after that debtor's prior chapter 13 case is dismissed. Thus, the filing of a new case within 6 months of dismissal of the old one, even though 240 days since assessment had elapsed, did not deprive the tax debts of priority.

(The court reiterated that the time the automatic stay is in effect is not counted in determining whether 240 days since assessment has elapsed. See In re Brickley, 70 B.R. 113 (Bankr. 9th Cir. 1986).)

Opinion number:

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U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED
FEB 19 1992
TERENCE H. DUNN, CLERK
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

In re: ROBERT W. WORTHEN, Debtor.	Bankruptcy No. 390-33988-H13
UNITED STATES OF AMERICA, Appellant, v. ROBERT W. WORTHEN, Appellee.	O P I N I O N Civil No. 92-59-FR

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FRYE, Judge:

The matter before the court is the appeal of the government from an order of the United States Bankruptcy Court for the District of Oregon in which the bankruptcy judge concludes that the tax claims of the United States are not entitled to priority status within the Chapter 13 plan of the debtor.

UNDISPUTED FACTS

On June 13, 1988, the United States made tax assessments against Robert Wesley Worthen and Beverly Dell Worthen for income taxes owing for the tax years 1982, 1983 and 1984. These income taxes are the joint and several liability of Robert Wesley Worthen and Beverly Dell Worthen.

On January 19, 1989, Robert Wesley Worthen and Beverly Dell Worthen jointly filed a Chapter 13 petition in bankruptcy. Because the tax assessments were made within 240 days of the time the petition in bankruptcy was filed, the tax claims for the years 1982, 1983 and 1984 were entitled to priority payment from the estate of Robert Wesley Worthen and Beverly Dell Worthen.

Thereafter, the Worthens moved the bankruptcy court for an order of dismissal of this joint petition in bankruptcy

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filed on January 19, 1989, and on May 30, 1990, the bankruptcy court entered an Order and Notice of Dismissal of this joint petition.

On July 27, 1990, the Worthens each filed an individual Chapter 13 petition in bankruptcy after they were divorced. These appeals to this court ensued from those cases: Robert W. Worthen, Bankruptcy No. 390-33988-H13, and Beverly Dell West, Bankruptcy No. 390-33989-H13. These individual Chapter 13 petitions were filed 58 days from the date of May 30, 1990, the date the first and joint Chapter 13 petition of the Worthens was dismissed.

On October 16, 1990, Proofs of Claim for Internal Revenue taxes were filed by the Internal Revenue Service (IRS) in the bankruptcy case of Robert W. Worthen and in the bankruptcy case of Beverly Dell West. In these claims, the IRS contends that the sum of $17,262.06 should be classified as priority tax claims for the taxes unpaid during the years 1982, 1983 and 1984.

Worthen and West objected to the unpaid taxes being classified as priority claims. The Chapter 13 plan submitted to the bankruptcy court by Worthen provided that the sum of $70 per month would be paid toward the secured claims of the IRS designated in the amount of $1,500. The Chapter 13 plan submitted to the bankruptcy court by West provided that the sum of $20 per month would be paid toward the secured claim of the IRS designated in the amount of $1,500.

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The United States objected to these Chapter 13 plans since they did not provide for the payment of the full amount of the tax claims. The United States argued to the bankruptcy court that the bankruptcy plan should not be confirmed because it failed to provide for the payment of all priority claims pursuant to section 1322(a)(2) of the Bankruptcy Code. The United States argued that section 108(c) of the Bankruptcy Code, read in conjunction with section 6503(b) of the Internal Revenue Code, tolls the 240-day period of section 507(a)(7)(A)(ii) for an additional six months, thereby preserving the tax claims in this case as priority claims.

Worthen and West argued to the bankruptcy court that the dismissal of the jointly filed petition in bankruptcy on May 30, 1990 and the filing of the individual petitions in bankruptcy on July 27, 1990 reduced the tax claims of the United States from priority status to general status because the individual petitions were filed 774 days after June 13, 1988, which was the date of the tax assessment.

