

11 U.S.C. § 108(a)
11 U.S.C. § 707(a)(8)(A)(i)
26 U.S.C. § 6502
26 U.S.C. § 6503(b)

In re Ralph Edward Dodson
And Nadine Phyllis Doddson

Case No. 394-36509psh13

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PSH

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The debtors objected to the IRS's claim contending that their 1984 taxes were not entitled to priority status. The debtors had filed three bankruptcies prior to the instant case. The IRS contended that under 11 U.S.C. § 108 and 26 U.S.C. §§ 6502 and 6503(b) the reachback period for priority taxes under § 707(a)(8)(A)(i) was suspended for the period of time the debtors were in bankruptcy plus an additional six months for each bankruptcy filing. The court rejected that argument concluding that in the case of multiple filing the IRS was entitled to only so much of the additional six months provided for under 26 U.S.C. § 6503(b) as had actually passed between filings. The court concluded that this holding was consistent with the principles of equity relied upon in In re Brickley 70 B.R. 113 (Bankr. 9th Cir. 1986) and In re West 5 F3d 423 (9th Cir. 1993) cert. denied 114 S.Ct. 1830; 128 L.Ed.2d 459(1994) wherein the court refused to adopt a literal reading of 11 U.S.C. § 108(a)(7)(A)(i) and (ii) when the result would have been to allow the debtor to avoid nondischargeability of tax by successive bankruptcy filings.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)
) Case No. 394-36509psh13
RALPH EDWARD DODSON,)
NADINE PHYLLIS DODSON,) OPINION
)

Debtor.)

The Dodsons have filed an objection to the Internal Revenue Service's proof of claim. The government claims priority status for 1984 income taxes as well as for certain FICA and withholding taxes for 1981, 1982 and 1985. Because the parties have insufficiently identified other issues surrounding the latter taxes the court at this time will address only the status of the income taxes. A tax return for the 1984 income taxes was last due on April 15, 1985. These taxes were assessed on June 17, 1985.

The debtors have been in and out of Chapter 13 bankruptcy three times prior to their latest Chapter 13 filing on November 1, 1994.¹

¹

<u>Time</u>	<u>Duration</u>
January 16, 1986 to July 11, 1986	177 days
October 2, 1986 to February 19, 1987	141 days

(continued...)

1 The government claims that it is entitled to priority status for the
2 debtors' 1984 income taxes under the holdings of In re Brickley, 70
3 B.R. 113 (Bankr. 9th Cir. 1986), and In re West 5 F.3d 423 (9th Cir.
4 1993) cert. denied, 114 S.Ct. 1830, 128 L.Ed.2d 459 (1994). In
5 Brickley after several years the debtors were unable to maintain
6 their Chapter 13 plan payments and in 1984 moved to dismiss the case.
7 Shortly before the dismissal, on October 3, 1984, they filed a
8 Chapter 7 case. The Internal Revenue Service claimed that the
9 debtors' 1979 and 1980 income taxes retained priority status in the
10 Chapter 7 under 11 U.S.C. § 507(a)(7)(A)(i)² although the taxes were
11 not, in the second case, "for a taxable year ending on or before the
12 date of the filing of the petition for which a return, if required,
13 is last due, including extensions, after three years before the date
14 of the filing of the petition."³ It pointed out that it had been
15 unable, with the automatic stay in place during the Chapter 13 case,
16 to collect the tax debt.
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18 The Brickley court commenced its analysis with 11 U.S.C. §
19 108(c) which, in the event an applicable nonbankruptcy statute of
20 limitations has not run when a bankruptcy petition is filed, allows
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22
23 ¹(...continued)

24 January 2, 1990 to August 19, 1994 4 years 230 days

25 ² Now 11 U.S.C. § 507(a)(8)(A)(i). Throughout this opinion the
26 court will refer to the statutory citation applicable at the time
the debtors first filed bankruptcy.

