

APR 18 2012

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	EC-11-1320-MkPaD
)		
7	MICHAEL SHANE HANSEN and)	Bk. No.	10-20248-C-7
	AMY HANSEN,)		
8)	Adv. No.	10-02180-C
	Debtors.)		
9	_____)		
)		
10	STATE OF CALIFORNIA)		
	EMPLOYMENT DEVELOPMENT)		
11	DEPARTMENT,)		
	Appellant,)		
12)		
	v.)	OPINION	
13)		
	MICHAEL SHANE HANSEN and)		
14	AMY HANSEN,)		
)		
15)		
	Appellees.)		
16	_____)		

Argued and Submitted on
March 22, 2012 at Sacramento, California

Filed - April 18, 2012

Appeal from the United States Bankruptcy Court
for the Eastern District of California

The Honorable David E. Russell, Bankruptcy Judge, Presiding

Appearances: _____
 Amy Julia Winn for the Appellant.
 Julia Patricia Gibbs for the Appellees.

Before: MARKELL, PAPPAS, and DUNN, Bankruptcy Judges.

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1 MARKELL, Bankruptcy Judge.:

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3 **INTRODUCTION**

4 The California Employment Development Department (the "EDD")
5 appeals the bankruptcy court's judgment that certain unpaid
6 unemployment insurance taxes were not the kind of taxes specified
7 in § 507(a)(8)(C).¹ As a consequence, the bankruptcy court held
8 that the unpaid unemployment insurance taxes in this case did not
9 give rise to a nondischargeable debt within the meaning of
10 § 523(a)(1)(A). We AFFIRM.

11 **FACTS**

12 One of the debtors in this case, Michael Shane Hansen
13 ("Hansen"), was president of Onvoi Business Solutions, Inc.
14 Onvoi Business Solutions, Inc., in turn, was part of a group of
15 related companies which included OBS Personnel, Inc., Onvoi
16 Holdings, Inc., and Birdcage Travel, Inc. (collectively, the
17 "Onvoi Entities" or "Onvoi"). The Onvoi Entities provided human
18 resources and staffing solutions to private clients.

19 In December 2002, Onvoi purchased Birdcage Travel, a company
20 which held an unemployment insurance tax rate of 0.9%. That
21 rate, established by the EDD, was considerably lower than the
22 4.7% rate at which the EDD had assessed Onvoi's unemployment
23 insurance tax liability.² Once the sale closed, Onvoi

24 _____
25 ¹ Unless specified otherwise, all chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

27 ² As stated in a treatise summarizing California law on this
28 point, employers are assessed a contribution rate for
unemployment insurance tax as follows:

(continued...)

1 transferred its employees from its existing EDD employer account
2 - with the 4.7% rate - to the EDD employer account formerly
3 maintained by Birdcage Travel - which had the 0.9% rate. Based
4 on the EDD's calculation, this saved Onvoi approximately \$2.8
5 million in unemployment insurance taxes.

6 On March 29, 2004, the EDD issued a notice of assessment,
7 pursuant to California Unemployment Insurance Code § 1735,³ to

8
9 ²(...continued)

10 Although all employer contributions are pooled and
11 available for unemployment benefits regardless of source,
12 a merit rating system is established with respect to
13 contribution rates by which the rate for each employer is
14 graduated according to the balance of contributions paid by
15 and benefits charged to that employer. . . .

16 The contribution rate for an employer is established
17 for each calendar year on the basis of the relation, on the
18 computation date, of the employer's "net balance of
19 reserve," that is, the excess, if any, of contribution
20 credits over benefit charges in the employer's account as
21 of that date, and the employer's "average base payroll,"
22 that is, the yearly average of taxable wages paid during a
23 specified number of calendar years preceding that date.

24 60 CAL. JUR. 3D, Unemployment Compensation § 20 (2012); see also
25 Cal. Unemp. Ins. Code § 977 (2012).