By letter dated August 21, 1991, the bankruptcy court determined that the individual tax claims were not priority claims because priority claims are "completely separate from and unrelated to the question of whether collection efforts on the claims would be barred by applicable nonbankruptcy law." Excerpt of Record L.

This appeal followed.

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APPLICABLE STANDARD

The bankruptcy court's interpretation of the relevant statutes are conclusions of law and are reviewed de novo by this court. Ragsdale v. Haller, 780 F.2d 794, 795 (9th Cir. 1986).

APPLICABLE LAW

Section 507(a)(7)(A) of the Bankruptcy Code lists the three kinds of tax claims which have priority status and which are nondischargeable in bankruptcy, including "(ii) [a tax] assessed within 240 days . . . before the date of the filing of the petition." 11 U.S.C. § 507(a)(7)(A)(ii) (Supp. 1991). If more than 240 days have passed between the assessment of the taxes and the filing of the petition in bankruptcy, then the tax claims are dischargeable as an unsecured debt. 11 U.S.C. §§ 523(a)(1)(A) and 507(a)(7)(A)(ii) (Supps. 1991).

Section 108(c) of the Bankruptcy Code provides, in relevant part:

> [I]f applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor . . . and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of --
>
> (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
>
> (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

11 U.S.C. § 108(c) (Supp. 1991). Section 108(c) of the Bank-

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ruptcy Code extends the statute of limitations for creditors in actions against debtors, where creditors are hampered from proceeding outside the bankruptcy court due to the provisions of 11 U.S.C. § 362. In re Brickley, 70 B.R. 113, 115 (9th Cir. BAP 1986).

Section 6502(a) of the Internal Revenue Code applicable to this case provides: "Where the assessment of any tax imposed by this title has been made . . . such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun -- (1) within 6 years after the assessment of the tax." 26 U.S.C. § 6502(a)(1). Section 6503(b) states: "The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States . . . and for 6 months thereafter." 26 U.S.C. § 6503(b). Under these sections, the six-year statute of limitations in section 6502 for the collection of taxes is suspended for any period the taxpayer's assets are in the control of the courts and for six months thereafter. In re Brickley at 115.

The issue before this court is whether section 108(c) of the Bankruptcy Code, in conjunction with section 6503(b) of the Internal Revenue Code, tolls the time period for tax collection so as to bring the taxes in question within the exception to the discharge provided in section 507(a)(7)(A)(ii).

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CONTENTIONS OF THE PARTIES

The United States contends that the joint filing of the Chapter 13 bankruptcy petition by Robert Wesley Worthen and Beverly Dell Worthen on January 19, 1989 suspended the running of the 240-day period under section 507(a)(7)(A)(ii) of the Bankruptcy Code for the duration of the joint Chapter 13 proceeding, and that the period for collection of the assessed taxes was extended by six months following the dismissal of that joint petition by operation of section 6503(b) of the Internal Revenue Code and section 108(c) of the Bankruptcy Code.

As such, the United States argues that the filings of the individual Chapter 13 bankruptcy petitions on July 27, 1990, only 58 days following the dismissal of the joint petition, affected neither the right of the IRS to assess any additional taxes nor the right of the IRS to an additional six months in which to collect the assessed taxes. Accordingly, the United States argues that the priority status of the tax claims is not affected either by the dismissed joint petition in bankruptcy or the filing of the individual bankruptcy petitions, and the Chapter 13 plans in the individual bankruptcy cases must provide for full payment of the priority claim of the IRS.

Worthen and West contend that there is no legal authority to support the position of the government that the filing of the joint petition tolled the 240-day period. Worthen and

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West argue that even assuming that the filing of the joint petition tolled the 240-day period, 278 days elapsed between the assessment of the taxes on June 13, 1988 and the filing of the individual petitions in bankruptcy on July 27, 1990.

Worthen and West contend that section 108(c) of the Bankruptcy Code does not operate to allow the suspension provided in section 6503(b) of the Internal Revenue Code to apply to the 240-day period provided in section 507(a)(7)(A)(ii) of the Bankruptcy Code.