³ Taxes which have priority status are, in turn, not
discharged by the debtor's bankruptcy proceeding. 11 U.S.C. §
523(a)(1). Otherwise the tax debt would have been discharged.

1 a claimant, if not permanently enjoined, the longer of the end of
2 such limitations period, including any suspension of the period due
3 to the stay, or 30 days after termination of the stay, to proceed
4 with its claim against the debtor. The court recognized that for
5 collection of federal tax debt the applicable nonbankruptcy statute
6 of limitations is 26 U.S.C. § 6502. It further recognized that 26
7 U.S.C. § 6503(b) suspends this collection period for the period "the
8 assets of the taxpayer are in the control or custody of the court in
9 any proceeding before any court of the United States...and for six
10 months thereafter."⁴ It concluded: "Since Congress did not intend
11 to allow a taxpayer to escape liability by the expiration of the
12 statute of limitations while his assets are protected by bankruptcy
13 proceedings, we hold that the tax debts in question are not subject
14 to the discharge granted in this case." Id at 115.

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16 The Brickley holding was not based on any actual computation the
17 court undertook, through application of the time frames established
18 by §108(c), and § 6503,⁵ to the individual facts, but rather was based
19 on a recognition that it would be inconsistent for the Bankruptcy
20 Code, through § 108(c), to protect a creditor from the otherwise
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23 ⁴ The Brickley court did not mention § 6503(h). Section
24 6503(h) is specifically applicable to bankruptcy cases and states:
25 "The running of the period of limitations ...on the making of
26 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 ... collection and ...[for]
6 months thereafter."

⁵ References to §§ 108(c), 507 and 523 refer to sections
under the Bankruptcy Code. §§ 6502, 6503 refer to sections under
the Internal Revenue Code.

1 adverse consequences of the automatic stay on pursuit of its claim,
2 and yet, through literal interpretation of the statutory language of
3 § 507(a)(7), not protect the creditor from the adverse consequences
4 of the stay on the priority status of its claim.

5 In West the debtors filed a joint Chapter 13 petition on January
6 19, 1989, 220 days after the IRS had assessed their 1982, 1983 and
7 1984 income taxes. The debtors subsequently dismissed this case and
8 filed individual Chapter 13 petitions 58 days later. The Internal
9 Revenue Service contended that the 1982, 1983, and 1984 income taxes
10 were entitled to priority status in the second Chapter 13 cases
11 pursuant to § 507(a)(7)(A)(ii). In holding for the government the
12 Ninth Circuit adopted the reasoning in Brickley. In an acknowledged
13 "rare" case, it stated: "Because literal interpretation of § 108(c)
14 would frustrate the Bankruptcy Code's intricate scheme for the
15 payment of tax claims, we do not adopt the debtors' 'plain language'
16 admonitions." West, 5 F.3rd at 426.

17
18 Both parties recognize that the Brickley and West holdings
19 implicate § 108(c) and, in turn, §§ 6503(b) and (h), in determining
20 the government's entitlement to priority status. They also recognize
21 that as the 1984 taxes were assessed prepetition the tolling period
22 recognized under both §§ 6503(b) and 6503(h) includes up to an
23 additional six months after the time during which the debtors had an
24 open case in bankruptcy court. Where their positions diverge is in
25 their interpretation of the extent of the suspension called for under
26 §§ 6503(b) and (h) under our facts. In this case, unlike in

1 Brickley, West or any other reported case of this genre, the debtors
2 filed more than two consecutive bankruptcies on dates which require
3 the court, on a third or later filing, to determine the extent of the
4 "credit" for the maximum six month tolling period arising after a
5 second or later filing. In neither Brickley nor West was this an
6 issue because in each case there had been only a second filing.
7 Under those facts, whether a full six month tolling period for a
8 previous filing should be "credited" cannot become an issue. Between
9 the first and second filing either the period between filings has
10 been lengthy enough to encompass the period during the first
11 bankruptcy plus six months or it has not. In the latter case the tax
12 debt, if priority in the first case, will remain priority. In the
13 former case, the government will have received full "credit" for the
14 mandated tolling period.
15

