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BANKRUPTCY COURTS' AUTHORITY UNDER § 505

ABSTRACT

“[T]he court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax”¹ Surprisingly, this provision does not refer to the jurisdiction of tax courts. Instead, 11 U.S.C. § 505 describes the vast statutory authority of bankruptcy courts to determine tax liabilities.

Apart from three narrow exceptions contained within the provision, bankruptcy courts' authority under § 505 is essentially limitless.² The broad language of § 505 extends bankruptcy courts' authority far beyond the context of bankruptcy, and courts have acknowledged that the plain meaning of the statute effectively creates a second tax court system.³ Interpreting § 505 in this manner raises constitutionality and federalism concerns and is ostensibly impractical. For these reasons, courts have taken three general approaches to define the extent of bankruptcy courts' authority under § 505.

This Comment evaluates these three approaches and examines other limitations and mechanisms that courts have utilized to restrict bankruptcy courts' authority to adjudicate § 505 proceedings. It concludes that the “arising under” approach is the ideal solution to § 505 because it emphasizes practicality while adhering to statutory canons and the goals of bankruptcy.

INTRODUCTION

The open-ended language of the United States Bankruptcy Code (the Code) grants bankruptcy courts broad authority to enter final judgments on a variety of issues. This broad authority is inconsistent with the narrower scope of authority bestowed on bankruptcy courts by the Constitution and other statutes.⁴ Over the years, the Supreme Court has attempted to reconcile the problems that have arisen from these conflicting allocations of authority.⁵ Although the Court's decisions aimed to clarify the true authority of bankruptcy courts, many issues remain. Evidence of this persisting incompatibility is exemplified in the

¹ 11 U.S.C. § 505(a)(1) (2012).

² *See id.* § 505(a)(2).

³ *See In re Wolverine Radio Co.*, 930 F.2d 1132, 1139 (6th Cir. 1991).

⁴ *See* 28 U.S.C. § 157 (2012); U.S. CONST. art. III, § 1.

⁵ *See Stern v. Marshall*, 564 U.S. 462 (2011); *see also* *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015).

controversy surrounding bankruptcy courts' authority to make § 505 determinations.

Section 505 of the Code states that bankruptcy courts “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.”⁶ Except for three narrow exceptions listed in § 505,⁷ the plain language of this provision grants bankruptcy courts broad authority to make tax liability determinations.⁸ The broad nature of § 505 creates significant overlap with the powers delegated to tax courts and enables bankruptcy courts to make determinations on matters well beyond the scope of bankruptcy.⁹ In an effort to remedy this predicament, courts have taken several different approaches to limit the authority of bankruptcy courts under § 505.

This Comment analyzes the various approaches courts have applied to determine the extent of bankruptcy courts' authority to make § 505 determinations. It then concludes that the most viable approach is to treat § 505 proceedings as core proceedings “arising under” Title 11.

Part A briefly describes the legislative and judicial history relating to the general controversy surrounding bankruptcy courts' authority. Part B describes the three general approaches courts have applied to delineate the authority of bankruptcy courts under § 505. Part C analyzes these approaches, and Part D concludes that applying the “arising under” approach to § 505 proceedings yields the most desirable outcomes.

A. *Background on the Authority of Bankruptcy Courts*

Prior to 1978, bankruptcy courts operated under a system where “referees” presided over bankruptcy proceedings and orders could be appealed to the federal district court.¹⁰ Under the Bankruptcy Reform Act of 1978 (the Act), Congress established bankruptcy courts as “court[s] of record” and as adjuncts

⁶ 11 U.S.C. § 505(a)(1) (2012).

⁷ Section 505 states that bankruptcy courts cannot determine tax liabilities (1) if the amount has already been determined by competent tribunal before the start of the case under Title 11, (2) the estate's right to a tax refund before a specified time period, or (3) if the determination is connected to certain ad valorem taxes. 11 U.S.C. § 505(a)(2) (2012).

⁸ *Id.* § 505.

⁹ *Id.*

¹⁰ *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 53 (1982).

to their corresponding federal district courts.¹¹ The Act stated that bankruptcy judges were to be appointed by the President with consent of the Senate for fourteen-year terms.¹² It established that bankruptcy judges could be removed by the “judicial council of the circuit” but “only for incompetency, misconduct, neglect of duty or physical or mental disability.”¹³ Additionally, the Act stated that “the salaries of the bankruptcy judges are set by statute and are subject to adjustment under the Federal Salary Act.”¹⁴ Finally, it expanded the authority of bankruptcy courts to “all ‘civil proceedings arising under title 11 [the bankruptcy title] or arising in or *related to* cases under title 11.’”¹⁵ Thus, the Act granted bankruptcy judges the type of broad authority that was generally reserved for Article III judges.¹⁶ However, in contrast to Article III judges, bankruptcy judges did not receive the same benefits such as lifetime appointment and the protection against salary decrease.¹⁷

The Supreme Court was forced to address this disparity in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, in 1982.¹⁸ In *Northern Pipeline*, the Court was asked to determine “whether the assignment by Congress to bankruptcy judges of the jurisdiction granted in 28 U.S.C. § 1471 (1976 ed., Supp.IV) by § 241(a) of the Bankruptcy Act of 1978 violates Art. III of the Constitution.”¹⁹ In a plurality opinion written by Justice Brennan, the Court noted the importance that the Constitution places on maintaining separation of powers between the three branches of government.²⁰ The plurality explained that the benefits afforded to judges under Article III, including life tenure and protection against diminution of salary, facilitate the Constitution’s separation of powers doctrine by reducing the legislative and executive branches’ influence over the judicial branch.²¹ As a result, the plurality concluded:

28 U.S.C. § 1471 (1976 ed., Supp.IV), as added by § 241(a) of the Bankruptcy Act of 1978, has impermissibly removed most, if not all,

¹¹ Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, 2657.

¹² *Id.*

¹³ *Id.*

¹⁴ *N. Pipeline Const. Co.*, 458 U.S. at 53.

¹⁵ *Id.* at 54.

¹⁶ DAVID G. EPSTEIN, BRUCE A. MARKELL, STEVE H. NICKLES & LAWRENCE PONOROFF, *BANKRUPTCY: DEALING WITH FINANCIAL FAILURE FOR INDIVIDUALS AND BUSINESSES* 561 (4th ed. 2015).

¹⁷ *Id.*

¹⁸ *N. Pipeline Const. Co.*, 458 U.S. 50.

¹⁹ *Id.* at 52; *see* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, 2668 (“The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.”).

²⁰ *See* *N. Pipeline Const. Co.*, 458 U.S. at 57–60.

²¹ *Id.* at 59–60.

of “the essential attributes of the judicial power” from the Art. III district court, and has vested those attributes in a non-Art. III adjunct. Such a grant of jurisdiction cannot be sustained as an exercise of Congress’ power to create adjuncts to Art. III courts.²²

1. Current Applicable Statutes

Two years later, in response to the concerns identified by the Supreme Court in *Northern Pipeline*,²³ Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA).²⁴ BAFJA created significant changes regarding the jurisdiction and judicial power of bankruptcy courts.²⁵ As a result, the jurisdiction of bankruptcy courts is currently defined in three key provisions of title 28: §§ 151, 1334, and 157.²⁶

Section 151 provides:

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding²⁷

This provision establishes bankruptcy judges as adjuncts to the district court with judicial authority over the matters referred to them by the district court under chapter 6 of title 28.²⁸

Section 1334 grants and defines federal district courts’ jurisdiction over title 11 cases and proceedings and has two notable implications.²⁹ First, it creates three classifications of civil proceedings associated with title 11. Second, it describes circumstances involving state law where the district court should abstain.³⁰

Section 1334(a) states that “[e]xcept as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all

²² *Id.* at 87.

²³ Rafael I. Pardo & Kathryn A. Watts, *The Structural Exceptionalism of Bankruptcy Administration*, 60 UCLA L. Rev. 384 (2012).

²⁴ Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA), Pub.L. 98–353, 98 Stat. 333.

²⁵ *Id.*

²⁶ EPSTEIN, *supra* note 16, at 562.

²⁷ 28 U.S.C. § 151 (2012).

²⁸ 1 COLLIER ON BANKRUPTCY ¶ 2.02 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

²⁹ 28 U.S.C. § 1334 (2012).

³⁰ *Id.*

cases under title 11.”³¹ In contrast, subsection (b) grants district courts “original but not exclusive jurisdiction of all civil proceedings *arising under* title 11, or *arising in or related to* cases under title 11” aside from the exceptions provided in subsection (e)(2).³² The language of subsection (b) identifies three types of proceedings: “arising under title 11,” “arising in [a case under title 11],” and “related to [a] case[] under title 11.”³³ As demonstrated in the following passages, these three categories have provided courts with an organizational structure for determining the extent of bankruptcy judges’ authority.

Section 157 allows district courts to refer title 11 proceedings and cases to bankruptcy judges.³⁴ Thus, this provision confers upon bankruptcy judges the authority described in § 151.³⁵ The language of § 157 permits district courts to exercise their discretion on whether to refer proceedings and cases to bankruptcy judges.³⁶ Congress gave district courts this discretion in an attempt to remedy the constitutional concerns addressed in *Northern Pipeline*.³⁷ Nevertheless, constitutional issues persisted.³⁸

Section 157 is significant because it explicitly addresses the authority of bankruptcy judges under the three categories of proceedings described in § 1334.³⁹ Section 157(b)(1) provides that “[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings *arising under* title 11, or *arising in* a case under title 11 . . . and may enter appropriate orders and judgments”⁴⁰ This subsection grants bankruptcy judges clear authority to enter final judgments in core proceedings *arising under* Title 11 or *arising in* a case under Title 11.⁴¹ Section 157 fails to provide an exact definition of core proceedings; however, § 157(b)(2) gives sixteen examples of core proceedings and notes that this list is not exhaustive.⁴²

³¹ *Id.* § 1334(a).

³² *Id.* § 1334(b) (emphasis added); *see* 28 U.S.C. § 1334(e)(2) (2012) (granting the district court exclusive jurisdiction over the property of the debtor and estate as well as over claims involving the employment of professional persons under § 327); *see also* 1 COLLIER, *supra* note 28, at ¶ 3.01 (noting that district courts’ lack of exclusive jurisdiction in subsection (b) allows for civil proceedings in a bankruptcy case to be brought in either federal or state court under specific circumstances).

³³ *Id.*

³⁴ 28 U.S.C. § 157 (2012).

³⁵ 1 COLLIER, *supra* note 28, at ¶ 2.02; *see* 28 U.S.C. § 151 (2012).

³⁶ 28 U.S.C. § 157 (2012) (stating that district courts “may” refer title 11 cases and proceedings to “the bankruptcy judges for the district”).

³⁷ 1 COLLIER, *supra* note 28, at ¶ 3.02.

³⁸ *Id.*

³⁹ 28 U.S.C. § 157 (2012).

⁴⁰ *Id.* § 157(b)(1) (emphasis added).

⁴¹ *Id.* § 157; *see* 28 U.S.C. § 1334(b) (2012).

⁴² *See* 28 U.S.C. § 157(b)(2) (2012).