26 ³ California Unemployment Insurance Code § 1735 provides:

27 Any officer, major stockholder, or other person, having
28 charge of the affairs of a corporate, association,
registered limited liability partnership or foreign limited
liability partnership, or limited liability company
employing unit, who willfully fails to pay contributions
required by this division or withholdings required by
Division 6 (commencing with Section 13000) on the date on
which they become delinquent, shall be personally liable
for the amount of the contributions, withholdings,
penalties, and interest due and unpaid by such employing
unit. The director may assess such officer, stockholder,
(continued...)

1 Hansen, individually, and/or as a responsible person of the Onvoi
2 Entities. The total amount assessed was \$4,820,523.86. This
3 amount included \$2,872,050.34 in unpaid unemployment insurance
4 taxes from January 1, 2003 through September 30, 2003;
5 \$1,753,521.28 in penalties;⁴ and \$194,952.24 in unpaid interest.
6 According to the EDD, the assessment represented the difference
7 between the amount of unemployment insurances taxes Onvoi paid
8 based on Birdcage Travel's 0.9% unemployment insurance tax rate
9 and the amount Onvoi should have paid had it applied the correct
10 4.7% rate.

11 **The Settlement Agreement**

12 Hansen, Michael Alexander Dimanno, Steven Dennis Whitney,
13 and Steven Bradley Serafin (collectively, the "Onvoi Principals")
14 signed a settlement agreement (the "Settlement Agreement") with
15 the EDD. The Settlement Agreement resolved not only the notice
16 of assessment the EDD had issued to Hansen; it also resolved the
17 notices of assessment the EDD had issued to each of the remaining
18 Onvoi Principals.

19 The Settlement Agreement provided as follows:

20
21 ³(...continued)
22 or other person for the amount of such contributions,
23 withholdings, penalties, and interest. The provisions of
24 Article 8 (commencing with Section 1126) and Article 9
25 (commencing with Section 1176) of Chapter 4 of Part 1 apply
26 to assessments made pursuant to this section. Sections
1221, 1222, 1223, and 1224 shall apply to assessments made
pursuant to this section. With respect to such officer,
stockholder, or other person, the director shall have all
the collection remedies set forth in this chapter.

27 ⁴ The copy of the notice of assessment included in the
28 excerpts of record does not specify the statutory bases for the
penalties imposed.

1 A. The [Onvoi Principals] shall pay the sum of \$1,600,000
2 in eleven monthly payments within 12 months after an
3 Administrative Law Judge (ALJ) of the CUIAB approves
4 this Settlement Agreement ("Approval Date"). The
5 [Onvoi Principals] shall also pay all accrued interest
6 and additional penalties and interest thereon, which
7 shall accrue during the eleven months following the
8 due date for the first payment shall accrue pursuant
9 to the Unemployment Insurance Code section 1135. The
10 total sum of the payments due during the eleven months
11 following the Approval Date shall be principal in the
12 amount \$1,600,000, penalty in the amount of
13 \$133,333.33, plus interest in the amount of \$1,027.04,
14 for a total sum of \$1,734,360.38. ("Total Amount
15 Owed"). If the [Onvoi Principals] pay the principal
16 sum of \$1,600,000 plus accrued interest and penalty
17 prior to 12 months after the Approval Date, then the
18 mandatory penalty shall cease to accrue.

19 . . .

20 C. If the [Onvoi Principals] fail to make any of said
21 eleven payments on a timely basis, then the EDD will
22 deem such failure to constitute a default in the
23 payment schedule and a material breach of the
24 Settlement Agreement. Hansen will then have thirty
25 additional days to make said defaulted payment and the
26 balance owed for the Total Amount Owed under the
27 Settlement Agreement, with credit given for all
28 previously made payments ("Balance Due").

D. If Hansen fails to pay the Balance Due within the 30
days following default as set forth in the Paragraph
8(c) above, then the EDD shall deem Hansen to have
defaulted and to be in material breach of the
Settlement Agreement. The EDD shall then have the
right to collect the Balance Due from Hansen using all
means allowed by law.

