No. _____

IN THE
Supreme Court of the United States

DONALD WAYNE BUSH and
KIMBERLY ANN BUSH,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160-61 (2010), the Court defined jurisdiction as "a court's adjudicatory authority" over classes of cases and persons. Bankruptcy Code §505(a)(1) precisely fits this definition, conferring authority on the bankruptcy courts to "determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax. . . . " 11 U.S.C. §505(a)(1). Pet. App. 70a.

Consistent with *Muchnick*, eight circuits have recognized that §505(a)(1) sets out a grant of jurisdiction. The Seventh Circuit, however, held that §505(a)(1) does not itself establish bankruptcy jurisdiction, but instead merely "sets out a task for bankruptcy judges" to perform. Pet. App. 18a. It further concluded, contrary to five other circuits, that bankruptcy courts also lack "related to" jurisdiction under 28 U.S.C. §1334(b) to determine the amount of a debtor's nondischargeable debt despite the impact that debt has on the scope of a debtor's discharge. Pet. App. 22a.

The questions presented are:

1. Whether 11 U.S.C. §505(a)(1) confers jurisdiction on the bankruptcy court to adjudicate the amount and legality of a debtor's tax liabilities.

2. Whether the bankruptcy court has jurisdiction under 28 U.S.C. §1334(b) to determine the amount of a debtor's non-dischargeable debt.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners Donald Wayne and Kimberly Ann Bush were movants in the bankruptcy court, the appellees in the district court, and the appellants in the court of appeals.

Respondent the United States of America was the respondent in the bankruptcy court, the appellant in the district court, and the appellee in the court of appeals.

RELATED PROCEEDINGS

United States Bankruptcy Court for the Southern District of Indiana:

> *In re Bush*, No. 14-09053-JMC (July 7, 2015 and Aug. 14, 2015)

United States District Court for the Southern District of Indiana:

> *In re Bush*, No. 1:15-cv-01318-RLY-CSW (Aug. 12, 2016 and Oct. 7, 2024)

United States Court of Appeals for the Seventh Circuit:

> *Bush v. United States of America*, No. 16-3244 (Sept. 20, 2019 and Apr. 29, 2024)
>
> *Bush v. United States of America*, No. 24-2996 (Apr. 29, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Donald Wayne and Kimberly Ann Bush (the "Bushes" or "Debtors") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

INTRODUCTION

This case presents an important question about bankruptcy jurisdiction that is now dividing the circuits: does a bankruptcy court have jurisdiction to determine the legality and amount of a taxing body's claim against a debtor when that determination will impact the extent of a debtor's discharge but not distributions to the debtor's other creditors from the bankruptcy estate? The Seventh Circuit said no (Pet. App. 17a-19a); eight other circuits have said yes: *United States v. Bond*, 762 F.3d 255, 260 (2d Cir. 2014); *Bunyan v. United States (In re Bunyan)*, 354 F.3d 1149, 1151 (9th Cir. 2004); *IRS v. Luongo (In re Luongo)*, 259 F.3d 323, 328 (5th Cir. 2001); *City of Perth Amboy v. Custom Distrib. Servs., Inc. (In re Custom Distrib. Servs. Inc.)*, 224 F.3d 235, 239-40 (3d Cir. 2000); *United States v. Kearns*, 177 F.3d 706, 709-10, 709 n.7 (8th Cir. 1999); *United States v. Wilson*, 974 F.2d 514, 516-17 (4th Cir. 1992); *Mich. Emp. Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1138 (6th Cir. 1991); *City Vending of Muskogee, Inc. v. Okla. Tax Comm'n*, 898 F.2d 122, 124-25 (10th Cir. 1990).

The majority of circuits find jurisdiction over such tax disputes by relying on the text of §505(a)(1) of the

Bankruptcy Code, which plainly states, with exceptions not applicable here, that a bankruptcy court "may determine the amount or legality of any tax. . . ." 11 U.S.C. §505(a)(1). Pet. App. 70a. Because §505(a)(1) speaks to the authority of the court to decide a class of cases and because this authority continues an explicit grant of jurisdiction under the former Bankruptcy Act (11 U.S.C. §11 2a(2A) (Pet. App. 73a)), the majority of circuits have held that §505(a)(1) confers independent jurisdiction on the bankruptcy courts to decide tax disputes involving the debtor. *See, e.g.*, *Quattrone Accts., Inc. v. IRS*, 895 F.2d 921, 925 (3d Cir. 1990).

The Seventh Circuit, standing alone, disregarded §505(a)(1)'s text and ignored its historical antecedents. Pet. App. 17a-19a. Likening §505(a)(1) to a non-jurisdictional claims-processing rule, the Seventh Circuit concluded that §505(a)(1) does not itself grant jurisdiction. *Id.* In so holding, the Seventh Circuit misapprehended the distinction this Court has drawn between jurisdictional grants, like the plain text of §505(a)(1) which address a court's authority, and claims processing rules, which impose obligations that parties must meet to invoke federal court jurisdiction. *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160-61 (2010). Because §505(a)(1) makes no mention of the parties' "obligations" and addresses only the "power of the court" to decide tax claims, it is a grant of jurisdiction to bankruptcy courts to decide tax disputes, like the one at issue in this case. 559 U.S. at 160-61 (citation omitted).

Compounding its error, the Seventh Circuit further held that bankruptcy courts lack jurisdiction under 28 U.S.C. §1334(b), the Judicial Code's general grant of bankruptcy jurisdiction, to decide the amount of a nondischargeable claim unless the dispute impacts creditors. Pet. App. 22a-27a. The Seventh Circuit held that this ground of jurisdiction only applies to disputes that might affect what creditors receive from the bankruptcy estate, and so, because the outcome of the Bushes' tax dispute would impact only their discharge, the dispute was not "related to" the bankruptcy case. *Id.* The Seventh Circuit offered no analysis for its conclusion that the extent of a debtor's discharge—the very reason an individual files for bankruptcy—is not "related to" the bankruptcy case.

The Seventh Circuit's ruling limiting the reach of "related to" jurisdiction conflicts with the decisions of five other circuits, all of which hold that determining the amount of a nondischargeable debt is within the bankruptcy court's "related to" jurisdiction because such determinations are central to the adjustment of the debtor-creditor relationship: *Islamov v. Ungar (In re Ungar)*, 633 F.3d 675, 679-80 (8th Cir. 2011); *Johnson v. Riebesell (In re Riebesell)*, 586 F.3d 782, 793-94 (10th Cir. 2009); *Morrison v. W. Builders of Amarillo, Inc. (In re Morrison)*, 555 F.3d 473, 479-80 (5th Cir. 2009); *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 868-70 (9th Cir. 2005); *Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 966 (6th Cir. 1993).

If left unresolved, this circuit split will result in confusion, inefficiencies, and the non-uniform treatment of

debtors under federal bankruptcy law. In addition, by restricting the bankruptcy courts' authority to decide tax disputes to only those bankruptcy cases where resolving the dispute impacts other creditors' distributions, the Seventh Circuit has effectively eliminated §505(a)(1) from the Code in all but a minority of bankruptcy cases. That is because the majority of bankruptcy cases filed each year are filed under chapter 7 of the Bankruptcy Code and in over 90% of those cases, there are no assets to distribute to creditors, which necessarily means a dispute over a nondischargeable tax liability in those cases can only affect the debtor and the taxing authority, and not other creditors.[1] Had Congress intended to make tax disputes off limits in the majority of bankruptcy cases, one would have expected §505(a)(1) to contain that limitation expressly instead of its current "broad grant of jurisdiction." *Luongo*, 259 F.3d at 328.

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[1] Of the 504,112 bankruptcy cases filed in 2024, approximately 59% were chapter 7 cases and of those cases over 90% were no asset cases. *See U.S. Bankruptcy Courts — Judicial Business 2024*, U.S. Court, https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/us-bankruptcy-courts-judicial-business-2024 (last visited July 24, 2025); *Chapter 7 - Bankruptcy Basics*, U.S. Courts, https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics (last visited July 24, 2025); Ed Flynn, Gordon Bermant, & Suzanne Hazard, *Bankruptcy by the Numbers: Chapter 7 Asset Cases*, U.S. Dep't of Justice, Exec. Office for U.S. Trustees (Dec. 2002), https://www.justice.gov/archive/ust/articles/docs/abi122002.pdf (96% of chapter 7 cases are "no asset" cases).

This petition therefore asks the Court to resolve the split in the circuits over the bankruptcy courts' jurisdiction to determine the amount of a nondischargeable tax claim.

OPINIONS BELOW

The final decision of the court of appeals (Pet. App. 1a-3a) is unreported but is available at 2025 WL 1232494. The final decision of the district court (Pet. App. 4a-14a) is unreported but is available at 2024 WL 4721688. The amended interlocutory opinion of the court of appeals (Pet. App. 15a-27a) is reported at 100 F.4th 807 (7th Cir. 2024). The original interlocutory opinion of the court of appeals (Pet. App. 28a-40a) is reported at 939 F.3d 839 (7th Cir. 2019). The initial opinion of the district court (Pet. App. 41a-50a) is unreported but is available at 2016 WL 4261867. The oral decision of the bankruptcy court (Pet. App. 54a-62a) is unreported but its judgment order (Pet. App. 51a-53a) is available at 2015 WL 12516006 and its ruling on the Government's motion to reconsider (Pet. App. 63a-69a) is unreported but is available at 2015 WL 12516007.

JURISDICTION

The court of appeals entered its judgment on April 29, 2025. *See* Pet. App. 1a-3a. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

11 U.S.C. §505, 28 U.S.C. §1334, and former 11 U.S.C. §11 (§2a(2A)) (1970) are reproduced in

pertinent part in the appendix to this petition. Pet. App. 70a-73a.

STATEMENT

A. Legal Background

1. "Critical features of every bankruptcy proceeding are the exercise of exclusive jurisdiction over all of the debtor's property, the equitable distribution of that property among the debtor's creditors, and the ultimate discharge that gives the debtor a 'fresh start' by releasing him, her, or it from further liability for old debts." *Cent. Va. Cmty. College v. Katz*, 546 U.S. 356, 363-64 (2006) (citation omitted). Central to ensuring the debtor's fresh start and the equitable distribution of a debtor's property is the claims allowance process. *See Katchen v. Landy*, 382 U.S. 323, 328-30 (1966).

In particular, the allowance of tax claims can have a significant impact on both the debtor and other creditors. That is because certain tax claims and associated penalties may not be discharged, diminishing the fresh start the debtor will receive when the estate is not sufficient to pay those claims in full. *See* 11 U.S.C. §523(a)(1), (7). And many tax claims are entitled to priority in payment and so their allowance may impact what other creditors will receive in those cases where distributions are made to creditors. *See* 11 U.S.C. §507(a)(8).

2. Consistent with these concerns, Congress supplied the bankruptcy courts with two independent jurisdictional bases for deciding the legality and amount

of a debtor's nondischargeable tax claims. As part of the establishment of general bankruptcy jurisdiction, "district courts [and bankruptcy courts by referral] have original jurisdiction over bankruptcy cases and related proceedings." *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 670 (2015) (citing 28 U.S.C. §1334(a),(b)). Related proceedings include those that "aris[e] under" the Bankruptcy Code or "aris[e] in" or are "related to" a bankruptcy case. 28 U.S.C. §1334(b). Pet. App. 71a-72a.

"[A]rising under" disputes present substantive questions of bankruptcy law and "arising in" disputes concern disputes that arise uniquely in a bankruptcy case. *Mesabi Metallics Co., LLC v. B. Riley FBR, Inc. (In re Essar Steel Minn., LLC)*, 47 F.4th 193, 197 (3d Cir. 2022) (citation omitted). This Court has recognized that the third category of general bankruptcy jurisdiction, "related to" jurisdiction, is broad in scope, and has cited with approval the Third Circuit's articulation of "related to" jurisdiction. *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 & n.6 (1995). The Third Circuit explained that a dispute is "related to" a bankruptcy case if it "could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively). . . ." *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984).

In addition to the general grant of jurisdiction found in §1334(b), §505(a)(1) independently empowers bankruptcy courts to determine the amount and legality of certain tax claims against debtors, just as the bankruptcy court may do for other types of claims. Section 505(a)(1) states:

> Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

11 U.S.C. §505(a)(1). Pet. App. 70a. The limit on the jurisdictional grant found in §505(a)(2) only excludes certain tax refund matters and tax disputes decided by another court before the bankruptcy filing. Pet. App. 70a-71a.

To ensure that bankruptcy courts can fully exercise the jurisdiction that §505(a)(1) provides, Congress also waived sovereign immunity with respect to actions brought under §505 for all governmental units and further authorized bankruptcy courts to "hear and determine any issue arising with respect to the application of [§505] to governmental units." 11 U.S.C. §106(a)(1), (2).

B. Procedural History

1. In 2013, the Internal Revenue Service issued a notice of deficiency to the Bushes, asserting a claim for over $107,000 in income taxes and over $78,000 in fraud penalties for the 2009, 2010, and 2011 tax years. Pet. App. 16a-17a. The Bushes initially challenged this notice by filing a tax court petition, but in September,

2014, before any hearing was held in the tax court, the Bushes filed the pending bankruptcy case. *Id.*

At the time of their bankruptcy filing, the Bushes lived in rural Indiana on a farm with their three minor children. Pet. App. 5a; Bankr. Doc. 21 at 21.[2] Mr. Bush operated a sole proprietorship, D&K Farms. Bankr. Doc. 21 at 19. Ms. Bush did office work for a mortgage firm. *Id.* While it was in effect, the automatic stay prevented further proceedings in the tax court. Once the bankruptcy stay ended, due to the Bushes receiving their discharge, the tax court continued to stay the Bushes' case pending the outcome of the appeals from the bankruptcy court's order. Pet. App. 43a.

2. Following the bankruptcy filing, the IRS filed a proof of claim in the Bushes' bankruptcy case for the taxes and penalties. Pet. App. 6a. The Bushes contested the IRS's tax notice and proof of claim on several fronts. Pertinent to this petition, the Bushes filed a motion to establish the amount of their tax penalties, denying that they had filed their tax returns fraudulently and relying on §505(a)(1) as establishing jurisdiction for the motion (the "tax penalty motion"). Pet. App. 43a, 44a-47a. The difference between a fraud tax penalty at 75% of the taxes owed and a negligence tax penalty at 20% of the taxes owed is significant. *See* 26 U.S.C. §6662(a)-(b)(1); Pet. App. 5a.

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[2] Citations to materials found in the Debtors' bankruptcy case, *In re Bush*, Case No. 14-09053 (Bankr. S.D. Ind.), are to "Bankr. Doc.__."

The Government moved to dismiss the tax penalty motion. Pet. App. 7a. It argued that §505(a)(1) was not a jurisdictional statute and that the bankruptcy court lacked jurisdiction under §1334(b) to determine the tax penalties because the amount of the Bushes' tax penalties (which would be subordinated to other creditor claims, *see* 11 U.S.C. §726(a)(4)) would not impact what other creditors would receive from the estate. Pet. App. 66a. Alternatively, it asked the bankruptcy court to abstain in favor of the tax court deciding the dispute. Pet. App. 7a.

The bankruptcy court overruled the Government's objection and its later motion to reconsider and set the tax penalty motion for trial in December 2015. *See* Pet. App. 52a-53a. The bankruptcy court held that the "Debtors' interest in determining the amount of their obligation to the IRS that may remain after their discharge . . . is part and parcel of Debtors' quest for a bankruptcy 'fresh start' and therefore a sufficient reason to support the Court's Bankruptcy Code § 505(a)(1) jurisdiction." Pet. App. 66a. As the bankruptcy court explained, limiting jurisdiction to only those instances in which the tax claim might impact the payments other creditors receive from the bankruptcy estate would "except a large segment of the debtor population" from relief under §505(a)(1) because most chapter 7 cases result in no distribution to creditors. Pet. App. 67a (quoting *D'Alessio v. IRS (In re D'Alessio)*, 181 B.R. 756, 761 (Bankr. S.D.N.Y. 1995)). Because Congress did not "limit[] the Court's § 505 jurisdiction to only those cases where sufficient assets exist to pay

more than IRS and other priority claims," the bankruptcy court would not do so either. *Id.* Following this ruling, the Government then moved for, and was granted, leave to proceed with an interlocutory appeal, staying the trial in the bankruptcy court. Pet. App. 8a.

