No. 00-458

In the Supreme Court of the United States

GEORGE C. PUCKETT, JR. AND MARTHA SUE PUCKETT,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether res judicata bars petitioners from bringing a tax refund suit with respect to tax liabilities adjudicated in a bankruptcy proceeding.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is unpublished, but the decision is noted at 213 F.3d 636 (Table). The opinion of the district court (Pet. App. 11a-27a) is reported at 82 F. Supp. 2d 660.

JURISDICTION

The judgment of the court of appeals was entered on April 12, 2000. A timely petition for rehearing was denied on June 12, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners filed a Chapter 11 bankruptcy petition in July 1987. The Internal Revenue Service filed proofs of claim for unpaid income taxes due from petitioners for the 1985-1990 tax years. Pet. App. 2a.[1] After several amendments, petitioners' bankruptcy plan was confirmed on April 2, 1991. The plan provided for payment of the entire amount of the government's tax claims. Pursuant to the plan, the tax claims were paid by petitioners on June 30, 1992. *Id.* at 2a-4a.[2]

On June 30, 1994, petitioners filed claims for refund of the tax payments made for their 1985-1988 tax years. Petitioners asserted (i) that their tax liability for 1985 should be reduced by application of a net operating loss carryforward from the 1984 tax year and (ii) that their tax liabilities for 1987 and 1988 should be reduced by application of a net operating loss carryback from the 1989 tax year. Pet. App. 4a.[3]

2. After the Service denied these claims for refund, petitioners brought this refund suit in district court. The court dismissed the complaint. Pet. App. 11a-27a. The court concluded that petitioners' refund suit is barred by res judicata because the bankruptcy court's

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[1] The Service also included in the proof of claim the unpaid employment taxes owed by a business that petitioners owned. Only the income taxes for the 1985-1988 tax years are at issue here.

[2] The payment petitioners made on June 30, 1992, fully satisfied their tax liabilities but did not pay all of the interest and penalties allowed under the plan. The plan specifically provided that the Service could assess and collect those amounts outside the bankruptcy proceeding. Pet. App. 2a-4a.

[3] These refund claims also asserted an entitlement to additional business deductions for the 1985-1988 tax years. Petitioners abandoned that issue in the court of appeals. Pet. App. 4a n.2.

orders constituted a final adjudication of petitioners' tax liabilities for these years. *Id.* at 26a. The court rejected petitioners' assertion that the confirmation of their bankruptcy plan was not a final determination of their liability for nondischargeable tax debts. The court concluded that petitioners' tax refund suit—which contests their liability for tax—is not a separate claim for relief from the matters adjudicated by the bankruptcy court in allowing the government's proof of claim for those same taxes. *Id.* at 21a-26a.

3. The court of appeals affirmed with a *per curiam* opinion. Pet. App. 1a-10a. The court of appeals agreed with the district court that all four conditions for application of the doctrine of res judicata are present in this case: (i) the parties to the two actions are the same; (ii) the judgment in the bankruptcy case was issued by a court of competent jurisdiction; (iii) the confirmation of the bankruptcy plan constituted an adjudication on the merits of petitioners' 1985-1988 tax liabilities; and (iv) petitioners' suit for a refund of taxes for the 1985-1988 tax years represented the same cause of action presented in, and determined by, the bankruptcy court. *Id.* at 6a-7a.

The court of appeals rejected petitioners' argument that the present case constituted a new cause of action because of their reliance there on issues (net operating loss claims) not raised by petitioners in the bankruptcy court. The court noted that petitioners could have asserted the net operating loss claims in response to the proofs of claim filed by the government in bankruptcy court. The court concluded that allowing petitioners to raise these claims in this untimely manner would improperly "grant [them] an unjustified opportunity to relitigate their tax liability." Pet. App. 8a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. The court of appeals correctly determined that the confirmation of petitioners' bankruptcy plan constituted a final adjudication of the tax liabilities that petitioners seek to challenge in their tax refund suit, and that the refund suit is therefore barred by res judicata. Petitioners err in contending (Pet. 8) that the confirmation of a plan does not fix the amount of tax liabilities for tax debts that are not dischargeable by the plan.[4] They mistakenly argue that the decisions in *In re Gurwitch*, 794 F.2d 584 (11th Cir. 1986), *In re Fein* v. *United States*, 22 F.3d 631 (5th Cir. 1994), and *In re Taylor*, 132 F.3d 256 (5th Cir. 1998), support their posi-