Next, § 157 addresses the third category of proceedings described in § 1334, proceedings *related to* a case under title 11.⁴³ Section 157(c)(1) states that “[a] bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise *related to* a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court.”⁴⁴ These findings are examined by the district court and any objection by the parties is reviewed on a *de novo* standard.⁴⁵ Following this examination and review, the district court enters a final judgment on the proceeding.⁴⁶

The limited authority granted to bankruptcy courts over non-core proceedings “related to” a case under title 11 reflects the Supreme Court’s holding in *Northern Pipeline* that bankruptcy judges do not have the constitutional authority to enter final judgments on these matters.⁴⁷ In interpreting § 157(b), courts have concluded that core proceedings may only be classified as either arising under title 11 or arising in a case under title 11.⁴⁸ In comparison, non-core proceedings at most may be classified as *relating to* a case under title 11.⁴⁹

2. “Arises Under,” “Arising in,” and “Related to” Jurisdiction

The circuits have produced their own definitions for the three categories of civil proceedings listed in § 1334(b). Nevertheless, the circuits have reached similar interpretations for each of these categories.

As noted in the previous section, core proceedings are comprised of matters “arising under” title 11 or “arising in” a title 11 case.⁵⁰ The meaning of “arises under” is fairly straightforward since it mirrors the language of § 1331, which grants district courts federal question jurisdiction.⁵¹ In bankruptcy, “arising under” jurisdiction encompasses rights and causes of action created by title 11.⁵²

⁴³ *Id.* § 157(c)(1).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *In re Wood*, 825 F.2d 90, 96 (5th Cir. 1987); see 1 COLLIER, *supra* note 28, at ¶ 3.02.

⁴⁸ *In re Wood*, 825 F.2d at 96; see 1 COLLIER, *supra* note 28, at ¶ 3.02.

⁴⁹ *In re Wood*, 825 F.2d at 96; see 1 COLLIER, *supra* note 28, at ¶ 3.02 (“The phraseology of section 157 leads to the conclusion that there is no such thing as a core matter that is ‘related to’ a case under title 11. Core proceedings are, at most, those that arise in title 11 cases or arise under title 11.”).

⁵⁰ *In re Wood*, 825 F.2d at 96; see 1 COLLIER, *supra* note 28, at ¶ 3.02.

⁵¹ 1 COLLIER, *supra* note 28, at ¶ 3.01; see 28 U.S.C. § 1331 (2012) (“The district courts shall have original jurisdiction of all civil actions *arising under* the Constitution, laws, or treaties of the United States.”) (emphasis added).

⁵² 1 COLLIER, *supra* note 28, at ¶ 3.01.

In comparison, “arising in” proceedings are claims not explicitly created by title 11, but found only in the context of bankruptcy.⁵³ “Arising in” jurisdiction includes proceedings such as the “allowance or disallowance of claims.”⁵⁴

Bankruptcy courts’ jurisdiction over non-core proceedings is limited to matters “related to” a title 11 case.⁵⁵ In *Celotex Corp. v. Edwards*, the Supreme Court declared that “related to” jurisdiction expanded beyond “proceedings involving the property of the debtor or the estate.”⁵⁶ However, courts have recognized that the “related to” language cannot be viewed without limitations.⁵⁷ In order to determine whether a proceeding adequately “relates to” a title 11 case, most courts have adapted a test applied by the Third Circuit in *Pacor, Inc. v. Higgins*.⁵⁸ Under this test, a proceeding is “related to” a title 11 case if “*the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.*”⁵⁹

3. Recent Influential Supreme Court Cases

Three recent Supreme Court cases have dramatically influenced the overall jurisdiction of bankruptcy courts.⁶⁰

In 2011, in *Stern v. Marshall*, the Court was asked to determine whether the bankruptcy court had the authority to enter a final judgment on a common law tortious interference counterclaim.⁶¹ The Court divided this initial question into two further questions. First, it asked whether the bankruptcy court had statutory authority under § 157 of the Code.⁶² Second, it asked whether the bankruptcy court had proper constitutional authority.⁶³

In answering the first question, the Court looked to the plain meaning of the language in § 157,⁶⁴ which explicitly authorizes bankruptcy courts to make determinations on “counterclaims by the estate against persons filing claims

⁵³ *In re Wood*, 825 F.2d at 96–97.

⁵⁴ EPSTEIN, *supra* note 16, at 564.

⁵⁵ 28 U.S.C. § 157(c)(1) (2012).

⁵⁶ *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995).

⁵⁷ *Id.*

⁵⁸ *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (1984).

⁵⁹ *Id.* (emphasis original).

⁶⁰ See *Wellness Int’l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015); *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014); *Stern v. Marshall*, 564 U.S. 462 (2011).

⁶¹ *Stern*, 564 U.S. at 469.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 475.

against the estate.”⁶⁵ The Court concluded that the plain language of the statute clearly granted the bankruptcy court the authority to enter a final judgment on the claim.⁶⁶ The Court recognized that this broad authorization of jurisdiction under § 157 could lead to the same serious constitutional concerns raised in *Northern Pipeline*.⁶⁷ However, it noted that the language of the statute was unambiguous and did not “leave[] any room for the canon of avoidance.”⁶⁸

The Court analyzed the second question, whether the bankruptcy court had constitutional authority, by looking to Article III of the Constitution.⁶⁹ Here, the Court concluded that “[a]lthough . . . § 157(b)(2)(C) permits the Bankruptcy Court to enter final judgment on [claimant]’s counterclaim, Article III of the Constitution does not.”⁷⁰ The majority explained that granting the bankruptcy court broad jurisdiction under § 157 ran afoul of the separation of powers principle.⁷¹ In its opinion, it noted that “Article III of the Constitution provides that the judicial power of the United States may be vested only in courts whose judges enjoy the protections set forth in that Article.”⁷² Since bankruptcy courts were established under Article I, the majority held that the bankruptcy court lacked authority to enter a final judgment on the “state law counterclaim.”⁷³

The dissent disagreed and stated that the bankruptcy court had both statutory and constitutional authority to enter judgment on the tortious interference counterclaim.⁷⁴ In its opinion, the dissent argued that when the possibility of a separation of powers issue arises, the non-Article III judge’s authority should be evaluated “pragmatic[ally]” using the five factors listed in *Commodity Futures Trading Commission v. Schor* to determine whether the non-Article III judge violated the separation of powers doctrine in a *meaningful way*.⁷⁵ Applying this approach, the dissent concluded that “a grant of authority to a bankruptcy court to adjudicate compulsory counterclaims does not violate any constitutional separation-of-powers principle related to Article III.”⁷⁶

⁶⁵ 28 U.S.C. § 157(b)(2)(C) (2012).

⁶⁶ Stern, 564 U.S. at 477–78.

⁶⁷ Stern, 564 U.S. at 477; see *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 57–60 (1982).

⁶⁸ Stern, 564 U.S. at 478.

⁶⁹ *Id.* at 482–85.

⁷⁰ *Id.* at 482.

⁷¹ *Id.* at 482–84.

⁷² *Id.* at 503.

⁷³ *Id.* at 503; see U.S. CONST. art. I, § 8.

⁷⁴ Stern, 564 U.S. at 505–21.

⁷⁵ *Id.* at 510–12.

⁷⁶ *Id.* at 513.

The Court again addressed bankruptcy courts' jurisdiction in 2014, in *Executive Benefits Insurance Agency v. Arkison*.⁷⁷ In *Executive Benefits*, the Court was asked to determine how a bankruptcy court should proceed when it encounters a *Stern* claim.⁷⁸ Identified by the characteristics of the counterclaim asserted in *Stern v. Marshall*, a *Stern* claim is defined as “a claim designated for final adjudication in the bankruptcy court as a *statutory matter*, but prohibited from proceeding in that way as a *constitutional matter*.”⁷⁹ The Court noted that “lower courts, including the Ninth Circuit in this case, have described *Stern* claims as creating a statutory ‘gap.’”⁸⁰ This “gap” occurs because although under *Stern v. Marshall*, bankruptcy courts do not have the authority to enter final judgments on *Stern* claims,⁸¹ “§ 157(b) does not explicitly authorize bankruptcy judges to submit proposed findings of fact and conclusions of law in a *core proceeding*,” as it does with non-core proceedings related to a case under title 11.⁸²

The Court unanimously held that despite this apparent “gap,” bankruptcy courts have the authority to treat *Stern* claims in the same manner as non-core proceedings under § 157(c).⁸³ As a result, when a bankruptcy court faces a *Stern* claim it can issue “proposed findings of fact and conclusions of law to be reviewed *de novo* by the district court.”⁸⁴

In 2015, the Court decided a third case, *Wellness International Network, Ltd. v. Sharif*,⁸⁵ that significantly impacted the extent of bankruptcy courts' jurisdiction. In *Wellness*, the Court held that Article III permits bankruptcy courts to enter final judgments on *Stern* claims provided that both parties in the action give their consent.⁸⁶ In its opinion, the majority followed a line of reasoning that closely resembled the dissent in *Stern*,⁸⁷ applying a flexible approach to bankruptcy courts' jurisdiction that takes into account the factors

⁷⁷ *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014).

⁷⁸ *Id.* at 2168.

⁷⁹ *Id.* at 2170 (emphasis added).

⁸⁰ *Id.* at 2172.

⁸¹ *Id.* at 2172–73.

⁸² *Id.* at 2173; *see* 28 U.S.C. § 157(c)(1) (2012) (authorizing bankruptcy judges to “submit proposed findings of fact and conclusions of law to the district court” for non-core proceedings that are “otherwise related to a case under title 11”).

⁸³ *Executive Benefits Ins. Agency*, 134 S. Ct. at 2173.

⁸⁴ *Id.* at 2168; *see* 28 U.S.C. § 157(c) (2012).

⁸⁵ *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015).

⁸⁶ *Id.* at 1944–45.

⁸⁷ *Id.*

listed in *Commodity Futures Trading Commission v. Schor*.⁸⁸ The Court in *Wellness* concluded that when evaluating *Stern* claims:

The Court must weigh “the extent to which the essential attributes of judicial power are reserved to Article III courts, and, conversely, the extent to which the non-Article III forum exercises the range of jurisdiction and powers normally vested only in Article III courts, the origins and importance of the right to be adjudicated, and the concerns that drove Congress to depart from the requirements of Article III.” Applying these factors, we conclude that allowing bankruptcy litigants to waive the right to Article III adjudication of *Stern* claims does not usurp the constitutional prerogatives of Article III courts.⁸⁹

Thus, the Court’s holding in *Wellness* allows bankruptcy courts to administer final judgments in *Stern* claims provided that they obtain the consent of all parties involved in the action.⁹⁰ Furthermore, the majority held that such consent may be satisfied by the express or implied consent of the parties.⁹¹ The Court’s holding in *Wellness* supports a broad and pragmatic interpretation of bankruptcy courts’ authority to enter final judgments.

B. Bankruptcy Courts’ Authority in the Context of § 505

Many of the 1984 modifications to the Code, including those codified in §§ 151, 1334, and 157, aimed to remedy the constitutional issues identified by the Court in *Northern Pipeline*.⁹² Despite these attempts, difficulties surrounding the extent of bankruptcy courts’ authority under title 11 persist.⁹³ One particular area of ambiguity is the scope of bankruptcy courts’ authority to enter final judgments on tax liability claims under § 505.⁹⁴ Courts have produced a variety of interpretations regarding the jurisdiction of bankruptcy courts over § 505 proceedings, which can be classified under three broad approaches.⁹⁵ These approaches are by no means absolute and courts sometimes augment and combine them. Furthermore, jurisdictional determinations under these methods are still subject to certain limitations, as discussed later in Part C(5). Nevertheless, the three approaches depicted in the following sections exemplify

⁸⁸ *Id.*; see *Stern v. Marshall*, 564 U.S. 462, 510–12 (2011).