Meanwhile, the Bushes also objected to the IRS's proof of claim and settled the amount of the base tax liability. Pet. App. 42a. In June 2015, with the tax penalty motion pending, the Bushes also filed an adversary proceeding, contending that—regardless of the amount—the Government's tax penalty claims were made too late to support an exception from the Bushes' discharge. Pet. App. 7a n.2. The bankruptcy court ruled that the 2009 and 2010 penalties were dischargeable but that the 2011 penalty was not, leaving the amount of the 2011 penalty to be determined when the court ruled on the tax penalty motion. *Id.*

3. The appeals in this case have given rise to five different decisions. In 2016, the district court reversed, holding the bankruptcy court lacked jurisdiction to decide the tax penalty dispute. Pet. App. 41a-50a. The Bushes appealed. In its initial decision, issued in 2019, the Seventh Circuit rejected §505(a)(1) as a basis for bankruptcy jurisdiction and instead concluded that the bankruptcy court had "related to" jurisdiction under 28 U.S.C. §1334(b) to decide the tax dispute. Pet. App. 28a-40a. Although the Seventh Circuit rejected the argument that the dispute was "related to" the bankruptcy case because it impacted the extent of the Bushes' discharge (Pet. App. 35a), it held that at the time the Bushes filed the tax penalty motion, a decision

could have "affected the allocation of assets among the creditors with outstanding claims" and on that basis the dispute was "related to" the bankruptcy. Pet. App. 37a. Despite finding jurisdiction, the Seventh Circuit ordered that on remand the bankruptcy court must abstain from hearing the dispute. *See* Pet. App. 40a.

The Bushes and the Government petitioned for rehearing, which the Seventh Circuit granted in 2024. Pet. App. 15a-27a. In its revised decision, the Seventh Circuit repeated its initial rejection of §505(a)(1) as an independent jurisdictional grant. Pet. App. 17a-19a. Although it acknowledged that "other circuits writing about §505 have used a 'jurisdictional' characterization," it concluded that §505 has nothing to do with jurisdiction because it "d[id] not use" the word jurisdiction and was not found in Title 28. Pet. App. 18a-19a. It further reasoned that §105(c) (11 U.S.C. §105(c)) which references Title 28 as the source of the authority for a court to exercise the powers set forth in the Bankruptcy Code "means that bankruptcy jurisdiction depends on Title 28." Pet. App. 19a.

The Seventh Circuit also reaffirmed its ruling that a bankruptcy court does not have "related to" jurisdiction to determine the amount of a nondischargeable debt unless that ruling will also impact the distribution from the estate to creditors. Pet. App. 21a-26a. But in its revised decision, the Seventh Circuit concluded that the district court should in the first instance determine whether the tax penalty motion "could have affected the allocation of assets among the creditors with outstanding claims." Pet. App. 26a. It also vacated its

decision directing abstention, accepting the Bushes' argument that it lacked jurisdiction to review the bankruptcy court's abstention decision. Pet. App. 27a.

On remand, the district court found, notwithstanding the Bushes' contrary evidence, that there was "no scenario under which the funds from the Debtors' bankruptcy estate could be used to satisfy the Debtors' tax penalties" and therefore the bankruptcy court lacked jurisdiction to decide the tax penalty motion. Pet. App. 13a-14a. The Seventh Circuit affirmed. Pet. App. 3a.

REASONS FOR GRANTING THE PETITION

The case for certiorari is straightforward. There is a clear and acknowledged split among the courts of appeals on two important and recurring questions about the power of bankruptcy courts to decide the amount and legality of non-dischargeable tax claims. This case, which squarely presents both issues, is a strong vehicle for resolving those questions. The petition should be granted.

I. THERE IS A CLEAR, ACKNOWLEDGED SPLIT ON BOTH QUESTIONS.

A. The Seventh Circuit's Decision Is Contrary to Eight Other Circuit Holdings that §505(a)(1) Confers Jurisdiction upon the Bankruptcy Courts Independent of Jurisdiction under Section 1334(b).

The Seventh Circuit's decision creates a circuit split on the question of whether §505(a)(1) confers

jurisdiction on bankruptcy courts to determine the amount and legality of tax claims independent of jurisdiction under §1334(b). Eight circuits—the Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, and Tenth—have held, contrary to the Seventh Circuit, that §505(a)(1) is an independent grant of jurisdiction: *Bond*, 762 F.3d at 260; *Bunyan*, 354 F.3d at 1151; *Luongo*, 259 F.3d at 328; *Custom Distrib. Servs.*, 224 F.3d at 239-40; *Kearns*, 177 F.3d at 709-10, 709 n.7; *Wilson*, 974 F.2d at 516-17; *Wolverine Radio*, 930 F.2d at 1138; *City Vending*, 898 F.2d at 124-25.

These eight circuits rest their conclusion that §505(a)(1) is a jurisdictional grant upon the text of the statute, its historical antecedents under the former Bankruptcy Act, and its legislative history. In *Luongo*, for example, the Fifth Circuit rejected the argument the Government made in this case below—that §505(a)(1)'s text "precludes a bankruptcy court from deciding the personal tax liability of the debtor." 259 F.3d at 328. Pointing to the language of the statute, the Fifth Circuit held that the Government's "reading of this subsection is contrary to the broad grant of jurisdiction in § 505(a)(1). . . ." *Id.* Similarly, the Second Circuit concluded that the text of "[§]505(a) is a grant of jurisdiction to the bankruptcy court over certain tax claims, not a grant of powers to trustees." *Bond*, 762 F.3d at 262. The Third Circuit also has "consistently interpreted § 505(a) as a jurisdictional statute" based upon "how the language and purpose of [§]505 has evolved. . . ." *Custom Distrib. Servs.*, 224 F.3d at 239-40 (quoting *Quattrone Accts.*, 895 F.2d at 923).

In addition to relying upon its text, the circuits holding that §505(a)(1) independently confers jurisdiction to decide tax claims also reach this conclusion by examining §505(a)(1)'s historical antecedents and its legislative history. As the Third Circuit explained in an early ruling on this question, "[w]hen the Bankruptcy Act of 1978 was promulgated, [§]505 replaced [§]2(a)(2A)" of the former Bankruptcy Act. *Quattrone Accts.*, 895 F.2d at 925. Congress intended that §505(a)(1), which was "derived from [§]2(a)(2A) of the former Bankruptcy Act" with only stylistic changes, would continue "to *clarify* the bankruptcy court's jurisdiction over tax claims. . . ." *Id.* at 924-25; *see* S. Rep. No. 95-989, at 67 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5853; *accord City Vending*, 898 F.2d at 123-24, 124 n.1 (relying on precedent decided under §2a(2A) to hold §505(a)(1) "gives federal courts the authority to determine, in bankruptcy proceedings, the amount and legality of any tax").

In reaching the opposite conclusion, the Seventh Circuit acknowledged that its ruling was inconsistent with precedent from other circuits. Pet. App. 18a. But it dismissed this long-standing precedent as merely a "'jurisdictional' characterization," stating it did "not see what §505 has to do with jurisdiction, a word it does not use." *Id.* It concluded that rather than conferring independent jurisdiction to determine tax claims, all that §505(a)(1) does is proscribe a "task[] for the bankruptcy judges" to perform. *Id.*

The Court should grant a writ of certiorari to correct the Seventh Circuit's outlier decision.

B. The Seventh Circuit's Decision Is Contrary to Five Other Circuits Holding that Bankruptcy Courts Have Jurisdiction under 28 U.S.C. §1334(b) to Determine the Amount of a Nondischargeable Debt.

Compounding its error on the §505(a)(1) jurisdictional question, the Seventh Circuit further concluded that the bankruptcy court lacked any other jurisdictional basis to determine the amount of the Bushes' nondischargeable tax debt. Pet. App. 1a-3a. According to the Seventh Circuit, bankruptcy courts do not have "related to" jurisdiction to determine the amount of a non-dischargeable debt unless that determination will also impact the distribution other creditors will receive from the bankruptcy estate. Pet. App. 22a-27a.

In so holding, the Seventh Circuit created a conflict with the decisions of the Fifth, Sixth, Eighth, Ninth, and Tenth Circuits—all holding that §1334(b) grants bankruptcy courts jurisdiction to determine not only whether a debt is dischargeable but also "related to" jurisdiction to determine the amount of any nondischargeable debt: *Ungar*, 633 F.3d at 679-80; *Riebesell*, 586 F.3d at 793-94; *Morrison*, 555 F.3d at 478-80; *Sasson*, 424 F.3d at 867-70; *McLaren*, 3 F.3d at 966.

These decisions are based on the text and the historical antecedents of bankruptcy jurisdiction. First, the grant of "related to" jurisdiction under §1334(b) is "very broad, 'including nearly every matter directly or indirectly related to the bankruptcy.'" *Sasson*, 424 F.3d at 868-69 (citation omitted). That breadth is

sufficient to encompass not only determining whether a debt is dischargeable but also the amount of any debt that may not be discharged. *Id.*

Second, because bankruptcy courts are courts of equity and "a party properly before a court of equity subjects himself 'to all the consequences that attach to an appearance,'" there is jurisdiction to determine the amount of a nondischargeable debt. *McLaren*, 3 F.3d at 966 (quoting *Alexander v. Hillman*, 296 U.S. 222, 242 (1935)). As the Ninth Circuit explained, by filing a claim, a "'creditor triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power.'" *Sasson*, 424 F.3d at 869 (quoting *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990)); *accord Riebesell*, 586 F.3d at 793. Here the Government filed a proof of claim for the tax penalties against the Bushes bankruptcy estate subjecting itself to the claims allowance process. Pet. App. 6a.

Finally, under the Bankruptcy Act, bankruptcy courts were expressly directed to determine the amount and enter judgment on any debt found to be nondischargeable and Congress did not intend to remove this jurisdiction when it enacted the modern Bankruptcy Code. *Sasson*, 424 F.3d at 867-68, 868 n.2 (citing H.R. Rep. No. 95-595, at 446, 49 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6401, 6010); *accord Morrison*, 555 F.3d at 479 ("'[t]raditionally,' under [§]17(c)(3) of the 1898 Bankruptcy Act, bankruptcy courts were empowered to enter such money judgments").

The Seventh Circuit did not address (or even acknowledge) these contrary decisions from the other circuits. Instead it dismissed out of hand the notion that determining the amount of a nondischargeable debt could be "related to" the bankruptcy case even though receiving a discharge is the primary reason debtors seek bankruptcy relief. Pet. App. 22a-23a.

The Court should grant a writ of certiorari to bring the Seventh Circuit into line with the other circuits on this important question.

II. THE COURT SHOULD RESOLVE THE CIRCUIT SPLITS.

The Court should resolve the circuit splits created by the Seventh Circuit's decision. It is clear these splits will not go away without this Court's intervention. Because the question of jurisdiction is yes or no, future decisions are unlikely to reconcile the views of the Seventh Circuit with those of other circuits on either ground of jurisdiction.

Additional percolation in the lower courts also is unnecessary on both questions. With respect to the first question presented: whether §505(a)(1) is a jurisdictional statute—nine of the thirteen circuits have addressed this issue. Some circuits, such as the Ninth and the Third, have reached the same conclusion about the jurisdictional nature of §505(a)(1) multiple times. *See Bunyan*, 354 F.3d at 1151; *Goldberg v. Ellett (In re Ellett)*, 254 F.3d 1135, 1148 (9th Cir. 2001); *Custom Distrib. Servs.*, 224 F.3d at 239-40; *Quattrone Accts.*, 895 F.2d at 924-25; *H&H Beverage Distributors v. Dep't of*

Revenue of Pa., 850 F.2d 165, 166-67 (3d Cir. 1988). Six circuits have addressed the second question presented: whether bankruptcy courts have jurisdiction to determine the amount of nondischargeable claims.

The Seventh Circuit's decision is an outlier on both questions and while future cases might deepen the split, there is no reason to think any such cases will further elucidate the questions presented. Denying review will simply prolong the uncertainty.

While the Seventh Circuit's ruling in this case remains in effect, it creates inefficient bankruptcy administration. Under that ruling, when the debtor or a governmental entity asks the bankruptcy court to determine whether a contested tax claim is dischargable, the bankruptcy court may only answer one-half of the question. If the court finds the tax debt nondischarageable, a different court will have to decide any contest over the amount of the debt. Having two courts address the same liability, particularly where the bankruptcy court has already addressed whether the debt is dischargeable, is both inefficient and unnecessarily costly. Indeed, the inefficiency of having two courts involved is one of the reasons some of the circuits give for concluding that there is "related to" jurisdiction to decide the amount of a nondischargeable debt. *See, e.g.*, *Riebesell*, 586 F.3d at 793 ("judicial economy and efficiency require that the bankruptcy court be empowered to settle both the dischargeability of the debt and the amount of the monetary judgment"); *Morrison*, 555 F.3d at 479 (noting "[t]here would be no judicial efficiency in requiring the beneficiary of a

nondischargeability judgment to pursue a separate lawsuit in state or federal court in order to secure a money judgment against the debtor").

In addition, addressing this circuit split is important to ensure that the bankruptcy laws are uniform across the United States as mandated by the Constitution's bankruptcy clause. U.S. Const. art. I, §8, cl.4.

The questions this petition presents are also important ones. As this Court explained long ago "[o]ne of the primary purposes of the Bankruptcy Act is to 'relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.'" *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) (citation omitted). Consistent with that purpose, the Court concluded in *Local Loan* that a debtor could seek relief in the bankruptcy court to determine the extent of a lien on his assets post-discharge. *Id.* at 244-45.

Following the Seventh Circuit's ruling in *Bush*, however, debtors who file in the Seventh Circuit will no longer be able to have the bankruptcy court decide the disputed amount of their tax obligations unless they can show that the determination matters to the distribution their creditors receive. Because, as explained above, most individual chapter 7 cases are "no asset" cases[3]—meaning that no funds will be distributed to creditors—debtors in those cases will be

[3] *See supra* note 1.

deprived of important relief and will continue to have "a sword of Damocles hanging over [their] heads" post-bankruptcy. *Bostwick v. United States*, 521 F.2d 741, 744, 746 (8th Cir. 1975) (holding that "Congress intended [in §2a(2A)] that the bankrupt have the opportunity for a full and final determination of the dischargeability of his tax debts" in bankruptcy courts to avoid this result). This is contrary to Congress's intent when it enacted §505(a)(1) to continue the pre-Code practice of placing jurisdiction over disputed tax claims in the bankruptcy courts. *Quattrone Accts.*, 895 F.2d at 924-25.

The Seventh Circuit's ruling also fails to consider that the discharge provided by bankruptcy is the reason individuals and corporations file for bankruptcy. To hold that actions to determine the extent of the discharge—particularly actions authorized by a particular Code section, §505(a)(1)—are not "related to" the bankruptcy case ignores the very purpose for bankruptcy filings, and cannot be a plausible construction of what is "related to" a bankruptcy case.

In short, the Seventh Circuit's crabbed view of the bankruptcy court's jurisdiction over tax disputes, contrary to the text of both §505(a)(1) and §1334(b) and the uniformly contrary decisions from other circuits, means that the treatment debtors receive in the Seventh Circuit will be materially different from that afforded debtors in other circuits. The Court should act to prevent this nonuniformity and bring the Seventh Circuit in line with the other circuits that have addressed the issues this petition presents.

Finally, this case is an appropriate vehicle to resolve the split. It presents a typical fact pattern: a debtor is faced with significant tax and other debt and files a bankruptcy petition seeking a fresh start and the attendant security that comes with finalizing his obligations to creditors. To achieve that goal, the debtor files a request to determine the amount and nature of his tax liability which is also the subject of an IRS claim against his estate. Whether the bankruptcy court has jurisdiction to decide the amount and nature of the tax claim is a question that will arise repeatedly in bankruptcy cases. And because the Seventh Circuit rejected jurisdiction based on both §505(a)(1) and §1334(b), this case squarely presents the questions presented. There is no reason to await a different certiorari candidate on an issue that this Court will inevitably decide.

