

In re West/Worthen

Cases Nos. 391-33988/89-H13 USDC # 92-59/60-Fr 2-19-92  
Reversing 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.

On appeal, the District Court stated at page 10 of its slip opinion that: "The plain language of section 6503(b) supports the contention of [the debtors] 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." The court may have intended to say that "the plain language of section 108(c) supports the debtors' contention that sections 108(c) is relevant only in determining the expiration of applicable collection periods outside bankruptcy and is not relevant to the determination of the priority of claims in bankruptcy cases."

The District Court quoted, apparently with approval, In re Brickley, 70 BR 113 (9th Cir. BAP 1986). In Brickley, the debtors filed a chapter 13 petition in November, 1981. At that time, the debtors' 1979 and 1980 tax debts were entitled to priority under §507(a)(7)(A)(i). The case was dismissed in late 1984, some 2 years and 9 months later. In October, 1984, after the 1979 and 1980 tax returns had been due for more than 3 years, the debtors filed a chapter 7 petition and contended that the 1979 and 1980 tax debts were dischargeable. The IRS contended that the debts were non-dischargeable under §523(a)(1).

In Brickley, the BAP held that "the time the government is stayed [by §362] should be disregarded" in calculating the 3 year period described in §507(a)(7)(A)(i). Id. at 113. The BAP held that if the tax debts were dischargeable, §108(c) and 26 USC §6503(b) would be rendered meaningless since extending the collection period while discharging the liability is pointless. According to the BAP, such a ruling would not give the IRS the time to collect tax debts that was intended to be given to it by Congress when it enacted §507(a)(7)(A)(i) and would allow debtors to unfairly manipulate the Code. Thus, the BAP ruled that §523(a)(1), which incorporates §507(a)(7)(A)(i), rendered the debts non-dischargeable. (It is not clear whether the BAP ruled that the 3-year priority period described in §507(a)(7)(A)(i) is extended by: 1) the time the stay is in effect plus 6 months; 2) the time the stay is in effect plus 6 months plus the 30 days provided in 11 USC §108(c); or 3) the time the stay is in effect.)

The District Court did not comment on why the plain language of the §108(c) did not control or on the strength of the analysis in Brickley. Without distinguishing between the issue in Brickley [dischargeability of the debt] and the issue in the case at bar [status of the claim], and with no independent analysis of the legal issues presented, the District Court ruled that "section 6503(b) ... gives the IRS an additional six-month period to collect its debt without discharge in bankruptcy." Id. slip op. at 12. The court may have

intended to say that "sections 6503(b) and 108(c) extend the 240 day period for determining priority described in 11 USC §507(a)(7)(A)(ii) by at least 6 months." The District Court reversed the trial court and remanded the matter for further proceedings.

Opinion number:

FILED  
U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
FILED

FEB 19 1992

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In re: )

BEVERLY DELL WEST, )  
Debtor. )

Bankruptcy No.  
390-33989-H13

UNITED STATES OF AMERICA, )  
Appellant, )

O P I N I O N

v. )

Civil No. 92-60-FR

BEVERLY DELL WEST, fka )  
Beverly D. Worthen, )  
Appellee. )

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- and -

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ifc

1 Stephen G. Fuerth  
2 Barbara A. Johnson  
3 U.S. Department of Justice  
4 Tax Division  
5 P. O. Box 683  
6 Ben Franklin Station  
7 Washington, D.C. 20044

8 Attorneys for United States of America

9 FRYE, Judge:

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

15 **UNDISPUTED FACTS**

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

21 On January 19, 1989, Robert Wesley Worthen and Beverly  
22 Dell Worthen jointly filed a Chapter 13 petition in bank-  
23 ruptcy. Because the tax assessments were made within 240  
24 days of the time the petition in bankruptcy was filed, the  
25 tax claims for the years 1982, 1983 and 1984 were entitled  
26 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

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

4 On July 27, 1990, the Worthens each filed an individual  
5 Chapter 13 petition in bankruptcy after they were divorced.  
6 These appeals to this court ensued from those cases: Robert  
7 W. Worthen, Bankruptcy No. 390-33988-H13, and Beverly Dell  
8 West, Bankruptcy No. 390-33989-H13. These individual Chapter  
9 13 petitions were filed 58 days from the date of May 30,  
10 1990, the date the first and joint Chapter 13 petition of  
11 the Worthens was dismissed.