⁸⁹ *Wellness Int’l Network, Ltd.*, 135 S. Ct. at 1944–45.

⁹⁰ *Id.* at 1944–45.

⁹¹ *Id.* at 1947; see 28 U.S.C. § 157(c)(2) (2012).

⁹² Pardo, *supra* note 23.

⁹³ See *Wellness Int’l Network, Ltd.*, 135 S. Ct. 1932; *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014); *Stern*, 564 U.S. 462.

⁹⁴ See 11 U.S.C. § 505 (2012).

⁹⁵ See *In re Johnston*, 484 B.R. 698, 708 (Bankr. S.D. Ohio 2012).

the predominant applications of § 505. These three approaches are described in the cases below and analyzed in greater detail in Part C.

1. Section 505 as an Independent Basis for Jurisdiction

One approach, taken by several courts, treats § 505 as an independent basis for bankruptcy courts to make determinations on tax liability claims.⁹⁶ An example of this interpretation is found in the case of *In re Luongo*.⁹⁷ In its opinion, the Fifth Circuit declined to classify § 505 proceedings under the three jurisdictional classifications of § 1334.⁹⁸ Instead, the court concluded that § 505 itself grants bankruptcy courts vast authority that is restricted only by the limitations expressly stated in the provision itself.⁹⁹

This view was also expressed in the case of *In re Fyfe*.¹⁰⁰ Here, the bankruptcy court held that “the determination of tax liability by a bankruptcy court is discretionary under section 505(a), with the only restraint on bankruptcy court determinations being a previous determination of the amount or legality of the tax liability by a court of competent jurisdiction before the filing of the bankruptcy petition.”¹⁰¹

The opinions of *In re Luongo* and *In re Fyfe* reflect the view that § 505 independently grants bankruptcy courts jurisdictional and substantive authority to make tax liability determinations.¹⁰² This is the broadest interpretation courts have adopted.

2. Core Proceedings “Arising Under” Title 11

The second approach many courts have applied concludes that bankruptcy courts have jurisdiction over § 505 proceedings based on the premise that such cases qualify as “arising under” jurisdiction under § 1334. The bankruptcy court’s discussion in *In re UAL Corp.* exemplifies this interpretation.¹⁰³ In this case, the court asserted that “[t]he determination of tax liability provided for by

⁹⁶ *Id.*

⁹⁷ *In re Luongo*, 259 F.3d 323 (5th Cir. 2001).

⁹⁸ *Id.* at 329.

⁹⁹ *Id.* at 328–29.

¹⁰⁰ *In re Fyfe*, 186 B.R. 290, 292 (Bankr. N.D. Ga. 1995).

¹⁰¹ *Id.* The opinion describes bankruptcy courts’ authority as “discretionary” because it is widely accepted that the language of § 505 allows bankruptcy judges to abstain from ruling on requests for tax liability determinations. This topic is discussed in detail in Part C(6).

¹⁰² *In re Luongo*, 259 F.3d 323; *In re Fyfe*, 186 B.R. 290.

¹⁰³ *In re UAL Corp.*, 336 B.R. 370 (Bankr. N.D. Ill. 2006).

§ 505(a) ‘arises under’ the Bankruptcy Code.”¹⁰⁴ In support of this assertion, it referred to the Fifth Circuit’s opinion in *In re Wood*.¹⁰⁵ Here, the Fifth Circuit discussed the three categories of proceedings listed in § 1334 and stated that the “arising under” title 11 category includes “proceedings that involve a cause of action created or determined by a statutory provision of title 11.”¹⁰⁶ Under this view, the language of § 505 satisfies “arising under” jurisdiction since it authorizes bankruptcy courts to make tax liability determinations, thereby creating a cause of action under title 11.¹⁰⁷ The court noted that on its face, the wording of § 505 seems to grant bankruptcy courts nearly unlimited authority to make tax liability determinations.¹⁰⁸ It explained that courts have recognized and responded to this predicament by establishing restrictions on bankruptcy courts’ § 505 authority based on time and the parties involved.¹⁰⁹

The bankruptcy court in *In re Kennedy* also utilized this approach to § 505.¹¹⁰ In its opinion, the court stated that “[a] proceeding ‘arising under’ title 11 involves a substantive right created by the Bankruptcy Code.”¹¹¹ Following this interpretation, the court held that “[t]he determination of tax liability provided for by § 505(a) ‘arises under’ the Bankruptcy Code, and is a core proceeding under 28 U.S.C. § 157(b)(2)(B), (I), and (O).”¹¹²

3. *Non-core Proceedings “Related to” a Title 11 Case*

Under the third approach taken by courts, bankruptcy courts only have the possibility of § 1334 “related to” jurisdiction over § 505 proceedings. Under this approach, “determinations as to the dischargeability of particular debts” are a recognized exception because these determinations are expressly identified as core proceedings under § 157(b)(2)(I).¹¹³ As a result, nearly all courts agree that bankruptcy courts have “arising under” jurisdiction over tax dischargeability determinations.¹¹⁴ However, other than those proceedings explicitly listed in

¹⁰⁴ *Id.* at 371.

¹⁰⁵ *Id.*; see *In re Wood*, 825 F.2d 90, 96–97 (5th Cir. 1987).

¹⁰⁶ *In re Wood*, 825 F.2d at 96.

¹⁰⁷ 11 U.S.C. § 505(a)(1) (2012).

¹⁰⁸ *In re UAL Corp.*, 336 B.R. at 374.

¹⁰⁹ *Id.* at 374–75. The limitations regarding the timing of the tax liability and the parties involved provide important constraints which are described later in Part C(5).

¹¹⁰ *In re Kennedy*, 529 B.R. 345 (Bankr. N.D. Ga. 2015).

¹¹¹ *Id.* at 349.

¹¹² *Id.* (internal quotations omitted).

¹¹³ 28 U.S.C. § 157(b)(2)(I) (2012).

¹¹⁴ *Id.* § 157.

§ 157, this approach provides that bankruptcy courts at most have § 1334 “related to” jurisdiction over § 505 claims.

The court in *In re Bush* articulated the reasoning behind this approach.¹¹⁵ Here, the court held that a debtor’s motion under § 505 does not invoke a substantive right that satisfies the requirements for “arising under” jurisdiction under § 1334.¹¹⁶ Instead, § 505 provides only a procedural right under title 11, whereas the actual substantive right is created by the Internal Revenue Code.¹¹⁷ Therefore, under this approach, except for tax dischargeability determinations, bankruptcy courts are limited to § 1334 “related to” jurisdiction for determinations under § 505.¹¹⁸ Moreover, before the bankruptcy court can assert “related to” jurisdiction over the § 505 proceedings, it must determine whether the circumstances satisfy the applicable standard for “related to.”¹¹⁹

Courts determine whether the “related to” standard is met by applying tests like the previously described *Pacor* test, which asks if the proceeding will have any conceivable impact on the estate.¹²⁰ In *In re Bush*, the circumstances of the § 505 motion failed to satisfy the more stringent “related to” test applied in the Seventh Circuit.¹²¹ This test maintains that a proceeding is only “related to” a title 11 case if “it affects the amount of property available for distribution or the allocation of property among creditors.”¹²² Because the proceeding failed this test, the court held that the bankruptcy court did not have the proper jurisdiction to enter a judgment or submit reviewable findings of fact and legal conclusions on the § 505 motion.¹²³

Following a similar analysis, the court in *In re Johnston* held that it lacked subject matter jurisdiction over a requested tax liability determination.¹²⁴ In its analysis, it noted that even within the Sixth Circuit, courts were split on whether § 505 independently granted bankruptcy courts jurisdiction over tax liability disputes.¹²⁵ Nevertheless, the court concluded “that § 505 does not serve as an

¹¹⁵ *In re Bush*, No. 1:15-CV-1318-WTL-DKL, 2016 WL 4261867 (S.D. Ind. Aug. 12, 2016). In the interest of full disclosure, the author of this Comment was the 2016 summer intern for the Honorable William Lawrence who presided over this case.

¹¹⁶ *Id.* at *7–8.

¹¹⁷ *Id.* at *8.

¹¹⁸ *Id.* at *8–9.

¹¹⁹ *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995); *see* 28 U.S.C. § 157(c)(1) (2012).

¹²⁰ *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (1984).

¹²¹ *In re Bush*, No. 1:15-CV-1318-WTL-DKL, 2016 WL 4261867 at *8–9.

¹²² *In re Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir. 1987).

¹²³ *In re Bush*, No. 1:15-CV-1318-WTL-DKL, 2016 WL 4261867 at *11–12; *see* 28 U.S.C. § 157 (2012).

¹²⁴ *In re Johnston*, 484 B.R. 698, 714 (Bankr. S.D. Ohio 2012).

¹²⁵ *Id.* at 708.

additional grant of jurisdiction to the bankruptcy courts.”¹²⁶ Instead, it held that § 505 “allow[s] the court to determine tax liability . . . if the court otherwise has jurisdiction over that proceeding under the confines of the jurisdiction granted to it by § 1334(a) or (b).”¹²⁷

The court then assessed the proceedings under each of the categories listed in § 1334.¹²⁸ It stated that the proceeding failed to satisfy the “arising in” classification since the requested determination regularly arises outside the context of bankruptcy cases.¹²⁹ The court also determined that the proceeding did not meet the standard for “arising under” title 11.¹³⁰ It noted that although the debtor argued that his complaint centered around dischargeability, the substantive issue actually concerned the separate issue of whether the debtor qualified as a “responsible person” under federal, state, and municipal tax law.¹³¹ Finally, the court utilized the *Pacor* test to assess the proceeding under the “related to” classification.¹³² It stated that the proceeding failed to meet the “related to” standard because the “rendering of the responsible person determination does not have any conceivable effect on the estate being administered”¹³³ As a result, the court held that it lacked subject matter jurisdiction under § 1334 and dismissed the case.¹³⁴

C. Analysis of § 505 Approaches

The “independent basis,” “arising under,” and “related to” approaches described above attempt to outline bankruptcy courts’ jurisdictional limits over § 505 claims.¹³⁵ Although each interpretation has advantages and disadvantages, the analysis below reveals that the “arising under” approach provides the optimal solution.

¹²⁶ *Id.* at 712.

¹²⁷ *Id.*

¹²⁸ *Id.* at 711–14.

¹²⁹ *Id.* at 712.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 711.

¹³³ *Id.*

¹³⁴ *Id.* at 714.

¹³⁵ Not all courts use this bright line distinction. Some rely on a combination and try to differentiate each proceeding on an individual basis. However, distinguishing between individual circumstances is inefficient and can lead to inconsistencies. A bright line interpretation under one of these three approaches greatly simplifies this process and provides a more precise articulation of bankruptcy courts’ authority under § 505.

1. Constitutional Concerns

As discussed previously in Part A(3), the Supreme Court's concerns regarding the extent of bankruptcy courts' jurisdiction are reflected in the recent rulings of *Stern v. Marshall*, *Executive Benefits Insurance Agency v. Arkison*, and *Wellness International Network, Ltd. v. Sharif*.¹³⁶ In these cases, the Court was forced to determine whether the Constitution permitted the broad authority granted to bankruptcy courts under the Code.¹³⁷ Specifically, all three holdings expressed concerns about bankruptcy courts' authority extending to include subject matter reserved for Article III judges by the Constitution.¹³⁸ These separation of powers concerns echoed the apprehension the Court articulated almost thirty years earlier in *Northern Pipeline*.¹³⁹ Together, these cases emphasize that lower courts should be wary of these concerns when they attempt to circumscribe the jurisdictional limitations of bankruptcy courts.