III. THE SEVENTH CIRCUIT'S DECISION IS WRONG.

A. The Seventh Circuit Erred in Holding that §505(a)(1) Does Not Confer Jurisdiction on Bankruptcy Courts to Decide the Legality and Amount of Tax Claims.

1. Section 505(a)(1)'s text clearly provides that bankruptcy courts have authority to decide the legality and amount of tax claims.

The principal error in the Seventh Circuit's treatment of §505(a)(1)—and its deviation from all of the other circuits that have considered the statute—is its

failure to apply the correct understanding of jurisdiction.

This Court has given a clear definition:

> 'Jurisdiction' refers to 'a court's adjudicatory authority.' *Kontrick v. Ryan*, 540 U.S. 443, 455 [] (2004). Accordingly, the term "jurisdictional" properly applies only to 'prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction)' implicating that authority. *Ibid.*

Muchnick, 559 U.S. at 160-61. Stated differently, "jurisdictional statutes 'speak to the power of the court rather than to the rights or obligations of the parties.'" *Landgraf v. USI Film Prods.*, 511 U.S. 244, 274 (1994) (quoting *Republic Nat'l Bank of Miami v. United States*, 506 U.S. 80, 100 (1992) (Thomas, J., concurring)).

Section 505(a)(1) meets this definition precisely. It sets out a class of matters to be adjudicated—tax liabilities—and §505(c) limits the adjudication to debtors and their bankruptcy estates. Section 505(a)(1) is not a claims processing rule; it does not set out the pre-filing requirements and obligations of the parties to invoke a court's jurisdiction. Section 505(a)(1) speaks only to the authority of the bankruptcy court to decide a class of cases, making it a jurisdictional statute. Pet. App. 70a-71a.

By including §505(a)(1) in the Bankruptcy Code, Congress necessarily intended that there would be jurisdiction to decide the class of disputes it specifies. The Seventh Circuit's ruling that despite its text §505(a)(1) does not independently confer jurisdiction and that §1334(b) also does not confer jurisdiction effectively writes §505(a)(1) out of the Code for the majority of bankruptcy cases. This case illustrates the point. That is a strange result that one would have expected Congress to make clear if that had been Congress's intent.

The Seventh Circuit never grapples with either the text of §505(a)(1) or the ultimate result of its holding. Instead, to support its contrary conclusion that §505(a)(1) is a claims processing rule, the Seventh Circuit relied on three of this Court's decisions addressing claims processing rules: *Fort Bend County v. Davis*, 587 U.S. 541 (2019); *United States v. Wong*, 575 U.S. 402 (2015); and *Gonzalez v. Thaler*, 565 U.S. 134 (2012). *See* Pet. App. 18a-19a. But those decisions actually demonstrate that §505(a)(1) is a jurisdictional statute.

In all three cases, the Court distinguished between statutes that give the federal courts authority to decide classes of cases and statutes that set out procedural prerequisites for invoking that authority. In *Fort Bend County v. Davis*, the Court distinguished between 42 U.S.C. §2000e-5(f)(3), which states that "[e]ach United States district court . . . shall have jurisdiction of actions brought under this subchapter" and §2000e- 5(f)(1), which sets forth time requirements for certain actions before filing suit. 587 U.S. at 550-51.

The Court held that the former provision (§2000e-5(f)(3)) was jurisdictional while the latter (§2000e-5(f)(1)) was not. *Id.*

United States v. Wong distinguishes between the jurisdictional grant set forth in 28 U.S.C. §1346(b)(1), giving federal courts exclusive jurisdiction over certain tort claims, and 28 U.S.C. §2401(b), establishing a deadline for bringing tort actions, which it holds is not jurisdictional. 575 U.S. at 411-12. And *Gonzalez v. Thaler* compares 28 U.S.C. §2253(a), which establishes jurisdiction over certain habeas corpus proceedings, to 28 U.S.C. §2253(c)(3), which sets forth certain prerequisites for court access, and holds that the former is a grant of jurisdiction while the latter is not. 565 U.S. at 143-44. In short, the distinction this Court drew in these decisions is clear—a statute that speaks to the authority of a federal court to act, like §2000e-5(f)(3) of Title VII of the Civil Rights Act of 1964, is jurisdictional while a statute which speaks to the parties' obligations necessary to invoke that power, like §2000e-5(f)(1), is not.

Section 505(a)(1) of the Bankruptcy Code is functionally identical to the three provisions that the cited decisions treat as jurisdictional. Its text speaks only to the power of the court to decide a class of cases and says nothing about the procedural obligations of the parties to invoke that power. As this Court held in *Sebelius v. Auburn Regional Medical Center*, Congress does not need to "incant magic words" to label a statute as jurisdictional; instead, a court faced with this question should consider context and the historical

practice surrounding the statute, which as explained below, supports the conclusion that §505(a)(1) on its own confers jurisdiction on bankruptcy courts to decide tax disputes. 568 U.S. 145, 153-54 (2013).

2. Pre-Code practice and §505(a)(1)'s legislative history establish that §505(a)(1) is a jurisdictional statute.

That §505(a)(1) confers bankruptcy jurisdiction over tax disputes is confirmed by its history. In 1966, Congress added §2a(2A) to the Bankruptcy Act to clarify bankruptcy jurisdiction over tax disputes. *Quattrone Accts.*, 895 F.2d at 925. Underscoring that §2a(2A) established jurisdiction, Congress added it to the provision of the Bankruptcy Act entitled: "Creation of Courts of Bankruptcy and Their Jurisdiction." Pet. App. 73a. And uniformly courts treated §2a(2A) as a grant of jurisdiction: *Bostwick*, 521 F.2d at 746 ("Congress intended that the bankrupt have the opportunity for a full and final determination of the dischargeability of his tax debts in order that he might avoid having a sword of Damocles hanging over his head"); *In re Century Vault Co.*, 416 F.2d 1035, 1041 (3d Cir. 1969) (§2a(2A) "makes clear that the bankruptcy court has jurisdiction to hear and determine any question arising as to the amount of any unpaid tax"); *City of Amarillo v. Eakens*, 399 F.2d 541, 543-44 (5th Cir. 1968) ("the effect of [§2a(2A)] is . . . to confer jurisdiction upon the

courts of bankruptcy to hear and determine questions as to amount or legality of tax claims").

Section 2a(2A) of the Act was in turn the model for §505(a)(1) of the Code. "[T]he jurisdictional grant contained in [§]505(a) is derived, with only stylistic changes, from §2a(2A) of the former Bankruptcy Act." 11 *Collier on Bankruptcy* ¶TX5.04[2][a] (16th ed. 2025). The legislative history for §505(a)(1) also demonstrates that Congress intended §505(a)(1) to continue to supply bankruptcy courts with jurisdiction over tax claim disputes. *See* S. Rep. No. 95-989, at 67, 1978 U.S.C.C.A.N. at 5853.

Looking to historical practice under §2a(2A) to inform the reading of §505(a)(1) is consistent with this Court's precedent holding that it "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Cohen v. de la Cruz*, 523 U.S. 213, 221 (1998) (citation omitted); *see also, e.g.*, *Hall v. United States*, 566 U.S. 506, 518 (2012) (holding 2005 Bankruptcy Code amendment did not "disrupt settled Chapter 13 practices"); *Hamilton v. Lanning*, 560 U.S. 505, 515-17 (2010) (same) ("[p]re-[amendment] bankruptcy practice is telling"; "we would expect that, had Congress intended" a substantive change, "Congress would have said so expressly"); *Travelers Cas. & Sur. Co. of Am. v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 453-54 (2007) (holding Bankruptcy Code provision did not overturn pre-Code law).

The legislative history for §505(a)(1) demonstrates that Congress did not intend to overturn pre-Code practice. Two of the principal sponsors of the Bankruptcy Code were Senator Dennis DeConcini and Representative Don Edwards. *See* Kenneth N. Klee, *Legislative History of the New Bankruptcy Law*, 28 DePaul L. Rev. 941, 957-58 (1979). In *Begier v. IRS*, 496 U.S. 53, 64-65, 64 n.5 (1990), this Court stated that it has treated the floor statements of these sponsors "as persuasive evidence of congressional intent." In their floor statements, these Code sponsors made clear that §505(a)(1) was a grant of bankruptcy jurisdiction.

On September 28, 1978, Rep. Edwards introduced a House amendment that included the final text of §505(a). *See* 124 Cong. Rec. 32350, 32360 (1978). On October 5, 1978, Sen. DeConcini introduced a revised House amendment with the final text of the entire Bankruptcy Code. The remarks of both sponsors made identical points reflecting the meaning of §505(a), including its establishment of jurisdiction over questions of personal tax liability:

> The House amendment authorizes the bankruptcy court to rule on the merits of any tax claim involving an unpaid tax, fine, or penalty relating to a tax, or any addition to a tax, of the debtor or the estate.

124 Cong. Rec. 32413 (1978) (Rep. Edwards).

> An individual debtor or the tax authority can[] . . . file a request that the bankruptcy court determine the debtor's personal liability for the balance of any nondischargeable tax not satisfied from assets of the estate.

124 Cong. Rec. 34012-13 (Sen. DeConcini).

> [T]he bankruptcy judge will have authority to determine which court [bankruptcy court or tax court] will determine the merits of [a federal] tax claim both as to claims against the estate *and claims against the debtor concerning his personal liability for nondischargeable taxes*.

124 Cong. Rec. 32414 (1978) (emphasis added); 124 Cong. Rec. 34014 (1978) (Sen. DeConcini) (repeating the language of the report of the House Judiciary Committee, H.R. Rep. 95-595, 1978 U.S.C.C.A.N at 6562).

In its opinion interpreting §505(a)(1) as non-jurisdictional, the Seventh Circuit gave no consideration to the derivation of §505(a)(1), pre-Code practice, or §505(a)(1)'s legislative history, all of which confirm that the meaning of the text of §505(a)(1) is itself a grant of bankruptcy jurisdiction.

3. Section 105(c) of the Bankruptcy Code does not negate the bankruptcy jurisdiction set out in §505(a)(1).

Finally, the Seventh Circuit also incorrectly read 11 U.S.C. §105(c) as making Title 28 the exclusive source of bankruptcy jurisdiction, thereby eliminating the jurisdiction set out in §505(a)(1). Pet. App. 19a. Based on this misunderstanding, the Seventh Circuit gave no consideration to the actual language of §505(a)(1), and reviewed only the grounds of bankruptcy jurisdiction set out in 28 U.S.C. §1334(b).

This analysis, again, is wrong. Provisions on bankruptcy jurisdiction in the Judicial Code never limited the jurisdictional provisions of either the Bankruptcy Act or the Bankruptcy Code, and §105(c) does not negate the jurisdiction set out in the Bankruptcy Code.

When the predecessor to the Bankruptcy Code, the 1898 Bankruptcy Act, was enacted, there was already a provision in federal law providing that "[t]he district courts . . . shall have in their respective districts original jurisdiction in all matters and proceedings in bankruptcy." Rev. Stat. §563(18) (18 Stat. 94, 96). Later, while the Bankruptcy Act was in effect, two subsequent judiciary laws treating bankruptcy jurisdiction were enacted. The Judicial Code of 1911, ch. 231, 36 Stat. 1087, 1093, provided in §24(19) that the jurisdiction of the district courts included "all matters and proceedings in bankruptcy" and the Judicial Code of 1948 used similar language "The district courts shall have

original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy." Judicial Code and Judiciary, ch. 646, § 1334, 62 Stat. 869, 931 (1948).

With these general jurisdictional grants in place, detailed jurisdictional provisions were set out in §2 of the Bankruptcy Act. 11 U.S.C. §11. Pet. App. 73a. No conflict was ever recognized between the general jurisdictional provisions in the judicial legislation and the specific provisions in the Bankruptcy Act. So, for example, this Court found jurisdiction over a trustee's preference action in §2 of the Bankruptcy Act, *Katchen*, 382 U.S. 323 at 327 n.2, while a later district court decision cited former §1334 for the same purpose, *In re Anjopa Paper & Bd. Mfg. Co.*, 269 F. Supp. 241, 271 (S.D.N.Y. 1967).

As noted above, after Congress added a specific tax jurisdictional provision, §2a(2A), to the Bankruptcy Act, the new provision was fully accepted as an effective grant of specific jurisdiction, consistent with the general grant of bankruptcy jurisdiction in the Judicial Code. *Bostwick*, 521 F.2d at 744; *Century Vault*, 416 F.2d at 1041; *City of Amarillo*, 399 F.2d at 543-44.

Thus, contrary to the Seventh Circuit's decision, the specific provision in §505(a)(1) for bankruptcy jurisdiction over tax disputes does not conflict with the general grant of bankruptcy jurisdiction in the Judicial Code. And §105(c) (11 U.S.C. §105(c)), added to the Bankruptcy Code by the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("BAFJA"), did not

change the scope of §505(a)(1). Indeed, BAFJA as a whole made no change in the scope of any federal bankruptcy jurisdiction. *See Wood v. Wood (In re Wood)*, 825 F.2d 90, 93 (5th Cir. 1987); Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 Wm. & Mary L. Rev. 743, 790 (2000) ("[T]he 1984 BAFJA amendments[] . . . say nothing about . . . the scope of federal bankruptcy jurisdiction.") Rather, BAFJA added 28 U.S.C. §157(b) and (c) to the Judicial Code to limit the extent to which bankruptcy courts could exercise jurisdiction over matters that are not core to bankruptcy, allowing bankruptcy courts only to submit proposed findings of fact and conclusions of law subject to de novo district court review, instead of final judgments, in non-core matters. *See Roy v. Canadian Pac. Ry. Co. (In re Lac-Mégantic Train Derailment Litig.)*, 999 F.3d 72, 79 (1st Cir. 2021).

BAFJA included §105(c) to enforce this limitation on the power of bankruptcy judges. It states that "[t]he ability of any district judge or other officer . . . of a district court"—including bankruptcy judges—"to exercise any of the authority . . . conferred upon the court under this title"—including §505(a)(1)—"shall be determined by reference to the provisions relating to such . . . officer, . . . set forth in title 28." 11 U.S.C. §105(c). The effect of this provision is to enforce the core/non-core distinction of 28 U.S.C. §157(b) and (c), extending it not only to the jurisdiction of bankruptcy courts set out in Title 28, but also to jurisdiction under Title 11.

Rather than remove the bankruptcy jurisdiction accorded by §505(a)(1), §105(c) recognizes that jurisdiction but makes its exercise by bankruptcy judges conform to the core/non-core limits. A bankruptcy judge exercising jurisdiction must determine whether a decision on the amount of a tax penalty is a core matter for which that court may enter judgment, or a non-core matter for which the court may only submit proposed findings of fact and conclusions of law. But the need to make that distinction does not affect the underlying jurisdiction of the bankruptcy court to hear the matter.

In sum, the Seventh Circuit's ruling that §505(a)(1) is not a jurisdictional statute was wrongly decided.

B. The Seventh Circuit Erred When It Held that Bankruptcy Courts Lack Jurisdiction to Determine the Amount of a Non-dischargeable Debt.

The Seventh Circuit also erred when it ruled that the bankruptcy court lacked "related to" jurisdiction under §1334(b) to determine the nature and amount of the Bushes' 2011 tax penalties. Pet. App. 22a-27a. Unlike the other circuits that have addressed this question, the Seventh Circuit limited its analysis to whether the outcome of the tax penalty motion would affect other creditors' distributions from the estate. *Id.* It provided no real analysis of why "related to" jurisdiction does not encompass disputes that determine the extent of a debtor's discharge and thus go to the heart of the adjustment of the debtor-creditor relationship that is at the core of every bankruptcy case.

The basic lesson of the other circuits' decisions, which the Seventh Circuit ignored, is that an effect on estate distribution is not the only way that a dispute can be "related to" a bankruptcy case. As a leading scholar explained,

> [s]ome courts of appeals suggest that something falls within the scope of "related to" jurisdiction only if 'the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.' *See Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). . . . This test, however, was not formed with [nondischargeable claims] in mind, and one can reasonably conclude that 'related to' jurisdiction should include resolving rights between the creditor and the debtor, even if they do not deal with the bankruptcy estate proper.

Douglas G. Baird, *Blue Collar Constitutional Law*, 86 Am. Bankr. L.J. 3, 4 n.4 (2012).