E. If Hansen does not pay the Balance Due and the EDD is
unable to collect the balance within 60 days following
the default, then the EDD shall deem Hansen to have
made a second default ("Second Default"). Hansen
shall then owe to the EDD the original amount of the
Challenged Assessment issued against Hansen in the
amount of \$4,820,523.86, with EDD giving credit for
all payments made by the [Onvoi Principals]
("Challenged Assessment Balance["]). Interest and
penalties shall accrue on the amount [of the]
Challenged Assessment Balance until it is paid in
full. The EDD shall then have the right to collect
the Challenged Assessment Balance from Hansen using
all means allowed by law. If Hansen makes a second
default, the EDD agrees not to pursue any collection
efforts against DiManno, Whitney or Serafin.

1 Settlement Agreement at 2-3.

2 An administrative law judge approved the Settlement
3 Agreement on March 17, 2009. From April 2009 to September 2009,
4 Hansen made six payments under the Settlement Agreement, totaling
5 \$1,000,513.46. Hansen did not, however, make the remaining
6 payments.

7 In a November 6, 2009 letter to Hansen, the EDD notified
8 Hansen that he had defaulted on the payment schedule and was in
9 breach of the Settlement Agreement. The EDD further advised
10 Hansen as follows:

11 Pursuant to the Settlement Agreement, you have until
12 November 16, 2009, to pay the balance due of \$733,846.92.
13 If you do not pay the balance due of \$733,846.92, by
14 November 16, 2009, the Employment Development Department
15 will exercise its right to collect that sum by using means
16 allowed by law.

17 Furthermore, if you do not pay the balance due by January
18 16, 2010, you will owe the EDD the original amount of the
19 assessment, less any settlement payments received. As of
20 today, that amount is \$3,819,990.61. In addition, interest
21 and penalt[ies] will accrue until that amount is paid in
22 full. The Employment Development Department will have the
23 right to collect that amount using all means allowed by
24 law.

25 Letter from EDD dated Nov. 6, 2009.

26 This letter notwithstanding, Hansen made no additional
27 payments to the EDD.

28 **The Debtors' Bankruptcy and The Adversary Proceeding**

Hansen and his wife, Amy Hansen (the "Debtors"), filed a
chapter 7 bankruptcy petition on January 6, 2010. On March 30,
2010, the EDD commenced the adversary proceeding giving rise to
this appeal. In its complaint (the "Complaint"), the EDD sought
a determination that the \$3,788,969 allegedly due and owing under
the Settlement Agreement (the "UI Tax") was a "tax" of the kind

1 specified in § 507(a)(8)(C) and thus gave rise to a
2 nondischargeable debt within the meaning of § 523(a)(1)(A). On
3 April 29, 2010, the Debtors moved to dismiss the Complaint as to
4 Amy Hansen.

5 After the Debtors moved to dismiss the Complaint but before
6 the bankruptcy court denied the motion, the EDD filed a first
7 amended complaint on May 24, 2010 (the "First Amended
8 Complaint"). In the First Amended Complaint, the EDD sought the
9 same determination of nondischargeability, but added the
10 allegation that the debt resulting from the UI Tax was a
11 community debt for which both Debtors were liable.

12 The Debtors answered the First Amended Complaint on June 13,
13 2010, admitting that the amount of the EDD's claim was
14 \$3,788,969, denying that the debt was a community debt for which
15 both Debtors were liable, and asserting waiver and estoppel as
16 affirmative defenses to the EDD's contention that the amount
17 allegedly due and owing was a tax.

18 At trial, the EDD argued that Hansen's liability for the UI
19 Tax was two-fold. First, it contended that Hansen was liable as
20 a responsible person as defined by California Unemployment
21 Insurance Code § 1735. Second, it contended that Hansen was
22 contractually liable under the Settlement Agreement which he
23 breached. The EDD also maintained that Amy Hansen was liable as
24 Hansen's spouse. The Debtors, on the other hand, asserted that
25 any liability Hansen faced under the Settlement Agreement was
26 entirely contractual, and as such, did not give rise to a
27 nondischargeable debt within the meaning of § 523(a)(1)(A).