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[4] 11 U.S.C. 1141(d)(1) provides generally that the confirmation of a bankruptcy plan discharges pre-existing debts. 11 U.S.C. 1141(d)(2) carves out an exception from discharge, however, for debts identified in 11 U.S.C. 523. Under 11 U.S.C. 523, tax debts afforded priority under 11 U.S.C. 507(a)(7) are not discharged. In turn, 11 U.S.C. 507(a)(7) provides priority for taxes that were due within the three-year period prior to the filing of the bankruptcy petition. Petitioners' bankruptcy petition was filed on July 8, 1987. Their taxes for 1985 and 1986 were due on April 15, 1986, and April 15, 1987, respectively. The taxes due for those years were therefore entitled to priority treatment under 11 U.S.C. 507(a)(7), and they are therefore nondischargeable under 11 U.S.C. 1141(d)(2).

Petitioners' tax liabilities for 1987 and 1988, however, were due after the filing of their bankruptcy petition. Those taxes are therefore treated as administrative expenses under 11 U.S.C. 503(b)(1)(B). As administrative expenses, those taxes are not excepted from discharge because, under 11 U.S.C. 1129(a)(9), a bankruptcy plan cannot be confirmed unless it provides for full payment of such claims.

tion on this issue. Although each of those cases concerned the application of res judicata to proceedings following a bankruptcy case, the issue they address is distinct from the question presented in this case.

The taxpayers in *Gurwitch*, *Fein*, and *Taylor* claimed that the government was barred from collecting certain taxes after the close of their bankruptcy proceedings because those taxes had been put in issue in the bankruptcy court by their inclusion in the confirmed bankruptcy plan.[5] These courts concluded that the confirmation of a plan of reorganization does not bar the government from asserting additional nondischargeable tax liabilities outside of the bankruptcy proceedings because the Bankruptcy Code expressly specifies that "these taxes are nondischargeable 'whether or not a claim for such tax was filed or allowed.'" *Gurwitch*, 794 F.2d at 585 (quoting 11 U.S.C. 523(a)(1)(A)). See also *In re Taylor*, 132 F.3d at 262; *In re Fein*, 22 F.3d at 633. None of those cases supports the diametrically opposite contention of petitioners—that, notwithstanding petitioners' acquiesence in unopposed allowance of the government's tax claims in the confirmed bankruptcy

[5] In *Gurwitch*, the government filed a proof of claim that was allowed and paid under the terms of the debtor's plan. When the government later sought to collect additional taxes, the taxpayer claimed that the amount provided for in his plan was conclusive. 794 F.2d at 585. In *Taylor*, the government sought to collect penalties from the taxpayer under 26 U.S.C. 6672. The taxpayer claimed that the government was barred from collecting because the government did not object when the proposed reorganization plan listed a liability for amounts due under 26 U.S.C. 6672 and provided for no payment. 132 F.3d at 259. In *Fein*, the taxpayer asserted that the confirmation of his bankruptcy plan finally determined that he had no liability for taxes because he gave the government notice of his bankruptcy proceeding and no proof of claim was filed. 22 F.3d at 632.

plan, the taxpayer may relitigate the amount of those liabilities in subsequent refund proceedings.