The dispute over the amount of the Bushes' tax penalty is "related to" their bankruptcy case under §1334(b) by the need to determine fully the extent of their discharge. Bankruptcy courts were given explicit authority in a 1970 amendment that added §17(c)(3) to the Bankruptcy Act, to enter judgment on any debts found to be nondischargeable, and that authority was expressly intended to remain in effect under the Code. *See* H.R. Rep. No. 95-595, at 49 (1977), *as reprinted in*

1978 U.S.C.C.A.N. 5963, 6010 (stating that the jurisdictional language now in 28 U.S.C. §1334(b) continues to permit the "liquidation of non-dischargeable debts," as was allowed by §17(c) of the Act); S*asson*, 424 F.3d at 868 & n.2. As the Fifth Circuit explained, Congress "intended bankruptcy courts to exercise far more expansive jurisdiction under the Code than under previous law" and therefore "could not have intended to cut back on their ability to enter money judgments in the core proceedings encompassed by non-dischargeability complaints." *Morrison*, 555 F.3d at 479. No language in 28 U.S.C. §1334(b) suggests that only an effect on estate distribution can make a dispute over the amount of a nondischargeable claim "related to" the debtor's bankruptcy case.

Moreover, by including a claim for the tax penalties at issue in its proof of claim, the United States brought within the bankruptcy court's jurisdiction not only a request for payment from the Bushes' estate, but also, because the penalty claim was nondischargeable, a claim against the Bushes personally. Resolving that claim completely made both aspects of the claim subject to bankruptcy jurisdiction. *McLaren*, 3 F.3d at 965-66. Similarly, by both their tax penalty motion and their dischargeability complaint, the Bushes raised the question of the amount of the tax penalty against them. As several of the circuit decisions hold, it would have been a waste of judicial resources for Congress not to allow the bankruptcy court, dealing with the question of whether a claim is dischargeable, to also decide the

amount of the claim. *See, e.g.*, *Riebesell*, 586 F.3d at 793-94 (collecting cases).

In deciding that bankruptcy court jurisdiction does not extend to determining the disputed amount of a nondischargeable debt, the Seventh Circuit's opinion wrongly interpreted 28 U.S.C. §1332(b). This error should be corrected.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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Appendix A

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted April 28, 2025[*]

Decided April 29, 2025

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

No. 24-2996

DONALD WAYNE BUSH AND KIMBERLY ANN BUSH, *Plaintiffs-Appellants*,

v.

UNITED STATES OF AMERICA, *Defendant-Appellee*.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:15-cv-01318-RLY-CSW

Richard L. Young, Judge

[*] This successive appeal has been submitted to the panel that decided the initial appeal. See Operating Procedure 6(b). Circuit Judge Flaum died after the first decision and has not been replaced on the panel; this appeal is being decided by a quorum. 28 U.S.C. §46(d). We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. Fed. R. App. P. 34(a)(2)(C).

ORDER

Our amended decision, 100 F.4th 807 (7th Cir. 2024), remanded to the district court with instructions to determine whether, on the date the bankruptcy judge was first asked to determine whether the Bushes owe a tax penalty (and, if so, how much), a decision on that question could have affected the allocation of assets among their other creditors.

The district court found that there was no potential effect. The court started with the Bushes' total assets, according to their own bankruptcy schedules ($308,748), then deducted the value of secured claims ($229,257) and assets claimed as exempt ($35,705), yielding a total of $43,786 available for distribution to priority and general creditors. The United States alone had a priority tax claim of roughly $100,000, so the judge ruled that the contested (but non-priority) claims to tax penalties could not affect the distribution.

The Bushes do not dispute this math. Instead they contend that their assets had a range of possible values and that the judge should have considered the assets' maximum value, which would have sufficed to cover all claims that had been filed already. The problem with this sort of argument is that it contradicts the schedules to which the Bushes themselves attested. If the assets had a range of possible values, the maximum (and most likely) values should have been revealed on the schedules. The schedules called for actual values, not the lowest value the assets could have had. Maybe the Bushes were trying to minimize the scheduled values to curtail their payouts in bankruptcy, but no matter the reason for choosing the values that they did, they are

stuck with their choices. The district court did not err in concluding that the dispute about tax penalties belongs in the Tax Court under the analysis of our opinion.

AFFIRMED

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,
Appellant,
v.

DONALD WAYNE BUSH and
KIMBERLY ANN BUSH,
Appellees.

No. 1:15-cv-01318-RLY-CSW
Bankruptcy No. 14-09053-JMC-7

ENTRY ON THE UNITED STATES' MOTION ON REMAND FROM THE SEVENTH CIRCUIT COURT OF APPEALS

The present dispute arose out of a Notice of Deficiency filed by the Internal Revenue Service against Donald and Kimberly Bush (or the "Debtors") in 2013 that morphed into a legal battle over whether the United States Tax Court or the Bankruptcy Court had jurisdiction to determine the Debtors' tax liability. Litigation over the Debtors' tax debt began in the Tax Court, then made its way through the Bankruptcy Court, the District Court, and the Seventh Circuit Court of Appeals—on appeal and on rehearing. It is now back on remand from the Seventh Circuit for the court to

determine: (1) whether the Bankruptcy Court has "related to" jurisdiction to determine the Debtors' tax liability; and (2) if so, whether the court should abstain in favor of the Tax Court under 28 U.S.C. § 1334(c). *Bush v. United States (Bush III)*, 100 F.4th 807, 814 (7th Cir. 2024). The court, having reviewed the parties' submissions, the bankruptcy and appellate records, and the applicable law, finds the district court was right all along—the Bankruptcy Court does not have jurisdiction over this tax dispute.

I. Background[1]

The Debtors live on a farm in Thorntown, Indiana. On September 6, 2013, the IRS issued a Notice of Deficiency to the Debtors, asserting tax deficiencies in the amount of $107,034 and fraud penalties in the amount of $80,275.50 (75% of the taxes owed) for tax years 2009, 2010, and 2011. On September 23, 2013, the Debtors filed a petition with the United States Tax Court, which had the effect of barring the IRS from assessing or collecting the tax until the Tax Court case was concluded. During the Tax Court proceedings, the parties reached stipulations that reduced the tax deficiencies for the three years to a total of $100,136. The only issue remaining before the Tax Court was whether the Debtors' returns were fraudulent, which would result in the assessment of 75% fraud penalties under IRC § 6663(a), or negligent, which would result in the assessment of 20% penalties under IRC § 6662(a).

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[1] The court borrows most of the undisputed facts from *In re Bush*, No. 1:15-cv-1318, 2016 WL 4261867 (S.D. Ind. Aug. 12, 2016).

On September 30, 2014, the morning the Tax Court trial was scheduled to begin, the Debtors filed a Chapter 13 bankruptcy petition, which automatically stayed the commencement of the Tax Court trial. In response, the United States filed an emergency motion to lift the automatic stay. The United States' motion was denied by the Bankruptcy Court.

The Debtors filed their schedules of assets and liabilities on October 14, 2014, listing assets worth $308,748 and liabilities of $281,750. (Bankr. Dkt. 21). The liabilities did not include federal and state taxes; the Debtors listed the amount of these liabilities as "unknown," but noted that the federal tax liability was "$100,000ish." (*Id.*).

On October 15, 2014, the Debtors filed a Notice of Conversion to Chapter 7. The next day, the IRS filed a Proof of Claim, which was objected to by the Debtors, and which was amended several times over the course of the next several months. As noted above, the parties eventually stipulated that the amount of taxes owed by the Debtors (excluding any penalties and interest) was $100,136.

On December 28, 2014, the Debtors filed a Motion to Determine Tax Liability pursuant to 11 U.S.C. § 505 ("§ 505 motion"). The Debtors stated in the motion that because they believed they would be able to reach an agreement with the IRS regarding the amount of tax owed, the primary dispute was whether the IRS was entitled to the 75% tax penalty it sought. The Debtors contended that "[n]egligence is the highest penalty that should be assessed." (Bankr. Dkt. 39 at 1). Accordingly, they asked the Bankruptcy Court to "establish that IRS

is owed the tax, but not the fraud penalty." (*Id.* at 2). At this juncture, only the 2011 tax penalty remains at issue.[2]

The Bankruptcy Court issued the Debtors a general discharge on March 16, 2015. This lifted the automatic stay and permitted the Tax Court proceeding to resume. The Tax Court scheduled a trial for October 2015. The Tax Court trial was eventually continued to permit resolution of the United States' initial appeal to the district court (see below).

The United States responded to the Debtors' § 505 Motion on May 19, 2015, asking the Bankruptcy Court to dismiss the motion for lack of jurisdiction or, in the alternative, to abstain from deciding the tax issue in favor of allowing the matter to proceed in the Tax Court. After the motion was fully briefed and a hearing was held, the Bankruptcy Court granted the Debtors' § 505 Motion and denied the United States' subsequent motion to reconsider that ruling. *In re Bush*, No. 14-09053, 2015 WL 12516006 (Bankr. S.D. Ind. July 7, 2015); *In re Bush*, 14-09053, 2015 WL 12516007 (Bankr. S.D. Ind. Aug. 14, 2015) (denying reconsideration).

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[2] The 2009 and 2010 penalties became moot when the district court affirmed the Bankruptcy Court's judgment in a separate adversary proceeding that the accuracy-related penalties for 2009 and 2010 were discharged under 11 U.S.C. § 523(a)(7)(B) because the events in question pre-dated the petition by more than three years. The 2011 return filing, however, fell within the three-year look-back period, so the Debtors conceded that the 2011 penalty (whether fraud or negligence) was excepted from discharge. *See United States v. Bush*, 549 B.R. 707 (Bankr. S.D. Ind. 2016), *aff'd*, No. 1:16-cv-00903, 2016 WL 6818517 (S.D. Ind. Nov. 18, 2016) (McKinney, J).

On August 18, 2015, the United States filed a Notice of Appeal and a motion for leave to file an interlocutory appeal, which the court granted. In its Entry on Judicial Review, the district court held that the Bankruptcy Court erred in determining that it had jurisdiction to determine the amount of the tax penalties owed by the Debtors. *In re Bush (Bush I)*, No. 1:15-cv-1318, 2016 WL 4261867, at *4 (S.D. Ind. Aug. 12, 2016) (Lawrence, J.). The Debtors appealed. The Seventh Circuit vacated the district court's judgment "based as it was on an erroneous jurisdictional view." *Bush v. United States (Bush II)*, 939 F.3d 839, 846 (7th Cir. 2019). But because the Debtors' bankruptcy case had ended, the court mandated abstention on remand, noting "the appropriate forum for [the] resolution [of the tax dispute] is the Tax Court." *Id.*

On October 4, 2019, the Debtors sought rehearing *en banc* on grounds that courts of appeal generally lack jurisdiction to review the merits of a bankruptcy court's abstention ruling. 28 U.S.C. § 1334(d) ("Any decision to abstain or not to abstain . . . is not reviewable by appeal or otherwise by the court of appeals . . . ."). The United States responded with a cross-petition for panel rehearing, arguing that the panel erred factually in assuming that, at the time of the § 505 Motion, there was a potential for estate assets to be sufficient to pay the penalty.

In an opinion dated April 29, 2024, the Seventh Circuit granted the petitions for rehearing and issued an amended opinion. *Bush III*, 100 F.4th at 808. The amended opinion once again vacated the judgment of the district court and remanded the case to the district court

with instructions "(a) to determine whether the related-to jurisdiction applies in light of the analysis in this opinion and (b), if it does, to decide whether to abstain under 28 U.S.C. § 1334(c)." *Id.* at 814.

II. Discussion

"The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute." *Bush I*, 2016 WL 4261867, at *2 (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995)). Pursuant to 28 U.S.C. § 1334(b), bankruptcy jurisdiction is limited to "civil proceedings arising under title 11, or arising in or related to cases under title 11." *Id.*

A court has related-to jurisdiction if the outcome of the proceeding could affect the amount of property available for distribution to creditors from the estate, and it "must be assessed at the outset of the dispute." *Bush III*, 100 F.4th at 813. The United States argues that at the time the § 505 Motion was filed, there was no realistic possibility that the estate assets could satisfy the administrative expenses of liquidation, the priority tax claims, and the creditors' claims. In other words, "there was no significant possibility that the penalty determination would impact estate administration." (Filing No. 40 at 4). The Debtors disagree and argue that the tax penalty determination could *conceivably* have affected estate administration. (Filing No. 42 at 5) ("*Celotex* states that there would be related-to jurisdiction if it was *conceivable* that this value existed."). The Debtors' reliance on the *Celotex* decision,

which was briefly discussed in *Bush II* and *Bush III*,[3] merits discussion.

In its order remanding this case, the *Bush III* court addressed the issue of whether related-to jurisdiction should be addressed at the outset of the dispute (*ex ante*) or at the conclusion of the dispute (*ex post*). *Bush III*, 100 F.4th at 813.

> The Supreme Court's most recent engagement with the related-to jurisdiction favorably quoted a rule, which it attributed to nine courts of appeals, that a matter comes within the related-to jurisdiction if it "could conceivably have any effect on the estate being administered in bankruptcy." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995). That's an *ex ante* inquiry and avoids making a jurisdictional decision only after the merits have been resolved and the effect can be known with certainty.

Id. Although the *Bush III* court ultimately determined that related-to jurisdiction should be assessed using an *ex ante* approach, it did not explicitly adopt the jurisdictional test set forth above. *Id.* (explaining that the court's unanimous conclusion that the *ex ante* perspective "is the right one . . . does not imply an overruling or even a modification of circuit precedent"). Indeed, the *Bush III* court also cited *Celotex* for the

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[3] The *Bush III* amended opinion "repeats much of" the Bush *II* opinion, including the legal analysis. *Bush III*, 100 F.4th at 809. The court will cite only to *Bush III* for simplicity's sake.

proposition that the Seventh Circuit uses "a slightly different test." *Id.* (citing *Celotex*, 514 U.S. at 308 n.6 (explaining the Second and Seventh Circuits have adopted "a slightly different test" to determine related-to jurisdiction than the other nine circuits)). That jurisdictional test, as applied to this case using the *ex ante* approach, is "whether, on the date the Bushes asked the bankruptcy judge to determine their tax liabilities, a decision could have affected the allocation of assets among the creditors with outstanding claims." *Id.*

Based on this new articulation of the related-to test, it is not clear whether there is a difference between the majority and minority tests for related-to jurisdiction anymore. The Bankruptcy Court for the Eastern District of Wisconsin does not think so. *See In re Charmoli*, 652 B.R. 845, 857 (Bankr. E.D. Wis. 2023) (noting the *Bush II* court adopted the majority "conceivability" approach). Importantly, the Supreme Court stated in *Celotex* that "whatever test is used"—the majority test or minority test—"bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor." *Id.*

In the Debtors' sworn bankruptcy schedules, they listed $308,748 in total estate assets and $281,750 in total liabilities (including $229,257 in secured claims but not including any tax liabilities). (Bankr. Dkt. 21 at 1, 8, 23). Of that, assets valued at $35,705 were claimed as exempt, leaving only $43,786 to satisfy priority and general creditors. The IRS priority tax claim, estimated on Schedule E as "$100,000ish," (*Id.* at 11), and now agreed to be somewhat more than that, could not be satisfied by this remaining unencumbered sum.

Consequently, as of the date of the § 505 Motion, there was no realistic possibility that determining whether the Debtors' unreported income was due to negligence or fraud would have any effect on the administration of the estate and distribution to creditors.

The Debtors resist this conclusion by asking the court to ignore what they submitted in their original bankruptcy schedules and to value those items in line with what would be a "conceivable" value. For example, on the Debtors' Schedule A, they assigned a "$0.00" value to the unpaid balance on a "land contract with parents." (*Id.* at 3). They argue "[t]his listing, on its face, would give rise to questions from a trustee as to the nature of the [Debtors'] property interest and the basis for its valuation." (Filing No. 42 at 7). They then point to a September 2016 adversary complaint brought by the Trustee to recover the value of the property for the benefit of the bankruptcy estate, which alleged the property had a value range of $80,000 - $118,000. (Adv. No. 16- 50308, Dkt. 1 ¶ 11). Based on that allegation, they argue the conceivable value of the property is $118,000.