Worthen and West argue that the express language of section 6503(b) of the Internal Revenue Code limits the application of the statute to the period of limitations on collection after assessment which is prescribed in section 6502(a).

The United States argues in reply that the purpose of section 6503(b) is to suspend the running of the statute of limitations on the right of the IRS to collect a nondischargeable federal tax liability from a debtor for a period of six months following the end of the period during which the assets of the debtor are in the control or the custody of the bankruptcy court. In other words, the United States argues that the federal tax claim listed in the first joint bankruptcy petition filed by Worthen and West retained nondischargeable status for an additional six months following the termination of that joint bankruptcy petition on May 30, 1990, and that the filing of the individual bankruptcy petitions on July 27, 1990 cannot defeat the priority position of the tax claims

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as established in the first joint bankruptcy petition. The United States asserts that to rule otherwise would allow a person or persons to file a petition in bankruptcy, to dismiss that petition, and to refile a second petition in bankruptcy as a facile device to obtain discharges of tax claims in the second bankruptcy proceeding which were nondischargeable in the first bankruptcy proceeding.

ANALYSIS

The tax assessments at issue were made 220 days prior to the time the Worthens filed their joint petition in bankruptcy and the tax claims in the joint petition were awarded priority status under section 507(a)(7)(A)(ii). The joint petition in bankruptcy was then dismissed. The individual petitions were filed 58 days after the joint petition was dismissed. After the taxes were assessed, there was a period of 278 days during which no bankruptcy proceeding was pending. This is 38 days more than the 240 days provided for priority status under section 507(a)(7)(A)(ii) of the Bankruptcy Code.

However, the United States argues that section 108(c) of the Bankruptcy Code and section 6503(b) of the Internal Revenue Code operate to extend the priority status provided for under section 507(a)(7)(A)(ii) for six months after the joint petition was dismissed. Worthen and West contend that section 108(c) does not authorize the application of section 6503(b) to the priority status provided for under section 507(a)(7)(A)(ii).

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Section 108(c) extends the statute of limitations in an action against a debtor by a creditor where "applicable nonbankruptcy law" provides for such an extension. Section 6503(b) of the Internal Revenue Code states that "[t]he period of limitations on collection after assessment prescribed in section 6502 shall be suspended" during a bankruptcy proceeding "and for 6 months thereafter." The issue in this case, however, does not involve the period of limitations on collection prescribed in section 6502(a) but involves the priority status of claimants to the assets of the petitioners in bankruptcy under section 507(a)(7)(A)(ii) of the Bankruptcy Code.

The plain language of section 6503(b) supports the contention of Worthen and West that section 108(c) does not apply to this action because section 6503(b) is not a nonbankruptcy law applicable to the priority status set out in section 507 (a)(7)(A)(ii) of the Bankruptcy Code.

In In re Brickley, 70 B.R. 113 (9th Cir. BAP 1986), the debtors filed a Chapter 13 proceeding, dismissed the Chapter 13 proceeding, and filed a Chapter 7 proceeding. The issue before the court was whether the time the government's collection efforts were stayed by reason of the pending Chapter 13 case should be taken into account in calculating the reach-back time of another priority section contained in 11 U.S.C. § 523(a)(1)(A), which provided that an income tax obligation of the debtor is not dischargeable if the last date on which a tax return could have been filed falls within three years

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of the date of the filing of the petition in bankruptcy. The court concluded that the priority allowed by 11 U.S.C. § 523 (a)(1)(A) was extended by section 6503(b), applicable through the operation of section 108(c). The court explained:

