25-103

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In Re: LAURA C. GOEBEL,
Debtor.

LAURA CHARLENE GOEBEL,
Plaintiff – Appellee,

v.

UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE,
Defendant - Appellant.

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLANT

BRUCE R. ELLISEN (202) 514-2929
MATTHEW S. JOHNSHOY (202) 616-1908
Attorneys
Tax Division
Department of Justice
Post Office Box 502
Washington, D.C. 20044

Of Counsel:
JOHN J. DURHAM
United States Attorney

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GLOSSARY

Term	Definition
Adv. Doc.	Numbered docket entries in Bankr. Adv. No. 1:22-ap-1085 (Bankr. E.D.N.Y.)
Bankr. Dkt.	Main Bankruptcy docket in Bankr. No. 1:22-bk-42103 (Bankr. E.D.N.Y.)
Bankr. Doc.	Numbered docket entries in Bankr. No. 1:22-bk-42103 (Bankr. E.D.N.Y.)
Bankruptcy Court	United States Bankruptcy Court for the Eastern District of New York
Debtor	Laura Charlene Goebel
District Court	United States District Court for the Eastern District of New York
Doc.	Numbered docket entries in District Court Case Nos. 1:23-cv-1944 (E.D.N.Y) and 1:24-mc-1328 (E.D.N.Y.) and Second Circuit Case No. 24-2383, as indicated.

STATEMENT OF JURISDICTION

Laura Goebel filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Eastern District of New York. (Bankr. Doc. 1.) She later commenced an adversary proceeding to determine the dischargeability of her federal tax debts. (A-18-35.) Bankruptcy courts generally have jurisdiction over dischargeability proceedings under 28 U.S.C. §§ 157(b)(1), 157(b)(2)(I), 1334.

The United States moved to dismiss Goebel's adversary complaint for lack of jurisdiction. (Adv. Doc. 13.) The Bankruptcy Court (Hon. Nancy Lord) denied the motion and directed Goebel to file a supplemental complaint based on post-complaint events. (*See* A-207-209, A-227-290.) The United States then filed a motion for leave to file an interlocutory appeal to the District Court under 28 U.S.C. § 158(a)(3) and Fed. R. Bankr. P. 8004, as well as a notice of appeal. (A-210-220.)

On August 8, 2024, the District Court (Hon. Dora Irizarry) issued an order denying the Government's motion without prejudice and sua sponte certified three issues for direct, interlocutory appeal to this Court. (A-221-226 (E.D.N.Y. No. 1:24-mc-1328, Doc. 9).) The District

Court had jurisdiction to certify these issues to this Court under 28 U.S.C. § 158(d)(2).

On September 9, 2024, the United States timely petitioned this Court for leave to file a direct, interlocutory appeal on the certified issues. (2d Cir. No. 24-2383, Doc. 1.) On January 15, 2025, this Court granted leave to appeal under 28 U.S.C. § 158(d)(2)(A) and opened this case. (A-291 (2d Cir. No. 24-2383, Doc. 15).) This Court has jurisdiction under 28 U.S.C. § 158(d)(2)(A).

STATEMENT OF THE ISSUES

1. Whether an action seeking a determination regarding the dischargeability of a tax debt presents a ripe Article III case or controversy before the Government engages in collection activity or takes any position on the issue.

2. If not, whether supplementation of a complaint pursuant to Federal Rule of Civil Procedure 15(d) can cure the jurisdictional defect of lack of ripeness by alleging facts that occurred after the initial filing.

3. Whether the federal tax exception to the Declaratory Judgment Act, 28 U.S.C. § 2201(a), bars a bankruptcy court from

issuing a purely declaratory judgment determining the dischargeability of a federal tax debt.

STATEMENT OF THE CASE

A. Procedural background

The Government moved to dismiss Goebel's adversary complaint for lack of jurisdiction, primarily due to lack of ripeness but also due to the effect of the federal tax exception to the Declaratory Judgment Act, 28 U.S.C. § 2201(a). The Bankruptcy Court denied the motion to dismiss and instead directed Goebel to file a supplemental complaint based on post-complaint events, which the court held would cure any ripeness defect. (A-207-209, A-227-290.) The Government appealed to the District Court (A-210-220), which sua sponte certified three issues for direct, interlocutory appeal to this Court (*see* A-221-226). This Court granted leave to appeal under 28 U.S.C. § 158(d)(2)(A). (A-291 (2d Cir. No. 24-2383, Doc. 15).)

B. Legal Background

Individual Chapter 7 bankruptcy debtors generally receive a fresh start when they obtain a discharge of most personal liabilities. 11 U.S.C. § 727. A Chapter 7 discharge order operates as a broad injunction against collection of personal debts, *see* 11 U.S.C. § 524(a)(2),

and it applies to all pre-bankruptcy debts excepts for those excepted from discharge by 11 U.S.C. § 523. *See* 11 U.S.C. § 727(b); *Kontrick v. Ryan*, 540 U.S. 443, 447 (2004). Debts are excepted from discharge "when, in Congress' judgment, the creditor's interest in recovering a particular debt outweighs the debtor's interest in a fresh start." *Bartenwerfer v. Buckley*, 598 U.S. 69, 72 (2023). Thus, it has long been understood that a discharge is meant to help only the "'honest but unfortunate debtor.'" *Grogan v. Garner*, 498 U.S. 279, 287 (1991) (quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934)).

Relevant here, 11 U.S.C. § 523(a)(1) excepts many, but not all, tax debts from discharge. Subsections 523(a)(1)(A) and 523(a)(1)(B) generally provide bright-line timing rules under which a discharge is denied for any income tax debt that, for example, is related to a return due less than three years before the bankruptcy or for which the Government has not yet had at least two years to collect after a return was filed. *See Young v. United States*, 535 U.S. 43, 46-49 (2002); *see also* 11 U.S.C. § 507(a)(8). In contrast, Section 523(a)(1)(C) excepts from discharge all tax debts "with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or

defeat such tax" regardless of their age or when a related return was filed. This provision generally harmonizes with the Internal Revenue Code. *See* 26 U.S.C. § 6501(c)(1)-(2).

Questions of whether a taxpayer willfully attempted to evade or defeat a tax within the meaning of 11 U.S.C. § 523(a)(1)(C) are fact intensive, involving discovery of the debtor's financial history and then a determination of the debtor's course of conduct related to taxes over many years, and ultimately a determination of intent. *See In re Tudisco*, 183 F.3d 133, 136-37 (2d Cir. 1999) (collecting cases). A question about whether a debt was excepted from discharge need not be tried in the bankruptcy court and is often determined by a state or other nonbankruptcy court in which a creditor later seeks to collect. 4 *Collier on Bankruptcy* ¶ 523.03 (16th ed. 2025); *see also Taggart v. Lorenzen*, 587 U.S. 554, 564 (2019).

C. Facts and procedural history

On September 2, 2022, Goebel filed a Chapter 7 bankruptcy petition. (Bankr. Doc. 1.) Her bankruptcy was a "no-asset" case, in which unsecured creditors were not required to file proofs of claims. (*See* A-2-3 (Bankr. Dkt. Entries Sept. 2, 2022 and Nov. 3, 2022); *see also*

Bankr. Doc. 7 at 4.) The meeting of creditors was held on October 4, 2022 (*see* A-1-2), and thus the deadline for creditors to object to a discharge was December 5, 2022. *See* Fed. R. Bankr. P. 4004(a). No objections were filed. On December 7, 2022, Goebel received a standard discharge. (Bankr. Doc. 13.)

But earlier, on October 23, 2022—before her discharge (and before the deadline to object to discharge)—Goebel commenced an adversary proceeding against the United States "seeking a determination of the Bankruptcy Court declaring the Debtor's income tax obligations for the calendar years 2008 through 2018 . . . as dischargeable obligations pursuant to § 523(a)(1) of the Bankruptcy Code." (A-19.) At the time her complaint was filed, the Government had neither taken any position on the dischargeability of her tax debts nor commenced (or even threatened) any post-bankruptcy collection activity. At that time, all collection remained stayed by the automatic stay because a discharge had not yet been "granted or denied." *See* 11 U.S.C. § 362(a), 362(c)(2)(C). Goebel did not complete service of process on the Government until March 22, 2023, which was more than three months after her discharge was entered, although the Government received

actual notice of the adversary complaint some time before it was served. (A-6; *see also* Adv. Doc. 11.)

Separately, after the discharge was entered and the automatic stay terminated, the IRS requested that the Department of Justice file any suit necessary to reduce Goebel's outstanding tax debts to judgment and respond to the adversary complaint. Consequently, on March 14, 2023, the Government filed a complaint (and the same day an amended complaint) in the District Court for the Eastern District of New York seeking a collectible money judgment for Goebel's income tax debts for tax years 2010 through 2018.[1] (E.D.N.Y. No. 1:23-cv-1944, Docs. 1, 2; *see also* A-222.) The Government alleged that those tax debts were non-dischargeable under 11 U.S.C. § 523(a)(1)(C) and thus remained collectible from Goebel. (E.D.N.Y. No. 1:23-cv-1944, Doc. 2.) The Government's complaint did not seek to collect taxes for 2008 and 2009 because the collection limitation periods had expired. (*Id.*)

Five weeks later on April 21, 2023, the Government moved to dismiss Goebel's adversary complaint for lack of jurisdiction.

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[1] Both complaints raised the discharge issue, but the amended complaint added facts that had been unintentionally omitted.