The Debtors argument is untenable for several reasons. First, the Trustee's adversary complaint was filed 21 months after the § 505 Motion. The Seventh Circuit counseled against relying on such *ex post* evidence in determining related-to jurisdiction. *Bush III*, 100 F.4th at 813. Second, related-to jurisdiction—even under the majority test—cannot be premised on hypothetically bringing and winning a different lawsuit. *See NVR, Inc. v. Majestic Hills, LLC*, No. 2:18-cv1335-NR, 2021 WL 2338848, at *4 (W.D. Pa. 2021) (instructing that for a civil proceeding to "'conceivably' have an effect

on the bankruptcy proceeding . . . the allegedly related lawsuit [must] affect the bankruptcy without the intervention of yet another lawsuit") (quoting *In re Fed.-Mogul Global*, 300 F.3d 368, 382 (3d Cir. 2002)).

Next, the Debtors note that the equipment and vehicles listed in Schedule B total $123,150 but, after the exemptions and liens on those items in Schedules C and D, the net value of those assets is $42,441. (Bankr. Dkt. 20 at 4–9). They admit this means the United States' valuation of the equipment and vehicles ($43,786) "would not be unreasonable." (Filing No. 42 at 7). Nevertheless, they ask the court to disregard their own values and to find that the equipment and vehicles could "conceivably have had a value at least 25% higher." (*Id.* at 9). This is so, they argue, for two reasons. "First, almost all of the assets are used as part of an ongoing business, and if sold on that basis, they would be worth more than their individual liquidation value." (*Id.* at 7). "Second, the values of the vehicles and equipment listed in the schedules are quite conservative," listing values "equal to or little more than the amount of the debt they secure." (*Id.* at 8). As the United States observes, the Debtors' argument that the Trustee could conceivably have recovered as much as 25% more than the values listed on the schedules for the Debtors' vehicles and equipment is based on nothing more than gross speculation.

In conclusion, the court finds that on the date the Debtors filed their § 505 Motion, December 28, 2014, the estate had insufficient assets to cover the Trustee's administrative costs, the Debtors' tax debt, and creditor claims. Consequently, there is no scenario under which

the funds from the Debtors' bankruptcy estate could be used to satisfy the Debtors' tax penalties—whether the penalties are based on negligence or fraud. Therefore, the Bankruptcy Court did not have related-to jurisdiction over the matter.

III. Conclusion

The Bankruptcy Court erred in determining that it had jurisdiction to determine the tax penalties owed by the Debtors. Accordingly, the United States' Motion on Remand from the Seventh Circuit Court of Appeals (Filing No. 40) is **GRANTED**. The Bankruptcy Court's rulings are **REVERSED**, and this case is **REMANDED** to the Bankruptcy Court for further proceedings consistent with this ruling.

SO ORDERED this 7th day of October 2024.

s/rly
RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Appendix C

In the United States Court of Appeals
For the Seventh Circuit

No. 16-3244

DONALD WAYNE BUSH and KIMBERLY ANN BUSH,
Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA,
Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Indiana,
Indianapolis Division.
No. 1:15-cv-1318-WTL-DKL
William T. Lawrence, *Judge*.

ON REHEARING — DECIDED APRIL 29, 2024

Before SYKES, *Chief Judge*, and FLAUM and EASTERBROOK, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*.

Our original decision in this case remanded to the district court with instructions to send the dispute to the Tax Court. 939 F.3d 839 (7th Cir. 2019). All parties petitioned for rehearing and rehearing en banc. After considering supplemental filings the panel has decided

to grant rehearing and revise our decision. What follows is an amended opinion, which repeats much of the original opinion so that readers can follow the reasoning and understand the full decision. (To the extent that the original decision is unchanged, both rehearing and rehearing en banc are denied. No judge in active service has called for a vote on the petitions for rehearing en banc.)

* * * * *

This appeal presents the question whether a bankruptcy court can determine the amount of a debtor's tax obligations, when the debtor is unlikely to pay them. Bankruptcy Judge Carr answered yes and scheduled a trial on the merits, 2015 Bankr. LEXIS 4494 (Bankr. S.D. Ind. July 7, 2015), but a district judge disagreed. 2016 U.S. Dist. LEXIS 106671 (S.D. Ind. Aug. 12, 2016). The interlocutory appeal to the district judge was authorized by 28 U.S.C. §158(a)(3). Because the district judge blocked further proceedings in the bankruptcy court, his decision is final and appealable to us under 28 U.S.C. §1291, for, outside of bankruptcy, tax obligations are stand-alone matters independently appealable. See *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501–02 (2015). See also *In re Anderson*, 917 F.3d 566 (7th Cir. 2019).

The dispute began in 2013 when the Internal Revenue Service demanded that Donald and Kimberly Bush pay $107,000 in taxes, plus $80,000 in fraud penalties, for tax years 2009, 2010, and 2011. (We round all figures to the nearest thousand.) The Bushes petitioned the Tax Court for review. By the time trial was imminent the parties had stipulated that the Bushes

owed $100,000 in taxes, but penalties remained in dispute: the IRS sought a 75% fraud penalty under 26 U.S.C. §6663(a), while the Bushes proposed a 20% negligence penalty under 26 U.S.C. §6662(a). On the date set for trial, the Bushes filed for bankruptcy, and the automatic stay prevented the Tax Court from proceeding. The bankruptcy court declined to lift the stay. The United States did not appeal but did file a proof of claim seeking taxes and penalties. It also proposed that the tax debt be given priority over the Bushes' other unsecured debts, while the penalty (whatever its ultimate amount) be determined to be nondischargeable under 11 U.S.C. §523(a)(7). The Bushes then initiated an adversary proceeding, asking the bankruptcy court to set the penalty at 20% of their unpaid taxes.

The Bushes pointed the bankruptcy court to 11 U.S.C. §505(a)(1), which reads:

> Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

The United States concedes that paragraph (2) does not apply to its dispute with the Bushes. But it argues that §505 as a whole does not grant subject-matter jurisdiction to bankruptcy judges and that only a potential effect on creditors' distributions justifies a

decision by a bankruptcy judge about any tax dispute. The Bushes insisted that §505 does supply jurisdiction, a view that the bankruptcy judge accepted and the district judge did not. The parties' briefs in this court continue the debate about the "jurisdictional" nature of §505.

This is unfortunate, though we grant that other circuits writing about §505 have used a "jurisdictional" characterization. See, e.g., *In re Luongo*, 259 F.3d 323, 328 (5th Cir. 2001) (calling §505 a "broad grant of jurisdiction"); *In re Custom Distribution Services, Inc.*, 224 F.3d 235, 239–40 (3d Cir. 2000) ("We have consistently interpreted §505(a) as a jurisdictional statute"). But we do not see what §505 has to do with jurisdiction, a word it does not use. Section 505 simply sets out a task for bankruptcy judges. Almost the entirety of the Bankruptcy Code prescribes tasks for bankruptcy judges. For example, §503 tells bankruptcy judges how to determine administrative expenses, and §547 provides for resolution of trustees' preference-recovery actions. Those and other sections in the Code are unrelated to jurisdiction, just as few of the many thousand substantive rules in the United States Code as a whole concern jurisdiction.

The Supreme Court insists that judges distinguish procedural and substantive rules from jurisdictional ones. See, e.g., *Fort Bend v. Davis*, 139 S. Ct. 1843 (2019); *United States v. Kwai Fun Wong*, 575 U.S. 402 (2015); *Gonzalez v. Thaler*, 565 U.S. 134 (2012). The rule in §505 is on the non-jurisdictional side. The Justices have acknowledged that in earlier years they used the word "jurisdiction" loosely, and our colleagues in other circuits may have been influenced by that old usage

when calling §505 "jurisdictional." But the Supreme Court has restricted the category of laws that can be called jurisdictional, and we must follow its current understanding of that term.

Most genuine jurisdictional rules appear in Title 28, the Judicial Code, and that's true of bankruptcy too. The Bankruptcy Code itself tells us this. Section 105(c) reads: "The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28." Bankruptcy judges act as officers of the district courts, see 28 U.S.C. §157(a), so §105(c) means that bankruptcy jurisdiction depends on Title 28. See also *Wellness International Network, Ltd. v. Sharif*, 575 U.S. 665, 669–70 (2015); .

And Title 28 addresses bankruptcy jurisdiction in detail:

> (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
>
> (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

> (e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—
>
> > (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and
> >
> > (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

28 U.S.C. §1334. Other grants of jurisdiction also may apply. A provision allowing district courts to resolve certain tax disputes, 28 U.S.C. §1346(a)(1), comes to mind. But the parties disregard it, and so shall we. The Bushes, as the proponents of jurisdiction, are entitled to choose which grants they rely on.

The United States protests that sovereign immunity negates any jurisdiction based on §1334, but 11 U.S.C. § 106(a)(1) waives that defense for subjects within §505. What is more, we have held that sovereign immunity does not affect subject-matter jurisdiction. See *United States v. Cook County*, 167 F.3d 381 (7th Cir. 1999). Section 1334 creates jurisdiction for three potentially relevant categories of disputes: those "arising in" bankruptcy litigation, those "arising under" the Bankruptcy Code, and those "related to" the resolution of the bankruptcy proceeding. The Bushes rely on all three; the United States contends that none applies. We take them in order.

A dispute "arises in" bankruptcy if it concerns a matter that is exclusive to bankruptcy law and practice.

See I*n re Repository Technologies, Inc.*, 601 F.3d 710, 719 (7th Cir. 2010). A proceeding to determine taxes and penalties does not arise in bankruptcy in this sense. As we have mentioned, it was set for trial in the Tax Court until the Bushes filed their petition under Title 11. Most tax disputes are resolved outside of bankruptcy. The requirements of "arises in" jurisdiction have not been satisfied.

A dispute "arises under" the Bankruptcy Code when it presents a substantive question of bankruptcy law. See, e.g., *Barnett v. Stern*, 909 F.2d 973, 981 (7th Cir. 1990). This tax dispute's substance depends on the Internal Revenue Code, not the Bankruptcy Code, so the "arising under" grant of jurisdiction is unavailable.

What remains is the "related to" jurisdiction in the second clause of §1334(b), which is how most non-bankruptcy issues, such as tort and contract disputes, come within a bankruptcy judge's powers. The Bushes contend that, if this jurisdiction permits a bankruptcy judge to resolve a contract dispute, it also permits a bankruptcy judge to resolve a tax dispute.

Language in *In re Collazo*, 817 F.3d 1047, 1053 (7th Cir. 2016), suggesting that entry of a money judgment following the conclusion of a bankruptcy always is "related to" that bankruptcy for the purpose of §1334(b), is unreasoned and has the quality of a drive-by ruling, subject to ready reexamination. See *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 91 (1998). We do not think that the unreasoned language of *Collazo* can be given effect, particularly in light of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), and *Stern v. Marshall*, 564 U.S. 462 (2011), which

observe that the permissible authority of judges (including bankruptcy judges) who lack life tenure is limited.

The difficulties in allocating authority between Article I and Article III tribunals, and between federal and state courts, when a dispute is "related to" bankruptcy but not part of it, need not concern us today, however. After all, disputes about the financial demands of the Internal Revenue Service always are resolved by federal rather than state tribunals—and the alternative to resolution by a bankruptcy judge serving under Article I is resolution by a judge of the Tax Court serving under Article I. Whether the bankruptcy judge or the Tax Court judge makes the initial decision, the disposition is subject to review by one or more judges serving under Article III. The constitutional and prudential concerns that have led to limits on the "related to" jurisdiction for state-law disputes are not salient to federal tax disputes.

The United States does not contend that resolution of tax disputes is never "related to" a bankruptcy. Instead it maintains that the tax dispute is not related to this bankruptcy, because the disposition will not affect other creditors' entitlements. It points to *In re FedPak Systems, Inc.*, 80 F.3d 207, 213–14 (7th Cir. 1996), which states that a dispute is "related to" bankruptcy when resolution "affects the amount of property for distribution [to creditors] or the allocation of property among creditors." See also, e.g., *In re Kubly*, 818 F.2d 643 (7th Cir. 1987); *In re Xonics, Inc.*, 813 F.2d 127 (7th Cir. 1987). That condition is not met here, the United States maintains, because other creditors' claims exceed

the Bushes' assets. The existence of insufficient assets would not by itself be enough to demonstrate the lack of a relation, for the size of any one debt may affect the allocation among creditors. But tax debts are subordinated to many other claims, so determining taxes and penalties has no effect here.

This line of argument suggests that the statement in *FedPak* needs a qualification. If the related-to jurisdiction really depends on how things look at the end of the bankruptcy—if jurisdiction turns, for example, on how many other claims eventually are presented—then authority cannot be determined at the time of filing. Yet one of the most fundamental rules of federal jurisdiction is that judicial authority depends on the state of affairs when a case begins (equivalently, when a claim is filed in bankruptcy) rather than on how things turn out. See, e.g., *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570–71 (2004); *Freeport-McMoRan Inc. v. K N Energy, Inc.*, 498 U.S. 426 (1991); *Louisville, New Albany & Chicago Ry. v. Louisville Trust Co.*, 174 U.S. 552, 566 (1899); *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539–40 (1824); *Gardynski-Leschuk v. Ford Motor Co.*, 142 F.3d 955 (7th Cir. 1998). And when the Bushes filed their motion under §505, just two months into their bankruptcy, only three creditors' claims had been filed against them.

Instead of asking us to evaluate the potential effect of the tax debt near the start of the bankruptcy, the United States draws our attention to the fact that many creditors had filed claims against the Bushes by the time the bankruptcy judge proposed to resolve the tax dispute. By *then* it seemed unlikely that the amount the

Bushes owe in taxes and penalties would affect other creditors. But taking that *ex post* view would contradict the norm that jurisdictional issues must be resolved *ex ante*, not in light of how things turn out.

The Supreme Court's most recent engagement with the related-to jurisdiction favorably quoted a rule, which it attributed to nine courts of appeals, that a matter comes within the related-to jurisdiction if it "could conceivably have any effect on the estate being administered in bankruptcy". *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1996). That's an *ex ante* inquiry and avoids making a jurisdictional decision only after the merits have been resolved and the effect can be known with certainty. Under this approach, the §505 motion is within the related-to jurisdiction because it might well have mattered if no further creditors had made claims.

Celotex said that our circuit uses a "slightly different test" and pointed to *Xonics* and *Home Insurance Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746 (7th Cir. 1989). *Xonics* dealt with a different problem: whether the related-to jurisdiction follows an asset after it leaves the estate. We held that it does not: that an asset's chain of title includes a trip through bankruptcy does not make the asset a ward of the bankruptcy court forever. *Xonics* does, however, contain the phrase "affects the amount of property available for distribution or the allocation of property among creditors." 813 F.2d at 131. *Home Insurance* quoted this language, which also is the genesis of the statement in *FedPak*.

None of our decisions addresses the distinction between *ex ante* and *ex post* perspectives. None considers the potential difference between demanding

an actual effect at the case's end and a potential effect when the claim is filed. The nine circuits that have addressed that subject unanimously conclude that the *ex ante* perspective is the right one. We agree. This does not imply an overruling or even a modification of circuit precedent; instead we address an issue that the circuit has not previously considered and align this circuit with the view widely held by our colleagues elsewhere: the related-to jurisdiction must be assessed at the outset of the dispute, and it is satisfied when the resolution has a potential effect on other creditors.

This leads to the question whether, on the date the Bushes asked the bankruptcy judge to determine their tax liabilities, a decision could have affected the allocation of assets among the creditors with outstanding claims. When seeking rehearing the United States contended that the answer is "no." In a response, the Bushes maintain that the answer is "yes." This subject was not addressed by either the district court or the parties' principal briefs. We think that further proceedings are necessary in the district court, unless the parties can agree on remand.

There remains one potential question. Suppose the district judge agrees with the Bushes that the answer is "yes" and that the related-to jurisdiction therefore applies. Should the court nonetheless abstain in favor of the Tax Court? When the bankruptcy began, the tax dispute was on the verge of trial in the Tax Court. Only the automatic stay imposed by 11 U.S.C. §362 blocked that trial. The bankruptcy appears to be over—at least the parties have not suggested that anything remains to be done. The estate's available assets have been used to

pay debts; most unpaid debts (though not the debt for 2011 tax penalties) have been discharged; the automatic stay has lapsed by its own terms; the Trustee's final report was filed on February 22, 2019. Congress has authorized district courts to relinquish jurisdiction of bankruptcy disputes "in the interest of justice", 28 U.S.C. §1334(c)(1), a phrase that may well fit given that the tax dispute stands in much the same posture as if the Bushes had never filed for bankruptcy.