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

19 Worthen and West objected to the unpaid taxes being clas-  
20 sified as priority claims. The Chapter 13 plan submitted to  
21 the bankruptcy court by Worthen provided that the sum of \$70  
22 per month would be paid toward the secured claims of the IRS  
23 designated in the amount of \$1,500. The Chapter 13 plan  
24 submitted to the bankruptcy court by West provided that the  
25 sum of \$20 per month would be paid toward the secured claim  
26 of the IRS designated in the amount of \$1,500.

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

12           Worthen and West argued to the bankruptcy court that  
13 the dismissal of the jointly filed petition in bankruptcy on  
14 May 30, 1990 and the filing of the individual petitions in  
15 bankruptcy on July 27, 1990 reduced the tax claims of the  
16 United States from priority status to general status because  
17 the individual petitions were filed 774 days after June 13,  
18 1988, which was the date of the tax assessment.

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

24 In re Worthen Excerpt of Record L.

25           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-

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

6        Section 6502(a) of the Internal Revenue Code applicable  
7        to this case provides: "Where the assessment of any tax  
8        imposed by this title has been made . . . such tax may be  
9        collected by levy or by a proceeding in court, but only if  
10       the levy is made or the proceeding begun -- (1) within 6 years  
11       after the assessment of the tax." 26 U.S.C. § 6502(a)(1).  
12       Section 6503(b) states: "The period of limitations on col-  
13       lection after assessment prescribed in section 6502 shall be  
14       suspended for the period the assets of the taxpayer are in the  
15       control or custody of the court in any proceeding before any  
16       court of the United States . . . and for 6 months thereafter."  
17       26 U.S.C. § 6503(b). Under these sections, the six-year sta-  
18       tute of limitations in section 6502 for the collection of  
19       taxes is suspended for any period the taxpayer's assets are  
20       in the control of the courts and for six months thereafter.  
21       In re Brickley at 115.

22       The issue before this court is whether section 108(c) of  
23       the Bankruptcy Code, in conjunction with section 6503(b) of  
24       the Internal Revenue Code, tolls the time period for tax col-  
25       lection so as to bring the taxes in question within the excep-  
26       tion 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

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

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

10 Worthen and West argue that the express language of sec-  
11 tion 6503(b) of the Internal Revenue Code limits the applica-  
12 tion of the statute to the period of limitations on collection  
13 after assessment which is prescribed in section 6502(a).

14 The United States argues in reply that the purpose of  
15 section 6503(b) is to suspend the running of the statute of  
16 limitations on the right of the IRS to collect a nondischarge-  
17 able federal tax liability from a debtor for a period of six  
18 months following the end of the period during which the assets  
19 of the debtor are in the control or the custody of the bank-  
20 ruptcy court. In other words, the United States argues that  
21 the federal tax claim listed in the first joint bankruptcy  
22 petition filed by Worthen and West retained nondischargeable  
23 status for an additional six months following the termination  
24 of that joint bankruptcy petition on May 30, 1990, and that  
25 the filing of the individual bankruptcy petitions on July 27,  
26 1990 cannot defeat the priority position of the tax claims

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

#### 8 ANALYSIS

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

19 However, the United States argues that section 108(c)  
20 of the Bankruptcy Code and section 6503(b) of the Internal  
21 Revenue Code operate to extend the priority status provided  
22 for under section 507(a)(7)(A)(ii) for six months after the  
23 joint petition was dismissed. Worthen and West contend that  
24 section 108(c) does not authorize the application of section  
25 6503(b) to the priority status provided for under section  
26 507(a)(7)(A)(ii).