(Adv. Doc. 13.) The Government argued that Goebel's complaint did not present a ripe dispute for purposes of Article III's case-or-controversy requirement because at the time it was filed the discharge remained hypothetical (expected but not certain) and the Government had not yet pursued post-bankruptcy collection or even taken any adverse position on dischargeability. (Adv. Doc. 13, Br. 1-2, 13-16.) And since the matter was not ripe, the Government argued that Goebel's complaint must be dismissed. (Adv. Doc. 13, Br. 1-2, 13-16.) In addition, and in the alternative, the Government argued that Goebel's request for purely declaratory relief was also barred by the federal tax exception to the Declaratory Judgment Act, 28 U.S.C. § 2201(a), which generally prohibits federal courts from issuing declarations "with respect to Federal taxes." (Adv. Doc. 13, Br. 9-12.)

Goebel opposed dismissal. She argued that the IRS's pre-bankruptcy collection activities were sufficient to establish ripeness. (*See* Adv. Doc. 18 at 5, 9; *see also id.* at 7 (alleging that debtor "recalls receiving notices from the IRS in or about 2016, 2017").) She also argued that "[t]he argument that the Debtor is seeking purely declaratory relief cannot be further from reality." (*Id.* at 4.) To support

her view that her action was not purely declaratory, she contended that obtaining relief would relieve her future worries about such debts. (*Id.* at 5 ("Anyone who ever lost sleep over crushing debt (unlike a government entity which can just increase taxes) understands that the relief being sought is not declaratory."). Goebel also accused the Government of having "strategically waited" to file suit until after the discharge was entered and the automatic stay terminated. (*Id.*) And she disputed the applicability of the caselaw the Government cited. (*Id.* at 9-16.) Finally, Goebel argued that the federal tax exception to the Declaratory Judgment Act was "not applicable." (*Id.* at 16-18.)

The Government filed a reply and the Bankruptcy Court heard oral argument on August 10, 2023. (A-36-206; Adv. Doc. 19.)

D. The Bankruptcy Court's opinion and order

The Bankruptcy Court denied the Government's motion to dismiss. (A-227-290 (bench ruling Mar. 13, 2024); A-207-209 (written order, Mar. 18, 2024).) In its bench ruling, the court acknowledged that "ripeness is determined as of the date the complaint was filed," but the court declined to decide whether there was a ripe dispute at that time. (A-247.) The court reasoned it was unnecessary to do so because the

Government "concedes that there is now a ripe case or controversy because it has commenced the District Court action and seeks an exception to discharge under Section 523(a)(1)(C)." (*Id.*) The Bankruptcy Court concluded that Goebel could thus cure any ripeness defect by filing a supplemental complaint under Fed. R. Civ. P. 15(d) to allege post-complaint events that, in the court's view, rendered the case ripe after the initial filing. (A-247-249, A-264.) *See* Fed. R. Bankr. P. 7015 (making Fed. R. Civ. P. 15(d) applicable to adversary proceedings in bankruptcy cases). The court also held that neither the Declaratory Judgment Act nor the doctrine of sovereign immunity barred the court from determining the dischargeability of Goebel's federal tax debts.[2] (A-264.) And thus, the court directed Goebel to file a supplemental complaint under Rule 15(d). (A-209, A-249, A-264.)

On April 1, 2024, the Government filed a timely notice of appeal and a motion for leave to pursue an interlocutory appeal to the District Court pursuant to 28 U.S.C. § 158(a)(3). (A-210-220.)

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[2] The Bankruptcy Court also declined to exercise its discretion to abstain from deciding the dischargeability question under 28 U.S.C. § 1334(c). (A-260-264.)

Meanwhile, on March 28, 2024, Goebel filed a new and supplemental complaint as directed by the Bankruptcy Court. (Adv. Doc. 27.) The Government has since moved to dismiss that complaint (as well as moved to withdraw the reference of the adversary proceeding to the Bankruptcy Court, *see* 28 U.S.C. § 157(d)). (Adv. Docs. 34, 37.) These matters have been stayed pending this appeal and are not directly at issue here.

E. The District Court's certification and this Court's grant of leave to appeal

The District Court denied the Government's motion for leave to file an interlocutory appeal and, instead, sua sponte certified three issues for direct appeal to this Court under 28 U.S.C. § 158(d)(2). (A-221-226 (E.D.N.Y. No. 1:24-mc-1328, Doc. 9).) The District Court also stayed the adversary proceeding in the Bankruptcy Court pending the outcome of this appeal. (A-13.) This Court granted the Government's petition for leave to file a direct appeal. (A-291 (2d Cir. No. 24-2383, Doc. 15).)

SUMMARY OF ARGUMENT

1. Goebel's complaint should have been dismissed because when it was filed no discharge order had been entered and there was not yet an

actual dispute as to dischargeability. At that time, the Government had not taken any position on dischargeability, engaged in post-bankruptcy collection activity, or even determined whether it would do so. A case is considered to be not "ripe," and thus not justiciable, if the case is dependent on contingent future events that may not occur as anticipated or may not occur at all. There is thus little question that there was no justiciable dispute at the start of this adversary proceeding as is required by Article III, and the Bankruptcy Court erred by failing to dismiss.

The position adopted by the Bankruptcy Court below risks providing dishonest debtors with improper discharges of particular debts using the mechanism of premature judicial determinations of dischargeability. It would be a misuse of the Bankruptcy Code, and contrary to Congressional intent, to allow dishonest tax debtors to obtain the practical benefits of a bankruptcy discharge of particular debts (to which they are not entitled) through the maneuver of obtaining a judgment (often uncontested) in a premature adversary proceeding. Such actions should be dismissed for lack of ripeness. Doing so will ensure that judicial dischargeability determinations are

appropriately limited and debtors do not benefit from an inappropriate litigation practice. Dismissing such actions will also ensure that: (1) needless litigation is not generated, (2) creditors are not forced to bear additional post-bankruptcy costs until and unless they choose to pursue post-bankruptcy collection, and (3) debtors are not able to pre-select the forum for a future dispute—thereby improperly shifting dischargeability disputes out of non-bankruptcy forums where they are traditionally decided.

2. Whether a jurisdictional defect can be cured by a supplemental complaint based on post-complaint events presents a closer question on which multiple Circuits disagree. The Government submits that a supplemental complaint based on post-complaint events cannot be used to cure the jurisdictional defect of lack of ripeness. But even assuming that the ripeness defect here could be cured as to tax years 2010 through 2018 (the years for which the Government seeks to collect), the Bankruptcy Court would still be the second court to acquire jurisdiction over those dischargeability issues and thus it is not the proper court to proceed. And there is still no case or controversy for the years 2008 and

2009 because the Government has not pursued post-bankruptcy collection for those years and has no intention of doing so.

3. Finally, any purely declaratory judgment as to the dischargeability of federal taxes is barred by the federal tax exception to the Declaratory Judgment Act, 28 U.S.C. § 2201(a). The Declaratory Judgment Act was amended in 1978 (together with the adoption of the modern Bankruptcy Code) and it now makes clear that courts cannot make purely declaratory determinations with respect to federal taxes in bankruptcy proceedings, other than in two specific types of proceedings under 11 U.S.C. §§ 505 and 1146—neither of which applies to dischargeability determinations.

ARGUMENT

This Court should put a definitive end to the questionable practice of Chapter 7 debtors seeking premature comfort orders regarding the hypothetical dischargeability of federal tax debts

Standard of review

This Court reviews a "bankruptcy court's findings of fact for clear error and its legal determinations de novo." *Anderson v. Credit One Bank, N.A.* (*In re Anderson*), 884 F.3d 382, 387 (2d Cir. 2018).

I.

The Bankruptcy Court should have dismissed Goebel's dischargeability complaint for lack of ripeness

A. Ripeness, like standing, is a constitutional justiciability requirement that must be met when the complaint is filed

Ripeness is an indispensable justiciability requirement rooted in the case-or-controversy requirement of Article III of the Constitution. *Trump v. New York*, 592 U.S. 125, 131 (2020). An action cannot proceed based on a dispute that is not ripe. *See id.* at 132-34. "A foundational principal of Article III is that 'an actual controversy must exist not only at the time the complaint is filed, but through all stages of the litigation.'" *Id.* at 131 (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90-91 (2013)). A case is considered to be not "ripe," and thus not justiciable, if the case is "dependent on 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Trump*, 592 U.S. at 131 (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)); *see also Kleinknecht v. Ritter*, No. 21-2041, 2023 WL 380536, at *3 n.2 (2d Cir. Jan. 25, 2023) (citing *Trump*, 592 U.S. at 129-32). Or put differently, a case is not ripe if there is not yet a concrete injury and any

dispute is merely hypothetical or conjectural as to what may happen. *Trump*, 592 U.S. at 131. A case based on a hypothetical dispute about a contingent future injury may not proceed. *See id.* at 132-34.

Ripeness is closely related to one of the elements of Article III standing—the requirement that a plaintiff must demonstrate "'an injury that is concrete, particularized, and imminent rather than conjectural or hypothetical.'" *Trump*, 592 U.S. at 131 (quoting *Carney v. Adams*, 592 U.S. 53, 60 (2020)). Thus, in many cases, including this one, ripeness and standing inquiries overlap. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007) (noting that sometimes "standing and ripeness boil down to the same question"); *Warth v. Seldin*, 422 U.S. 490, 499 n.10 (1975) ("The standing question thus bears close affinity to questions of ripeness—whether the harm asserted has matured sufficiently to warrant judicial intervention . . . .").