2. Petitioners also err in asserting (Pet. 11-12) that the decision in this case conflicts with *Balbirer* v. *Austin*, 790 F.2d 1524 (11th Cir. 1986). *Balbirer* involved issue preclusion or collateral estoppel rather than claim preclusion or res judicata. Under the doctrine of collateral estoppel, a litigant is precluded from further litigation only of the issues that were actually litigated and necessarily determined in the prior proceeding. See, *e.g.*, *Baker* v. *General Motors Corp.*, 522 U.S. 222, 233 n.5 (1998) (under principles of collateral estoppel, "an issue of fact or law, actually litigated and resolved by a valid final judgment, binds the parties in a subsequent action, whether on the same or a different claim"); *Migra* v. *Warren City School District Board of Education*, 465 U.S. 75, 77 n. 1 (1984). In *Balbirer*, creditors sought relief in a bankruptcy proceeding by requesting the bankruptcy court to determine that a certain debt owed to them was nondischargeable because it arose from misrepresentations made by the debtor. 790 F.2d at 1525. A prior action for damages resulting from the debtor's misrepresentation had been dismissed with prejudice, however, and the debtor asserted that further litigation of the misrepresentation issue was precluded by principles of collateral estoppel. *Ibid.* The bankruptcy court and the district court agreed with the debtor, but the court of appeals reversed and remanded for a determination whether the parties to the Illinois action had intended the dismissal to serve as an adjudication on the merits of the misrepresentation claim. *Id.* at 1528. The court concluded that only the issues "actually * * * resolved by [the prior] judgment" would operate as an estoppel to preclude their litigation in a subsequent case. *Ibid.*

Unlike *Balbirer*, the present case involves claim preclusion, not issue preclusion. Petitioners are therefore wide of the mark in asserting that the court of appeals failed in this case to consider whether certain issues raised in the tax refund suit (in particular, the carryforward and carryback of net operating losses) had been addressed in the bankruptcy proceeding. Although principles of collateral estoppel would not preclude consideration of those issues if they had not been actually resolved in the prior proceeding, the doctrine of res judicata precludes relitigation of their entire claim for the years addressed in the prior case. As this Court has explained, "[u]nder the doctrine of claim preclusion, '[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'" *Rivet* v. *Regions Bank of Louisiana*, 522 U.S. 470, 476 (1998) (quoting *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394, 398 (1981)). Because a final determination of petitioners' 1985-1988 income tax liabilities was made in the bankruptcy court, and because petitioners could have raised any issues relating to their tax liabilities for that year prior to that determination, the doctrine of res judicata now bars them from raising and relitigating claims pertaining to those years.[6]

3. Finally, petitioners claim (Pet. 12) that regardless of the effect that res judicata might have on other claims, it has no effect on their claims concerning

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[6] Petitioners' bankruptcy plan was confirmed in 1991. The facts concerning the possible application of a net operating loss carryforward and net operating loss carrybacks to their 1985-1988 tax years were established prior to 1991 and therefore could have been asserted in the bankruptcy court. Pet. App. 8a.

the carryforward and carryback of net operating losses. They rely for this argument on 26 U.S.C. 6511(d)(2)(B)(iii), which generally provides a special period of limitation for refund claims for tax years that are affected by net operating loss adjustments in subsequent years.

In the first place, the court of appeals properly noted that petitioners had waived this argument by failing to raise it "before the district court." Pet. App. 9a. The court declined to exercise its discretion to reach this issue, and petitioners offer no reason why that exercise of discretion would warrant review by this Court. Moreover, as the court of appeals explained (*id.* at 8a):

> [Petitioners] do not contend that they were unable to bring their claim to reduce their 1985, 1987, and 1988 tax liability by applying carryover and carryback [net operating losses] before the bankruptcy court. Our review of the record * * * indicates that they had ample opportunity to do so. There is no allegation in the record that the facts from which the existence of the 1984 and 1989 [net operating losses] were determined were not available to the Pucketts at the time that the IRS filed its amended proof of claim in 1991. In fact, the Pucketts had themselves ascertained that they had suffered a loss in 1984, and declared it on their timely-filed 1984 tax return.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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