1           Section 108(c) extends the statute of limitations in  
2 an action against a debtor by a creditor where "applicable  
3 nonbankruptcy law" provides for such an extension. Section  
4 6503(b) of the Internal Revenue Code states that "[t]he period  
5 of limitations on collection after assessment prescribed in  
6 section 6502 shall be suspended" during a bankruptcy proceed-  
7 ing "and for 6 months thereafter." The issue in this case,  
8 however, does not involve the period of limitations on collec-  
9 tion prescribed in section 6502(a) but involves the priority  
10 status of claimants to the assets of the petitioners in bank-  
11 ruptcy under section 507(a)(7)(A)(ii) of the Bankruptcy Code.

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

17           In In re Brickley, 70 B.R. 113 (9th Cir. BAP 1986), the  
18 debtors filed a Chapter 13 proceeding, dismissed the Chapter  
19 13 proceeding, and filed a Chapter 7 proceeding. The issue  
20 before the court was whether the time the government's col-  
21 lection efforts were stayed by reason of the pending Chapter  
22 13 case should be taken into account in calculating the reach-  
23 back time of another priority section contained in 11 U.S.C.  
24 § 523(a)(1)(A), which provided that an income tax obligation  
25 of the debtor is not dischargeable if the last date on which  
26 a tax return could have been filed falls within three years

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

5 [I]t is clear that Congress, by enacting Section  
6 108(c), intended to activate Section 6503(b) and  
7 thereby suspend the running of the statute of  
8 limitations for tax collection during a taxpayer's  
9 bankruptcy proceedings. Since Congress did not  
10 intend to allow a taxpayer to escape liability by  
11 the expiration of the statute of limitations while  
12 his assets are protected by bankruptcy proceedings,  
13 we hold that the tax debts in question are not sub-  
14 ject to the discharge granted in this case.

15 The Debtors' argument that the IRS failed to  
16 collect its taxes within the three-year period of  
17 nondischargeability ignores the fact that their  
18 property was unreachable during most of that time.  
19 To follow the Debtors' argument would render the  
20 extension of the statute of limitations in Section  
21 108(c) without meaning, since tax collectability  
22 is obviously useless if the tax debt has been dis-  
23 charged. In addition, such a result would open  
24 the door to schemes of tax avoidance by debtors who  
25 could simply dismiss and refile their case after  
26 the expiration of the three-year period of nondis-  
chargeability. 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.

27 In the present case, the Debtors were in a  
28 Chapter 13 bankruptcy from 1981 until 1984 and  
29 thereby were protected by the automatic stay of  
30 Section 362. Section 6503(b) of title 26, applic-  
31 able to bankruptcy cases via 11 U.S.C. § 108(c),  
32 suspended the collections period set out in  
33 Sections 507 and 523 in order to give the IRS  
34 the full opportunity contemplated by Congress to  
35 collect the delinquent taxes from 1979 and 1980.

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

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

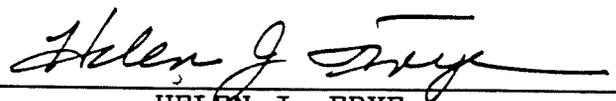
4 In re Brickley involves the determination of priority  
5 status under section 507, the same provision applicable to  
6 this case. The court in In re Brickley held that section  
7 6503(b) of title 26 was applicable through 11 U.S.C. § 108(c)  
8 to extend the priority status provisions of section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

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

19 **CONCLUSION**

20 The ruling of the bankruptcy court is reversed. This  
21 action is remanded to the bankruptcy court for further pro-  
22 ceedings in accordance with this opinion.

23 DATED this 19 day of February, 1992.

24 

25 HELEN J. FRYE  
26 United States District Judge