16 Here, between two of their three previous cases the debtors
17 refiled bankruptcy petitions before the six month suspension period
18 following the previous case dismissals provided for under both §
19 6503(b) and § 6503(h) had expired. The government believes it is
20 entitled to a full six month "credit" on the tolling period for each
21 of the debtors' three previous bankruptcy filings. The debtors claim
22 the government is entitled to count for that purpose only so much of
23 each six month period that actually passed between each of the
24 filings.
25

26 The government's brief assumes, for purposes of determining the
total time tolled by § 6503, that the date which is tolled is April

1 15, 1985. The debtors' brief is unclear on this point. This court
2 has struggled with the question from which date the § 6503 tolling
3 period incorporated into § 507(a)(7)(A)(i) through Brickley should be
4 counted. Yet the date from which the tolling period is counted is
5 crucial to the controversy before it. There are several potentially
6 relevant dates from which the tolling period can be counted. The
7 debtors' 1984 tax return was due on April 15, 1985. The court
8 assumes the debtors timely filed their tax return because the
9 government has identified the deadline for assessment of those taxes
10 as April 15, 1988. The taxes were assessed on June 17, 1985. Under
11 the Internal Revenue Code then applicable the assessed taxes were
12 collectible, without bankruptcy, through June 17, 1991. The debtors
13 first filed bankruptcy on January 16, 1986. Therefore, the three
14 year period described in § 507(a)(7)(A)(i) reached back to January
15 16, 1983. This three year period for their present filing reaches
16 back to November 1, 1991.

17
18 The genesis of the court's struggle to identify the correct date
19 from which to count the tolling period is clear. Section 6503 of the
20 Internal Revenue Code and § 507(a)(7)(A) of the Bankruptcy Code were
21 not written to work together. They serve different purposes. If
22 used as intended § 6503 tolls the time of one easily identifiable
23 period, the period of limitations on the making of assessments or
24 collections under the Internal Revenue Code. Section 507(a)(7)(A)
25 identifies the status of a priority tax, for purposes of distribution
26 from the bankruptcy estate, by carving out a three year period just

1 prior to the bankruptcy filing date. This statutory language makes
2 no suggestion that this three year reachback period would ever be
3 affected by a subsequent bankruptcy filing. It is a simple
4 calculation, absent the Brickley holding, to determine whether a tax
5 falls within that period.

6 Although under their facts neither court needed to explain the
7 exact method of fusing § 6503 to § 507, Brickley and West contain
8 guidance on this point. Brickley states: "The issue is whether the
9 time the government's collection efforts were stayed by reason of the
10 pending Chapter 13 case should be taken into account in calculating
11 the reachback period of 11 U.S.C. § 523(a)(1)(A)." Brickley, 70 B.R.
12 at 113. (emphasis added). It concluded: "Section 6503(b) of title
13 26, applicable to bankruptcy cases via 11 U.S.C. § 108(c), suspended
14 the collections period set out in Sections 507 and 523 in order to
15 give the IRS the full opportunity contemplated by Congress to collect
16 the delinquent taxes... Brickley, 70 B.R. at 115 (emphasis added).
17 Both of the quoted statements are somewhat confusing. § 523(a)(1)(A)
18 does not contain the actual three year reachback period. This
19 language appears in § 507(a)(7)(A)(i) which is incorporated in §
20 523(a)(1)(A). Further, the purpose of neither § 507 nor § 523 was to
21 address the collection of taxes. However, throughout the opinion the
22 court focused on the reasonableness, given a previous bankruptcy
23 filing, of tolling the time encompassed by the three year reachback
24 period of § 507(a)(7)(A)(i). In other words, tolling should impact
25 the bankruptcy statute, not a tax statute.
26

1 West reinforces this conclusion within the context of the two
2 hundred forty day assessment period of § 507(a)(7)(A)(ii). It
3 concluded "[T]he debtors' joint Chapter 13 case suspended the running
4 of § 507(a)(7)(A)(ii)'s 240-day priority period from the date of the
5 bankruptcy petition until six months after the case was dismissed."
6 West, 5 F.3d at 427.