B. No ripe controversy exists regarding the dischargeability of a tax debt in a Chapter 7 bankruptcy before *both* (i) a discharge occurs *and* (ii) a taxing authority either starts post-bankruptcy collection or at least takes a concrete, contrary position on dischargeability

1. There was no ripe dispute about the dischargeability of Goebel's federal tax debts for 2008 through 2018 when she filed her complaint

This Court should put a definitive end to the questionable practice of Chapter 7 debtors seeking premature comfort orders regarding the hypothetical dischargeability of their federal tax debts. Requests for dischargeability determinations as to tax debts are not ripe until *both* (i) a Chapter 7 discharge order has entered *and* (ii) a taxing authority has either started post-bankruptcy collection activity or else has at least taken a concrete, contrary position on dischargeability confirming that it intends to collect the tax debt post-bankruptcy. Without those two prerequisites, any judicial determination is premature and the case is unripe as there is not an actual dispute about actual events as is required by Article III. *Cf. Trump*, 592 U.S. at 131, 134.

First, there is little doubt that there was no ripe dispute when Goebel's complaint was filed. As happened here, a Chapter 7 discharge is usually entered quickly, within a few months of the bankruptcy filing,

unless there is a timely objection to the entry of discharge.[3] But Goebel's complaint pre-dated both the deadline to object to discharge and the discharge order. Indeed, Goebel's discharge was not entered until 45 days after her complaint was filed. On those grounds alone, the dischargeability complaint was premature and thus unripe.

Any ruling about the scope of a hypothetical discharge that may never be granted is simply a request for a potentially expensive, fact-intensive advisory opinion. And if an objection to discharge may be timely filed and could be sustained, then that is even more reason to avoid a premature determination. Thus, at the start of this case, any question about the scope of a still-hypothetical discharge and the application of 11 U.S.C. § 523(a)(1) remained purely hypothetical and conjectural.

Second, and more importantly, even assuming that a dispute about the scope of a hypothetical discharge of a tax debt could ripen before the discharge occurs, here no such dispute existed. The

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[3] A Chapter 7 discharge is generally entered immediately upon the expiration of the period to object to it, and that time is normally 60 days after the first date set for the initial meeting of creditors. Fed. R. Bankr. P. 4004(a), 4004(c)(1).

Government had not taken any position on dischargeability of the tax debts when Goebel's complaint was filed—let alone taken the sort of concrete, contrary position that would be needed to create a live, justiciable dispute. The Government had not, for instance, pursued post-bankruptcy collection or even expressed an intent to do so. Nor was there any reason to do so at that time.

To explain, in an individual Chapter 7 bankruptcy, the automatic stay that prevents collection terminates only when a discharge is entered. 11 U.S.C. § 362(c)(2)(C). This means that before discharge there is normally no collection activity nor any reason to expect such activity. This case was no different. No post-bankruptcy collection activity occurred prior to discharge, nor was any threatened.

Instead, the IRS chose to wait on the sidelines to see what (if anything) would happen and evaluate its position later. There is usually little incentive for any creditor to worry about hypothetical events or consider collection while the automatic stay remains in effect. And Congress has explicitly provided the Government with additional time to consider its options as to federal tax debts post-bankruptcy—thereby alleviating any press of time to do so while the bankruptcy is

pending. *See* 26 U.S.C. § 6503(h)(2) (suspending the period to collect taxes while collection is prohibited by the bankruptcy automatic stay and for six months thereafter).

Thus, at the time Goebel's complaint was filed, no discharge had been entered, and the Government had not yet committed itself to any post-bankruptcy collection or even determined whether it might challenge the dischargeability of Goebel's tax debts post-bankruptcy. As a result, Goebel was asking the Bankruptcy Court for a purely advisory opinion about the possible scope of a hypothetical discharge that might never be granted and about which there was no dispute. Accordingly, the Bankruptcy Court should have dismissed Goebel's dischargeability complaint as unripe.

2. Debtors should not be able to manufacture a fresh start by means of premature judicial determinations

Section 523(a)(1)(C) of the Bankruptcy Code was intended to deny the certainty of a fresh start to dishonest debtors—those who file fraudulent returns or willfully attempt to evade or defeat their taxes. Here, while Goebel's complaint broadly references 11 U.S.C. § 523(a)(1), it is reasonably clear from context that her legal maneuver was aimed

at ensuring that the Government would not later be able to assert that her taxes were non-dischargeable under 11 U.S.C. § 523(a)(1)(C). This is because the other provisions of 11 U.S.C. § 523(a)(1) are largely based on time periods that are easily calculated. Here all of the income tax debts that Goebel raised in her complaint relate to returns due more than three years ago, and all returns were filed more than two years before bankruptcy. (*See* A-19-20; Adv. Doc. 13, Br. 3.) *See* 11 U.S.C. § 523(a)(1)(A), 523(a)(1)(B). That leaves only Section 523(a)(1)(C).[4]

Section 523(a)(1)(C) provides that an individual is not discharged from any tax debt "with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax." It makes sense that Congress chose to make these categories of tax debts non-dischargeable as it compliments their treatment under the Internal Revenue Code.

The Government ordinarily has only three years to assess a tax, or to collect a tax by a proceeding in court without assessment. 26 U.S.C. § 6501(a). But there is no time limitation "[i]n the case of a false or

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[4] Tax penalties are covered by a separate provision, 11 U.S.C. § 523(a)(7), which is not at issue here.

fraudulent return with intent to evade tax" or "[i]n case of a willful attempt in any manner to defeat or evade tax imposed by this title." 26 U.S.C. § 6501(c)(1)-(2).[5] These exceptions ensure that dishonest taxpayers are not shielded behind the normally short, three-year time limit to assess (or collect without assessment) just because their misconduct is undetected. The Government thus has an unlimited time to discover and assess those taxes. After it has assessed such taxes, the Government then has ten years from assessment to collect the taxes by levy or by a proceeding in court. 26 U.S.C. § 6502(a). Section 523(a)(1)(C) thus compliments these Internal Revenue Code provisions by ensuring that dishonest tax debtors are denied a discharge—thereby protecting the unlimited time period under 26 U.S.C. § 6501(c) to discover and assess their tax debts (subject to the 10-year period under 26 U.S.C. § 6502(a) to collect assessed taxes). *See Dalton v. I.R.S.*, 77 F.3d 1297, 1301 n.3 (10th Cir. 1996) (observing that the language of § 523(a)(1)(C) "tracks with" § 6501(c)).

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[5] Similar criminal statutes also punish such misconduct. *See* 26 U.S.C. §§ 7201, 7207.

It would be a misuse of the Bankruptcy Code, and contrary to Congressional intent, to allow dishonest tax debtors to obtain the practical benefits of a discharge of their tax debts (to which they are not entitled) through the maneuver of obtaining a judgment (often uncontested) in a premature adversary proceeding with res judicata effect. After all, "[b]arring certain debts from discharge necessarily reflects aims distinct from wiping the bankrupt's slate clean." *Bartenwerfer v. Buckley*, 598 U.S. 69, 72 (2023). Thus, here—as in a number of recent cases—the Government, in the hope of ending an improper litigation practice, has objected to the debtor's premature request for a comfort order.

3. Debtors who wonder whether they were sufficiently dishonest should not be allowed to contrive certainty through premature comfort orders

Debtors who wonder whether their conduct was sufficiently dishonest to make their taxes non-dischargeable under 11 U.S.C. § 523(a)(1)(C) should not be allowed to artificially manufacture certainty through the use of preemptive litigation before any post-bankruptcy collection activity. Such debtors should instead have to wait for a ripe dispute about post-bankruptcy collectability to

materialize—which in the absence of indicia of fraud on returns or willful attempts at evasion of collection will never happen. And frankly, Goebel (and debtors like her) doth protest too much.

Dischargeability under 11 U.S.C. § 523(a)(1)(C) is not something that an honest but unfortunate debtor would reasonably need to worry about. Section 523(a)(1)(C) specifically "targets the dischargeability of tax debts by deceitful, rather than honest debtors." *IRS v. Wallace* (*In re Wallace*), No. 23-cv-1331, 2023 WL 7360835, at *5 (C.D. Ill. Nov. 7, 2023). For most debtors "any fear of a future dischargeability action by the United States under subsection 523(a)(1)(C) is remote at best . . . ." *In re Mlincek*, 350 B.R. 764, 769 (Bankr. N.D. Ohio 2006). And thus "it would not be reasonable for [a debtor], assuming that he [or she] was an honest debtor, to worry over the dischargeability of his [or her] debt under § 523(a)(1)(C)." *Wallace*, 2023 WL 7360835, at *5. Such a debtor's worries relate only to a possible future dispute and have thus been held to be "insufficiently concrete to support his [or her] standing to bring a claim." *Id.* Which of course means—in a case like this one, where standing and ripeness overlap—that such concerns are also unripe. And if it should someday come to pass that the

Government decides to assert a possible Section 523(a)(1)(C) fraud-or-willfulness exception against some debtors—for instance after discovering additional facts or new evidence—"then the debtors have only themselves to blame, and they should not benefit by a preemptive suit . . . ." *Mlincek*, 350 B.R. at 769.

It is only those individuals who have committed (or believe they may have committed) misconduct with regard to their tax obligations that would ever need to worry. But in cases where misconduct has occurred it is particularly important that the Government is not forced to choose whether to defend a premature lawsuit or else be barred from pursing future collections for all tax debts for that tax year (even those not yet discovered). Debtors who willfully attempted to evade or defeat a tax are not meant to be discharged from that tax, nor should they benefit simply because they might have done a good job of concealing their misconduct.[6]

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[6] Many debtors no doubt hope their actions will be uncontested and that they will quickly obtain the judicial comfort order requested. And certainly, the Government might reasonably decide that it does not have the resources to investigate the debtor's conduct in order to decide whether to object to yet another premature adversary proceeding. After all, these issues can be highly fact intensive. *See Tudisco*, 183 F.3d at 136-37.