> [I]t is clear that Congress, by enacting Section 108(c), intended to activate Section 6503(b) and thereby suspend the running of the statute of limitations for tax collection during a taxpayer's bankruptcy proceedings. Since Congress did not intend to allow a taxpayer to escape liability by the expiration of the statute of limitations while his assets are protected by bankruptcy proceedings, we hold that the tax debts in question are not subject to the discharge granted in this case.
>
> The Debtors' argument that the IRS failed to collect its taxes within the three-year period of nondischargeability ignores the fact that their property was unreachable during most of that time. To follow the Debtors' argument would render the extension of the statute of limitations in Section 108(c) without meaning, since tax collectability is obviously useless if the tax debt has been discharged. In addition, such a result would open the door to schemes of tax avoidance by debtors who could simply dismiss and refile their case after the expiration of the three-year period of nondischargeability. Since enforcement of the tax laws against delinquent tax debtors takes time, Congress, through Section 523, intended to give the taxing authority at least three full years to pursue such debtors. Congress did not intend to allow tax avoidance through bankruptcy by permitting the discharge of the debtor before the taxing authority has had a fair opportunity to collect taxes due.
>
> In the present case, the Debtors were in a Chapter 13 bankruptcy from 1981 until 1984 and thereby were protected by the automatic stay of Section 362. Section 6503(b) of title 26, applicable to bankruptcy cases via 11 U.S.C. § 108(c), suspended the collections period set out in Sections 507 and 523 in order to give the IRS the full opportunity contemplated by Congress to collect the delinquent taxes from 1979 and 1980.

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> The Debtors therefore should not be discharged of the obligations under Section 523.

In re Brickley, 70 B.R. at 115-16 (citations omitted).

In re Brickley involves the determination of priority status under section 507, the same provision applicable to this case. The court in In re Brickley held that section 6503(b) of title 26 was applicable through 11 U.S.C. § 108(c) to extend the priority status provisions of section 507. The application of the ruling in In re Brickley results in a finding in favor of the United States in this case that the period as provided in section 507 (a)(7)(A)(ii) was extended by the six months stated in section 6503(b).

While the IRS had more than 240 days, unrestricted by any court proceeding, to collect the tax assessments prior to the time that the Worthens filed their individual petitions in bankruptcy, section 6503(b), which the court in In re Brickley applied to section 507, gives the IRS an additional six-month period to collect its debt without discharge in bankruptcy.

CONCLUSION

The ruling of the bankruptcy court is reversed. This action is remanded to the bankruptcy court for further proceedings in accordance with this opinion.

DATED this 19 day of February, 1992.

Helen J. Frye

HELEN J. FRYE
United States District Judge

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: BEVERLY DELL WEST,
Debtor.

BEVERLY DELL WEST,
Appellant,
v.
UNITED STATES OF AMERICA,
Appellee.

No. 92-35286
D.C. No.
CV-92-60-FR

In re: ROBERT WESLEY WORTHEN,
Debtor.

ROBERT WESLEY WORTHEN,
Appellant,
v.
UNITED STATES OF AMERICA,
Appellee.

No. 92-35293
D.C. No.
CV-92-59-FR

OPINION

Appeals from the United States District Court
for the District of Oregon
Helen J. Frye, District Judge, Presiding

Argued and Submitted
August 30, 1993—Portland, Oregon

Filed September 21, 1993

Before: James R. Browning, Mary M. Schroeder, and
Cynthia Holcomb Hall, Circuit Judges.

92-415 (G)

Opinion by Judge Hall

SUMMARY

Bankruptcy/Priorities

Affirming a district court judgment reversing a bankruptcy court order denying priority to IRS tax claims, the court of appeals held that the tax claims had priority because the debtors' prior Chapter 13 case suspended the running of Bankruptcy Code Section 507(a)(7)(A)(ii)'s 240-day priority period from the date of the bankruptcy petition until six months after the case was dismissed.

On June 13, 1988, the Internal Revenue Service (IRS) assessed income taxes for the years 1982 through 1984 against appellants Beverly West and Robert Worthen, then a married couple. Two hundred and twenty days later, on January 19, 1989, the couple filed a joint petition under Chapter 13 of the Bankruptcy Code, which was voluntarily dismissed on May 30, 1990. Appellants divorced shortly thereafter. On July 27, 1990, 58 days after dismissing their joint case, appellants filed individual Chapter 13 petitions. Appellants then filed Chapter 13 plans providing for payment of the IRS claims on a pro rata basis with the general, unsecured claims.