28 After hearing the parties' opening arguments, the bankruptcy

1 court invited testimony on the issue of how the UI Tax was
2 calculated. Brenda Farber, chief of the EDD's special procedures
3 section, testified on that point. The bankruptcy court, however,
4 found Farber's testimony incomplete, as she could not identify
5 the interest rate used to generate the amounts at issue. To
6 provide the EDD with the opportunity to supplement the evidence
7 concerning the calculation of the UI Tax, the bankruptcy court
8 continued the trial.⁵

9 Before adjourning, however, the bankruptcy court announced
10 its preliminary rulings. First, the bankruptcy court determined
11 that no judgment would be entered against Amy Hansen. The
12 bankruptcy court concluded that she would be liable for the UI
13 Tax only to the extent that the EDD could collect on its judgment
14 from any of the Debtors' community property, and that the state
15 court would have to resolve any issues as to what would
16 constitute community property. Second, the bankruptcy court
17 concluded that the UI Tax gave rise to a nondischargeable debt
18 within the meaning § 523(a)(1)(A), as it was a "tax" of the kind
19 specified in § 507(a)(8)(C).⁶

21 ⁵ The bankruptcy court cited an additional reason for the
22 continuance: to allow both parties additional time to address
23 whether any penalties included as part of the UI Tax would be
dischargeable under § 507(a)(8)(G).

24 ⁶ At the time the bankruptcy court announced this
25 preliminary ruling, the EDD had represented that a portion of the
26 unemployment insurance premiums was deducted from employees'
27 salaries while another portion was paid for by employers.
However, at the beginning of the continued trial, the EDD
28 conceded that the unemployment insurance tax is not withheld from
employees. This is consistent with the EDD's explanation of

(continued...)

1 At the continued trial, the parties first addressed the
2 issues relating to UI Tax calculation. The parties then offered
3 their final arguments. The EDD argued that nothing in the plain
4 language of § 507(a)(8)(C) imposed a requirement that the "tax
5 required to be collected" be collected from a third-party. It
6 maintained that the UI Tax at issue was a tax of the kind
7 specified in § 507(a)(8)(C) because the EDD was required to
8 collect it,⁷ and as such, the UI Tax gave rise to a

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10 _____
11 ⁶(...continued)
12 unemployment insurance taxes provided at oral argument.

13 ⁷ The EDD argued it was required to collect the UI Tax under
14 California Unemployment Insurance Code § 301, which reads:

15 There is in the Labor and Workforce Development Agency the
16 Employment Development Department, which is vested with the
17 duties, purposes, responsibilities, and jurisdiction
18 heretofore exercised by the State Department of Benefit
19 Payments or the California Health and Human Services Agency
20 with respect to job creation activities. The Employment
21 Development Department shall be administered by an
22 executive officer known as the Director of Employment
23 Development who is vested with the duties, purposes,
24 responsibilities, and jurisdiction heretofore exercised by
25 the Director of Benefit Payments with respect to the
26 following functions:

27 (a) Job creation activities.

28 (b) Making manual computations and making or denying
recomputations of the amount and duration of benefits.

(c) Determination of contribution rates and the
administration and collection of contributions, penalties
and interest, including but not limited to filing and
releasing liens.

(d) Establishment, administration, and transfer of reserve
accounts.

(continued...)

1 nondischargeable debt under § 523(a)(1)(A). The Debtors,
2 however, argued that the UI Tax was not a "tax required to be
3 collected" because it was an employer paid tax, not a tax
4 collected from third parties.⁸ On that basis, the Debtors
5 contended that the UI Tax did not give rise to a nondischargeable
6 debt within the meaning of § 523(a)(1)(A).