Allowing premature dischargeability actions would inevitably lead to results that are contrary to Congress's clear intent that such debts not be discharged, *i.e.*, that all tax debts covered by 11 U.S.C. § 523(a)(1)(C) should remain payable. In other cases where no misconduct is revealed, litigation will simply consume resources unnecessarily. This is an inappropriate litigation practice that this Court should not permit.

4. The Bankruptcy Court did not make any finding about whether there was a ripe dispute when the complaint was filed

The closest the Bankruptcy Court came to making a finding as to whether there was a ripe dispute when the complaint was filed was to say that it would not dismiss the case for being "unripe" (A-244, A-246) and that it would not dismiss "whether or not there was a ripe case or controversy at the time the complaint was filed" (A-264). The court instead held that it *would* have jurisdiction *if* a supplemental complaint was later filed, and any jurisdictional defect would thereby be cured. (*See* A-232, A-248, A-264.) In proceeding this way, the Bankruptcy Court acted as though there was no initial defect and yet it also tried to conjure up jurisdiction for itself where none had existed.

In its meager analysis, the Bankruptcy Court also misconstrued the relevant timeframe by suggesting that the Government's collection suit was filed "shortly after" Goebel's complaint—thereby suggesting that Goebel did not significantly jump the gun. (*See* A-246.) But the District Court suit was not filed until March 14, 2023, almost five months after Goebel's complaint was filed on October 23, 2022. That is not "shortly after." And close enough does not satisfy the case-or-controversy requirement of Article III.

Furthermore, in the interlude, significant events occurred: the deadline to object to discharge passed, the discharge entered, and the automatic stay terminated.[7] By minimizing this important time period, the Bankruptcy Court appeared to suggest that there must have been a live dispute at the time Goebel's complaint was filed. But, on the contrary, when this case began, no dispute existed or was even visible on the horizon—it was purely hypothetical and speculative and did not in fact arise for many months.

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[7] It was only after the discharge entered and the stay terminated that the IRS later made a referral to the Department of Justice to bring a suit seeking a money judgment for Goebel's tax debts that could then support judicial collection remedies.

Moreover, the Government's District Court suit did not seek to collect taxes for tax years 2008 and 2009, and thus there is still no justiciable dispute as to those years. The Bankruptcy Court acknowledged this jurisdictionally important fact. (A-234.) But the court nevertheless swept those two tax years in with the others when it held it would not dismiss due to the District Court suit that covered years 2010 through 2018.

5. The Bankruptcy Court's attempt to distinguish a line of lower court opinions that have dismissed premature dischargeability actions lacks merit

The Bankruptcy Court also erred by relying on the Government's pending District Court suit as the reason for distinguishing and rejecting a line of lower court opinions that have dismissed premature dischargeability actions. (A-246.) These courts held that dischargeability actions like the one here that seek premature comfort orders are not ripe for adjudication as there is no justiciable Article III dispute unless the Government has already asserted that an exception to discharge applies or has commenced (or threatened to commence) post-bankruptcy collection activity. *See, e.g.*, *IRS v. Wallace* (*In re Wallace*), No. 23-cv-1331, 2023 WL 7360835, at *6 (C.D. Ill. Nov. 7,

2023); *Hinton v. United States*, No. 09-cv-6920, 2011 WL 1838724, at *4 (N.D. Ill. May 12, 2011); *In re Namai*, Adv. Proc. No. 23-ap-00044, 2023 WL 5422627 (Bankr. D. Md. Aug. 21, 2023); *In re Erikson*, Adv. Proc. No. 12-ap-05546, 2013 WL 2035875 (Bankr. E.D. Mich. May 10, 2013); *In re Sheehan*, Adv. Proc. No. 09-ap-1351, 2010 WL 4499326 (Bankr. N.D. Ohio Oct. 29, 2010); *cf. In re Mlincek*, 350 B.R. 764 (Bankr. N.D. Ohio 2006) (dismissing complaint based on non-Article III prudential grounds).

For instance, in *Hinton*, the district court concluded that until the Government had taken concrete steps to collect the taxes, any dispute about the discharge is only "hypothetical and conjectural" and, therefore, not justiciable. *Hinton*, 2011 WL 1838724, at *4. Similarly, in *Wallace*, another district court held that "[a] debtor does not have *carte blanche* to bring an action under § 523(a)(1) . . . as there is no justiciable controversy unless the IRS has argued that the exception applies or has otherwise threatened to collect the debtor's tax debts." *Wallace*, 2023 WL 7360835, at *6. That is so regardless of whether the justiciability issue is framed as a problem of ripeness or standing. *See id.* at *7 ("in this case, the issues of standing and ripeness cannot help

but bleed into one another"); *see also Hinton*, 2011 WL 1838724, at *2 ("Whether characterized as case or controversy, standing, or ripeness, the issue is one of justiciability.").

After reviewing many of the lower court opinions the Government cited, the Bankruptcy Court erroneously indicated that this case was different because there was now "collection activity that began after the dischargeability action[]" filed by Goebel. (A-246.) But this distinction contradicts the bedrock principle that "'the jurisdiction of the court depends upon the state of things at the time of the action brought.'" *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570 (2004) (quoting *Mollan v. Torrance*, 22 U.S. 537, 539 (1824)). Post-complaint events do not retroactively provide jurisdiction to a complaint that was previously lacking it; the state of things at the time of the complaint is not retroactively changed.

There is no meaningful distinction between the facts in *Hinton* and *Wallace* and the facts here at the time Goebel's adversary complaint was filed. And even though for some tax years there is now pending collection activity (that began months after the start of this case), the critical jurisdictional question is still whether the Bankruptcy

Court had jurisdiction when the adversary complaint was filed. *Grupo Dataflux*, 541 U.S. at 583. The fact that collection activity may have later commenced (as to some tax years) is thus irrelevant to the analysis about the state of things when her proceeding was started.

Furthermore, there still is no pending or imminent collection activity for tax years 2008 and 2009. And because each income tax debt for each year is its own cause of action, *see Commissioner v. Sunnen*, 333 U.S. 591, 598-99 (1948), the Government's choice to pursue other tax years did not ripen any dispute as to tax years 2008 and 2009. Thus, while the Bankruptcy Court's analysis was erroneous as to all tax years, it was even more so as to tax years 2008 and 2009.

Understandably, some anxious Chapter 7 debtors do not want to wait to see whether their pre-bankruptcy tax creditors will someday assert a discharge exception—and perhaps do not even want to wait for a discharge to actually be entered. Such debtors would no doubt prefer to seek an early judicial determination of whether their federal tax debts will be covered by a discharge. But a debtor's anxiety does not create a justiciable dispute. Bringing a dischargeability action too soon, before a discharge has entered and before a creditor has taken any

concrete, contrary position on dischargeability, is a recipe for creating additional litigation where none is needed. Left alone, a creditor might never attempt to collect post-bankruptcy (and decide to bear the costs of doing so) and thus there would be no need for a court to issue a decision on whether a discharge exception applies.

6. Debtors should not be allowed to use premature actions to prevent creditors from making their own choice about whether to attempt post-bankruptcy collection

Finally, debtors should not be allowed to use premature dischargeability actions to prevent creditors from making their own choice of whether and when to spend more resources to pursue post-bankruptcy collection. Nor should debtors be allowed to pre-select the forum in which a future dispute will be heard (if one eventually arises). Here, after Goebel filed her complaint, it remained pending for five months before she completed service of process and sought to proceed. (*See* A-6; *see also* Adv. Doc. 11.) Meanwhile, she had prematurely forced the matter into the forum of her choosing for an advance determination of the dischargeability of her tax debts before any determination was remotely necessary. Such premature suits are not uncommon. *See, e.g.*, *In re Thompson*, 666 B.R. 1 (Bankr. E.D.N.Y. 2024), *appeal pending*,

No. 1:24-cv-7434 (E.D.N.Y.); *Abrahamsen v. United States*, Adv. No. 1:25-ap-01015 (Bankr. E.D.N.Y.); *Parsi v. United States*, Adv. No. 8:24-ap-8095 (Bankr. E.D.N.Y.). But such premature suits should not be rewarded; instead they should be dismissed. Otherwise, debtors will file complaints in the mere hope that a dispute will arise or even in the hope that a default judgment will be obtained, thereby precluding any future dispute.

Determinations about the scope of a prior discharge have traditionally been made by non-bankruptcy courts in later collection suits. *See Brown v. Felsen*, 442 U.S. 127, 129 (1979). Even today, it is still expected that the applicability of discharge exceptions will often be decided in such later collection suits. *See Taggart v. Lorenzen*, 587 U.S. 554, 563-64 (2019) (explaining that whether a debt is excepted from a prior discharge order is a question that is normally determined in a later collection suit); *see also* 4 *Collier on Bankruptcy* ¶ 523.03 (16th ed. 2025); Fed. R. Civ. P. 8(c)(1) advisory committee's note to 2010 amendment; Fed. R. Bankr. P. 4007 advisory committee's note to Subdivision (b).

The bankruptcy court's traditional authority to determine dischargeability questions relates only to determining the effect of its own prior discharge order. *See Local Loan v. Hunt*, 292 U.S. 234, 239-41 (1934); *see also Pepper v. Litton*, 308 U.S. 295, 304 & n.11 (1939) (discussing *Local Loan*). The modern Bankruptcy Code does not create or even imply a statutory cause of action to determine most dischargeability questions.[8] Nor is there any statutory provision that might create a special reason the dischargeability of a tax debt under Section 523(a)(1) could be addressed before discharge. Discharges under 11 U.S.C.§ 523(a)(1) are self-effectuating.[9] *See Whitehouse v. LaRoche*, 277 F.3d 568, 576 (1st Cir. 2002).