Although *Northern Pipeline*, *Stern*, *Executive Benefits*, and *Wellness* had a seismic impact on the overall jurisdiction of bankruptcy courts, the separation of powers concerns raised in these cases are not implicated in the context of § 505 proceedings. Section 505 creates an overlap between the subject matter jurisdiction of bankruptcy courts and tax courts.¹⁴⁰ However, Article I, § 8 of the Constitution states “[t]he Congress shall have power to lay and collect taxes,” and “[the power to] establish . . . uniform laws on the subject of bankruptcies throughout the United States.”¹⁴¹ This language grants the legislative branch the authority to establish both tax courts and bankruptcy courts.¹⁴² As a result, the overlap between tax courts and bankruptcy courts created by § 505 only involves Article I judges.¹⁴³ Therefore, in the context of § 505, bankruptcy courts are not at risk of intruding on subject matter delegated to Article III judges. For this reason, granting bankruptcy courts broad authority under § 505 does not invoke

¹³⁶ See *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015); *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014); *Stern v. Marshall*, 564 U.S. 462 (2011).

¹³⁷ *Wellness Int'l Network, Ltd.*, 135 S. Ct. 1932; *Executive Benefits Ins. Agency*, 134 S. Ct. 2165; *Stern*, 564 U.S. 462.

¹³⁸ *Wellness Int'l Network, Ltd.*, 135 S. Ct. 1932; *Executive Benefits Ins. Agency*, 134 S. Ct. 2165; *Stern*, 564 U.S. 462.

¹³⁹ *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 54–55 (1982); see *Wellness Int'l Network, Ltd.*, 135 S. Ct. 1932; *Executive Benefits Ins. Agency*, 134 S. Ct. 2165; *Stern*, 564 U.S. 462.

¹⁴⁰ 11 U.S.C. § 505 (2012).

¹⁴¹ U.S. CONST. art. I, § 8, cl. 1, 4.

¹⁴² U.S. CONST. art. I, § 8.

¹⁴³ *Id.*

the separation of powers concerns described by the Supreme Court in the previous four cases.¹⁴⁴

Further analysis of the Court's more recent holdings in *Stern*, *Executive Benefits*, and *Wellness* reveals a trend that favors an expansive reading of § 505.¹⁴⁵ This trend is initially demonstrated by the dissent in *Stern*, which supported a broad yet pragmatic approach to bankruptcy courts' jurisdiction.¹⁴⁶ Three years later in *Executive Benefits*, the Court expanded bankruptcy courts' jurisdiction to allow them to submit reviewable findings of fact and conclusions of law in core proceedings where they lack constitutional authority.¹⁴⁷ Finally, in *Wellness*, the Court increased bankruptcy courts' jurisdiction even further by holding that the constitutional limitations of *Stern* claims could be overcome so long as both parties consented to the bankruptcy court's jurisdiction.¹⁴⁸ These three cases demonstrate the Court's current trend of expanding bankruptcy courts' jurisdiction.¹⁴⁹ This continued expansion of bankruptcy courts' jurisdiction supports granting bankruptcy courts' broad authority to make determinations under § 505.

Another possible constitutional concern arises from bankruptcy courts' ability to adjudicate state taxes. There are four types of courts that have original jurisdiction over federal tax litigation: the district courts, tax courts, courts of federal claims, and bankruptcy courts.¹⁵⁰ With respect to state taxes, the Tax Injunction Act, codified in 28 U.S.C. § 1341, prevents federal courts from "enjoin[ing], suspend[ing] or restrain[ing] the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."¹⁵¹ For this reason, "[m]any people believe that [§ 1341] insulates state tax determinations almost entirely from federal court oversight."¹⁵² However, bankruptcy courts are a unique exception to § 1341.¹⁵³

¹⁴⁴ See *Wellness Int'l Network, Ltd.*, 135 S. Ct. 1932; *Executive Benefits Ins. Agency*, 134 S. Ct. 2165; *Stern*, 564 U.S. 462.

¹⁴⁵ See *Wellness Int'l Network, Ltd.*, 135 S. Ct. 1932; *Executive Benefits Ins. Agency*, 134 S. Ct. 2165; *Stern*, 564 U.S. 462.

¹⁴⁶ *Stern*, 564 U.S. at 510–12 (J. Breyer, dissenting).

¹⁴⁷ *Executive Benefits Ins. Agency*, 134 S. Ct. at 2170.

¹⁴⁸ *Wellness Int'l Network, Ltd.*, 135 S. Ct. at 1944–45.

¹⁴⁹ See *Stern*, 564 U.S. at 510–12 (J. Breyer, dissenting); *Executive Benefits Ins. Agency*, 134 S. Ct. at 2170; *Wellness Int'l Network, Ltd.*, 135 S. Ct. at 1944–45.

¹⁵⁰ Steve R. Johnson, *The Phoenix and the Perils of the Second Best: Why Heightened Appellate Deference to Tax Court Decisions is Undesirable*, 77 OR. L. REV. 235, 238–40 (1998).

¹⁵¹ 28 U.S.C. § 1341 (2012).

¹⁵² Clark R. Calhoun & Timothy L. Fallaw, *Avoiding the TIA: Not Impossible, But Close*, TAX ANALYSTS AUDIT + BEYOND 425, 425 (2010).

¹⁵³ *City Vending of Muskogee, Inc. v. Oklahoma Tax Comm'n*, 898 F.2d 122, 123 (10th Cir. 1990).

As the Tenth Circuit noted, “[§ 1341] will not preclude the determination of state tax liability where federal courts have jurisdiction under the Bankruptcy Code, 11 U.S.C. § 505.”¹⁵⁴ As a result, § 505 appears to create federalism concerns.

Courts have recognized this problem, and in response, they have limited bankruptcy courts’ authority to determine state taxes. As one court noted,

[§ 1341’s exception for bankruptcy courts] does not mean that § 505 should permit a debtor/taxpayer simply to forego the state process and use the bankruptcy court’s adversary proceeding vehicle to “federalize” a question that otherwise would be exclusively an issue of state law. A taxpayer cannot challenge a state tax for the first time in federal court when a state provides a process to challenge the tax, *see, e.g., Patel v. City of San Bernardino*, 310 F.3d 1138, 1141 (9th Cir. 2002); *Bernard v. Village of Spring Valley, N.Y.*, 30 F.3d 294, 297 (2d Cir. 1994) (holding that action in federal court was barred when plaintiff had procedurally adequate remedies that could be sought in state court); *Daytona Beach Racing and Recreational Facilities Dist. v. County of Volusia*, 579 F.2d 367, 369 (5th Cir. 1978) (holding that plaintiff could not “fail to take advantage of the state remedy and then litigate in federal court”).¹⁵⁵

The restriction described above is significant because it allows for a broad approach to § 505 while minimizing federalism issues.

2. Goals of Bankruptcy

Bankruptcy law in the modern era has two primary goals. First, it aims to facilitate “equitable distribution of the debtor’s assets among his or her creditors.”¹⁵⁶ Second, it hopes to provide debtors with a fresh start.¹⁵⁷

Evaluating the “independent basis,” “arising under,” and “related to” approaches to § 505 in light of the two goals of bankruptcy supports granting bankruptcy courts broad authority. Vesting the bankruptcy courts with broad authority promotes these goals because bankruptcy judges are in a better position to understand the debtor’s financial circumstances and ability to repay. Bankruptcy judges’ additional knowledge of the debtor’s financial situation enables them to better determine the amount of tax liabilities the debtor can reasonably afford, thereby facilitating repayment to creditors as well as the

¹⁵⁴ *Id.*

¹⁵⁵ *In re Pontes*, 310 F. Supp. 2d 447, 453 (D.R.I. 2004).

¹⁵⁶ 9 AM. JUR. 2D BANKRUPTCY § 5.

¹⁵⁷ *Id.*

debtor's fresh start. Furthermore, in most cases, granting the bankruptcy judge broad authority under § 505 allows for more efficient determinations of the debtor's tax liabilities. In turn, this increased efficiency expedites the bankruptcy process, thereby facilitating both the distribution of the debtor's assets as well as the debtor's fresh start. For these reasons, the "independent basis" or "arising under" approaches to § 505 would help promote the two primary goals of bankruptcy. In contrast, the "related to" approach, where the final determination is left to the district or tax court, would likely hinder bankruptcy's main objectives.

3. *Statutory Analysis*

Several canons of statutory interpretation should also be considered when evaluating courts' approaches to § 505 proceedings.

a. *Plain Meaning Canon*

First, one should examine the plain meaning of § 505. As the Court stated in *Caminetti v. United States*:

It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the lawmaking body which passed it, the sole function of the courts is to enforce it according to its terms.¹⁵⁸

As previously noted, the constitutional authority "to lay and collect taxes" is expressly delegated to Congress under Article I of the Constitution.¹⁵⁹ Therefore, as required by *Caminetti*, the legislative branch has the proper "constitutional authority" to grant bankruptcy courts the power to make tax determinations under § 505.¹⁶⁰

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

¹⁵⁸ *Caminetti v. United States*, 242 U.S. 470, 485 (1917).

¹⁵⁹ U.S. CONST. art. I, § 8, cl. 1.

¹⁶⁰ U.S. CONST. art. I, § 8; *see Caminetti*, 242 U.S. at 485.

adjudicated by a judicial or administrative tribunal of competent jurisdiction.¹⁶¹

Here, the plain and general meaning of § 505 supports granting bankruptcy courts broad authority.¹⁶² The expansive nature of the statute is reflected in the repeated use of the word “any” and the phrase “whether or not.”¹⁶³ There is no limiting language within subsection (1) itself, and as discussed later, the restrictions imposed in subsection (2) are minimal.¹⁶⁴ Thus, under the plain meaning approach described in *Caminetti*, § 505 appears to grant bankruptcy courts an independent basis for jurisdiction.¹⁶⁵

However, as discussed throughout this Comment, the plain language of § 505 allows for bankruptcy courts to adjudicate matters far beyond the scope of bankruptcy.¹⁶⁶ The Sixth Circuit recognized this concern and noted that “a literal reading of section 505(a) could lead to absurd results: ‘[T]aken at face value, without recourse to the legislative history, § 505 makes the Bankruptcy Courts a second tax court system, empowering the Bankruptcy Court to consider “any” tax whatsoever, on whomsoever imposed.’”¹⁶⁷ For this reason, although the plain meaning canon favors granting bankruptcy courts broad authority, further analysis is required to determine the necessary limitations of § 505.

b. Congressional Purpose

An additional aspect of § 505 that should be considered is Congress’s purpose in drafting the statute. “When [plain] meaning has led to absurd or futile results . . . this Court has looked beyond the words to the purpose of the act.”¹⁶⁸ The court in *In re Luongo* noted that pursuant to the statutory history of § 505 “the section ‘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.’”¹⁶⁹ The court noted that legislative statements at the enactment of § 505 indicated:

[U]nder the paragraph heading “Jurisdiction of the tax court in bankruptcy cases,” the legislative statements instruct that “the

¹⁶¹ 11 U.S.C. § 505(a)(1) (2012) (emphasis added).

¹⁶² *Id.* § 505.

¹⁶³ *Id.* § 505(a)(1).

¹⁶⁴ *Id.* § 505(a). These restrictions are discussed in greater detail in Part C(5)(a).