7 At the conclusion of the continued trial, the bankruptcy
8 court declined to adopt its prior preliminary rulings and stated
9 the following findings of fact and conclusions of law:

10 Well, [the Debtors] pointed out for the record what I
11 had previously decided. I've determined I was wrong on
12 that score. This is not a tax that is required to be
13 collected in the light of a sales tax and it is not
14 withheld. The Board has conceded that, so it's not
15 withheld.

16 The question is whether it's collected. And I believe
17 that "collected" means, as Collier defines it, tax is
18 claimed, it's for a tax. That's fine. That meets the
19 qualification. The tax is owed by a party other than the
20 debtor. That's true. Here, it's owed by Onvoi. Tax must
21 be collected or withheld from that party and transmitted to

22 ⁷(...continued)

23 (e) Making assessments and the administration of credits
24 and refunds.

25 (f) Approving elections for coverage or for financing
26 unemployment and disability insurance coverage.

27 ⁸ In making their argument, the Debtors relied on California
28 Unemployment Insurance Code § 976. That section provides:

Employer contributions to the Unemployment Fund shall
accrue and become payable by every employer, except an
employer as defined by Section 676, for each calendar year
with respect to wages paid for employment. The
contributions are due and shall be paid to the department
for the Unemployment Fund by each employer in accordance
with this division and shall not be deducted in whole or in
part from the wages of individuals in his employ.

Cal. Unemp. Ins. Code § 976 (emphasis supplied).

1 the government. That's the part that daunts me, because
2 it's not required to be withheld from employees' wages in
any way. It's a tax upon the employer on the employer's
payroll.

3
4 Even though the State says it's the liability of an
officer of the employer, that's not what the Bankruptcy
Code says. The Bankruptcy Code says that it has to be, in
5 effect, a trust pass, sales tax, income taxes withheld from
the employee, which really don't belong to the corporation,
6 let's say, and for which the governmental units rely upon
officers of the corporation to abide by the law to collect
7 these taxes. They're supposed to hold them and transmit
them to the taxing authority.

8 That isn't what we have here.

9
10 Hr'g Tr. (May 10, 2011) at 29:7-30:13 (emphasis supplied).

11 The bankruptcy court continued:

12 Consequently, I have to change my decision in respect
to Mr. Hansen who I held liable in the previous hearing and
13 state that he is not liable. The obligation is
dischargeable in bankruptcy. And the fact that it's
14 contractual doesn't change that. As a matter of fact, all
contractual obligations . . . are discharged in bankruptcy.

15
16 So consequently, I must rule . . . that unemployment
insurance tax that is assessed against an officer of a
corporation under California law is a dischargeable
17 obligation under bankruptcy law. . . . [W]e don't have to
worry about the calculation of interest and penalties and
18 all that, because the underlying obligation, tax
obligation, is an obligation that is dischargeable in this
19 bankruptcy proceeding

20 Hr'g Tr. (May 10, 2011) at 31:6-21.

21 On June 6, 2011, the bankruptcy court entered judgment for
22 the Debtors. The EDD timely appealed.⁹

23 **DISCUSSION**

24 The sole issue on appeal is whether the UI Tax is a "tax
25 required to be collected" within the meaning of § 507(a)(8)(C)

26 _____
27 ⁹ The bankruptcy court had jurisdiction pursuant to 28
U.S.C. § 1334 and 157(b)(2)(I). We have jurisdiction under 28
28 U.S.C. § 158.

1 and thus gives rise to a nondischargeable debt pursuant to
2 § 523(a)(1)(A). Under applicable law, we review such issues of
3 statutory construction de novo. Friedman v. P+P, LLC (In re
4 Friedman), __ B.R. __, __, 2012 WL 911545, at *5 (9th Cir. BAP
5 Mar. 19, 2012) (citing AMB Prop., L.P. v. Official Creditors (In
6 re AB Liquidating Corp.), 416 F.3d 961, 963 (9th Cir. 2005)).
7 “De novo review means that the reviewing court ‘do[es] not defer
8 to the lower court’s ruling but freely consider[s] the matter
9 anew, as if no decision had been rendered below.’” Dawson v.
10 Marshall, 561 F.3d 930, 933 (9th Cir. 2009) (modifications in
11 original) (quoting United States v. Silverman, 861 F.2d 571, 576
12 (9th Cir. 1988)).