The IRS objected to confirmation on the ground that Bankruptcy Code Section 507(a)(7)(A) required that the plans give priority to the tax claims. The bankruptcy court ruled that the IRS was not entitled to priority because it had assessed the taxes more than 240 days before the debtors' individual petitions. The district court reversed, holding that the debtors' prior bankruptcy case suspended the running of the 240-day priority period until six months after the case was dismissed.

On appeal, West and Worthen argued that priority status in their individual cases was inappropriate because 774 days had elapsed between the time of assessment and the date on which they filed their individual petitions. The IRS argued that, read together, the Bankruptcy and Internal Revenue Codes suspended section 507(a)(7)(A)'s priority periods from the time a debtor files for bankruptcy until six months after the case is dismissed.

[1] This rare case was not appropriate for a literal application of section 108(c) of the Bankruptcy Code, which provides for the suspension of certain nonbankruptcy statutes of limitation on actions against a debtor in bankruptcy. Literal interpretation of that section would frustrate the Code's intricate scheme for the payment of tax claims. **[2]** Section 507(a)(7) creates a delicate balance between priority and discharge of tax claims.

[3] By incorporating the suspension provisions of the Internal Revenue Code, section 108(c) reflects a policy determination that it would be unfair to allow the statute of limitations to run against the government's right to enforce a tax lien when, even if the government did bring suit, it could not collect because it could not get at the taxpayer's assets. **[4]** The Ninth Circuit Bankruptcy Appellate Panel reached the same conclusion in *Brickly v. United States (In re Brickley)*, 70 B.R. 113 (Bankr. 9th Cir. 1986). The persuasive reasoning of that decision was adopted.

[5] The appellants' contention that, even if the 240-day period stopped running during their prior bankruptcy, the IRS was still not entitled to priority because it actually had 278 days after assessment in which to collect the taxes without hindrance from a pending bankruptcy case was not persuasive. **[6]** The six-month extension reflected a legislative recognition that interruption in collection activity required additional time once the IRS was again free to pursue tax debtors. Accordingly, the IRS claims were entitled to priority.

COUNSEL

Wayne Godare, Snyder & Associates, Portland, Oregon, for the appellants.

Gary R. Allen, Tax Division, United States Department of Justice, Washington, D.C., for the appellee.

OPINION

..ALL, Circuit Judge:

Chapter 13 debtors Beverly West and Robert Worthen appeal the district court's reversal of bankruptcy court orders denying priority to tax claims of the Internal Revenue Service. The district court held that the debtors' prior Chapter 13 case suspended Bankruptcy Code § 507(a)(7)(A)(ii)'s 240-day priority period until six months after the debtors dismissed that case. We affirm.

I. Background

On June 13, 1988, the IRS assessed income taxes for the years 1982 through 1984 against Beverly and Robert Wor-'en. Two-hundred and twenty days later, on January 19, .989, the Worthens filed a joint petition under Chapter 13 of the Bankruptcy Code. On May 30, 1990, the Worthens voluntarily dismissed their case. They divorced shortly thereafter. On July 27, 1990, fifty-eight days after dismissing their joint case, Beverly West and Robert Worthen filed individual Chapter 13 petitions.

The IRS subsequently filed proofs of claim in the West and Worthen cases for the 1982-1984 income taxes. The debtors each filed Chapter 13 plans that provided for payment of the IRS claims on a pro rata basis with the general, unsecured

claims. The IRS objected to confirmation on the ground tha Bankruptcy Code § 507(a)(7)(A) required that the plans giv priority to the tax claims.

The bankruptcy court overruled the IRS objections, reason ing that the IRS was not entitled to priority because it ha assessed the taxes more than 240 days before the debtors individual petitions. The district court reversed, holding tha the debtors' prior bankruptcy case suspended the running o the 240-day priority period until six months after the case wa dismissed.