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[8] Indeed, the modern Bankruptcy Code repealed a short-lived, broad statutory cause of action adopted late in the life of the old Bankruptcy Act (in 1970). *See* former 11 U.S.C. § 35(c)(3) (1976 ed.) (Bankruptcy Act § 17c(3)); Act of Oct. 19, 1970, Pub. L. No. 91-467, § 7, 84 Stat. 990, 993. This brief experiment with a broad statutory cause of action ended when the provision was eliminated by the Bankruptcy Reform Act of 1978. *See* 11 U.S.C.A. § Disp. Table (West 2025).

[9] In contrast, there is a statutory cause of action that creditors must use to seek a pre-discharge determination for debts covered by 11 U.S.C. § 523(a)(2), 523(a)(4), and 523(a)(6), or else such debts are discharged. *See* 11 U.S.C. § 523(c); *see also Taggart*, 587 U.S. at 564 (discussing § 523(c)); Fed. R. Bankr. P. 4007(c)-(d).

A discharge order "operates as an injunction" that bars creditors from collecting any discharged debt as a personal liability of the debtor. 11 U.S.C. § 524(a)(2). When a bankruptcy court seeks to determine the dischargeability of a tax debt, it can do so using its authority to interpret the scope of the discharge injunction.[10] *See Taggart*, 587 U.S. at 560 (observing that the § 524(a)(2) discharge injunction can be enforced using § 105(a), which provides that "a court may issue any 'order' or 'judgment' that is 'necessary or appropriate' to 'carry out' other bankruptcy provisions") (quoting 11 U.S.C. § 105(a)); *see also Local Loan*, 292 U.S. at 241; *cf. Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (citing *Local Loan*, 292 U.S. at 239) (a bankruptcy court has "jurisdiction to interpret and enforce its own prior orders"). Thus, before a bankruptcy court may opine about the dischargeability of a tax debt, the court must first have entered a discharge order.

The Bankruptcy Court below referred (A-236, A-241, A-252) to a bankruptcy rule that provides that a complaint to determine most dischargeability questions "may be filed at any time," Fed. R. Bankr. P.

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[10] The Internal Revenue Code creates its own exclusive damages remedy for any willful violation of a discharge injunction by an officer or employee of the Internal Revenue Service. *See* 26 U.S.C. § 7433(e).

4007(b), but this rule must be interpreted based on context and the limits of judicial power. A court-made rule cannot trump Article III, which requires that there must first be a live, concrete dispute that is not hypothetical or conjectural. Nor was the intent of Rule 4007(b) to authorize determinations about the scope of an order before a dispute arises. Read in context, the "at any time" language simply clarifies that most actions will not be untimely even if the case must be reopened. *See Hinton*, 2011 WL 1838724, at *4 ("Rule 4007(b) permits a debtor who is being (wrongfully) pursued by a creditor . . . to return to the bankruptcy court to obtain a determination that the debt was or was not discharged."). But while such actions cannot be filed too late, they can still be filed too early. *Id.* at *4.

Goebel here prematurely sought a determination of dischargeability, thereby "alter[ing] who decides whether a debt has been discharged" and "moving litigation" into the court of her choice—the Bankruptcy Court—and keeping it from a non-bankruptcy forum. *Taggart*, 587 U.S. at 564. This had the effect of preempting her creditor's ability to choose whether and when to file a post-bankruptcy collection suit in the court of its choice (which is the norm). *See id.* at

563-64. In cases involving federal tax debts, a debtor's preemptive procedural move amounts to an attempt to prevent the matter from later being determined by a federal district court. And in cases involving non-federal tax debts, the same premature filing gambit might improperly shift future dischargeability litigation out of state courts. That is not what Congress intended, *see Taggart*, 587 U.S. at 564, and it should not be allowed.

C. A supplemental complaint based on post-complaint events cannot be used to cure an initial justiciability defect

1. The Bankruptcy Court erred in holding that a supplemental complaint based on post-complaint events could cure a ripeness defect

This Court should hold that a supplemental complaint based on post-complaint events filed under Fed. R. Civ. P. 15(d) cannot be used to cure an initial justiciability defect, such as a lack of ripeness or standing. *See* Fed. R. Bankr. P. 7015 (making Fed. R. Civ. P. 15(d) applicable to adversary proceedings in bankruptcy cases). As such, this Court should hold that the Bankruptcy Court erred when it concluded that the ripeness defect here could be cured without dismissal by filing a supplemental complaint. (A-209, A-247-249, A-264.)

Rule 15(d) provides that a "court may . . . permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented," and "[t]he court may permit supplementation even though the original pleading is defective in stating a claim or defense." Supplemental complaints thus relate only to post-complaint facts or events, and the rule contemplates that they may cure defects in claims or defenses. But, importantly, Rule 15 does not provide that a supplemental complaint can cure defects in subject matter jurisdiction, such as a lack of ripeness. Moreover, although Rule 15(c) provides that some amendments to pleadings under Rule 15(a) and (b) may "relate[ ] back to the date of the original pleading" nothing in Rule 15 provides for relation back of allegations in a supplemental pleading under Rule 15(d).

A majority of this Court previously held in an en banc case that "[e]vents occurring after the filing of the complaint cannot operate so as to create standing where none previously existed." *City of Hartford v. Towns of Glastonbury*, 561 F.2d 1032, 1051 n.3 (2d Cir. 1976) (en banc; plurality opinion); *see id.* at 1053 (Kaufman, C.J., concurring) (similar).

This Court explained that this must be true because "[a]ny other rule would permit lawsuits to be maintained in the mere hope that the lawsuit itself would generate a constitutional 'controversy' before the appellate process is complete." *Id.* at 1051 n.3*; see also id.* at 1053. Where standing and ripeness overlap, as they do here, it follows that the same must be true of ripeness. Here any dispute ripened as to some tax years only because an actual collection suit was filed in another court as to those years. But as *City of Hartford* counsels, a debtor should not be allowed to maintain a premature action in the bankruptcy court "in the mere hope," *id.* at 1051 n.3, that a constitutional controversy would eventually ripen. *See also id.* at 1053.

It is also notable that the language of Fed. R. Civ. P. 15(d) is discretionary: "the court *may*, on just terms, permit a party to serve a supplemental pleading"; and "[t]he court *may* permit supplementation." *Id.* (emphasis added). It would be incongruous to give the court such discretion over justiciability questions like standing and ripeness, which go to the court's own power under Article III. At the least, even if a court could allow supplementation to cure a jurisdictional defect, a court should not exercise its discretion to permit supplementation when that

would prejudice the other party, as here, where the Government could be deprived of its ability to pursue its first-properly-filed suit and obtain a jury trial and a money judgment in the District Court.

2. This Court has said that it has never squarely addressed the question whether post-complaint events can cure a jurisdictional defect, which is a question that has divided other circuits

This Court has said that it has "never squarely addressed whether events occurring after the filing of a complaint may cure a jurisdictional defect that existed at the time of initial filing." *Saleh v. Sulka Trading Ltd.*, 957 F.3d 348, 354 (2d Cir. 2020); *see also Donnelly v. Controlled Application Rev. and Resol. Program Unit*, 37 F.4th 44, 51 n.4 (2d Cir. 2022); *Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, 991 F.3d 370, 390 (2d Cir. 2021) (declining to decide whether supplementation under Rule 15(d) may cure a jurisdictional defect); *but see City of Hartford*, 561 F.2d at 1051 n.3, 1053 (en banc) (discussed above at 38-39). This Court has also recently observed that whether a jurisdictional

defect can be cured by post-complaint events has generated a significant circuit split. *Saleh*, 957 F.3d at 354 & n.7 (collecting cases).[11]

Admittedly, an opinion of the Supreme Court and an opinion of this Court have suggested in dicta that a supplemental complaint could be used to cure a problem with subject matter jurisdiction without a dismissal. In *Mathews v. Diaz*, 426 U.S. 67 (1976), the Supreme Court suggested that the plaintiff's failure to satisfy a pre-suit statutory requirement before suing did not require a dismissal. *Id.* at 75. The Court noted that the record showed that the plaintiff "satisfied this condition while the case was pending" and thus "[u]nder these circumstances, [the Court] treat[ed] [the] pleadings as properly supplemented by the Secretary's stipulation that Espinosa had filed an application." *Id.* at 75. In so holding, the Court also noted that "[a] supplemental complaint in the District Court would have eliminated this jurisdictional issue." *Id.* at 75 & n.8 (citing Fed. R. Civ. P. 15(d),

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[11] *Compare, e.g.*, *Scahill v. District of Columbia*, 909 F.3d 1177, 1183-84 (D.C. Cir. 2018) (post-complaint facts alleged in a supplemental pleading may cure jurisdictional defects), *with, e.g.*, *Park v. Forest Serv. of U.S.*, 205 F.3d 1034, 1037 (8th Cir. 2000) (jurisdiction cannot be based on events subsequent to the filing of the original complaint).

and *Sec. Ins. Co. of New Haven, Conn. v. U.S. for Use of Haydis*, 338 F.2d 444, 447-49 (9th Cir. 1964)).[12]

Similarly, in *Travelers Ins. v. 633 Third Assocs.*, 973 F.2d 82, 87-88 (2d Cir. 1992), this Court remanded a case for a plaintiff to file an amended complaint, and in so doing the Court suggested that the plaintiff's complaint could also be supplemented to include post-complaint events under Fed. R. Civ. P. 15(d). In context, this comment suggested that post-complaint events might allow the complaint to proceed without dismissal. *See Saleh*, 957 F.3d at 354-55 (describing dicta in *Travelers* as addressing "whether events occurring after the filing of a complaint may cure a jurisdictional defect that existed at the time of initial filing").