13 Applying this standard, we hold that the UI Tax is not a tax
14 contemplated by § 507(a)(8)(C), and that, consequently, it does
15 not give rise to a nondischargeable debt within the meaning of
16 § 523(a)(1)(A).

17 The EDD argues “plain meaning,” and asserts that the
18 bankruptcy court erred as a matter of law when it did not
19 construe § 507(a)(8)(C) according to its understanding of plain
20 meaning review.¹⁰ Specifically, the EDD argues that the
21 bankruptcy court “improperly imputed to the text of
22

23 ¹⁰ In its reply brief, the EDD also argues that the debt
24 resulting from the UI Tax should be nondischargeable because a
25 contrary determination would impair California’s unemployment
26 insurance trust fund. Aplt.’s Reply Br. at 4-5. However, the
27 EDD did not raise this argument in its opening brief. For this
28 reason, we consider the argument waived and need not entertain it
here. See McKay v. Ingleson, 558 F.3d 888, 891 n.5 (9th Cir.
2009) (citing Arpin v. Santa Clara Valley Transp. Agency, 261
F.3d 912, 919 (9th Cir. 2001)).

1 § 507(a)(8)(C) two requirements not stated in the statute, i.e.,
2 that the 'tax required to be collected' had to be collected (1)
3 by the debtor and (2) from a third party." Apl't.'s Opening Br.
4 at 11 (emphasis in original). By so doing, the EDD contends, the
5 bankruptcy court erroneously construed § 507(a)(8)(C) as applying
6 exclusively to trust fund taxes. The supposed better view, to
7 which the EDD contends we must subscribe, is that the UI Tax is a
8 "tax required to be collected" because it is a tax the EDD must
9 collect.

10 On the other hand, the Debtors argue that adopting the EDD's
11 reading of the statute would "violate[] the rule of statutory
12 construction requiring courts to apply meaning to every word, to
13 avoid finding redundancies, [and] to avoid finding provisions of
14 statutes meaningless." Aple.'s Responsive Br. at 6 (citations
15 omitted). In particular, the Debtors maintain that "[i]f the tax
16 specified in [§] 507(a)(8)(C) is 'tax collected by the
17 government', then all of the other subsections of Section
18 507(a)(8) are rendered meaningless." Id. On these grounds, the
19 Debtors contend that the EDD's reading of the statute is fatally
20 flawed.

21 **A. Principles of Statutory Construction**

22 Because the statutory text is "[t]he starting point in
23 discerning congressional intent," any exercise in statutory
24 construction begins there. Lamie v. United States Tr., 540 U.S.
25 526, 534 (2003) (citation omitted). See also Searcy v. Ada
26 County Prosecuting Attorney's Office (In re Searcy), 463 B.R.
27 888, 892 (9th Cir. BAP 2012) (citations omitted). However, the
28 inquiry also ends there "if the statutory language is unambiguous

1 . . . and the statutory scheme is coherent and consistent.”
2 Schindler Elevator Corp. v. United States ex rel. Kirk,
3 ___ U.S. ___, ___, 131 S. Ct. 1885, 1893 (2011) (internal quotation
4 marks omitted) (quoting Robinson v. Shell Oil Co., 519 U.S. 337,
5 340 (1997) (in turn quoting United States v. Ron Pair Enters.,
6 Inc., 489 U.S. 235, 240 (1989)).

7 Accordingly, there is no reason to consult the legislative
8 history unless the statutory text is ambiguous. In re Searcy,
9 463 B.R. at 892. “[W]hether a statute is ambiguous is
10 determined by reference to the language itself, the specific
11 context in which the language is used, and the broader context of
12 the statute as a whole.” Id. (modifications in original)
13 (quoting Hough v. Fry (In re Hough), 239 B.R. 412, 414 (9th Cir.
14 BAP 1999) (quoting in turn Robinson, 519 U.S. at 341)).