II. Statutory Framework

A bankruptcy court may not confirm a Chapter 13 plan unless it provides for "the full payment . . . of all claims entitled to priority under section 507" of the Bankruptcy Code. 11 U.S.C. § 1322(a)(2) (1988). Section 507 accords priority, in part, to government claims for income taxes "assessed within 240 days . . . before the date of the filing of the petition." *Id.* § 507(a)(7)(A)(ii).[1]

Section 108(c) of the Bankruptcy Code provides for the suspension of certain nonbankruptcy statutes of limitation on actions against a debtor in bankruptcy.[2] Section 6503 of the

[1] "(a) The following expenses and claims have priority in the following order: . . .

(7) Seventh, allowed unsecured claims of governmental units, only to the extent such claims are for —

(A) a tax on or measured by income or gross receipts — . . .

(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition." 11 U.S.C. § 507(a)(7)(A)(ii) (1988).

[2] "[I]f applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, . . . and such period has not expired before the date of the filing of the petition, then such period does not expire until . . . the end of such period, including any suspension of such period occurring on or after the commencement of the case." 11 U.S.C. § 108(c)(1) (1988).

Internal Revenue Code, which suspends the limitation period on tax collection against a debtor in bankruptcy until six months after the debtor's case is dismissed,[3] is one example of a nonbankruptcy provision within the scope of § 108(c).

III. Contentions of the Parties

The debtors concede that, because the IRS assessed the taxes at issue within 240 days before their joint Chapter 13 petition, the tax claims in that case would have been entitled to priority under § 507(a)(7)(A). The debtors assert, however, tha riority status in their individual cases is inappropriate because 774 days had elapsed between the time of assessment and the date on which they filed their individual petitions. The bankruptcy court agreed.

The IRS argues that, read together, the Bankruptcy and Internal Revenue Codes suspend § 507(a)(7)(A)'s priority periods from the time a debtor files for bankruptcy until six months after the case is dismissed. The IRS concedes that § 108(c), which incorporates only nonbankruptcy law, does not facially apply to suspend the bankruptcy law priority periods. It urges, however, that § 108(c)'s incorporation of § 6503's suspension and extension illustrates a statutory purpose to preserve the collectibility of certain tax claims and that, as a result, the suspension and extension must also apply

[3] "The running of the period of limitations . . . on the making of assessments or collection shall, in a case under [the Bankruptcy Code], be suspended for the period during which the [IRS] is prohibited by reason of such case from making the assessment or from collection and . . . [for] 6 months thereafter." 26 U.S.C. § 6503 (h)(2) (Supp. 1990).

The IRS may not collect tax claims against a debtor in bankruptcy unless it obtains relief from the automatic stay. *See* 11 U.S.C. § 362(a)(6) (1988). Because such relief is rarely granted, the IRS usually is "prohibited by reason of such case" from collecting taxes until the bankruptcy petition is dismissed. Under § 6503(h)(2), therefore, the collection limitation period usually does not begin to run until six months after dismissal.

to the priority periods. The district court agreed and reversed the bankruptcy court.

IV. Discussion

We review *de novo* the district court's statutory interpretation. *E.g., Careau Group v. Juan de la Cruz Farm Workers Pension Fund (In re Careau Group)*, 923 F.2d 710, 711 (9th Cir. 1991).

To begin, we note that interpretation of the Bankruptcy Code "begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enters.*, 489 U.S. 235, 241 (1989) (interpreting § 506(b)). *E.g., Patterson v. Shumate*, 112 S. Ct. 2242, 2248 (1992) (interpreting § 541(c)); *Toibb v. Radloff*, 111 S. Ct. 2197, 2200 (1991) (interpreting § 109(d)). Nevertheless, we realize that "in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters' . . . , the intention of the drafters, rather than the strict language, controls." *Ron Pair*, 489 U.S. at 242 (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)).[4]

[1] The case at bar is one such "rare case." Because literal interpretation of § 108(c) would frustrate the Bankruptcy Code's intricate scheme for the payment of tax claims, we do not adopt the debtors' "plain language" admonitions.