The right forum for decision, however, is the district court rather than this court. The statute gives the district court the power to relinquish jurisdiction and provides that its decision "is not reviewable by appeal or otherwise by the court of appeals." 28 U.S.C. §1334(d). *Conway v. Smith Development, Inc.*, 64 F.4th 540 (4th Cir. 2023), explores the consequences of §1334(d), and we agree with it that appellate courts must avoid resolving disputes about the application of §1334(c)(1).

The judgment of the district court is vacated, and the case is remanded with instructions (a) to determine whether the related-to jurisdiction applies in light of the analysis in this opinion and (b), if it does, to decide whether to abstain under 28 U.S.C. §1334(c).

Appendix D

In the United States Court of Appeals
For the Seventh Circuit

No. 16-3244

DONALD WAYNE BUSH and KIMBERLY ANN BUSH,
Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA,
Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Indiana,
Indianapolis Division
No. 1:15-cv-1318-WTL-DKL
William T. Lawrence, *Judge*.

Argued May 22, 2017

Decided September 20, 2019

Before FLAUM, EASTERBROOK, and SYKES, *Circuit Judges*.

Easterbrook, *Circuit Judge*.

This appeal presents the question whether a bankruptcy court can determine the amount of a

debtor's tax obligations, when the debtor is unlikely to pay them. Bankruptcy Judge Carr answered yes and scheduled a trial on the merits, 2015 WL 12516006, 2015 Bankr. LEXIS 4494 (Bankr. S.D. Ind. July 7, 2015), but a district judge disagreed. 2016 WL 4261867, 2016 U.S. Dist. LEXIS 106671 (S.D. Ind. Aug. 12, 2016). The interlocutory appeal to the district judge was authorized by 28 U.S.C. §158(a)(3). Because the district judge blocked further proceedings in the bankruptcy court, his decision is final and appealable to us under 28 U.S.C. §1291, for, outside of bankruptcy, tax obligations are stand-alone matters independently appealable. See *Bullard v. Blue Hills Bank*, 135 S. Ct. 1686, 1692 (2015). See also *In re Anderson*, 917 F.3d 566 (7th Cir. 2019).

The dispute began in 2013 when the Internal Revenue Service demanded that Donald and Kimberly Bush pay $107,000 in taxes, plus $80,000 in fraud penalties, for tax years 2009, 2010, and 2011. (We round all figures to the nearest thousand.) The Bushes petitioned the Tax Court for review. By the time trial was imminent the parties had stipulated that the Bushes owed $100,000 in taxes, but penalties remained in dispute: the IRS sought a 75% fraud penalty under 26 U.S.C. §6663(a), while the Bushes proposed a 20% negligence penalty under 26 U.S.C. §6662(a). On the date set for trial, the Bushes filed for bankruptcy, and the automatic stay prevented the Tax Court from proceeding. The bankruptcy court declined to lift the stay. The United States did not appeal but did file a proof of claim seeking taxes and penalties. It also proposed that the tax debt be given priority over the Bushes' other unsecured debts, while the penalty (whatever its

ultimate amount) be determined to be nondischargeable under 11 U.S.C. §523(a)(7). The Bushes then initiated an adversary proceeding, asking the bankruptcy court to set the penalty at 20% of their unpaid taxes.

The Bushes pointed the bankruptcy court to 11 U.S.C. §505(a)(1), which reads:

> Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

The United States concedes that paragraph (2) does not apply to its dispute with the Bushes. But it argues that §505 as a whole does not grant subject-matter jurisdiction to bankruptcy judges and that only a potential effect on creditors' distributions justifies a decision by a bankruptcy judge about any tax dispute. The Bushes insisted that §505 does supply jurisdiction, a view that the bankruptcy judge accepted and the district judge did not. The parties' briefs in this court continue the debate about the "jurisdictional" nature of §505.

This is unfortunate, though we grant that other circuits writing about §505 have used a "jurisdictional" characterization. See, e.g., *In re Luongo*, 259 F.3d 323, 328 (5th Cir. 2001) (calling §505 a "broad grant of jurisdiction"); *In re Custom Distribution Services, Inc.*, 224 F.3d 235, 239-40 (3d Cir. 2000) ("We have

consistently interpreted §505(a) as a jurisdictional statute"). But we do not see what §505 has to do with jurisdiction, a word it does not use. Section 505 simply sets out a task for bankruptcy judges. Almost the entirety of the Bankruptcy Code prescribes tasks for bankruptcy judges. For example, §503 tells bankruptcy judges how to determine administrative expenses, and §547 provides for resolution of trustees' preference-recovery actions. Those and other sections in the Code are unrelated to jurisdiction, just as few of the many thousand substantive rules in the United States Code as a whole concern jurisdiction.

The Supreme Court insists that judges distinguish procedural and substantive rules from jurisdictional ones. See, e.g., *Fort Bend v. Davis*, 139 S. Ct. 1843 (2019); *United States v. Kwai Fun Wong*, 135 S. Ct. 1625, (2015); *Gonzalez v. Thaler*, 565 U.S. 134 (2012). The rule in §505 is on the non-jurisdictional side. The Justices have acknowledged that in earlier years they used the word "jurisdiction" loosely, and our colleagues in other circuits may have been influenced by that old usage when calling §505 "jurisdictional." But the Supreme Court has restricted the category of laws that can be called jurisdictional, and we must follow its current understanding of that term.

Most genuine jurisdictional rules appear in Title 28, the Judicial Code, and that's true of bankruptcy too. The Bankruptcy Code itself tells us this. Section 105(c) reads: "The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the

provisions relating to such judge, officer, or employee set forth in title 28." Bankruptcy judges act as officers of the district courts, see 28 U.S.C. §157(a), so §105(c) means that bankruptcy jurisdiction depends on Title 28. See also *Wellness International Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1939 (2015).

And Title 28 addresses bankruptcy jurisdiction in detail:

> (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
>
> (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.
>
> (c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
>
> (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under

title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

28 U.S.C. §1334. Other grants of jurisdiction also may apply. A provision allowing district courts to resolve certain tax disputes, 28 U.S.C. §1346(a)(1), comes to mind. But the parties disregard it, and so shall we. The Bushes, as the proponents of jurisdiction, are entitled to choose which grants they rely on.

The United States protests that sovereign immunity negates any jurisdiction based on §1334, but 11 U.S.C. §106(a)(1) waives that defense for subjects within §505. What is more, we have held that sovereign immunity does not affect subject-matter jurisdiction. See *United States v. Cook County*, 167 F.3d 381 (7th Cir. 1999).

Section 1334 creates jurisdiction for three potentially relevant categories of disputes: those "arising in" bankruptcy litigation, those "arising under" the Bankruptcy Code, and those "related to" the resolution of the bankruptcy proceeding. The Bushes rely on all three; the United States contends that none applies. We take them in order.

A dispute "arises in" bankruptcy if it concerns a matter that is exclusive to bankruptcy law and practice. See *In re Repository Technologies, Inc.*, 601 F.3d 710, 719 (7th Cir. 2010). A proceeding to determine taxes and penalties does not arise in bankruptcy in this sense. As we have mentioned, it was set for trial in the Tax Court until the Bushes filed their petition under Title 11. Most tax disputes are resolved outside of bankruptcy. The requirements of "arises in" jurisdiction have not been satisfied.

A dispute "arises under" the Bankruptcy Code when it presents a substantive question of bankruptcy law. See, e.g., *Barnett v. Stern*, 909 F.2d 973, 981 (7th Cir.

1990). This tax dispute's substance depends on the Internal Revenue Code, not the Bankruptcy Code, so the "arising under" grant of jurisdiction is unavailable.

What remains is the "related to" jurisdiction in the second clause of §1334(b), which is how most non-bankruptcy issues, such as tort and contract disputes, come within a bankruptcy judge's powers. The Bushes contend that if this jurisdiction permits a bankruptcy judge to resolve a contract dispute, it also permits a bankruptcy judge to resolve a tax dispute.

Language in *In re Collazo*, 817 F.3d 1047, 1053 (7th Cir. 2016), suggesting that entry of a money judgment following the conclusion of a bankruptcy always is "related to" that bankruptcy for the purpose of § 1334(b), is unreasoned and has the quality of a drive-by ruling, subject to ready reexamination. See *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 91 (1998). We do not think that the unreasoned language of *Collazo* can be given effect, particularly in light of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), and *Stern v. Marshall*, 564 U.S. 462 (2011), which observe that the permissible authority of judges (including bankruptcy judges) who lack life tenure is limited.

The difficulties in allocating authority between Article I and Article III tribunals, and between federal and state courts, when a dispute is "related to" bankruptcy but not part of it, need not concern us today, however. After all, disputes about the financial demands of the Internal Revenue Service always are resolved by federal rather than state tribunals—and the alternative to resolution by a bankruptcy judge serving under

Article I is resolution by a judge of the Tax Court serving under Article I. Whether the bankruptcy judge or the Tax Court judge makes the initial decision, the disposition is subject to review by one or more judges serving under Article III. The constitutional and prudential concerns that have led to limits on the "related to" jurisdiction for state-law disputes are not salient to federal tax disputes.

The United States does not contend that resolution of tax disputes is *never* "related to" a bankruptcy. Instead it maintains that the tax dispute is not related to *this* bankruptcy, because the disposition will not affect other creditors' entitlements. It points to *In re FedPak Systems, Inc.*, 80 F.3d 207, 213-14 (7th Cir. 1996), which states that a dispute is "related to" bankruptcy when resolution "affects the amount of property for distribution [to creditors] or the allocation of property among creditors." See also, e.g., *In re Kubly*, 818 F.2d 643 (7th Cir. 1987); *In re Xonics, Inc.*, 813 F.2d 127 (7th Cir. 1987). That condition is not met here, the United States maintains, because other creditors' claims exceed the Bushes' assets. The existence of insufficient assets would not by itself be enough to demonstrate the lack of a relation, for the size of any one debt may affect the allocation among creditors. But tax debts are subordinated to many other claims, so determining taxes and penalties has no effect here.

This line of argument suggests that the statement in *FedPak* needs a qualification. If the related-to jurisdiction really depends on how things look at the end of the bankruptcy—if jurisdiction turns, for example, on

how many other claims are made—then authority cannot be determined at the time of filing. Yet one of the most fundamental rules of federal jurisdiction is that judicial authority depends on the state of affairs when a case begins (equivalently, when a claim is filed in bankruptcy) rather than on how things turn out. See, e.g., *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570-71 (2004); *Freeport-McMoRan Inc. v. K N Energy, Inc.*, 498 U.S. 426 (1991); *Louisville, New Albany & Chicago Ry. v. Louisville Trust Co.*, 174 U.S. 552, 566 (1899); *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539-40 (1824); *Gardynski-Leschuk v. Ford Motor Co.*, 142 F.3d 955 (7th Cir. 1998). And when the Bushes filed their motion under §505, just two months into their bankruptcy, only three creditors' claims had been filed against them. It does not appear—more importantly, the United States does not contend—that on the date the Bushes asked the bankruptcy judge to determine their tax liabilities, a decision could not have affected the allocation of assets among the creditors with outstanding claims.

Instead of asking us to evaluate the potential effect of the tax debt near the start of the bankruptcy, the United States draws our attention to the fact that many creditors had filed claims against the Bushes by the time the bankruptcy judge proposed to resolve the tax dispute. By *then* it seemed unlikely that the amount the Bushes owe in taxes and penalties would affect other creditors. But taking that *ex post* view would contradict the norm that jurisdictional issues must be resolved *ex ante*, not in light of how things turn out.

The Supreme Court's most recent engagement with the related-to jurisdiction favorably quoted a rule, which it attributed to nine courts of appeals, that a matter comes within the related-to jurisdiction if it "could conceivably have any effect on the estate being administered in bankruptcy." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995). That's an *ex ante* inquiry and avoids making a jurisdictional decision only after the merits have been resolved and the effect can be known with certainty. Under this approach, the §505 motion is within the related-to jurisdiction because it might well have mattered if no further creditors had made claims.

Celotex said that our circuit uses a "slightly different test" and pointed to *Xonics* and *Home Insurance Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746 (7th Cir. 1989). *Xonics* dealt with a different problem: whether the related-to jurisdiction follows an asset after it leaves the estate. We held that it does not: that an asset's chain of title includes a trip through bankruptcy does not make the asset a ward of the bankruptcy court forever. *Xonics* does, however, contain the phrase "affects the amount of property available for distribution or the allocation of property among creditors." 813 F.2d at 131. *Home Insurance* quoted this language, which also is the genesis of the statement in *FedPak*.

None of our decisions addresses the distinction between *ex ante* and *ex post* perspectives. None considers the potential difference between demanding an actual effect at the case's end and a potential effect when the claim is filed. The nine circuits that *have* addressed that subject unanimously conclude

that the *ex ante* perspective is the right one. We agree. This does not imply an overruling or even a modification of circuit precedent; instead we address an issue that the circuit has not previously considered and align this circuit with the view widely held by our colleagues elsewhere: the related-to jurisdiction must be assessed at the outset of the dispute, and it is satisfied when the resolution has a potential effect on other creditors. It follows that the bankruptcy court has subject-matter jurisdiction over this tax dispute.

Although the bankruptcy judge has the authority to decide how much the Bushes owe in tax penalties, whether the judge should exercise that authority is a distinct question. When the bankruptcy began, the tax dispute was on the verge of trial in the Tax Court. Only the automatic stay imposed by 11 U.S.C. §362 blocked that trial. The bankruptcy appears to be over—at least the parties have not suggested that anything remains to be done. The estate's available assets have been used to pay debts; most unpaid debts (though not the debt for 2011 tax penalties) have been discharged; the automatic stay has lapsed by its own terms; the Trustee's final report was filed on February 22, 2019. There is no reason why this residual dispute about tax penalties should stick with the bankruptcy judge, who otherwise is done with the case, rather than the specialist judges in the Tax Court. Congress has authorized district courts to relinquish jurisdiction of bankruptcy disputes "in the interest of justice," 28 U.S.C. §1334(c)(1), and that description fits the Bushes' situation. Today the tax dispute stands in the same posture as if the Bushes had never filed for bankruptcy, and the appropriate forum for its resolution is the Tax Court.

So although the bankruptcy judge was right to hold that he had authority to resolve the tax dispute while the Bushes' bankruptcy was ongoing, the exercise of that authority is no longer appropriate. We vacate the district judge's decision, based as it was on an erroneous jurisdictional view, and remand with instructions to remand to the bankruptcy judge for the entry of an order under §1334(c)(1), which will mark the final step in the Bushes' bankruptcy proceedings.

Appendix E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:

DONALD WAYNE BUSH and
KIMBERLY ANN BUSH,

Debtors.

Cause No. 1:15-cv-1318-WTL-DKL
Bankruptcy Cause No. 14-9053-JMC

Chapter 7

ENTRY ON JUDICIAL REVIEW

This cause is before the Court on an appeal by the United States of America of two rulings of the Bankruptcy Court: an order granting the Debtors' Motion to Determine Tax Liability and an order denying the United States' motion to reconsider that order. For the reasons set forth below, the bankruptcy court's rulings are **REVERSED, the Debtors' first motion to strike (Dkt. No. 18) is DENIED, and the Debtors' second motion to strike (Dkt. No. 20) and the United States' motion to expedite (Dkt. No. 22) are DENIED AS MOOT.**

I. BACKGROUND

On September 6, 2013, the IRS issued a Notice of Deficiency to the Debtors asserting tax deficiencies in the amount of $107,034 and fraud penalties in the amount of $80,275.50 (75% of the taxes owed) for tax years 2009,

2010, and 2011. On September 23, 2013, the taxpayers filed a petition with the United States Tax Court, which had the effect of barring the IRS from assessing or collecting the tax until the Tax Court case was concluded. During the Tax Court proceedings, the parties reached stipulations that reduced the tax deficiencies for the three years to a total of $100,136. The only issue thus remaining before the Tax Court was whether the Debtors' returns were fraudulent, which would result in the assessment of 75% fraud penalties under IRC § 6663(a), or negligent, which would result in the assessment of 20% penalties under IRC § 6662(a).