¹⁶⁵ See 11 U.S.C. § 505 (2012); *Caminetti*, 242 U.S. at 485.

¹⁶⁶ 11 U.S.C. § 505 (2012).

¹⁶⁷ *In re Wolverine Radio Co.*, 930 F.2d 1132, 1139 (6th Cir. 1991).

¹⁶⁸ *United States v. Am. Trucking Ass’ns*, 310 U.S. 534, 543 (1940).

¹⁶⁹ *In re Luongo*, 259 F.3d 323, 328 (5th Cir. 2001).

bankruptcy judge will have authority to determine which court will determine the merits of the tax claim both as to claims against the estate and *claims against the debtor concerning his personal liability for nondischargeable taxes.*¹⁷⁰

These discussions demonstrate Congress's intent for bankruptcy courts to have authority beyond tax dischargeability determinations.¹⁷¹ However, the legislative history provided in *In re Luongo* does not define the extent of bankruptcy courts' authority under § 505. Thus, although these statements should be considered and support granting bankruptcy courts broad authority, further analysis is required.¹⁷²

c. *Holistic Interpretation*

Analyzing § 505 under the well-established principle of interpretation described in *Utility Air Regulatory Group v. EPA* yields an important distinction from the previous two approaches.¹⁷³ In this case, the Court emphasized that statutory interpretation must account for the “fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”¹⁷⁴

Sections 151, 157, and 1334 are all located under title 28 “Judiciary and Judicial Procedure.”¹⁷⁵ Section 1334 is titled “Bankruptcy Cases and Proceedings,” and it can be found under part IV “Jurisdiction and Venue” within chapter 85 “District Courts; Jurisdiction.”¹⁷⁶ Sections 151 and 157 are titled “Designation of Bankruptcy Courts” and “Procedures” respectively.¹⁷⁷ Sections 151 and 157 are located under part I “Organization of Courts,” within chapter 6 “Bankruptcy Judges.”¹⁷⁸ The placement and titles assigned to §§ 151, 157, and 1334 include references to bankruptcy judges and jurisdiction. Hence, the placement of these sections indicate that they are intended to grant jurisdictional authority.

¹⁷⁰ *Id.* at 328–29 (emphasis original).

¹⁷¹ *Id.*

¹⁷² Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597, 606–07 (1991).

¹⁷³ Util. Air Regulatory Grp. v. EPA, 134 S. Ct. 2427 (2014).

¹⁷⁴ *Id.* at 2441.

¹⁷⁵ 28 U.S.C. §§ 151, 157, 1334 (2012).

¹⁷⁶ *Id.* § 1334.

¹⁷⁷ *Id.* §§ 151, 157.

¹⁷⁸ *Id.*

In contrast, § 505 is titled “Determination of Tax Liability.”¹⁷⁹ It is found in title 11 “Bankruptcy” under chapter 5 “Creditors, the Debtor, and the Estate” subchapter I “Creditors and Claims.”¹⁸⁰ None of these titles refer to jurisdiction or the procedural aspects of bankruptcy courts. Thus, there is no indication that § 505’s placement is intended to confer jurisdiction.

As a result, the canon used in *Utility Air* demonstrates that § 505 does not grant jurisdiction like the “independent basis” approach suggests.¹⁸¹ Instead, the organization of the U.S. Code indicates that bankruptcy courts’ jurisdiction arises from §§ 151, 157, and 1334. This favors the “arising under” and “related to” approaches since both derive bankruptcy courts’ jurisdiction from these three sections.¹⁸²

Statutory analysis under these three canons produces slightly different conclusions. However, the canons of plain meaning and congressional purpose appear to support granting bankruptcy courts broad authority under § 505.¹⁸³ Furthermore, under the holistic principle described in *Utility Air*, the placement of § 505 within the Code strongly indicates that it does not independently confer jurisdiction. As a result, these three canons are best reconciled by the “arising under” approach to § 505. The “arising under” approach grants bankruptcy courts broad authority and justifies the placement of § 505 in the context of the Code.

4. Practical Considerations

In comparing the “independent basis,” “arising under,” and “related to” approaches to § 505, it is important to evaluate their practicality. Although the “related to” approach appears to be the most inefficient, as demonstrated in the subsequent paragraphs, this is not necessarily true. Under the “related to” approach, the bankruptcy judge must employ the following two-step analysis.

First, the judge must decide whether the non-core § 505 proceeding passes the applicable “related to” test.¹⁸⁴ Most jurisdictions including the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits utilize the *Pacor* test or

¹⁷⁹ 11 U.S.C. § 505 (2012).

¹⁸⁰ *Id.*

¹⁸¹ *Util. Air Regulatory Grp.*, 134 S. Ct. at 2441.

¹⁸² *Id.*

¹⁸³ *See In re Wolverine Radio Co.*, 930 F.2d 1132, 1139 (6th Cir. 1991).

¹⁸⁴ 28 U.S.C. § 157(b)(3) (2012). This test does not apply to tax dischargeability determinations which are expressly listed as core proceedings in § 157. 28 U.S.C. § 157(b)(2)(I) (2012).

something closely resembling it.¹⁸⁵ However, other circuits apply different standards to determine if the proceedings are “related to” a title 11 case. For example, the Seventh Circuit holds that a proceeding is only adequately “related to” a title 11 case if “it affects the amount of property available for distribution or the allocation of property among creditors.”¹⁸⁶ If it is uncertain whether the determination under § 505 will affect the estate, then the proceeding is considered “unrelated” and the bankruptcy court lacks subject matter jurisdiction.¹⁸⁷

If the § 505 proceeding satisfies the applicable “related to” test, the bankruptcy court then proceeds to the second step. Under the second step, “the bankruptcy judge . . . submit[s] proposed findings of fact and conclusions of law to the district court.”¹⁸⁸ The district judge will review these findings under a *de novo* standard and enter a final order or judgment on the matter.¹⁸⁹

The two-step analysis required under the “related to” approach initially appears to be the most inefficient of the three approaches given that the other approaches allow the bankruptcy judge to make independent determinations. However, this is not necessarily true. Sometimes, when a case originates in the tax court, the party may qualify to file for bankruptcy. In this case, the party can file a bankruptcy petition followed by a § 505 motion requesting that the bankruptcy judge make specified tax liabilities determinations. The party’s act of filing the bankruptcy petition will operate as a stay on the tax court proceedings until the stay is lifted by the bankruptcy judge.¹⁹⁰ In these circumstances, the tax court proceedings are completely suspended, and if the bankruptcy court has jurisdiction, the bankruptcy court is authorized to make tax liability determinations that would otherwise be decided in the tax court. This scenario leads to inefficiencies and raises concerns of forum shopping by debtors who believe that the bankruptcy court will offer a more favorable determination of their tax liabilities.¹⁹¹ Although this scenario will occur regardless of which § 505 approach is applied, there is likely an even greater risk of forum shopping in jurisdictions that apply the “independent basis” or “arising under” approaches.

¹⁸⁵ *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995); see *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (1984); *In re General Oil Distributors, Inc.*, 21 B.R. 888, 892 n. 13 (Bankr. E.D.N.Y. 1982) (identifying a proceeding as “related to” a Title 11 case if “the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.”).

¹⁸⁶ *In re Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir. 1987).

¹⁸⁷ See *In re Bush*, No. 1:15-CV-1318-WTL-DKL, 2016 WL 4261867, at *4 (S.D. Ind. Aug. 12, 2016).

¹⁸⁸ 28 U.S.C. § 157(c)(1) (2012).

¹⁸⁹ *Id.*

¹⁹⁰ 11 U.S.C. § 362(a)(1) (2012).

¹⁹¹ See *In re Encompass Servs. Corp.*, 337 B.R. 864, 876 (Bankr. S.D. Tex. 2006).

Forum shopping is more likely to occur under the “independent basis” or “arising under” approaches because the potential debtor knows that the bankruptcy court will have the authority to make the requested tax determinations. Furthermore, these two approaches raise an additional fear for taxing authorities. Taxing entities argue that granting bankruptcy courts broad authority under § 505 “will further diminish the ability of the taxing authority to collect revenue by allowing the bankruptcy court to dictate the amounts owed to it.”¹⁹² Therefore, it can be argued that the “independent basis” and “arising under” approaches may promote inefficiencies as well as diminish the revenues of tax entities.

However, the practical concerns associated with granting the bankruptcy court broad authority under § 505 are significantly outweighed by the benefits afforded to debtors. Debtors often believe they will receive more favorable judgments in a bankruptcy court due to the goals of bankruptcy and the judge’s more extensive knowledge of their financial circumstances.¹⁹³ This perception bolsters debtors’ cooperation with courts and their judgments, which in turn facilitates repayments to creditors, including taxing authorities.

Moreover, in many cases, tax liabilities pose a significant burden for debtors to overcome before they can receive a fresh start. In contrast, taxing entities generally stand to gain very little from recovering these liabilities, especially considering the amount of resources they must expend if the taxes are disputed. For these reasons, this Comment proposes that granting bankruptcy courts broad authority under § 505 produces significant benefits that outweigh the increased risk of forum shopping and possible harm to tax entities.

5. *Recognized Limitations*

Apart from the “independent basis,” “arising under,” and “related to” approaches discussed above, courts have applied additional restrictions and methods to limit the expansive language of § 505.

¹⁹² Shu-Yi Oei, *Rethinking the Jurisdiction of Bankruptcy Courts over Post-Confirmation Federal Tax Liabilities: Towards A New Jurisprudence of 11 U.S.C. § 505*, 19 AKRON TAX J. 49, 66 (2004).

¹⁹³ T. Keith Fogg, Grover Hartt, III & Mark S. Wallace, *When, Why, and How Should A District Court Be Asked to Withdraw the Reference of A Tax Controversy to A Bankruptcy Court? Who Will Hear What When Bankruptcy Meets the Tax Code?*, 20 PRAC. TAX L. 41 (2005–2006).

a. *Statutory Limitations*

The language of § 505 itself provides three undisputed limitations.¹⁹⁴ Section 505(a)(2) expressly states that the bankruptcy court may not make tax liability determinations concerning:

(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.¹⁹⁵

The first limitation imposed by § 505(a)(2)(A) reflects the well-known principle of *res judicata* along with the Rooker-Feldman doctrine.¹⁹⁶ The adjudications identified in § 505(a)(2)(A), which bar the bankruptcy court from making a determination, also include “administrative orders” and “[n]egotiated settlements, which would operate to bar further litigation in state court.”¹⁹⁷

The second limitation imposed by § 505(a)(2)(B) inhibits bankruptcy courts from making determinations over tax refunds “unless a refund has been ‘properly requested’ from the relevant governmental unit.”¹⁹⁸ This restriction encourages the trustee and debtor to comply with appropriate procedures, such as time limitations, when requesting a tax refund.¹⁹⁹

¹⁹⁴ See 11 U.S.C. § 505(a)(2) (2012).

¹⁹⁵ *Id.* (emphasis added).

¹⁹⁶ See Elizabeth Weller, *Does the Bankruptcy Court Really Have Unlimited Authority to Redetermine Taxes?*, 26 AM. BANKR. INST. J. 9, 12 (2010); see also 18B CHARLES ALAN WRIGHT, ARTHUR R. MILLER, EDWARD H. COOPER, VIKRAM DAVID AMAR, RICHARD D. FREER, HELEN HERSHKOFFA, JOAN E. STEINMAN & CATHERINE T. STRUVE, FEDERAL PRACTICE & PROCEDURE § 4469.1 (2d ed. 2002) (explaining that the Rooker-Feldman doctrine establishes that “[t]he general statutes that establish original federal subject-matter jurisdiction in the district courts do not extend to an ‘appeal’ from a state-court judgment”).