But this Court has also stated that post-complaint events cannot cure initial jurisdictional defects. For instance, in the en banc opinion in *City of Hartford*, discussed above at 38-39, the majority (a plurality plus a concurrence) reversed a district court opinion and instructed that the case be dismissed for lack of standing. The majority held that a

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[12] Notably, the jurisdictional defect in *Mathews* was statutory, not constitutional.

lack of standing could not be cured by post-complaint events. 561 F.2d at 1051 n.3 (en banc; plurality opinion); *see id.* at 1053 (Kaufman, C.J., concurring) (similar). The majority explained that this rule was necessary because "[a]ny other rule would permit lawsuits to be maintained in the mere hope that the lawsuit would generate a constitutional 'controversy' before the appellate process is complete." *Id.* at 1051 n.3; *see id.* at 1053.

That is what has happened here. Goebel filed a premature action, but she now hopes to be allowed to maintain her premature action given that a dispute has since materialized—albeit in another federal court (and only as to some tax years). This case is then just another example of the "phenomenon of which federal district courts must be wary, namely, the generation, or re-generation, of what appears to be a constitutional 'case' or 'controversy' by means of the litigation process itself." *N.L.R.B. v. Comm. of Interns & Residents*, 566 F.2d 810, 817 n.9 (2d Cir. 1977) (citing *City of Hartford*, 561 F.2d at 1051-52 n.3; *id.* at 1053). Such premature cases should be quickly dispatched and not allowed to linger.

In addition, this Court's recent unpublished opinions have also suggested that initial jurisdictional defects are not curable. For instance, in a takings case, *Kleinknecht v. Ritter*, No. 21-2041, 2023 WL 380536 (2d Cir. Jan. 25, 2023), this court held that the submission of a relevant building application *after* a complaint was filed, even if it could now be in dispute, necessarily "means that it cannot give rise to a ripe taking claim." *Id.* at *3 n.2 (emphasis added) (citing *Trump*, 592 U.S. at 129-32). Fundamentally, this is because "a case must be ripe – and 'not dependent on contingent future events' – when 'the complaint is filed.'" *Id.* (quoting *Trump*, 592 U.S. at 131). Likewise, in *Carlone v. Lamont*, No. 21-871, 2021 WL 5049455 (2d Cir. Nov. 1, 2021), this Court similarly made clear that any purported post-complaint injuries "would not cure the jurisdictional [standing] defect." *Id.* at *3 n.3. Again, this was because courts look only to the state of things when the action was filed. *See id.* (citing *City of Hartford*, 561 F.2d at 1051 n.3; additional citation omitted).

3. Even if a supplemental complaint could cure a jurisdictional defect, this case should still not proceed

Even assuming a supplemental complaint could cure a jurisdictional defect (such that dismissal is not required), this adversary proceeding should still not proceed because as to tax years 2010 through 2018 the Bankruptcy Court would still not be the first court with jurisdiction over the parties and the issues. And that is really what this appeal is about. The Government concedes that, as to the tax years covered by the District Court collection suit (2010 through 2018), there is now a ripe dispute among the parties about dischargeability. But if two federal courts may hear the same dispute, then either this Court or one of the lower courts will need to decide which forum should proceed first. In that regard, this Court's caselaw is clear that "the first court to obtain *jurisdiction of the parties and the issues* should have priority over a second court to do so." *AEP Energy Servs. Gas Holding Co. v. Bank of Am., N.A.*, 626 F.3d 699, 722 (2d Cir. 2010) (emphasis added; internal quotation marks and citation omitted). In fact, this Court has recognized that even if not formally enjoined, the second court to obtain jurisdiction would still have "an independent obligation to defer to the

primacy of the first-filed suit" and the second court would almost always be considered to have "abused its discretion in not doing so." *Id.* at 723-24.[13]

The Supreme Court recently explained that in the event that an amended complaint is filed that adds or subtracts federal claims or changes the diversity of the parties, a federal court will then gain or lose jurisdiction at that time. *See Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 35-36 (2025) ("The reconfiguration accomplished by an amendment may bring the suit either newly within or newly outside a federal court's jurisdiction."). An amendment, thus, may create jurisdiction "where it once was wanting," *id.* at 36, which then "establishes jurisdiction going forward," *id.* at 38—*i.e.*, there is jurisdiction from that time on.

Assuming that a supplemental complaint could cure a jurisdictional defect, then the reasoning of *Royal Canin* should also apply to supplemental complaints. Applying that framework here, the

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[13] This Court has noted some limited exceptions from the first-filed rule, including, for instance, when the first forum was chosen merely for forum-shopping reasons. *See AEP Energy Servs.*, 626 F.3d at 724-25.

District Court was the first court to have jurisdiction of the parties *and* the issues as to tax years 2010 through 2018. The most important part of the analysis is not whether the Bankruptcy Court eventually gains jurisdiction but *when* it gains jurisdiction. Here the Bankruptcy Court could not have gained jurisdiction prior to when the District Court suit was filed or for some time thereafter (no sooner than when Goebel filed her supplemental complaint). And since the District Court is the first forum with jurisdiction of the parties and the issues for tax years 2010 through 2018, it should be the court to proceed to decide those issues. *AEP Energy Servs.*, 626 F.3d at 722.

Although some courts have suggested that a supplemental complaint based on post-complaint events might cure a statutory-ripeness defect such as a statutorily untimely filing, *see, e.g.*, *T Mobile Northeast LLC v. City of Wilmington, Del.*, 913 F.3d 311, 326-32 (3d Cir. 2019), the date when a court obtains jurisdiction is still the date the supplemental complaint was filed, *i.e.*, jurisdiction is obtained on the date of the curative version of the complaint. *See Lutter v. JNESO*, 86 F.4th 111, 125-26 (3d Cir. 2023) ("[A] plaintiff's Article III standing is

evaluated as of the date of the supplemental pleading.").[14] Thus, there is simply no way that even after the supplemental complaint was filed the Bankruptcy Court could be considered the first court to have obtained jurisdiction of the parties and issues for 2010 through 2018. Therefore, the Bankruptcy Court should not be allowed to usurp the first court with jurisdiction.

And, in any event, a supplemental complaint could not cure the ripeness defect as to 2008 or 2009 because, as explained above at p. 7, the District Court suit does not include those years. Thus, there is still no justiciable dispute for tax years 2008 and 2009.

II.

The federal tax exception to the Declaratory Judgment Act bars the declaratory relief that Goebel seeks

In addition, and in the alternative, the Bankruptcy Court erred because the purely declaratory relief that Goebel seeks regarding the dischargeability of her federal tax debts is barred by the Declaratory

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[14] Because justiciability is a jurisdictional requirement under Article III, it is different than statutory requirements, like administrative exhaustion or timeliness.

Judgment Act, 28 U.S.C. § 2201(a), which applies to determinations made in bankruptcy proceedings.

A. Declaratory Judgment Act, 28 U.S.C. § 2201(a)

The Declaratory Judgment Act provides, in relevant part:

> (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration . . . .

28 U.S.C. § 2201(a).[15] To interpret this provision, it is important to understand how it has evolved. In 1935, shortly after the initial enactment of the Declaratory Judgment Act, Congress added what is known as the federal tax exception, which clarified that the new declaratory judgment remedy was not intended to apply "with respect to Federal taxes." Revenue Act of 1935, Pub. L. No. 74-407, c. 829, § 405, 49 Stat. 1014, 1027. In the 1970s, Congress then added a few

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[15] Section 505 provides that a court may make certain "[d]etermination[s] of tax liability." Section 1146 contains "Special tax provisions." Both sections were enacted in 1978 as part of the new Bankruptcy Code, as was Section 523. *See* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, title I, §§ 505, 523, 1146, 92 Stat. 2549, 2582, 2590, 2641.

exceptions to the federal tax exception. First, in 1976 Congress excepted "actions brought under section 7428 of the Internal Revenue Code of 1954." Tax Reform Act of 1976, Pub. L. No. 94-455, title xiii, § 1306, 90 Stat. 1520, 1720. Then, in 1978, in the same act that adopted the modern Bankruptcy Code, Congress simultaneously amended the Declaratory Judgment Act to allow determinations regarding federal taxes in Title 11 bankruptcy proceedings but only as to proceedings under 11 U.S.C. §§ 505 and 1146. *See* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, title II, § 249, 92 Stat. 2549, 2672.

The caselaw is clear that while the Declaratory Judgment Act authorizes federal courts to provide declaratory relief, it does not confer subject-matter jurisdiction on the federal courts—jurisdiction must come from another source. *See California v. Texas*, 593 U.S. 659, 672 (2021) (citing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671-72 (1950)); *see also Sunvestment Energy Grp. NY 64 LLC v. Nat'l Grid USA Servs. Co.*, 116 F.4th 106, 113 (2d Cir. 2024). The caselaw further suggests that the federal tax exception to the Declaratory Judgment Act limits or removes subject matter jurisdiction, or else acts

to limit an otherwise applicable waiver of sovereign immunity (thereby limiting jurisdiction). *See Jolles Found. v. Moysey*, 250 F.2d 166, 169 (2d Cir. 1957); *SEC v. Credit Bancorp, Ltd.*, 297 F.3d 127, 137 (2d Cir. 2002); *Futia v. United States*, No. 23-860, 2024 WL 2151115, at *2 (2d Cir. May 14, 2024); *see also Rivero v. Fidelity Invs., Inc.*, 1 F.4th 340, 345 (5th Cir. 2021); *In re UAL Corp.*, 336 B.R. 370, 373 (Bankr. N.D. Ill. 2006).