7 Therefore this court concludes that, in applying the policy
8 represented in these two cases, within the context of §
9 507(a)(7)(A)(i), the tolling period recognized in § 6503 should
10 commence from the date, in the first bankruptcy, under given facts,
11 for which a return, if required, is last due, including extensions.
12

13 This is the approach taken by the government in its brief. In
14 their three previous cases the debtors were in bankruptcy a total of
15 5 years, 183 days. Adding this period plus three six-month periods
16 to April 15, 1985 would extend the date for which a return was last
17 due to May 2, 1992. The three year reachback period under §
18 507(a)(8)(A)(i) for the debtors' latest filing is November 1, 1991.
19 Thus the 1984 taxes, falling within the three year reachback period
20 of § 507(a)(8)(A)(i) for the latest filing, still would be entitled
21 to priority status. In their brief the debtors are unclear from what
22 date the tolling period should commence. This court assumes that
23 their theory would count from April 15, 1985, 5 years, 183 days plus
24 82 days (the time between filings 1 and 2), 74 days, (the time
25 between filings 3 and 4), and a full six months (after filing 2) to
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1 extend the date from which a return, if required, is last due,
2 including extensions, to September 16, 1991. This date would not fall
3 within the three year reachback limit, under their latest bankruptcy
4 filing, of November 1, 1991. Therefore the court must address the
5 ultimate issue between the parties: Whether the government is
6 entitled to an extension of the tolled period for a full six months
7 for each of the debtors' previous bankruptcy filings.

8
9 In light of the reference in § 6503(b) to "any proceeding" and
10 in § 6503(h) to "such case" it would seem logical to conclude that
11 the government is always entitled to an extension of the tolled
12 period for a full six months for each of a debtors' previous
13 bankruptcy filings.

14 However, a careful examination of the facts before this court
15 reveals that what the government in fact is asking it to do is to
16 provide them a full six month "credit" for tolling under § 6503 for
17 the period between the debtors' first and second bankruptcy filing.⁶
18 The additional 98 days which would have extended the actual 82 day
19

20 ⁶ The issue now before this court was ripe, although
21 apparently not addressed, at the time the debtors filed their third
22 bankruptcy on January 2, 1990. The government had received its
23 full six month "credit" for tolling purposes for the second filing
24 between the second and third filing. Eighty two days passed
25 between the debtors' first and second filing. The debtors were in
26 bankruptcy 177 days during the first filing and 141 days during the
second. Eighty two plus 177 plus 141 plus 180 (assuming six months
is equal to 180 days) equals 580 days. Adding 580 days to April
15, 1985 tolls the "date the (1984) return was last due" to
December 1, 1986. The § 507(a)(7)(A)(i) three year reachback date
for the January 2, 1990 filing was January 2, 1987. Thus, unless
the government had received a six month "credit" for tolling
purposes for the period between the first and second filing their
claim for 1984 taxes would not have received priority treatment
because it did not fall within the three year reachback period for
the third filing.

1 period between the first and second filing to a full six months, when
2 added to all the other tolling periods under our facts except for a
3 full six month "credit" between the third and fourth filing, would be
4 more than sufficient to toll the April 15, 1985 date into the three
5 year reachback period from November 1, 1994. ⁷

6 This court has determined that the particular circumstance in
7 which the government now finds itself can arise only if, after a
8 debtor's second or subsequent bankruptcy filing and prior to the
9 debtor's refiling, the government fails to collect the tax at issue
10 after it is no longer stayed from its collection efforts for a
11 uninterrupted period which is lengthy enough to include the actual
12 prior days in bankruptcy plus any actual days between filings which
13 are less than six months in length plus an actual six month period
14 which has expired after any filing. If this post-bankruptcy
15 collection period were any shorter, upon a subsequent bankruptcy
16 filing the tolling period clearly authorized by the statute would not
17 have run and the tax would retain its priority status. In fact,
18 because of tolling, the greater either the number or length of the
19 debtor's previous bankruptcy filings the longer the uninterrupted
20 period of time the government is given to collect the tax once the
21 debtor is no longer in bankruptcy.
22