On September 30, 2014, the morning the Tax Court trial was scheduled to begin, the Debtors filed a Chapter 13 bankruptcy petition, which automatically stayed the commencement of the Tax Court trial. In response, the United States filed an emergency motion to lift the automatic stay. The United States' motion was denied by the Bankruptcy Court.

The Debtors filed their schedules of assets and liabilities on October 14, 2014, listing assets worth $308,748.00 and liabilities of $281,750. The liabilities did not include federal and state taxes; the Debtors listed the amount of these liabilities as "unknown," but noted that the federal tax liability was "$100,000ish."

On October 15, 2014, the Debtors filed a Notice of Conversion to Chapter 7. The next day, the IRS filed a Proof of Claim, which was objected to by the Debtors and which was amended several times over the course of the next several months. As noted above, the parties eventually stipulated that the amount of taxes owed by the Debtors (excluding any penalties and interest) was $100,136.

In the meantime, on December 28, 2014, the Debtors filed a Motion to Determine Tax Liability pursuant to 11 U.S.C. § 505 ("§ 505 motion"). The Debtors stated in the motion that because they believed they would be able to reach an agreement with the IRS with regard to the amount of tax owed, the primary dispute was whether the IRS was entitled to the 75% tax penalty it sought. Accordingly, they asked the Bankruptcy Court to "establish that IRS is owed the tax, but not the fraud penalty."

The Bankruptcy Court issued the Debtors a general discharge on March 16, 2015. This lifted the automatic stay and permitted the Tax Court proceeding to resume. The Tax Court scheduled a trial for October 2015. This trial eventually was continued to permit resolution of this appeal.

The United States responded to the Debtors' § 505 Motion on May 19, 2015, asking that the Bankruptcy Court dismiss the motion for lack of jurisdiction or, alternatively, that the Bankruptcy Court abstain from deciding the tax issue in favor of allowing it to proceed before the Tax Court. After the motion was fully briefed and a hearing was held, the Bankruptcy Court granted the Debtors' § 505 Motion; it also denied the United States' subsequent motion to reconsider that ruling. The United States filed a Notice of Appeal and a Motion for Leave to Appeal those rulings, which this Court granted. The issues presented are now ripe for this Court's review.

II. PRELIMINARY MATTERS

There are three ancillary motions to resolve before turning to the merits of the United States' appeal. First, the Debtors move to strike the United States' reply brief

as untimely. As the United States correctly points out, the Debtors' calculation of the date the reply brief was due failed to account for the additional three days "for mailing" that are added pursuant to Fed. R. Bankr. P. 9006(f). The reply brief was not late, and the motion to strike (Dkt. No. 18) is **DENIED**.

Next, the Debtors have moved to strike the declaration of the Trustee that was attached to the United States' reply brief because it is not part of the Record on Appeal. As it is not necessary for the Court to consider that declaration in ruling on this appeal, the motion to strike (Dkt. No. 20) is **DENIED AS MOOT**.

Finally, the United States filed a Request to Expedite Decision and Statement Regarding Oral Argument (Dkt. No. 22). The Court has determined that oral argument is not necessary, as the parties have thoroughly briefed the relevant issues. The request to expedite is **DENIED AS MOOT**.

III. DISCUSSION

The United States argues that the Bankruptcy Court erred when it found that it had jurisdiction to determine the amount of the Debtors' tax penalties or, alternatively, that the Bankruptcy Court should have abstained from making that determination in favor of permitting the Tax Court proceeding to go forward. When reviewing a decision of the Bankruptcy Court, conclusions of law made by the Bankruptcy Court are reviewed de novo, *In re Jepson*, 816 F.3d 942, 944 (7th Cir. 2016), while a Bankruptcy Court's decision whether to abstain is reviewable only for an abuse of discretion, *Matter of U.S. Brass Corp.*, 110 F.3d 1261, 1268 (7th Cir. 1997) (citations omitted).

"The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). Pursuant to 28 U.S.C.A. § 1334(b), bankruptcy jurisdiction is limited to "civil proceedings arising under title 11, or arising in or related to cases under title 11." *Id.* The Debtors, citing *In re Luongo*, 295 F.3d 323 (5th Cir. 2001), argue that the statute pursuant to which their motion is brought, 11 U.S.C. § 505, independently grants bankruptcy courts jurisdiction to decide the tax liability of a debtor.[1] While it is true that some courts have so held, the Court disagrees that § 505 permits a bankruptcy court to exercise jurisdiction over matters that do not otherwise satisfy 28 U.S.C.A. § 1334, the statute that establishes bankruptcy jurisdiction. *See In re Johnston*, 484 B.R. 698, 712 (Bankr. S.D. Ohio 2012) (holding that § 505 is not an independent grant of jurisdiction) (citing *In re Swain*, 437 B.R. 549, 562 (Bankr. E.D. Mich. 2010) and *United States v. Zelles (In re CNS, Inc.)*, 255 B.R. 198, 201 (N.D. Ohio 2000), but noting the contrary holdings of other courts). Accordingly, the question is whether the Debtors' § 505 motion is a "civil proceeding[] arising under title 11, or arising in or related to [a case] under title 11."

The determination of the amount of tax penalties owed by the Debtors clearly does not satisfy "arising in" jurisdiction, which are "administrative matters that arise *only* in bankruptcy cases." *In re Repository Techs., Inc.*, 601 F.3d 710, 719 (7th Cir. 2010). However, the Debtors argue that the matter "arises under title 11"

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[1] The Debtors cite to language in IRS Publication 508 that they believe supports their position. Even assuming that the Debtors' reading of the publication is correct, subject matter jurisdiction obviously cannot be created by the "admission" of a party.

because 11 U.S.C.A. § 505(a)(1) provides that, with exceptions not applicable here, a bankruptcy court "may determine the amount or legality of . . . any fine or penalty relating to a tax." Since § 505 is a provision in title 11, and they have filed a motion pursuant to § 505 asking the Bankruptcy Court to determine the amount of a tax penalty, the Debtors assert that their request "arises under" Title 11.

Courts are divided on the question of whether proceedings under § 505 "arise under" Title 11. While the Debtors correctly cite *In re UAL Corp.*, 336 B.R. 370 (Bankr. N.D. Ill. 2006), in support of their position that "[t]he determination of tax liability provided for by § 505(a) 'arises under' the Bankruptcy Code" and therefore is a "core proceeding," and the Court recognizes that other courts have reached the same conclusion, the Court disagrees. The Seventh Circuit has defined proceedings "arising under Title 11" in the context of determining whether a proceeding is "core":

> A proceeding is core under section 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case.

Diamond Mortgage Corp. of Illinois v. Sugar, 913 F.2d 1233, 1239 (7th Cir. 1990) (quoting *Barnett v. Stern*, 909 F.2d 973, 981 (7th Cir. 1990)). By filing their motion under § 505, the Debtors are not invoking a "substantive right" under that statute, but rather a procedural one: They are seeking to have a substantive question of law that arises under the Internal Revenue Code decided by means of a procedure provided for by Title 11.

Accordingly, the § 505 motion does not "arise under" Title 11.

That leaves the question of "related to" jurisdiction. The Seventh Circuit takes a more narrow view of "related to" jurisdiction than many other courts, holding that "a case is 'related' to a bankruptcy when the dispute affects the amount of property for distribution [i.e., the debtor's estate] or the allocation of property among creditors." *Matter of FedPak Sys., Inc.*, 80 F.3d 207, 213–14 (7th Cir. 1996). The United States argues that the dispute over the amount of tax penalties owed by the Debtors in this case does not satisfy this definition because "[d]etermination of the amount of the tax penalties cannot affect the amount of property available for distribution to creditors (or create a surplus for the debtors) because the penalties are subordinated to all other prepetition claims and the estate has insufficient assets to reach the penalties." Dkt. No. 14 at 30. In other words, the amount of property available for distribution to creditors from the estate will be the same whether the Debtors owe 20% negligence penalties or 75% fraud penalties, because there is no scenario under which funds from the estate will be used to satisfy the penalties.

The Court agrees with the United States that the § 505 motion cannot be "related to" the bankruptcy case for jurisdiction purposes unless its resolution will affect the amount of money available to distribute to creditors from the estate. The Debtors note repeatedly that whether a surplus might exist in the estate but for any tax penalties has not yet been decided and assert that "a strong possibility remains that a surplus exists." Dkt. No. 15 at 14 n.4. Their only explanation for this assertion is the following passage from their brief:

> In the Debtors' case here, there is a reasonable possibility of a surplus. Debtors sought a determination of the amount and dischargeability of the tax debts, including penalties and interest. The Bankruptcy Court has the penalty and interest issue under advisement . . . and has not yet made a determination. A determination by the Bankruptcy Court that penalties and interest are discharged would result in IRS' claim being approximately $107,000.00. Debtors' house alone ($118,000 based on realtor.com) can satisfy that debt. That discharge would free up assets in excess of all creditor claims. There are still more than $20,000 in other assets that the Trustee will have, providing a surplus to the Debtors.

Dkt. No. 15 at 26. This argument ignores the fact that over $60,000 in claims have been made against the estate by creditors other than the IRS. *See* Dkt. No. 8-2 at 15-19 (Claims Registry Summary).[2] The Debtors do not suggest that any of those claims will not be allowed and payable out of the estate, nor do they dispute that those claims will have priority over any tax penalties that are not discharged by the Bankruptcy Court. Taking the Debtors' argument at face value and assuming that the

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[2] It is unnecessary for the Court to take judicial notice of this fact, as requested by the United States, or to consider the declaration submitted by the United States along with its reply brief, to which the Debtors object, inasmuch as the claims registry is part of the appellate record.

house will generate enough to satisfy the $107,000 nondischargeable[3] tax obligation, the "more than $20,000 in other assets" that the Debtors assert will be available in the estate clearly are not sufficient to satisfy over $60,000 in claims and any administrative costs. Given the fact that the record cannot support a finding that any tax penalties will be paid from the estate, it is irrelevant to the administration of the estate how much those tax penalties are. Accordingly, that determination is not "related to" the bankruptcy, and the Bankruptcy Court lacked jurisdiction to make it. Assuming some or all of those penalties are not dischargeable, the Debtors clearly have an interest in how much they are; they simply are not entitled to have that determination (as opposed to the issue of dischargeability) made as part of their bankruptcy proceeding.

IV. CONCLUSION

For the reasons set forth above, the Bankruptcy Court erred in determining that it had jurisdiction to determine the amount of tax penalties owed by the Debtors. The Debtors' Motion to Determine Tax Liability must be DENIED. Accordingly, the Bankruptcy Court's rulings are REVERSED and this case is REMANDED to the Bankruptcy Court for further proceedings consistent with this ruling.

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[3] While the Debtors originally asserted that the underlying taxes were dischargeable, they eventually "consented" to them being "nondischargeable and priority." Dkt. No. 8 at 563.

SO ORDERED: 8/12/16

/s/ William T. Lawrence
Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Copies to all counsel of record via electronic notification

Appendix F

SO ORDERED: July 7, 2015

James M. Carr
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:

DONALD WAYNE BUSH and
KIMBERLY ANN BUSH,

Debtors.

Case No. 14-09053-JMC-7

ORDER ON MOTION TO
DETERMINE TAX LIABILITY

THIS MATTER comes before the Court on the Motion to Determine Tax Liability filed by Donald and Kimberly Bush ("Debtors") on December 28, 2014 (Docket No. 39) (the "Motion"), the United States' Response in Opposition to Debtors' Motion to Determine Tax Liability (Seeking Dismissal for Lack of Jurisdiction, or Alternatively, Abstention) filed by the United States of America (the "United States") on May 19, 2015 (Docket No. 66) (the "United States' Response"), and the Debtors' Response to United States Memorandum in Opposition to Debtors Motion to Determine Tax Liability filed by Debtors on June 10, 2015 (Docket No. 74) (the "Debtors' Response"). The

Court conducted a status conference on June 11, 2015 and ordered that a subsequent hearing on July 7, 2015 ("Hearing") would be conducted only to resolve two issues: 1.) whether the Court should or should not make and 11 U.S.C. § 505 determination of tax liability, and 2.) whether the Court should or should not abstain from hearing the Motion pursuant to 28 U.S.C. § 1334(c). The Court solicited briefs, statements of factual issues in dispute, and witness and exhibit lists from the parties in advance of the Hearing. The Debtors filed a statement of factual issues, an exhibit list, and a witness list all on June 24, 2015 and a brief on June 25, 2015 (Docket Nos. 81, 82, 83, and 91) (collectively, the "Debtors' Hearing Brief"). The United States filed a statement of factual issues, an exhibit list, a witness list, and the United States' Sur-Reply to Debtors' Response to United States' Response in Opposition to Debtors' Motion to Determine Tax Liability all on June 25. 2015 (Docket Nos. 88, 89, 90, and 87) (collectively, the "United States' Hearing Brief"). The Court having reviewed the Motion, the United States' Response, the Debtors' Response, the Debtors' Hearing Brief, and the United States' Hearing Brief, having heard from counsel for the Debtors and the United States at the Hearing, and being otherwise duly advised, now enters the following order:

For the reasons stated on the record at the Hearing, the Motion is granted to the extent the Court agrees to determine the amount of the tax and penalties that are the subject of the Motion. The United States' Response is overruled and the Court determines that it has jurisdiction to hear the Motion and declines to abstain from hearing the Motion. The Court orders that a telephone pretrial conference shall be held on **July, 28, 2015 at 10:00 a.m. EDT** for the purpose of scheduling

the Motion for trial. Parties shall call in to the Court at 317/229-3961.

IT IS SO ORDERED.

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Appendix G

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

IN RE:

Case No. 14-09053-JMC-13

DONALD WAYNE BUSH and
KIMBERLY ANN BUSH,
Debtors.

116 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204
July 7, 2015, 10:20 a.m.

TRANSCRIPT OF MOTION HEARING BEFORE
HONORABLE JAMES M. CARR
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:
For the Debtors:
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10412 Allisonville Road, Suite 200
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For USA/Internal Revenue Services
U.S. Department of Justice, Tax Div.
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Office of the U.S. Attorney
By: JEFFREY L. HUNTER, AUSA
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Indianapolis, IN 46204

For the U.S. Trustee:
Office of Michael J. Hebenstreit
By: MICHAEL J. HEBENSTREIT, ESQ.
151 N. Delaware Street, Suite 2000
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Audio Operator:
Heather Butler

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

THE COURT: Are we ready? Go ahead and proceed, Ms. Mayhew.

MS. MAYHEW: Your Honor, in terms of the Court's jurisdiction I'd like to point out the overall scheme of the bankruptcy court in the judicial process. The bankruptcy court derives its jurisdiction from the district court and Article III standing applies in the bankruptcy court. However, bankruptcy jurisdiction is narrower than Article III standing.

And under the Bankruptcy Code, it is the Chapter 7 trustee who in general has control over what objections to claims or what ancillary proceedings would be brought for the administration of the Chapter 7 bankruptcy case.

In this instance, the -- in order to do that you're trying to continue the smooth processing -- the smooth administration of a bankruptcy case. And this goal of making sure bankruptcy cases move forward smoothly, and I quote from *In re: Ray*, 597 F.3d 871 at 874, (7th Cir. 2010), this goal is achieved primarily by narrowly defining who has standing in a bankruptcy proceeding.

The burden to establish standing is on the party claiming that standing exists so we move on to say that having the trustee responsible for determining which issue should be raised in the bankruptcy moves the case forward more smoothly.

Another quote that I think addresses this, Your Honor, is from *Koch Refining*, where the court said that the trustee's single effort eliminates the many wasteful and competitive suits of individual creditors. So we got initially the principle that -- the Chapter 7 trustee is the one who -- should decide which claims are brought.

Moving on directly to the line of cases where courts have held -- the general principal I think, Your Honor, is aware is that a Chapter 7 debtor does not have standing to bring an ancillary suit in bankruptcy court unless they are going to receive a -- and also get a distribution under 726.

And --

THE COURT: That's neither here nor there. They're not bringing a suit against the IRS (indiscernible).

MS. MAYHEW: They're seeking a different suit.

