

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

JAY LESLIE WOLKENBROD, )  
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Petitioner(s), ) CZ  
)  
v. ) Docket No. 23767-13 L.  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent )  
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**ORDER AND DECISION**

This collection due process (CDP) case is on the Court’s June 15, 2015 St. Paul, Minnesota trial calendar. The IRS moved on April 9, 2015, for summary judgment. Mr. Wolkenbrod has filed a response and cross-motion for summary judgment. Mr. Wolkenbrod is a resident of Minnesota, and an appeal would ordinarily go to the Eighth Circuit, which means that Tax Court’s review of the IRS’s decision is subject to *Robinette v. Commissioner*, 439 F.3d 455 (8th Cir. 2006). This case requires the Tax Court to follow what lawyers call the “record rule.” What this means is that the Court has to look at the same things that the IRS looked at during Mr. Wolkenbrod’s collection due process hearing (the so-called “administrative record”) to decide whether the IRS officer abused his discretion in upholding the levy.

When the IRS sent him a notice of intent to levy -- a notice, in other words, that it planned to take his property to pay his 2005 tax bill -- Mr. Wolkenbrod asked for a hearing. The one issue that he raised in his request was that, although he owed taxes for 2005 in the past, he had filed for bankruptcy and received a discharge of his debts. He argued that the 2005 tax debt was one of those the Bankruptcy Court discharged.

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In a case like this, where the underlying tax liability isn't at issue, the question is whether Mr. Wolkenbrod has a defense to collection in the form of a bankruptcy discharge. When the amount of liability is not at issue, our standard of review is abuse of discretion. *Sego v. Commissioner*, 114 T.C. 604, 610 (2000); *Goza v. Commissioner*, 114 T.C. 176, 181-82 (2000). "This means \*\*\* that we look to see if the Commissioner's decision was based on an error of law or rested on a clearly erroneous finding of fact, or whether he ruled irrationally." *Antioco v. Commissioner*, 105 T.C.M. (CCH) 1234, 1237 (2013).

In this case, the IRS officer who made the determination explained that he was following the Bankruptcy Code in his decision. Bankruptcy Code section 523(a)(1)(A) says that the usual bankruptcy discharge doesn't apply to a tax debt if someone like Mr. Wolkenbrod had a due date for his return that was less than three years before he filed for bankruptcy.

There is a little bit of confusion about when Mr. Wolkenbrod's 2005 tax return was due. The right answer is October 16, 2006 -- the IRS record says October 15, but that was a Sunday. (We also note that the IRS Appeals officer made a small mistake here when he said that Mr. Wolkenbrod had until October 31, 2006 to file. Such a harmless error makes no difference. *See* 5 U.S.C. § 706.) There is no dispute that Mr. Wolkenbrod filed his bankruptcy petition on August 21, 2008.

The only conclusion we can reach is that the IRS Appeals officer got it exactly right -- Mr. Wolkenbrod's 2005 tax debt was *not* discharged in bankruptcy.<sup>1</sup>

It is therefore

ORDERED that respondent's motion for summary judgment is granted. It is also

ORDERED that petitioner's cross-motion for summary judgment is denied. It is also

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<sup>1</sup> Mr. Wolkenbrod mentions collection alternatives here and there in the record, but he didn't give the IRS the financial information that it needs to evaluate such requests. The IRS does not abuse its discretion when it denies a collection alternative after not receiving this information. *Sullivan v. Commissioner*, 104 T.C.M. (CCH) 713, 718 (2012).

ORDERED and DECIDED that respondent may proceed with the collection of petitioner's federal income-tax liabilities for the tax year 2005 as described in the Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated September 20, 2013.

**(Signed) Mark V. Holmes  
Judge**

ENTERED: **JUN 09 2015**