23 A review of the Congressional purpose in enacting § 108(c) is
24 useful. As noted in Brickley, the Senate Report discussing what
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26 ⁷ 177 days plus 180 days plus 141 days plus 180 days plus 4
years 230 days plus 73 days (actual days between third and fourth
filing) equals 2,441 days which tolls the August 15, 1985 date to
January 6, 1992.

1 became § 108(c) states:

2 In the case of Federal tax liabilities, the Internal
3 Revenue Code suspends the statute of limitations on a tax
4 liability of a taxpayer from running while his assets are
5 in the control or custody of a court and for six months
6 thereafter [Section 6503]. The Amendment applies this rule
7 in a title 11 proceeding. Accordingly, the statute of
8 limitations on collection of non-dischargeable Federal tax
9 liability of a debtor will resume running after 6 months
10 following the end of the period during which the debtor's
11 assets are in control or custody of the bankruptcy court.
12 This rule will provide the Internal Revenue Service
13 adequate time to collect nondischargeable taxes following
14 the end of the title 11 proceedings. 70 B.R. 115, citing S.
15 Rep. No. 989, 95th Cong., 2nd Sess. 30-31 (1978), U.S. Code
16 Cong. & Admin. News 1978, pp 5787, 5816, 5817, (emphasis
17 added).

18 The West court recognized that "[t]he sole function of assigning
19 priority to certain tax claims is to enhance the government's ability
20 to collect those claims." West, 5 F.3d at 426, fn. 7. The court
21 noted that the statutory six months provided for the suspension of
22 the limitations period on tax collections after restoration of the
23 Service's right to proceed with collection "illustrates a legislative
24 recognition that interruption in collection activity necessitates
25 additional time once the IRS is again free to pursue tax debtors.
26 Although the legislative history [of § 6503] 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 do so." West, 5 F.3d at
427.

Legislative history identifies that the purpose of the
government's additional six month tolling period after bankruptcy is
to provide it adequate time to pursue collection of the tax debt. For

1 collections efforts sufficient time was identified as six months.
2 However, as this court has pointed out, for purposes of determining
3 the right to priority status under what is now § 507(a)(8)(A)(i) the
4 government will find it necessary to assert a right to a separate six
5 month "credit" for each previous bankruptcy filing only where it has
6 had far more than six months' additional time after a particular
7 bankruptcy to pursue collection of the tax and has failed to do so
8 before the next bankruptcy filing.

9
10 The Brickley and West courts refused to apply the literal
11 language of § 507(a)(7)(A)(i) and (ii) when the result would have
12 allowed the debtor to avoid nondischargeability of the tax by filing
13 successive bankruptcies. They chose, rather, to apply the principle
14 of equity which is reflected in the language of § 108(c) to determine
15 the government's entitlement to priority status. The principle of
16 equity for which these cases stand supports a finding, under our
17 particular facts, that the 1984 income taxes are not entitled to
18 priority status in the debtors' latest bankruptcy case. In this case
19 the government was given a large window of opportunity to collect
20 these taxes. This window was much greater than the language of §
21 108(c) and § 6503 contemplates. It did not collect the taxes. The
22 equities support a treatment of the tax debt, to the extent not
23 secured through the prepetition assessment, as a general unsecured
24 claim, allowing the debtors to provide a feasible Chapter 13 plan to
25 the court, to complete the plan, and to obtain a discharge and a
26 fresh start.

1 This opinion contains the court's findings of fact and
2 conclusions of law and pursuant to Bankruptcy Rule 7052, they will
3 not be separately stated.

4 An order consistent herewith shall be entered.

6 POLLY S. HIGDON
7 Bankruptcy Judge

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