¹⁹⁷ Weller, *supra* note 196.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

The final limitation imposed by Section 505(a)(2)(C) restricts bankruptcy courts' authority to redetermine *ad valorem* taxes.²⁰⁰ This provision was added by Congress in 2005 to further limit the broad authority of bankruptcy courts under § 505.²⁰¹

b. Party Limitations

Another established restriction limits bankruptcy courts' jurisdiction to make determinations under § 505 to only *debtors* in the case.²⁰² The Sixth Circuit in *In re Wolverine Radio Co.* identified this limitation, stating “virtually all the courts which have considered the issue have concluded that section 505(a) does not extend the bankruptcy court’s jurisdiction to parties other than the debtor.”²⁰³ This limitation was also recognized by the Fifth Circuit in *In re Prescription Home Health Care, Inc.*²⁰⁴ In its opinion, the court noted that although the language of § 505 appears to enable bankruptcy courts to make tax liability determinations for all parties, in reality “it [only] grants jurisdiction to determine the tax liabilities of the debtor and the estate, not those of third parties.”²⁰⁵

c. Timing Limitations of § 505 Determinations

Bankruptcy judges' authority under § 505 is additionally restricted based on *when* the tax liabilities accrued.²⁰⁶ However, “in contrast to [the] consensus as to *whose* tax issues may be adjudicated under § 505(a), the courts have reached no consensus as to *when* a tax issue must arise in order to be subject to that adjudication.”²⁰⁷ In a bankruptcy case, tax liabilities can accrue in one of three timeframes: pre-petition tax liabilities, tax liabilities that occur during the “gap” after filing of a bankruptcy case but before confirmation of a plan, and post-confirmation tax liabilities.²⁰⁸

²⁰⁰ *Id.*; see BLACK’S LAW DICTIONARY (10th ed. 2014) (“(Of a tax) proportional to the value of the thing taxed”).

²⁰¹ Weller, *supra* note 196.

²⁰² See *In re UAL Corp.*, 336 B.R. 370, 374 (Bankr. N.D. Ill. 2006).

²⁰³ *In re Wolverine Radio Co.*, 930 F.2d 1132, 1139 (6th Cir. 1991); *In re Brandt–Airflex Corp.*, 843 F.2d 90, 94–96 (2d Cir. 1988); *In re Interstate Motor Freight Sys.*, 62 B.R. 805 (Bankr. W.D. Mich. 1986).

²⁰⁴ *In re Prescription Home Health Care, Inc.*, 316 F.3d 542 (5th Cir. 2002).

²⁰⁵ *Id.* at 547.

²⁰⁶ Oei, *supra* note 192, at 56 (emphasizing that the time distinctions under § 505 are based when the tax accrued rather than when the § 505 motion is brought).

²⁰⁷ *In re UAL Corp.*, 336 B.R. 370, 374 (Bankr. N.D. Ill. 2006).

²⁰⁸ Oei, *supra* note 192, at 54–58.

Pre-petition tax liabilities encompass those that have arisen before the debtor has filed for bankruptcy as well as tax refunds that are the result of pre-bankruptcy tax years.²⁰⁹ Tax liabilities that accrue during the “gap” period are treated as administrative expenses under 11 U.S.C. § 503 “[e]xcept to the extent that they are priority taxes.”²¹⁰ Finally, post-confirmation tax liabilities accrue after a plan has been confirmed.²¹¹ Commentaries on § 505 assert that bankruptcy judges have the authority to enter judgments on pre-petition tax liabilities.²¹² Furthermore, § 505(b)(2) explicitly addresses bankruptcy judges’ ability to make determinations concerning tax liabilities arising during the “gap” period.²¹³ However, the extent of bankruptcy judges’ authority over post-confirmation tax liabilities is particularly controversial and subject to a range of court interpretations.²¹⁴

Under a broad view, post-confirmation tax liability determinations are permissible if they will affect the success of the plan.²¹⁵ Supporters of this perspective often rely on 11 U.S.C. § 1142, which indicates that bankruptcy courts have authority over post-confirmation determinations “necessary for the consummation of the [bankruptcy] plan.”²¹⁶ Proponents also note that neither the legislative history nor § 505 itself provides clear limitations regarding post-confirmation determinations.²¹⁷ Therefore, § 1142 and the lack of limitations regarding § 505 indicate that bankruptcy courts are allowed to enter judgments on post-confirmation tax liabilities.²¹⁸ Courts have upheld this view with regard to post-confirmation tax liability determinations of *confirmed* chapter 11 plans.²¹⁹ However, courts have not allowed bankruptcy judges to make § 505

²⁰⁹ *Id.* at 54–55.

²¹⁰ *Id.* at 55–56 (citing 11 U.S.C. §§ 503(b)(1)(B), 507(a)(8) (2012)).

²¹¹ *Id.* at 56.

²¹² *Id.* at 55.

²¹³ 11 U.S.C. § 505(b)(2) (2012); *see* Oei, *supra* note 192, at 56.

²¹⁴ *In re* UAL Corp., 336 B.R. at 374.

²¹⁵ Oei, *supra* note 192, at 71.

²¹⁶ 11 U.S.C. § 1142(b) (2012); *see, e.g., In re* U.S. Brass Corp., 301 F.3d 296, 305–06 (5th Cir. 2002) (holding that the bankruptcy court properly had jurisdiction and authority to enter judgment over post-confirmation claims identified as core proceedings).

²¹⁷ *See In re* Goldblatt Bros., Inc., 106 B.R. 522, 529–30 (Bankr. N.D. Ill. 1989).

²¹⁸ *Id.*

²¹⁹ *See id.* at 525–26 (holding that post-confirmation tax liability claims were core proceedings that fell within the bankruptcy court’s jurisdiction under § 505); *see also In re* U.S. Brass Corp., 301 F.3d at 305–06 (holding that bankruptcy court properly had jurisdiction and authority to enter judgment over post confirmation claims identified as core proceedings).

determinations concerning the tax implications of merely *proposed* chapter 11 plans.²²⁰

In comparison, proponents of a narrower view argue that bankruptcy courts completely lack the authority to make § 505 determinations for post-confirmation tax liabilities.²²¹ The court in *In re Hartman Material Handling Systems, Inc.*, agreed with this interpretation, stating that “[a]ny tax’ does not mean any tax of any entity at any point in time.”²²² The court noted that no section in the Code including § 505 grants bankruptcy courts’ authority over post-confirmation tax determinations.²²³ Additionally, the court asserted that expanding bankruptcy courts’ jurisdiction in this manner would “establish a precedent for a former debtor to return to bankruptcy court to have any and all of its future tax consequences determined.”²²⁴

One author, Shu-Yi Oei, analyzed courts’ perspectives on § 505 post-confirmation tax determinations and concluded that bankruptcy courts should apply the narrower interpretation for three reasons.²²⁵ First, she pointed out that § 505 is located under subchapter I, titled “Creditors and Claims” and is surrounded by other sections dealing with claims against the estate.²²⁶ Oei notes that both pre-petition tax liabilities as well as “gap” tax liabilities, classified as administrative expenses, satisfy the definition of “claims” in bankruptcy; however, post-confirmation tax liabilities are not considered “claims” under the Code.²²⁷ Furthermore, Oei reasons that the surrounding sections indicate that § 505 should be classified as a “substantive” provision “that specifies the content of the bankruptcy court’s authority concerning a special type of bankruptcy claim” rather than a provision that grants jurisdiction.²²⁸

²²⁰ See *In re UAL Corp.*, 336 B.R. at 375–80 (holding that the bankruptcy court lacked jurisdiction under § 505 “to determine the tax effects of a Chapter 11 plan before it has been confirmed”).

²²¹ Oei, *supra* note 192, at 60; see *In re Holly’s, Inc.*, 172 B.R. 545, 562 (Bankr. W.D. Mich. 1994) (holding that “although § 505(a) speaks in broad terms, it does not grant a bankruptcy court subject matter jurisdiction over postconfirmation tax years”).

²²² *In re Hartman Material Handling Sys., Inc.*, 141 B.R. 802, 812 (Bankr. S.D.N.Y. 1992).

²²³ *Id.* at 812–13.

²²⁴ *Id.*

²²⁵ Oei, *supra* note 192, at 96.

²²⁶ *Id.* at 87.

²²⁷ *Id.*; see also *In re UAL Corp.*, 336 B.R. at 375 (noting that § 505’s placement within subchapter I indicates that tax determinations under § 505 “must be those that generate or offset claims against the estate, thus including matters that arose before the case was filed or during its administration, but not claims based on facts that would only arise after the estate has been terminated by confirmation of a plan”).

²²⁸ Oei, *supra* note 192, at 86.

Second, Oei concedes that the legislative history fails to mention whether § 505 grants authority over post-confirmation tax liabilities.²²⁹ However, Oei cites to the legislative history of the Bankruptcy Reform Act, which indicates that chapter 5 was intended to focus “on the actions and property of the debtor prior to the bankruptcy filing and on debts owing by the debtor as of the day of the bankruptcy filing.”²³⁰ Oei asserts that these factors reveal that the legislative history of § 505 supports the exclusion of bankruptcy courts’ authority over post-confirmation tax liabilities.²³¹

The third reason Oei provides in support of the narrower view of § 505 is the narrower view’s consistency with general bankruptcy policy.²³² Typically, the bankruptcy court lacks authority over other kinds of post-confirmation claims.²³³ Thus, allowing post-confirmation determinations under § 505 would be an abnormal extension of the bankruptcy court’s authority inconsistent with the overall structure of the Code.²³⁴ This Comment agrees with Oei’s reasoning and assertion that bankruptcy courts should only have the authority to make § 505 determinations for tax liabilities accruing pre-petition and during the “gap” period, but not after a chapter 11 plan has been confirmed.²³⁵

d. External Time Restrictions

Although there is uncertainty regarding bankruptcy judges’ authority over tax liabilities based on when they accrue, it is widely accepted that § 505 determinations do not override other extenuating time limitations. “[S]ection 505 does not serve to revive a period of limitation if it has otherwise expired prior to the filing of the petition.”²³⁶ This principle is exemplified in *In re Home and Housing of Dade County, Inc.*²³⁷ In this case, the court held that the debtor’s application for a charitable use exemption was time barred under Florida law, and the bankruptcy court’s § 505 determination could not usurp this time requirement.²³⁸ Another example of this concept is reflected in the court’s holding in *In re Millsaps*.²³⁹ In this case, the court held that the debtor could not

²²⁹ *Id.* at 87–88; see also *In re Goldblatt Bros., Inc.*, 106 B.R. 522, 529–30 (Bankr. N.D. Ill. 1989).

²³⁰ Oei, *supra* note 192, at 88.

²³¹ *Id.*

²³² *Id.* at 89.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.* at 96.

²³⁶ *In re Qual Krom S., Inc.*, 119 B.R. 327, 329 (Bankr. S.D. Fla. 1990).

²³⁷ *In re Home & Hous. of Dade Cty., Inc.*, 220 B.R. 492 (S.D. Fla. 1998).

²³⁸ *Id.* at 495.