15 **1. The Statutory Text of § 507(a)(8)(C)¹¹**

16 We begin our exercise in statutory construction with the
17 relevant statutory text. Section 507 provides:

18 (a) The following expenses and claims have priority in
19 the following order:

20 . . .

21 (8) Eighth, allowed unsecured claims of
22 governmental units, only to the extent that such
23 claims are for--

24 . . .

25 (C) a tax required to be collected or withheld
26 and for which the debtor is liable in whatever

27 ¹¹ When the Code was originally enacted, the current
28 § 507(a)(8) was designated as § 507(a)(6). With the Bankruptcy
Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353,
§ 350(2), 98 Stat. 333, 358, it was redesignated as 507(a)(7).
The section was redesignated again, this time as 507(a)(8), under
the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat.
4106. See 4 COLLIER ON BANKRUPTCY ¶ 507.11[1] (Alan N. Resnick &
Henry J. Sommer eds., 16th ed.).

1 capacity

2 We focus our inquiry on the meaning of the phrase "tax
3 required to be collected." Even though the EDD concedes that
4 unemployment insurance tax is not withheld from employees, it
5 nonetheless maintains that the UI Tax falls within the scope of
6 § 507(a) (8) (C).

7 A good argument exists that the statutory text is ambiguous
8 with respect to which taxes would fall under the category of a
9 "tax required to be collected." See Shank v. State Dep't of
10 Revenue (In re Shank), 792 F.2d 829, 830 (9th Cir. 1986)
11 (consulting the legislative history to decide whether sales taxes
12 collected from third parties were an excise tax under
13 § 507(a) (6) (E) [now 507(a) (8) (E)] or a trust fund tax under
14 § 507(a) (6) (C) [now 507(a) (8) (C)]); DeChiaro v. N.Y. State Tax
15 Comm'n, 760 F.2d 432, 434 (2d Cir. 1985) (same). True, a
16 statute's awkward and ungrammatical text is alone insufficient to
17 render it ambiguous. See Lamie, 540 U.S. at 534. But here, as
18 the language uses the passive voice, it is not clear whether the
19 language anticipates that the collector of the tax must be the
20 taxing agency (as the EDD contends) or the taxpayer (as argued by
21 Hansen). Given that this critical distinction is not
22 definitively answered by the statute's text, we turn to the
23 legislative history to ascertain which of the two meanings urged
24 upon us is most consistent with congressional intent.

25 **2. The Legislative History**

26 Section 507 as it currently exists is a product of the
27 Bankruptcy Reform Act of 1978, 95 Pub. L. No. 95-598, 92 Stat.

1 2549.¹² Subparagraph (C) in particular is the result of a
2 compromise which reconciled the differences between the House and
3 Senate drafts of the provision. See generally Kenneth N. Klee,
4 Legislative History of the New Bankruptcy Law, 28 DEPAUL L. REV.
5 941, 953-57 (1979). As set forth in the Joint Statement of
6 Representative Edwards and Senator DeConcini,¹³ which accompanied
7 the negotiated provision, subparagraph (C) would establish
8 priority for claims arising from:

9 Taxes which the debtor was required by law to withhold or
10 collect from others and for which he is liable in any
11 capacity, regardless of the age of the tax claims. This
12 category covers the so-called "trust fund" taxes, that is,
income taxes which an employer is required to withhold from
the pay of his employees, and the employees' share of
social security taxes.

13 124 Cong. Rec. 32,415 (1978) (emphasis supplied).

14 Based on the legislative history, we resolve
15 § 507(a)(8)(C)'s ambiguity in favor of the Debtors.¹⁴ Doing

17 ¹² The Bankruptcy Reform Act of 1978 provided the basis for
the existing Code. See 1 COLLIER, supra, ¶ 20.01.

