

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

INTERNAL REVENUE SERVICE,)	
APPELLANT)	
)	
v.)	
)	CIVIL No. 2:16-cv-8-DBH
WILLIAM CHARLES MURPHY,)	(BANKRUPTCY No. 05-22363)
)	(BANKRUPTCY ADV. No. 11-2020)
APPELLEE)	
)	
)	

**PROCEDURAL ORDER REGARDING ISSUES
TO ADDRESS AT ORAL ARGUMENT**

The parties to this bankruptcy appeal are scheduled for oral argument on August 22, 2016. In light of previous appeals, I am very familiar with the procedural background and the disputed and undisputed facts of this case. It will not be worthwhile for the lawyers to spend their oral argument time on the facts or on what happened in the bankruptcy court. Instead, I suggest counsel focus on the following legal issues, listed here in no particular order:

1. Section 7433(e) of the Internal Revenue Code allows a taxpayer to recover damages if an IRS officer or employee “willfully violates” the automatic stay and discharge provisions of the Bankruptcy Code. “Willfully” and “willful” are words employed in both the Internal Revenue Code and the Bankruptcy Code, but apparently with different meanings. Compare, e.g., Cheek v. United States, 498 U.S. 192 (1991), with Fleet Mortg. Group, Inc. v. Kaneb, 196 F.3d 265 (1st Cir. 1999). Moreover, the section of the Public Law that created section

7433(e) also provided damages relief if an IRS officer or employee disregards an Internal Revenue Code provision “recklessly or intentionally, or by reason of negligence,” terms different from “willfully.” Pub. L. No. 105-206, PL 105-206, § 3102(b), 112 Stat. 685, 730 (1998) (amending section 7426 of the Internal Revenue Code). Given these various contexts, what is the proper statutory interpretation of “willfully violates” in this discharge case? What is the effect of Internal Revenue Manual § 1.4.51.2.7.1(4) that states:

The Service can only be held liable for damages and attorney’s fees if it commits a “willful violation” of the stay or discharge injunction. “Willful” in this context means an act that was committed intentionally or knowingly. *A willful violation occurs when the Service has received notice of a voluntary bankruptcy filing or of the court’s granting of a discharge, and the Service does not respond timely to stop its collection activities.*”

(Emphasis added.)

2. What insight, if any, does the Restatement (Second) of Judgments § 28 furnish on the use of offensive collateral estoppel in this case? Does sovereign immunity affect the analysis? What standard of review should I employ in reviewing the bankruptcy court’s decision to apply offensive collateral estoppel?

SO ORDERED.

DATED THIS 27TH DAY OF JULY, 2016

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE