

No. 10-875

**In The
Supreme Court of the United States**

LYNWOOD D. HALL and BRENDA A. HALL,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition For A Writ Of Certiorari
To The Ninth Circuit Court Of Appeals**

**REPLY IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI**

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In re Dawes, 382 B.R. 509 (Bankr. D. Kan. 2008)1

Knudsen v. IRS (In re Knudsen), 581 F.3d 696 (8th Cir. 2009)1

In re Smith, ___ B.R. ___, 2011 WL 832110 (Bankr. W.D. Pa. Mar. 14, 2011)2

REPLY BRIEF OF PETITIONERS

In its Brief, the United States unequivocally “agrees that this Court should grant review to resolve the conflict between the Eighth and Ninth Circuits regarding the proper treatment in Chapter 12 bankruptcy proceedings of post-petition tax liabilities resulting from the sale of farm assets.” Brief for the United States (“Brief”) at 14. The United States also agrees that the desirability of uniform administration of the Nation’s tax and bankruptcy laws necessitates this Court’s resolution of the split. *Id.*

The parties disagree, to some extent, about the reach of the Ninth Circuit’s decision. The Solicitor General contends that corporate Chapter 11 cases are not implicated by the opinion below, asserting that such cases are governed by different statutes than those involved in this case. Brief at 11 n.6. Petitioners respectfully disagree. The Eighth Circuit specifically noted that IRC § 1399 applies to Chapter 11 corporate cases, and that bankruptcy estates in those cases are not “taxable entities.” See *Knudsen v. IRS (In re Knudsen)*, 581 F.3d 696, 708 n.2 (8th Cir. 2009); see also *In re Dawes*, 382 B.R. 509, 518 (Bankr. D. Kan. 2008) (“If this Court were to adopt the rationale urged by the IRS, the holding would impact not only Chapter 12 cases, but also corporate Chapter 7 and 11 cases, and perhaps even tax claims of local and state authorities.”). The root of the Government’s arguments is IRC § 1399, which applies to all debtors except individuals that file petitions under Chapter 7 or Chapter 11 of the Bankruptcy Code. The opinion

below, if left standing, has the potential to throw all business bankruptcy cases into disarray. But whether the scope of the Ninth Circuit's decision is expansive, as Petitioners assert, or more narrow, as the Government contends, the desirability of this Court's intervention is manifest.

In the short period of time since the Petition filing, confusion in Chapter 12 cases has been illustrated by yet another published opinion, *In re Smith*, ___ B.R. ___, ___, 2011 WL 832110, at *9-*10 (Bankr. W.D. Pa. Mar. 14, 2011). The court in *Smith* attempted to decide whether it should follow the Eighth Circuit or the Ninth Circuit. Ultimately, the court concluded that it could not determine which case was correct, and instead decided the matter on other grounds. *See id.* The *Smith* case is further evidence that bankruptcy judges in the Third Circuit, as elsewhere, are troubled by the current state of uncertainty, and that practitioners do not know how to advise their clients. As the United States also notes in its brief, there are several cases like *Smith* pending before various courts around the country. Brief at 13.

Much of the Government's Brief concerns the merits. To be sure, Petitioners and the Solicitor General, like the Eighth and Ninth Circuits, disagree about the meaning of the statutory scheme. Both sides agree, however, that the Court should grant certiorari precisely to address that dispute.

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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