[2] Section 507(a)(7) creates a "delicate balance" between priority and discharge of tax claims. *In re Official Comm. of*

[4] "[A] court should go beyond the literal language of a statute if reliance on that language would defeat the plain purpose of the statute: '. . . the court will not look merely to a particular clause in which general words may be used, *but will take in connection with it the whole statute . . . and the objects and policy of the law . . . .*' " *Bob Jones Univ. v. United States*, 461 U.S. 574, 586 (1983) (quoting *Brown v. Duchesne*, 19 How. 183, 184 (1857) (emphasis added)).

Unsecured Creditors of White Farm Equip. Co., 943 F.2d 752, 757 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 1292 (1992).[5] The statute's legislative history reveals that, as part of this balance, "Congress intended to give the government the benefit of certain time periods to pursue its collection efforts." *United States v. Richards (In re Richards)*, 994 F.2d 763, 765 (10th Cir. 1993). "[T]he tax collector . . . should not lose taxes which he has not had reasonable time to collect or which the law has restrained him from collecting." S. Rep. No. 989, 95th Cong., 2d Sess. 14 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5800.[6]

[3] By incorporating the suspension provisions of the Internal Revenue Code, § 108(c) reflects a policy determination that " 'it would be unfair to allow the statute [of limitations] to run against the government's right to enforce a tax lien when, even if the government did bring suit, it couldn't collect because it couldn't 'get at' the taxpayer's assets.' " *Molina v. United States (In re Molina)*, 99 B.R. 792, 794-95 (S.D. Ohio 1988) (quoting *United States v. Verlinsky*, 459 F.2d 1085, 1087 (5th Cir. 1972)).[7] Interpreting § 108(c) literally would allow a debtor to create an "impenetrable refuge" by filing a bankruptcy petition, waiting for § 507(a)(7)'s priority periods to expire, and then dismissing the case and refiling shortly thereafter. *Florence v. IRS (In re Florence)*, 115 B.R. 109, 111 (Bankr. S.D. Ohio 1990).[8]

[5]For example, priority claims are not discharged in Chapter 13 until paid in full. 11 U.S.C. §§ 1322(a)(2), 1328 (1988). Nonpriority claims, however, may be discharged upon pro rata payment with general, unsecured claims. *Id.* § 1328.

[6]The House Report evinces a similar concern: "An open-ended dischargeability policy would provide an opportunity for tax evasion through bankruptcy, by permitting discharge of tax debts before a taxing authority had an opportunity to collect any taxes due." H.R. Rep. No. 595, 95th Cong., 1st Sess. 190 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6150.

[7]Contrary to the debtors' assertions, tax claim collection and priority are intimately related. The sole function of assigning priority to certain tax claims is to enhance the government's ability to collect those claims.

Given the clearly-expressed statutory purpose of providing the IRS with a specific period of time within which to collect taxes, "[s]uch a result is neither required by, nor consistent with, a holistic interpretation of the Bankruptcy Code." *Id.* This is particularly true in light of the established policy that " 'limitations statutes barring the collection of taxes otherwise due and unpaid are strictly construed in favor of the Government.' " *Badaracco v. Commissioner of Internal Revenue*, 464 U.S. 386, 392 (1983) (quoting *Lucia v. United States*, 474 F.2d 565, 570 (5th Cir. 1973)).

[4] In the first case to address this issue, *Brickley v. United States (In re Brickley)*, 70 B.R. 113 (Bankr. 9th Cir. 1986), the Ninth Circuit Bankruptcy Appellate Panel reached the same conclusion. The *Brickley* panel reasoned that a literal reading of § 108(c) "would render the extension of the statute of limitations . . . without meaning, since tax collectibility is obviously useless if the tax debt has been discharged." *Id.* at 115.

Nearly every other court that has analyzed the issue has followed *Brickley*.[9] Most recently, the Tenth Circuit applied a

[8]Such an interpretation would also be inconsistent with the maxim *contra non valentem agere, non currit praesciptio* ("the prescription does not run against one unable to act"). *See* 51 Am. Jur. 2d *Limitations on Actions* §§ 138-77 (1970).