THE COURT: They're seeking to reduce the amount of their obligation after the case is over.

MS. MAYHEW: Right.

THE COURT: Asserting the principal of a fresh start.

MS. MAYHEW: So where they are doing that, there's -- the line of cases seems to have begun, Your Honor, with *In re Adams*, which is Northern District -- sorry -- *In re Adams* is -- addresses this principal and all of that line of cases -- sorry -- that's not the one, Your Honor. It's *In re Abel* that seems to be the case that began the line of

reasoning that a debtor has standing where the claim is not dischargeable. *In re Abel* is 334 F.2d 339 (5th Cir. 1964) case.

But all of those *Abel* line of cases -- all of the cases that have descended from that case are undermined because the statutory scheme on which *Abel* was based has been amended.

The primary basis for the *Abel* decision was that the debtor had standing to object to a tax lien. That was an -- objecting to a tax lien, here it's seeking a determination on the amount but the end result is the same.

At that time, 26 U.S.C. 6871 permitted the immediate assessment of taxes against a debtor in bankruptcy. That is no longer the case. In this case in particular there has been no assessment of the taxes at issue because of the pending tax court case. Under a current version of 26 U.S.C. Section 6871, a debtor's tax liability can only be assessed if it has become res judicata pursuant to a determination either in this court or in the tax court. So they are being given a full and fair opportunity to contest the tax in that forum.

So because they will have a full and fair opportunity to challenge the tax liability, we submit that the -- that entire line *Abel* cases should be looked at with question. And that whether a debtor's post-bankruptcy debt exists -- is dischargeable or not -- is not an adequate immediate concern for the bankruptcy estate.

If the Chapter 7 trustee believed that it was, the Chapter 7 trustee could bring the action.

THE COURT: It's one of the two principle pillars. Ms. Mayhew, I don't know if you know this but I've been practicing bankruptcy law for almost 40 years and I

know an awful lot about bankruptcy and I know an awful lot about what the principle purposes are. And one of the principle purposes is a fresh start for the debtor. And so, the question of what the debtor is going to owe after the bankruptcy is over is in the core of the bankruptcy process and of this Court.

To argue that they don't have an interest because it may not affect how creditors get paid just doesn't make any sense. It really just doesn't make any sense. And I know you've said over and over and I'm -- and I keep telling you I don't agree with the cases that say that my jurisdiction depends on whether or not there's going to be money left over to pay creditors.

So I -- you know, I -- and I -- quite frankly, I don't understand why the Government is reluctant to go forward in this forum where the question -- the issue is fraud. And it's an issue -- you know, it's not some complicated tax question. There's no notation that that tax court is more competent that I am to listen to evidence and determine whether or not fraud has been committed.

So I have to tell you unless you've got something else to say that's -- that cuts -- and then I don't get it because you tell me that we have processes in this court that would be helpful to you that they don't have in that other court and yet you want to go in the other court. I mean, that just --

MS. MAYHEW: Your -- if I may, Your Honor, there is one other point that we raised in our brief when we were discussing whether this Court should abstain. So --

THE COURT: Which is what?

MS. MAYHEW: Which is when we look at the elements for abstention, the last point that I raised in my brief, I think, Your Honor, is the first and perhaps on of the most important points and that is that this debtor has gone through -- has filed in bankruptcy court seeking a friendlier court. This was blatant forum shopping and --

THE COURT: I'm not a friendlier court. See, that's what I don't get from the Government. Why do you assume I'm more friendly to the debtor than I am to the Government?

MS. MAYHEW: Your Honor, we do not make that assumption whatsoever. However, the debtor clearly did make that assumption when they filed --

THE COURT: Well, you made the assumption that the tax court would be more friendly to you and so you're both forum shopping and I don't see any principle that would cause me to say one forum -- well certainly I don't see a principal that would say to me the tax court is a better forum.

I can get your case tried before October.

MS. MAYHEW: Your Honor --

THE COURT: I can get it tried cheaper, easier, more expeditiously. So this whole argument that -- you know, that there's some misuse of judicial resources just doesn't make any sense.

MS. MAYHEW: Your Honor, is it not perhaps a misuse of judicial resources where a taxpayer files a petition in tax court, prepares for trial, has the Government's attorney spend all of the time to prepare for trial, show up on the first day of trial expecting to try the case with their witnesses ready and able and a taxpayer runs to

bankruptcy court to stop the tax trial that they've initiated --

THE COURT: So what got wasted?

MS. MAYHEW: -- by petitioning the tax court --

THE COURT: What got wasted?

MS. MAYHEW: A lot of time and effort --

THE COURT: That's -- but that water --

MS. MAYHEW: -- on the part of the United States.

THE COURT: -- is over the dam. That's done. So now the question is, from here going forward, what's the best use of judicial resources? And I just don't get it. And I don't get it because Congress wrote Section 505. It afforded that as a remedy to debtors.

So, I've got to figure out some reason -- some principal reason -- some economic, logical reason why we shouldn't go forward on that basis and I don't see one, quite frankly. I just don't see it.

MS. MAYHEW: Your Honor, we don't want to open the floodgates to many debtors -- many taxpayers deciding at the last minute when they think that they need more time --

THE COURT: But if you have --

MS. MAYHEW: -- to prepare for trial --

THE COURT: See I would get it -- I would get it if you came in here and said the issues to be decided in this case are highly technical issues under the Internal Revenue Code and its regulations that the tax court deals with on a regular basis, I'd say to you, I agree. Go to the tax court.

But when you come to me and say the issue is fraud, I do that every day and it doesn't make any sense to me to say, well, the tax court must more better able to make that determination than I do. Because I think they do -- well, I don't know if they do or they don't do it every day but that's right at the core of what we do here. And you don't have some technical tax issue that they're -- that they have better expertise to deal with.

So you know where I am. Where I am is we're going to stay here and we're going to resolve this issue and I want to do it in an expedited, expeditious way in which it's -- you know, I don't are you in a hurry to get this decided?

MS. MAYHEW: Your Honor, we'd like to get it decided in a reasonable amount of time --

THE COURT: Then tell me when.

MS. MAYHEW: -- but given --

THE COURT: When -- tell me when. When do you want to try the case? When do you want to try it?

MS. MAYHEW: We would need a minimum of five months for discovery.

THE COURT: All right. So you want to try it December?

MS. MAYHEW: (No audible response).

THE COURT: See, now that's your choice. You -- if you want to try it before October, we can try it before October but if you want to try it in December, we can try it in December.

MS. MAYHEW: Your Honor, given the -- that there are at least 11 witnesses --

THE COURT: Okay.

MS. MAYHEW: -- I don't know how many others we need to schedule that --

THE COURT: All right. You want it in December? Do you want January? When do you want to try it?

MS. MAYHEW: Five months for discovery, Your Honor. We can get our pretrial papers ready in another month.

THE COURT: Okay. Well do you want a trial date in December is my question or do you want a trial date in January?

MS. MAYHEW: December.

THE COURT: And how many trial days do you believe you need?

MS. MAYHEW: Your Honor, without having conducted discovery I can't say.

THE COURT: All right.

MS. MAYHEW: I would assume a minimum of --

THE COURT: Then here's what we're going to do. We're going to schedule a pretrial conference -- give me a date, Heather in the -- three weeks.

* * * *

[Balance of hearing discusses scheduling of pretrial conference.]

Appendix H

SO ORDERED: August 14, 2015

James M. Carr
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:

DONALD WAYNE BUSH and
KIMBERLY ANN BUSH,

Debtors.

Case No. 14-09053-JMC-7A

ORDER DENYING UNITED STATES' MOTION TO RECONSIDER

THIS MATTER comes before the Court on the *United States' Motion to Reconsider "Order on Motion to Determine Tax Liability" (Doc. 93) in Light of Forthcoming Motion Regarding Dischargeability Complaint, and to Determine the Motions in Tandem and Then Stay the Matters Pending a Motion for Interlocutory Appeal if the Jurisdictional Ruling is not Changed* filed by the United States on July 21, 2015 (Docket No. 104) (the "Motion"). The Court, having reviewed the Motion, the *Order on Motion to Determine Tax Liability* entered by the Court on July 7, 2015 (Docket No. 93) (the "July 7 Order"), the *Motion to Determine Tax Liability* filed by Donald and Kimberly

Bush (the "Debtors") on December 28, 2014 (Docket No. 39) (the "§ 505 Motion"), the *United States' Response in Opposition to Debtors' Motion to Determine Tax Liability (Seeking Dismissal for Lack of Jurisdiction or, Alternatively, Abstention)* filed on May 19, 2015 (Docket No. 66), the *Debtors' Response to United States Memorandum in Opposition to Debtors Motion to Determine Tax Liability* filed on June 10, 2015 (Docket No. 74), the *United States' Sur-Reply to Debtors' Response to United States' Response in Opposition to Debtors' Motion to Determine Tax Liability* filed on June 25, 2015 (Docket No. 87), the *Factual Issues* filed by Debtors on June 24, 2015 (Docket No. 81), the *Creditor United States' Factual Issues* filed on June 25, 2015 (Docket No. 88), and *Debtors' Brief in Support of the Court Hearing the Tax Liability Matter* filed on June 25, 2015 (Docket No. 91); having heard and considered the arguments of counsel at a hearing on July 28, 2015 and July 7, 2015; and being otherwise duly advised, now **DENIES** the Motion, insofar as it seeks a reconsideration and reversal of the July 7 Order.

In this chapter 7[1] bankruptcy case, the trustee is administering valuable property. The trustee's efforts to sell the bankruptcy estate's assets are not complete and there is a dispute regarding the amount of dollars the trustee will generate from his efforts. Therefore, whether the trustee may generate more dollars than are necessary to satisfy any claim of the Internal Revenue Service ("IRS") allowed in this case is still in doubt.

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[1] This case was converted from chapter 13 on October 15, 2014 (Docket No. 24).

On April 22, 2015, the IRS filed an amended proof of claim (the "IRS POC") seeking recovery of a total of $197,541.10. That claim is roughly broken down as follows:

> $33,143 tax due for 2009 (pending examination)
>
> $47,100 tax due for 2010 (pending examination)
>
> $26,791 tax due for 2011 (pending examination)
>
> $8,212 tax due for 2012 (assessed 3/24/14)
>
> $81,899.96 penalty to date of petition on unsecured priority claims (including interest thereon)

On June 10, 2015, Debtors filed an amended objection[2] to the IRS POC (Docket No. 75).

The principal issues regarding the IRS POC appear to be (1) whether penalties sought by the IRS for alleged fraudulent (as opposed to negligent) returns should be allowed; and (2) whether penalties sought by the IRS should be excepted from discharge pursuant to Bankruptcy Code §523(a)(7).[3]

Debtors have asked the Court to determine the amount and validity of the IRS POC pursuant to Bankruptcy Code § 505. The IRS objects to the Court's

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[2] Debtors had filed an objection on December 2, 2014 (Docket No. 34) to the original proof of claim filed by the IRS on October 16, 2014, but that objection was withdrawn on April 15, 2015 (Docket No. 56).

[3] The IRS refers to this as the "Cassidy issue." *See* Motion, pp. 12-16.

jurisdiction to make such a determination and alternatively requests that the Court abstain from doing so.

By the July 7 Order, the Court granted the § 505 Motion and overruled the IRS' objection thereto. The Court also decided that no valid basis exists for abstention.

The Motion asks, among other things, that the Court reconsider and reverse the July 7 Order.

The IRS offers several arguments to support its Motion. However, the principal arguments are those already resolved against the IRS by the July 7 Order. The IRS asserts that the Court lacks jurisdiction to determine Debtors' tax liability (and Debtors' objection to the IRS POC) because (1) it is unlikely that the trustee's efforts will generate sufficient funds to pay even the IRS priority claims for tax, without considering any penalty that may be allowed, and therefore the determination of the allowable amount of the IRS POC will not impact the administration of the bankruptcy estate; and (2) given the above, Debtors have no standing to object to the IRS POC.

The Court disagrees with the cases cited by the IRS to support its first argument. Instead, the Court believes that even if it were determined at this stage that there will not be sufficient funds to pay the IRS claim for unpaid tax (as opposed to penalties), Debtors' interest in determining the amount of their obligation to the IRS that may remain after their discharge and the conclusion of this case is part and parcel of Debtors' quest for a bankruptcy "fresh start" and therefore a sufficient reason to support the Court's Bankruptcy Code § 505(a)(i) jurisdiction. The

Court agrees with cases such as *D'Alessio v. Internal Revenue Service (In re D'Alessio)*, 181 B.R. 756 (Bankr. S.D.N.Y. 1995). As expressed in *D'Alessio*, "[h]ad Congress wanted to except a large segment of the debtor population from this statutory right, it would have included another subsection to § 505 which excludes from review tax disputes in no-asset cases." *Id.* at 761. Congress created no "bright line" rule limiting the Court's § 505 jurisdiction to only those cases where sufficient assets exist to pay more than IRS and other priority claims.

In *Internal Revenue Service v. Luongo (In re Luongo)*, 259 F.3d 323, 330 (5th Cir. 2001), the Fifth Circuit explained as a basis for refusing to abstain from exercising § 505 jurisdiction:

> These cases [that support abstention when assets will not suffice to pay general unsecured claims] improperly view § 505 in isolation without proper deference to the other goals of the Bankruptcy Code. The bankruptcy court's responsibility in administering the estate is not only to achieve a fair and equitable distribution of assets to the creditors, but also to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh." *Local Loan v. Hunt*, 292 U.S. 234, 244, 54 S.Ct. 695, 699, 78 L.Ed. 1230 (1934). Thus, a court should consider the impact of the abstention not only on the general administration of the estate, but also on the debtor. *In re Smith*, 122 B.R. 130, 133-134 (Bankr. M.D. Fla. 1990)….

The IRS also argues that a debtor does not have standing to object to an IRS proof of claim in circumstances like this case. Because the standing of an objector may depend upon the pecuniary interest of the objector in the allowance or disallowance of a claim, it may be true that where the allowance of the claim will have no pecuniary impact on a debtor, the debtor lacks standing to object. However, where as here the asserted claim may be fully or partially non-dischargeable and remain unsatisfied by the trustee, the allowable amount of the claim will have a direct pecuniary impact upon a debtor. As such, Debtors have a real pecuniary interest in the allowance or disallowance of the IRS POC. In finding debtor standing, *In re Toms*, 229 B.R. 646, 651 (Bankr. E.D. Pa. 1999) explained:

> [I]f there were a claim asserted in a chapter 7 case which would not be discharged and which is not likely to be paid in full by the trustee, then the chapter 7 debtor will be legally responsible for payment of any remaining claim after the bankruptcy case is concluded. Due to this continuing obligation, the debtor has a pecuniary interest in the disallowance of the claim. Were the claim disallowed or reduced in amount, the debtor's continuing liability after bankruptcy could be affected.

The assertions by the IRS regarding judicial economy and relative expertise of the Tax Court and Bankruptcy Court in this matter are unpersuasive. This Court, not the Tax Court, by exercising in Bankruptcy Code § 505 jurisdiction can best afford the parties complete and efficient relief.

IT IS SO ORDERED.

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Appendix I

Relevant Statutory Provisions

11 U.S.C. § 505

Determination of tax liability

(a)(1) Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

(2) The court may not so determine --

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title;

(B) any right of the estate to a tax refund, before the earlier of --

(i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or

(ii) a determination by such governmental unit of such request; or

(C) the amount or legality of any amount arising in connection with an ad valorem tax

on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under applicable nonbankruptcy law has expired.

* * * *

(c) Notwithstanding section 362 of this title, after determination by the court of a tax under this section, the governmental unit charged with responsibility for collection of such tax may assess such tax against the estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law.

28 U.S.C. § 1334

Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising

under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction --

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

11 U.S.C. § 11 (1970)

Creation of Courts of Bankruptcy and Their Jurisdiction

2a The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held to—

* * * *

> (2A) Hear and determine, or cause to be heard and determined any question arising as to the amount or legality of any unpaid tax, whether or not previously assessed, which has not prior to bankruptcy been contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, and in respect to any tax, whether or not paid, when any such question has been contested and adjudicated by a judicial or administrative tribunal of competent jurisdiction and the time for appeal or review has not expired, to authorize the receiver or the trustee to prosecute such appeal or review…

* * * *