²³⁹ *In re Millsaps*, 133 B.R. 547 (Bankr. M.D. Fla. 1991).

use § 505 to refile a tax refund that was time barred under the Internal Revenue Code.²⁴⁰ As these cases demonstrate, if a debtor has failed to file a claim for a tax exemption or a tax refund within the required time period, the debtor will be unable to use § 505 to resurrect these claims.²⁴¹

The types of restrictions described above enable courts to significantly reduce the overlap between the jurisdiction of bankruptcy and tax courts. As a result, they prevent the “absurd” outcome produced by the plain meaning of § 505 which would otherwise allow bankruptcy courts to operate as a second tax court system.

6. *Abstention*

Finally, it is important to recognize that in certain circumstances a bankruptcy court may have jurisdiction, yet it is nevertheless ill-suited to adjudicate the matter at issue. In these situations, bankruptcy courts can and should abstain from the § 505 proceedings. Under both 28 U.S.C. § 1334(c)(1) and 11 U.S.C. § 505(a)(1), bankruptcy courts can exercise their discretion to abstain from adjudicating § 505 claims.²⁴² Abstention under these provisions is an important mechanism that bankruptcy courts should utilize to self-regulate the extent of their authority.²⁴³ Moreover, if applied properly, abstention alleviates many of the jurisdictional concerns previously described in this Comment.

Section 1334(c)(1) grants bankruptcy courts the discretion to voluntarily abstain from proceedings “in the interest of justice, or in the interest of comity with State courts or respect for State law.”²⁴⁴ Courts have articulated several factors that should be weighed when a bankruptcy court is considering abstaining under § 1334(c)(1).²⁴⁵ These factors include the proceeding’s impact

²⁴⁰ *Id.* at 553.

²⁴¹ *See In re Home & Hous. of Dade Cty., Inc.*, 220 B.R. at 495; *In re Millsaps*, 133 B.R. at 553.

²⁴² 28 U.S.C. § 1334(c)(1) (2012); 11 U.S.C. § 505(a)(1) (2012).

²⁴³ Some courts analyze both statutes when considering abstention; however, often courts invoke § 505(a)(1) as a basis for abstention without any discussion of § 1334(c)(1). *See In re Hosp. Ventures/Lavista*, 314 B.R. 843, 848–49 (Bankr. N.D. Ga. 2004) (“Most courts have exercised discretion . . . without even mentioning § 1334(c)(1) or note it without any meaningful discussion; courts that consider both statutes have concluded either that § 1334(c)(1) governs the question, that § 505(a) does, or that the bankruptcy court may abstain under either.”).

²⁴⁴ 28 U.S.C. § 1334(c)(1) (2012).

²⁴⁵ *In re Johnston*, 484 B.R. 698, 714 (Bankr. S.D. Ohio 2012). The court in *Johnston* listed thirteen factors to consider:

- (1) the effect or lack of effect on the efficient administration of the estate if a court abstains; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficulty or

on the estate, whether bankruptcy law issues predominate, and the relatedness of the § 505 proceeding to the overall bankruptcy case.²⁴⁶ Courts have noted that abstention under § 1334 “is the exception, not the rule,” and it is only appropriate in extraordinary circumstances.²⁴⁷

Section 505(a)(1) states “the court *may* determine,” rather than “must determine,” the tax liability issue.²⁴⁸ Most courts agree that the permissive language of § 505(a)(1) allows bankruptcy courts to decide whether they should abstain from adjudicating a § 505 claim. Some courts have concluded that bankruptcy judges should only abstain from § 505 determinations when another suitable forum is available; however, most courts have not limited abstention to these circumstances.²⁴⁹ Instead, “the majority have looked to the traditional basis for abstention and chosen to abstain where the determination of taxes would not benefit the bankruptcy estate or unsecured creditors, or would interfere with the uniformity of tax assessment within the tax jurisdiction.”²⁵⁰ In these situations, a state or tax court may provide a better forum for adjudicating the tax liability issues. In determining whether abstention is appropriate under § 505(a)(1), courts have again articulated several factors to consider, including whether the proceeding involves complex tax issues, the proceeding’s effect on the administration of the bankruptcy case, and the proceeding’s impact on the bankruptcy court’s docket.²⁵¹

unsettled nature of the applicable state law; (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; (7) the substance rather than form of an asserted core proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden of this court’s docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; (12) the presence in the proceeding of non-debtor parties; and (13) any unusual or other significant factors.

²⁴⁶ *Id.*

²⁴⁷ *Id.*; see also *McDaniel v. ABN Amro Mortg. Grp.*, 364 B.R. 644, 649 (S.D. Ohio 2007).

²⁴⁸ 11 U.S.C. § 505(a)(1) (2012) (emphasis added).

²⁴⁹ *Weller*, *supra* note 196.

²⁵⁰ *Id.*

²⁵¹ *In re Johnston*, 484 B.R. at 718 (Bankr. S.D. Ohio 2012). The court in *In re Johnston* listed six abstention factors:

(1) the complexity of the tax issues to be decided; (2) the need to administer the bankruptcy case in an orderly and efficient manner; (3) the burden on the bankruptcy court’s docket; (4) the length of time for trial and decision; (5) the asset and liability structure of the debtor; and (6) the prejudice to the debtor and the potential prejudice to the taxing authorities.

Although these factors provide guidance, bankruptcy courts have complete discretion to decide whether to abstain under either § 1334(c)(1) or § 505(a)(1).²⁵² Furthermore, a bankruptcy court's abstention decision is only reviewable for "abuse of discretion."²⁵³ As a result of this high standard, abstention decisions are rarely overturned on appeal.

In addition to abstaining based on the factors discussed above, most courts agree that two particular instances involving § 505 proceedings strongly support abstention. The first situation that generally favors abstention is a chapter 7 no-asset case.²⁵⁴ In a chapter 7 no-asset case, the debtor lacks any assets that can be distributed amongst the creditors.²⁵⁵ No-asset cases comprise the majority of chapter 7 bankruptcy cases and are created through state and federal exemptions.²⁵⁶ Bankruptcy judges have the authority to make determinations under § 505 regardless of whether the proceeding is an asset or no-asset case.²⁵⁷ However, no-asset cases often represent circumstances where the bankruptcy judge should abstain from making a § 505 determination.²⁵⁸ In these cases, the § 505 proceedings will have no impact on the estate. In addition, the trustee cannot facilitate asset distribution amongst creditors, thus limiting the court's ability to further the goals of bankruptcy.²⁵⁹ For these reasons, if there is another available forum, then the bankruptcy court should likely abstain.

A second situation that generally supports abstention is § 505 proceedings concerning nondischargeable tax liabilities.²⁶⁰ Nondischargeable tax liabilities invoke factors for abstention under § 1334(c)(1) as well as § 505(a)(1) and, as a result, often present a situation where the bankruptcy court should consider abstaining.²⁶¹ The Code explicitly provides that bankruptcy judges have the authority to make determinations regarding the dischargeability of specific claims.²⁶² In addition, bankruptcy judges are authorized to enter judgments concerning taxes already identified as nondischargeable.²⁶³ As the Fifth Circuit

²⁵² *In re Middlesex Power Equip. & Marine, Inc.*, 292 F.3d 61, 69 (1st Cir. 2002).

²⁵³ *Id.*; see also *Gober v. Terra+Corp. (In re Gober)*, 100 F.3d 1195, 1207 (5th Cir. 1996); *Coker v. Pan Am. World Airways, Inc. (In re Pan Am. Corp.)*, 950 F.2d 839, 844 (2d Cir. 1991).

²⁵⁴ *In re Johnston*, 484 B.R. at 719.

²⁵⁵ *Bankruptcy Basics Glossary*, UNITED STATES COURTS, <http://www.uscourts.gov/educational-resources/educational-activities/bankruptcy-basics-glossary#content-for-n> (last visited Mar. 5, 2017).

²⁵⁶ *Id.*

²⁵⁷ *In re Smith*, 122 B.R. 130, 133–34 (Bankr. M.D. Fla. 1990).

²⁵⁸ *E.g., In re Smith*, 122 B.R. 130.

²⁵⁹ See 9 AM. JUR. 2D BANKRUPTCY § 5.

²⁶⁰ *In re Luongo*, 259 F.3d 323, 328–29 (5th Cir. 2001).

²⁶¹ *In re Johnston*, 484 B.R. at 714, 718.

²⁶² 28 U.S.C. § 157(b)(2)(I) (2012).

²⁶³ 11 U.S.C. § 505 (2012).

pointed out, the legislative statements accompanying § 505 demonstrate that Congress intended for bankruptcy judges to have the authority to make tax liability determinations for nondischargeable taxes.²⁶⁴ “[T]he bankruptcy judge will have authority to determine which court will determine the merits of the tax claim both as to claims against the estate and *claims against the debtor concerning his personal liability for nondischargeable taxes.*”²⁶⁵

While the bankruptcy court clearly has authority regardless of a tax’s dischargeability status, whether the § 505 motion relates to a dischargeable or nondischargeable tax is an important factor in deciding if the bankruptcy judge should abstain. This is a significant consideration because bankruptcy cannot provide debtors with relief from nondischargeable taxes.²⁶⁶ Although the debtor will be burdened if he is found liable for the nondischargeable taxes, this remains true irrespective of the forum where the proceedings are held.²⁶⁷ Thus, in these circumstances, the bankruptcy court cannot facilitate the debtor’s “fresh start.”²⁶⁸ Furthermore, the determination of a debtor’s liability for a nondischargeable tax is generally rooted in state and federal tax law and fails to invoke substantive bankruptcy issues.²⁶⁹ As a result, bankruptcy courts should strongly consider abstaining when faced with these proceedings.²⁷⁰

The ability of bankruptcy courts to abstain from § 505 determinations offers a remedy for several of the jurisdictional concerns discussed in the previous sections. First, it eases the tension caused by the jurisdictional overlap of bankruptcy and tax courts by allowing bankruptcy judges to abstain when significant tax issues arise.²⁷¹ Second, it enables bankruptcy judges to self-impose limitations on their authority. This is exemplified by the prevailing tendency of bankruptcy judges to abstain from § 505 determinations that do not impact the bankruptcy estate.²⁷² Finally, the factors for deciding whether to abstain directly encourage the bankruptcy judge to consider practical concerns such as efficiency, and the burdens imposed on debtors and taxing authorities.²⁷³ Abstention can be used to alleviate many of the jurisdictional issues surrounding

²⁶⁴ *In re Luongo*, 259 F.3d at 328–29.

²⁶⁵ *Id.* (internal quotations omitted).

²⁶⁶ 11 U.S.C. § 523(a)(1) (2012); *see* 11 U.S.C. § 507(a)(8)(G) (2012).

²⁶⁷ *In re Johnston*, 484 B.R. at 715.

²⁶⁸ *See id.* at 715–16.

²⁶⁹ *Id.*

²⁷⁰ *See* 9 AM. JUR. 2D BANKRUPTCY § 5.

²⁷¹ *See* Weller, *supra* note 196.

²⁷² *See id.*

²⁷³ *See id.*

§ 505; however, the discretionary nature of abstention prevents it from serving as a conclusive solution.

7. Outcome of Comment's Proposal on Cases Discussed in Part B

As previously discussed, the “arising under” approach best reconciles the applicable canons of statutory interpretation. In addition, this approach promotes the goals of bankruptcy and has many practical benefits. This Comment asserts that the “arising under” approach, in conjunction with recognized limitations and proper use of abstention, provides the ideal solution to the broad language of § 505. An application of this assertion to the cases in Part B demonstrates its notable advantages and illuminates a particular weakness.