[9]*See Montoya v. United States (In re Montoya)*, 965 F.2d 554, 555-58 (7th Cir. 1992); *Linder v. United States (In re Linder)*, 139 B.R. 950, 952-53 (D. Colo. 1992); *United States v. Deitz (In re Deitz)*, 116 B.R. 792, 794 (D. Colo. 1990); *Molina*, 99 B.R. at 794-95; *Stoll v. IRS (In re Stoll)*, 132 B.R. 782, 784-85 (Bankr. N.D. Ga. 1990); *In re Ross*, 130 B.R. 312, 313-14 (Bankr. D. Neb. 1991); *In re Wise*, 127 B.R. 20, 21-23 (Bankr. E.D. Ark. 1991); *In re Ringdahl*, [1990-91] Bankr. L. Rep. (CCH) ¶ 74,082 (Bankr. M.D. Fla. 1991); *In re Bryant*, 120 B.R. 983, 984-85 (Bankr. E.D. Ark. 1990); *In re Davidson*, 120 B.R. 777, 781-87 (Bankr. D.N.J. 1990);

different analysis but reached the same conclusion. *See Richards*, 994 F.2d at 765-66 (affirming the bankruptcy court's use of § 105(a) to suspend the 240-day priority period during the course of the debtor's prior bankruptcy). We find *Brickley* persuasive and adopt its reasoning.

[5] The debtors contend that, even if the 240-day period stopped running during their prior bankruptcy, the IRS is still not entitled to priority because it actually had 278 days after assessment in which to collect the taxes without hindrance from a pending bankruptcy case (220 days prior to the joint petition plus fifty-eight days after dismissal and before the individual petitions). We disagree. Because we look to Internal Revenue Code § 6503, incorporated through Bankruptcy Code § 108(c), to suspend the priority period, we think it logical to also apply § 6503's six-month extension period.[10]

[6] The six-month extension illustrates a legislative recognition that interruption in collection activity necessitates additional time once the IRS is again free to pursue tax debtors. Although the legislative history is bereft of reasons for granting the extension, common sense dictates that such a period was given in order to provide the IRS with sufficient time to restart and refocus its collection efforts once able to so. The

Florence, 115 B.R. at 110-13; *In re Quinlan*, 107 B.R. 300, 301 (Bankr. D. Colo. 1989); *In re Ryan*, No. 88-B-07735-A, 1989 WL 155684 (Bankr. D. Colo. 1989).

Although *Brickley* and several of these cases actually address the three-year priority period of § 507(a)(7)(A)(i), the analysis applies with equal force to the 240-day priority period. *See Richards*, 994 F.2d at 766 (applying cases construing the three-year period to analyze the 240-day period).

[10]Every other case that has mentioned the six-month extension has reached the same conclusion. *See Montoya*, 965 F.2d at 557; *Deitz*, 116 B.R. at 794; *Ross*, 130 B.R. at 313; *Wise*, 127 B.R. at 23. In *Deitz*, as in the case at bar, the additional six-months was the determining factor in whether the tax claims were entitled to priority.

legislative history of § 108(c), which incorporates § 6503, implicitly acknowledges this purpose:

> [Section 108(c) is] designed to minimize the administrative problems governmental tax authorities face, or may face, in collecting taxes in bankruptcy proceedings. . . .
>
> [T]he statute of limitations on a nondischargeable Federal tax liability of a debtor will resume running *after 6 months* following the end of the period which the debtor's assets are in the control or custody of the bankruptcy court. This rule will provide the [IRS] *adequate time to collect* nondischargeable taxes *following the end of the [bankruptcy] proceedings.*

S. Rep. No. 989, 95th Cong., 2d Sess. 14-15, 30-31 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5800-01, 5816-17 (emphasis added). Adding six months to the priority period in the case of successive bankruptcy petitions preserves this intent.

V. Conclusion

The debtors' joint Chapter 13 case suspended the running of § 507(a)(7)(A)(ii)'s 240-day priority period from the date of the bankruptcy petition until six months after the case was dismissed. The IRS claims are therefore entitled to priority.

AFFIRMED.