Looking beyond any jurisdictional analysis, the caselaw is also clear that "'[t]he [Declaratory Judgment Act] only provides courts with discretion to fashion a remedy, not a cause of action.'" *Sunvestment Energy*, 116 F.4th at 113–14 (quoting *Pub. Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 241 (1952)). Congress thus "enlarged the range of remedies available" by providing for an alternative type of relief that augments the traditionally available remedies. *Skelly Oil*, 339 U.S. at 671-72. Suits requesting declaratory judgements must, however, meet the Article III case-or-controversy requirement, which means the underlying dispute must still "be real and substantial and admit of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a

hypothetical state of facts." *California v. Texas*, 593 U.S. at 672 (internal quotation marks and citation omitted).

B. The federal tax exception to the Declaratory Judgment Act generally bars declaratory relief with respect to federal taxes in bankruptcy proceedings, and no exception applies here

For a suit against the Government to proceed, the plaintiff must always show three things: "a cause of action, subject matter jurisdiction, and a waiver of sovereign immunity." *Presidential Gardens Assocs. v. U.S. ex rel. Sec'y of Hous. & Urb. Dev.*, 175 F.3d 132, 139 (2d Cir. 1999). Goebel cannot demonstrate that her suit satisfies all three prerequisites.

In *Jolles Foundation*, this Court observed that the federal tax exception was an "express exception . . . removing from the courts the power to declare rights 'with respect to Federal taxes . . . .'" 250 F.2d at 169. Accordingly, the Court held (citing other circuit court opinions) that within the "field" of federal taxes, "the courts have no jurisdiction to enter declaratory judgments." *Id.* (citations omitted). Thus, this Court has held that the federal tax exception deprives federal courts of jurisdiction to issue declaratory judgements with regard to federal taxes.

Since *Jolles Foundation*, this Court has also indicated that the federal tax exception to the Declaratory Judgment Act may act to limit or restrict a waiver of sovereign immunity. For instance, in *Credit Bancorp*, this Court suggested that, assuming the Declaratory Judgment Act waived sovereign immunity, the federal tax exception would have the effect of "exclud[ing] from any such waiver [of sovereign immunity] the power to declare rights or obligations with respect to federal taxes." 297 F.3d at 137. And recently, this Court held in an unpublished opinion in *Futia*, that a plaintiff-taxpayer could not show an applicable waiver of sovereign immunity because, among other things, the "Declaratory Judgment Act prevents the court[s] from making declarations 'with respect to Federal taxes.'" 2024 WL 2151115 at *2 (citing 28 U.S.C. § 2201(a)).

Here, Goebel's complaint sought "a determination of the Bankruptcy Court declaring [certain tax debts] as dischargeable obligations pursuant to § 523(a)(1)." (A-19.) This request was made before any discharge order was entered and thus was a request for a purely advisory declaration—and not a request to enforce a prior discharge order. If the discharge had already entered and the

Government had commenced post-discharge collection activity based on a contention of non-dischargeability, then there would be no question that Goebel could ask a bankruptcy court to enforce the Section 524(a)(2) discharge injunction. *See Taggart*, 587 U.S. at 559-60 (citing 11 U.S.C. §§ 105(a), 524(a)(2)); *Local Loan*, 292 U.S. at 241; *see also* 26 U.S.C. § 7433(e) (creating an exclusive damages remedy for any willful violation of a discharge injunction by an officer or employee of the Internal Revenue Service). But where, as here, a debtor files a complaint solely seeking an advance determination of dischargeability of a federal tax debt before the entry of discharge and before the Government has engaged in any post-petition collection activity (or at least taken a concrete position on dischargeability), the debtor is seeking a purely advisory opinion about the law based on hypothetical facts. Courts are generally not allowed to provide declaratory relief in such situations. *See, e.g.*, *California v. Texas*, 593 U.S. at 672.

But, what's more, the purely declaratory relief that Goebel is seeking is barred by the federal tax exception to the Declaratory Judgment Act, 28 U.S.C. § 2201(a), even after the filing of the Government's complaint in the District Court. The federal tax

exception contains two narrow exceptions applicable to bankruptcy proceedings, for determinations under 11 U.S.C. §§ 505 and 1146, but neither exception relates to prospective dischargeability determinations under 11 U.S.C. § 523. Thus, the Bankruptcy Court was barred from issuing a purely declaratory judgment and should have dismissed this case. *Cf. Jolles Found.*, 250 F.2d at 169; *Credit Bancorp*, 297 F.3d at 137; *Futia*, 2024 WL 2151115, at *2.

C. The Bankruptcy Court erred in concluding that this case was one under 11 U.S.C. § 505

The Bankruptcy Court below erroneously reasoned that this case was one under 11 U.S.C. § 505, and thus that it met a bankruptcy-specific exception to the federal tax exception to the Declaratory Judgment Act. (*See* A-256-258.) The court concluded that Goebel's request constituted a request to "determine the amount or legality of any tax" under Section 505(a)(1) because "it implicitly seeks a determination that the Plaintiff's nondischargeable tax liability is zero." (*See* A-258.) The court also suggested that 11 U.S.C. §§ 505 and 523 were simply "two sides to the same coin." (*Id.*)

But neither statement is true. A legal determination about the dischargeability of a tax is entirely distinct from determining the

"amount" or "legality" of the tax. *Compare* 11 U.S.C. § 505(a), *with* 11 U.S.C. § 523(a); *see also In re Isom*, 901 F.2d 744, 745 (9th Cir. 1990) (explaining that the IRS can collect a discharged tax debt by enforcing a pre-bankruptcy lien on the debtor's property because "[t]he liability for the amount assessed remains legally enforceable even where the underlying tax debt is discharged in the bankruptcy proceeding"). Neither the amount nor the legality of a tax is disturbed by the discharge; the tax is simply rendered no longer collectable from the debtor personally. *See Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991) ("a bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an action against the debtor *in personam*—while leaving intact another—namely, an action against the debtor *in rem*"). The Government can, for instance, continue to collect a discharged tax debt by enforcing its tax lien on non-estate property. *See Dewsnup v. Timm*, 502 U.S. 410, 418-419 (1992) (explaining that pre-petition tax liens survive discharge). To determine whether a debt remains enforceable post-discharge as a personal liability of the debtor only requires answering a yes or no question. It does not require a court to determine how much was owed or the amount that remains

enforceable. Simply put, how much tax is owed and whether that tax is subject to discharge are separate questions.[16]

This case is purely one about the scope of a hypothetical discharge under 11 U.S.C. §§ 727 and 523; it does not implicate 11 U.S.C. § 505. Goebel did not seek a determination under Section 505 (nor could she have done so). The Bankruptcy Court's conclusion that this case also arose under Section 505 is simply wrong. As such, this Court should hold that this case does not fit within any of the exceptions to the federal tax exception to the Declaratory Judgment Act.

D. The Bankruptcy Court erred in relying on the waiver of sovereign immunity in 11 U.S.C. § 106(a)

The Bankruptcy Court erred when it reasoned that the waiver of sovereign immunity in 11 U.S.C. § 106(a) is sufficient to overcome the federal tax exception to the Declaratory Judgment Act. (*See* A-258-260.) While Section 106(a) broadly abrogates sovereign immunity as to all government units and a litany of Bankruptcy Code provisions, including 11 U.S.C. § 523, it cannot overcome the more-specific statutory restriction on federal courts issuing the relief

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[16] By analogy, determining whether a woodchuck can chuck wood, is distinct from determining how much wood a woodchuck could chuck.

requested. The Declaratory Judgment Act explicitly bars courts from granting declaratory relief with respect to federal taxes, and neither of the two bankruptcy-specific exceptions applies here.

1. As to waivers of sovereign immunity, 28 U.S.C. § 2201(a) is the more-specific provision

The Bankruptcy Court's reasoning was wrong because the federal tax exception in 28 U.S.C. § 2201(a) is the more specific statutory provision, which therefore controls over the more general provision, 11 U.S.C. § 106(a). *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012)) (discussing the classic canon of construction "'that the specific governs the general'" (quoting *Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 384 (1992)). In fact, Section 106(a) is so general that the Supreme Court recently observed that it includes "many" provisions that "plainly do not implicate sovereign immunity at all." *United States v. Miller*, 604 U.S. ___, 145 S. Ct. 839, 854 (2025) (citing 11 U.S.C. § 106(a)). In contrast, the federal tax exception to the Declaratory Judgment Act is extremely narrow and it applies only to one type of controversy, *federal tax* controversies. Accordingly, bankruptcy courts may still issue declaratory relief as to

the non-tax claims of all governmental units and as to state and local taxes.

Furthermore, as explained above at page 50, two bankruptcy-specific exceptions to the federal tax exception to the Declaratory Judgment Act were enacted at the same time as 11 U.S.C. § 106 in the Bankruptcy Reform Act of 1978, meaning that the two statutes must be construed together.[17] *See* Bankruptcy Reform Act of 1978, title I, § 106, 92 Stat. at 2555-56; *id.*, title II, § 249, 92 Stat. at 2672. These exceptions show that the federal tax exception to the Declaratory Judgment Act is indeed intended to apply to determinations in bankruptcy proceedings.