In re Luongo involved a debtor's claim to compel the return of an income tax overpayment which the IRS used to setoff an unpaid tax liability.²⁷⁴ The claimant argued that the setoff was improper because the tax liability was discharged in bankruptcy and the overpayment had been exempted from the claimant's bankruptcy estate.²⁷⁵ The court in *In re Luongo* held that the bankruptcy court had the jurisdiction and authority to enter judgment on the dispute solely based on § 505, and it did not abuse its discretion by refusing to abstain.²⁷⁶

Utilizing the “arising under” approach produces the same results. “Arising under” jurisdiction would be satisfied because the dispute involved the legality of a debtor's tax, which is considered a core proceeding.²⁷⁷ Under the “arising under” approach, the bankruptcy court's jurisdiction and authority are derived from §§ 1334 and 157 rather than from § 505 alone.²⁷⁸ The bankruptcy court's decision not to abstain did not constitute an abuse of discretion, and several abstention factors indicated that the bankruptcy court should adjudicate the claim.²⁷⁹ Specifically, the claim primarily involved issues regarding the Code and invoked bankruptcy's goal of providing debtors with a fresh start.²⁸⁰ Thus, applying the “arising under” approach to this case would yield the same outcome for slightly different reasons.

²⁷⁴ *In re Luongo*, 259 F.3d at 327.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 336.

²⁷⁷ See 11 U.S.C. § 505(a)(1) (2012); 28 U.S.C. § 157(b)(1) (2012).

²⁷⁸ 28 U.S.C. §§ 157, 1334 (2012).

²⁷⁹ *In re Luongo*, 259 F.3d at 332.

²⁸⁰ *Id.*

In re Fyfe was a chapter 7 case involving determinations for the amount of federal income tax liability, the dischargeability of debt arising from federal income taxes, and for the validity of a tax lien on debtor's property.²⁸¹ As with *In re Luongo*, applying the "arising under" approach to this case produces the same outcome utilizing different reasoning. In *In re Fyfe*, the court stated that § 505(a) alone granted the bankruptcy court jurisdiction and authority to enter judgment on the tax liabilities in dispute.²⁸² In contrast, if the "arising under" approach is applied, the disputed tax liabilities would be considered "core" proceedings.²⁸³ As a result, the bankruptcy court would have proper jurisdiction and authority premised on §§ 1334 and 157.²⁸⁴

Application of the "arising under" approach in *In re Johnston* has a significant impact on the court's reasoning.²⁸⁵ *In re Johnston* involved a chapter 7 no-asset case, where the bankruptcy court was asked to determine whether the debtor was liable for unpaid trust fund taxes that arose from three corporate entities which he solely owned.²⁸⁶ Although, as the court noted, it could be argued that the bankruptcy court's decision concerned whether the debtor qualified as a "responsible person," a holistic view of the proceeding demonstrated that the fundamental issue was whether the debtor was liable for the unpaid trust fund taxes.²⁸⁷ Under the "arising under" approach this tax liability determination would fall within the broad language of § 505(a)(1) and would create a cause of action under title 11 thereby satisfying "arising under" jurisdiction under § 1334.

Although applying the "arising under" approach grants the bankruptcy court proper subject matter jurisdiction, the circumstances of the case strongly suggest that the court should abstain. The court in *In re Johnston* recognized this and despite its holding that it lacked jurisdiction, the court continued to evaluate the proceeding by weighing the factors associated with §§ 1334 and 505 abstention.²⁸⁸ In its analysis the court emphasized many significant facts that favored abstention under § 1334 including: (1) the lack of effect on the administration of the estate and distributions to creditors; (2) the nondischargeable nature of the taxes; (3) the absence of bankruptcy issues; (4)

²⁸¹ *In re Fyfe*, 186 B.R. 290, 291 (Bankr. N.D. Ga. 1995).

²⁸² *Id.*

²⁸³ *See* 11 U.S.C. § 505 (2012).

²⁸⁴ *See id.* § 505(a)(1); 28 U.S.C. § 157(b)(1) (2012).

²⁸⁵ *In re Johnston*, 484 B.R. 698 (Bankr. S.D. Ohio 2012).

²⁸⁶ *Id.* at 702.

²⁸⁷ *Id.* at 704.

²⁸⁸ *Id.* at 714–19.

the availability of an alternative forum; and (5) the court's lack of jurisdiction over the person that the debtor alleged was the actual "responsible person."²⁸⁹

The court also noted several factors that supported abstention under § 505 such as: (1) the absence of complex tax issues; (2) the lack of effect on the bankruptcy estate; (3) the determination would likely delay in estate's closing; and (4) there were no assets to administer or distribute among creditors.²⁹⁰ For these reasons, even though jurisdiction would be proper if the "arises under" approach is applied, careful consideration of the abstention factors associated with §§ 1334 and 505 demonstrates that the bankruptcy court should abstain.²⁹¹ This situation exemplifies how bankruptcy courts can effectively utilize abstention to limit their authority in circumstances where jurisdiction is controversial and where they are ill-suited to adjudicate the proceeding.

Application of the "arising under" approach to *In re Bush* produces a significant change in the case's outcome. This case involved a chapter 7 debtor's § 505 motion to determine the type and amount of tax penalties the debtor owed.²⁹² In *In re Bush*, the court applied the "related to" approach.²⁹³ The debtor's motion failed to satisfy the Seventh Circuit's "related to" test,²⁹⁴ which required the proceedings to "affect[] the amount of property available for distribution or the allocation of property among creditors."²⁹⁵ As a result, the court held that the bankruptcy court lacked jurisdiction to enter judgment or submit reviewable findings of facts and legal conclusions on the motion.²⁹⁶

Under the "arising under" approach, the debtor's motion would constitute a core proceeding, thus granting the bankruptcy court jurisdiction to enter a final judgment based on §§ 1334 and 157.²⁹⁷ Although the bankruptcy court would have proper jurisdiction and authority under this approach, assessing the circumstances using the abstention factors discussed in Part C(6) strongly suggests that the bankruptcy court should abstain.²⁹⁸ For example, the distribution of the estate would be unaffected by the determination since the penalties, regardless of type, "are subordinated to all other prepetition claims"

²⁸⁹ *Id.* at 714–18.

²⁹⁰ *Id.* at 718–19.

²⁹¹ *See id.* at 714–19.

²⁹² *In re Bush*, No. 1:15-CV-1318-WTL-DKL, 2016 WL 4261867 at *1 (S.D. Ind. Aug. 12, 2016).

²⁹³ *Id.* at *6–8.

²⁹⁴ *Id.* at *11.

²⁹⁵ *In re Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir. 1987).

²⁹⁶ *In re Bush*, No. 1:15-CV-1318-WTL-DKL, 2016 WL 4261867 at *11.

²⁹⁷ *See* 11 U.S.C. § 505 (2012); 28 U.S.C. § 157 (2012).

²⁹⁸ *In re Bush*, No. 1:15-CV-1318-WTL-DKL, 2016 WL 4261867; *see* Part C(6).

and the debtor's assets are insufficient to satisfy these other claims.²⁹⁹ The debtor filed his bankruptcy case the morning his tax court trial was scheduled to commence.³⁰⁰

In addition, determining the type of tax penalties to be assessed was the only remaining issue before the tax court.³⁰¹ The filing of the bankruptcy case followed by the § 505 motion hindered the tax court from efficiently administering the case.³⁰² Furthermore, the suspicious timing of the debtor's actions suggests that the debtor was engaging in forum shopping.³⁰³ It is also unclear whether the penalties would be dischargeable and to what extent.³⁰⁴ Thus, it is difficult to demonstrate how the determination would support the bankruptcy court's fresh start objective. Finally, since determining the type of tax penalties was the only matter at issue, it is evident that the case did not involve complex bankruptcy issues that would have favored the bankruptcy court's expertise.³⁰⁵

Despite the presence of these factors, the bankruptcy judge in *In re Bush* failed to abstain, and it is unlikely his decision would qualify as abuse of discretion on appeal,³⁰⁶ demonstrating the biggest weakness in the "arising under" approach. Since this approach grants bankruptcy courts broad authority, instances may arise where bankruptcy judges will have the power to enter final judgments on § 505 motions even when the circumstances make it inadvisable. Situations like *In re Bush*, where a bankruptcy judge fails to adhere to the abstention factors, allow for inconsistent administration of the law and intrude on the authority delegated to the tax court system.

8. Predicting Future Trends

In recent years, the law regarding bankruptcy courts' jurisdiction has undergone significant changes.³⁰⁷ Section 505 is only a small portion of bankruptcy courts' overall authority. However, analyzing the major revisions that have occurred to bankruptcy courts' jurisdiction as a whole sheds light on

²⁹⁹ *In re Bush*, No. 1:15-CV-1318-WTL-DKL, 2016 WL 4261867 at *8.

³⁰⁰ *Id.* at *2.

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *See id.*

³⁰⁴ *Id.* at *9.

³⁰⁵ *Id.* at *8–9.

³⁰⁶ *Id.* at *1.

³⁰⁷ *See* *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015); *Exec. Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014); *Stern v. Marshall*, 564 U.S. 462 (2011).

how § 505 claims are likely to be handled. As described in Part A, the Supreme Court's opinion in *Northern Pipeline* revealed the Court's strict adherence to constitutional ideals—specifically the separation of powers doctrine.³⁰⁸ The Court's opinion in *Northern Pipeline* followed by BAFJA and its decision in *Stern v. Marshall* each sought to reduce the scope of bankruptcy courts' authority.³⁰⁹ This pattern shifted in *Executive Benefits Insurance Agency* and most recently in *Wellness International Network*, where the Court expanded bankruptcy courts' authority and emphasized practicality when assessing their jurisdictional limitations.³¹⁰ In the context of § 505, this trend by the Court appears to favor approaches like the “arising under” approach suggested by this Comment. The “arising under” approach to § 505 reflects the Court's recent priorities because it grants bankruptcy courts broad authority while implementing restrictions in a practical manner through abstention and other recognized limitations.

CONCLUSION

Analysis of the “independent basis,” “arising under,” and “related to” approaches to § 505 reveals advantages and disadvantages associated with each approach. However, when compared to each other, the most viable interpretation is that § 505 proceedings are core proceedings “arising under” title 11. This view adheres to the goals of bankruptcy by granting bankruptcy courts broad authority to make determinations. Furthermore, this approach aligns with applicable principles of statutory interpretation while facilitating efficient and effective administration of bankruptcy proceedings. These theoretical and practical considerations demonstrate that the “arising under” approach offers the most suitable interpretation of § 505. Nevertheless, it is important for courts to apply and create jurisdictional limitations like the ones described in Part C(1) and Part C(5). These restrictions create practical boundaries on the authority of bankruptcy courts and prevent them from operating as a secondary tax court system. Even with these limitations, cases will arise where a bankruptcy court has jurisdiction; however, the particular circumstances of the case make jurisdiction highly unfavorable. Therefore, it is crucial for bankruptcy courts to utilize their ability to abstain when these situations occur. As demonstrated in this Comment, the “arising under” approach, combined with agreed upon

³⁰⁸ *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 59–60 (1982).

³⁰⁹ *Stern*, 564 U.S. at 469; *N. Pipeline Constr. Co.*, 458 U.S. at 87; Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA), Pub. L. 98–353, 98 Stat. 333.

³¹⁰ *Exec. Benefits Ins. Agency*, 134 S. Ct. 2165; *Wellness Int'l Network, Ltd.*, 135 S. Ct. at 1944.

limitations and conscientious abstention, produces the most pragmatic solution to the ambiguities surrounding § 505.

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