In addition, this Court has suggested that the federal tax exception acts as a restriction on a waiver of sovereign immunity that might otherwise allow the issuance of declaratory judgments as to federal taxes. *See Credit Bancorp.*, 297 F.3d at 137; *see also Futia*, 2024 WL 2151115, at *2. And to the extent there is any ambiguity about the

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[17] In 1994, Section 106 was amended to clarify that it also allows monetary judgments, but otherwise the 1994 "amendments did not expand § 106's scope beyond what Congress envisioned in 1978." *Miller*, 604 U.S. ___, 145 S. Ct. at 854.

scope of a waiver of sovereign immunity, a court "must 'construe any ambiguities in the scope of a waiver in favor of the sovereign.'" *Miller*, 604 U.S. ___, 145 S. Ct. at 852 (quoting *F.A.A. v. Cooper*, 566 U.S. 284, 291 (2012)). But the Bankruptcy Court here failed to do so. Put simply, the Bankruptcy Court's conclusion (A-258-260) that the broad waiver of sovereign immunity in 11 U.S.C. § 106(a) was sufficient to allow it to grant declaratory relief with respect to *federal tax* debts—as opposed to other tax debts—is wrong.

2. Beyond waivers of sovereign immunity, there is also no statute that authorizes purely declaratory relief with respect to the dischargeability of federal taxes

The Bankruptcy Court's reliance on 11 U.S.C. § 106(a) was also misplaced because whether or not the federal tax exception limits a waiver of sovereign immunity, it is still a strict statutory limitation on the type of substantive relief available in federal courts with regard to federal taxes. By definition, "[a]n absence of immunity does not result in liability if the substantive law in question is not intended to reach the federal entity." *U.S. Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540 U.S. 736, 744 (2004). Waivers of sovereign immunity are thus "'analytically distinct' from the question 'whether the source of

substantive law upon which the claimant relies provides an avenue for relief.'" *Miller*, 604 U.S. ___, 145 S. Ct. at 850 (citing *FDIC v. Meyer*, 510 U.S. 471, 484 (1994)). And the Declaratory Judgment Act merely provides an alternative remedy for existing causes of action, it is "not a cause of action." *Sunvestment Energy*, 116 F.4th at 114. Thus, the substantive cause of action that would allow a bankruptcy court to grant declaratory relief with respect to federal taxes must be found elsewhere.

Additionally, the text and structure of 28 U.S.C. § 2201(a) demonstrate that it bars all suits for declaratory relief "with respect to Federal taxes" that might otherwise be allowed under other statutes. The exceptions to the federal tax exception show that its bar applies to other statutes. For instance, there is an exception that provides that the federal tax exception does not apply to "actions brought under [26 U.S.C. §] 7428." 28 U.S.C. § 2201(a). But 26 U.S.C. § 7428 itself specifically authorizes suits for declaratory judgments relating to the status and classification of organizations as exempt from taxation. Even so, Congress recognized that the Declaratory Judgment Act's broad language "with respect to Federal taxes" would bar such suits

(*i.e.*, was intended to bar such suits) unless the Declaratory Judgment Act contained an express exception allowing them.

Moreover, the adoption of the two bankruptcy-specific exceptions in 1978 further demonstrates Congress's intent and understanding that the Declaratory Judgment Act bars all declaratory relief with respect to federal taxes—even federal-tax-related determinations under other provisions of Title 11. Else there would have been no need to provide that the tax exception does not apply to determinations "under section 505 or 1146 of title 11." 28 U.S.C. § 2201(a).

The Bankruptcy Court also suggested that the federal tax exception is irrelevant here because the provision of 11 U.S.C. § 523(a)(1) that states that certain taxes are non-dischargeable itself contemplates that a bankruptcy court may determine whether a debtor's taxes are dischargeable. (A-251-252, A-255-257.) There is, however, no exception in the Declaratory Judgment Act for a proceeding to determine the dischargeability of federal taxes under Section 523. And the fact that Congress found it necessary to provide two bankruptcy-specific exceptions shows the federal tax exception *does* apply to limit determinations under other provisions of Title 11. By

itself then, Section 523 is not sufficient to authorize purely declaratory relief as to federal taxes. Nor does Section 523 create any statutory cause of action to litigate the dischargeability of tax debts (or even imply one) or provide its own remedy. Accordingly, a court cannot issue a declaratory determination with respect to federal taxes simply by invoking Section 523(a)(1).

Finally, it is worth emphasizing that the relief Goebel requested here is purely declaratory. She did not and could not have requested an injunction to enforce a discharge order, as there was not yet a discharge order to enforce. Thus, even if the issues here are analyzed solely as to whether declaratory relief is authorized as to the dischargeability of federal taxes, the answer is "no" because such a determination is still one "with respect to Federal taxes." *See* 28 U.S.C. § 2201(a).

Put simply, whether the federal tax exception to the Declaratory Judgment Act is treated as a jurisdictional restriction or just a provision that restricts the type of relief or remedy that can be granted, either way it expressly bars Goebel's request.

E. The Bankruptcy Court erred in relying on the reasoning of two cases under the old Bankruptcy Act because their reasoning was abrogated by statutory amendments

The Bankruptcy Court erred in relying on the reasoning of two cases decided under the old Bankruptcy Act because their reasoning was abrogated by later statutory amendments. (*See* A-240-241, A-255-256 (*citing Bostwick v. United States*, 521 F.2d 741, 747 (8th Cir. 1975); *McKenzie v. United States*, 536 F.2d 726, 729 (7th Cir. 1976)). In both *Bostwick* and *McKenzie*, the Government argued, among other things, that the bankruptcy courts could not determine the dischargeability of federal tax debts because such requests were requests for declaratory judgments barred by the federal tax exception to the Declaratory Judgment Act. In both cases, the courts ruled against the Government. *Bostwick*, 521 F.2d at 747; *McKenzie*, 536 F.2d at 729. Relying on these cases, the Bankruptcy Court stated that the Government's position did not present an "issue of first impression" but had been rejected before in *Bostwick* and *McKenzie*. (A-240-241, A-255-56.) The Bankruptcy Court's reliance on those cases was misplaced for two reasons.

First, the Bankruptcy Court overlooked the relevant statutory history, including the important intervening statutory amendments made just a few years later in the Bankruptcy Reform Act of 1978. When *Bostwick* and *McKenzie* were decided in 1975 and 1976, Section 17c(3) of the old Bankruptcy Act expressly authorized a debtor or a creditor to file an application to obtain a determination of dischargeability for almost all types of debts (including tax debts). *See* former 11 U.S.C. § 35(c)(3) (1976 ed.). But that provision was repealed by the Bankruptcy Reform Act of 1978. 11 U.S.C.A. § Disp. Table (West 2025). Section 17's successor—11 U.S.C. § 523—contains no general statutory authorization for debtors to file complaints to obtain determinations of dischargeability. In addition, both opinions were based on a prior version of the Declaratory Judgment Act before its amendment by the Bankruptcy Reform Act of 1978 to provide that the federal tax exception does not apply to "a proceeding under section 505 or 1146 of title 11." *See* Bankruptcy Reform Act of 1978, title II, § 249, 92 Stat. at 2672. This language clarified the matter and shows that federal courts are indeed generally barred from making declarations with respect to federal taxes in bankruptcy proceedings; that bar

excludes only two types of bankruptcy determinations. Thus, the simultaneous 1978 enactment of the modern Bankruptcy Code and the amendment to the Declaratory Judgment Act abrogated the reasoning and persuasive value of the *Bostwick* and *McKenzie* opinions.

Second, *Bostwick* and *McKenzie* should be regarded as dicta regarding any discussions of the Declaratory Judgment Act because, in each case, the debtors also sought injunctive relief. In *Bostwick*, the debtors sought an order barring tax collection while their application under old Section 17c was pending (*see* 521 F.2d at 742), and the primary issue addressed in the opinion concerned the availability of injunctive relief (*id.* at 744-47). The debtor in *McKenzie* also sought injunctive relief (and dischargeability was not even disputed). In *McKenzie*, the IRS had applied amounts collected pre-bankruptcy to a concededly discharged income tax debt. 536 F.2d at 727. The debtor thus sought and obtained an order requiring the IRS to re-allocate those amounts to an undisputedly non-dischargeable tax debt. *See id.* at 727-728. In short, neither *Bostwick* nor *McKenzie* addressed the question presented here: whether the federal tax exception bars a complaint seeking purely declaratory relief about whether a federal tax debt is

dischargeable. Given the later statutory amendments and very different posture, those opinions are inapposite here.

CONCLUSION

For the reasons stated above, the decision of the Bankruptcy Court should be reversed.

Respectfully submitted,

/s/ Matthew S. Johnshoy

BRUCE R. ELLISEN (202) 514-2929
MATTHEW S. JOHNSHOY (202) 616-1908
N.Y. Bar Reg. No. 5330691
Attorneys
Tax Division
Department of Justice
Post Office Box 502
Washington, D.C. 20044

Of Counsel:
JOHN J. DURHAM
United States Attorney

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Dated: April 30, 2025

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11 U.S.C. § 106. Waiver of sovereign immunity

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

* * *

11 U.S.C. § 505. Determination of tax liability

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

(2) The court may not so determine—

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

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

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

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

(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under applicable nonbankruptcy law has expired.

* * *

11 U.S.C. § 523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1192 1 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required—

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

* * *

11 U.S.C. § 6501. Limitations on assessment and collection

(a) General rule

Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter, the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

* * *

(c) Exceptions

(1) False return

In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax

In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return

In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

* * *

11 U.S.C. § 6502. Collection after assessment

(a) Length of period

Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 10 years after the assessment of the tax, or

(2) if—

(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or

(B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.

If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a

judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

* * *

28 U.S.C. § 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

* * *

Fed. R. Civ. P. 15. Amended and Supplemental Pleadings (Pre-December 2023 Version)

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) Based on an Objection at Trial. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) Notice to the United States. When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.