18 ¹³ Given the absence of a conference and the key roles
19 played by Representative Edwards and his counterpart floor
20 manager Senator DeConcini, we treat their floor statements on the
Bankruptcy Reform Act of 1978 as persuasive evidence of
21 congressional intent. See Begier v. I.R.S., 496 U.S. 53, 64
(1990) (relying on floor statements of Representative Edwards and
22 Senator DeConcini in determining whether post-petition payments
of trust-fund taxes constituted voidable preference payments).

24 ¹⁴ Our view accords with the legislative history of
§ 17(a)(1)(e) of the former Bankruptcy Act, the predecessor to
25 §§ 523(a) and 507(a)(8)(C). Act of July 5, 1966, Pub. L. No. 89-
496, 80 Stat. 270. As amended in 1966, that provision excepted
26 from discharge taxes the debtor "collected or withheld from
others as required by the laws of the United States or any State
27 or political subdivision thereof, but has not paid over"

28 The Ninth Circuit's decision in In re Shank, though specific
to the appropriate categorization of sales taxes within the

(continued...)

1 otherwise would frustrate congressional intent. The legislative
2 history shows that under § 507(a)(8)(C), a "tax required to be
3 collected" must be collected from a third party. The UI Tax at
4 issue here is not collected from a third party. Rather, as the
5 EDD explained at oral argument, unemployment insurances taxes are
6 payable directly by the employer; here, that was Onvoi. As such,
7 it is not a "tax required to be collected" from anyone; Onvoi was
8 responsible for its own debts. For this reason, we cannot
9 conclude that the UI Tax is a tax of the kind specified in
10 § 507(a)(8)(C). See 4 COLLIER, supra, ¶ 507.11[4] (identifying
11 five elements that must be present for a claim to achieve
12 priority under § 507(a)(8)(C) and emphasizing the requirement
13 that "the tax at issue must be owed by a party other than the
14 debtor and then collected or withheld by the debtor from the
15 other party"). See also 3 NORTON BANKRUPTCY LAW & PRACTICE 3d
16 § 49.52 (2012).

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21 ¹⁴(...continued)
22 Code's priorities scheme, also lends support to our conclusion.
There, the Ninth Circuit reasoned:

23 § 17(a)(1)(e) excepted from discharge taxes the debtor "has
24 collected or withheld from others." Although this language
25 did not expressly refer to sales taxes, the legislative
26 history strongly suggests that Congress did not intend to
27 limit the § 17(a)(1)(e) exception to withholding
taxes. . . . The indication, was, in fact, that the
17(a)(1)(e) exception was intended to extend to sale taxes
a vendor has collected from its customers.

28 792 F.2d at 831 (citations omitted). See also DeChiaro, 760 F.2d
at 434.

1 **B. Debts Excepted from Discharge under § 523(a) (1) (A)**

2 Section 523(a) (1) (A) provides:

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

5 (1) for a tax or a customs duty--

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

10 As a consequence, to be a nondischargeable tax under
11 § 523(a) (1), the tax must also be a priority tax as contemplated
12 by § 507(a) (3) or § 507(a) (8). As we have determined that the UI
13 Tax at issue here is not a tax of the kind specified in
14 § 507(a) (8) (C) - the only provision as to which the EDD seeks to
15 qualify the UI Tax as a tax within the meaning of § 523(a) (1) (A)
16 - we must find that it does not give rise to a nondischargeable
17 debt. Cf. United States v. Sotelo, 436 U.S. 268, 279 (1978)
18 (debtor's responsible person liability, imposed pursuant to
19 Internal Revenue Code § 6672, for taxes debtor was required to
20 collect but did not pay over, was nondischargeable under former
21 Bankruptcy Act § 17(a) (1) (e)); In re Shank, 792 F.2d at 833
22 (excise taxes required to be collected from third parties fell
23 within the scope of § 507(a) (6) (C) [now § 507(a) (8) (C)] and thus
24 gave rise to a nondischargeable debt under § 523(a) (1) (A));
25 Vitaliano v. Cal. Franchise Tax Bd. (In re Vitaliano), 178 B.R.
26 205, 209 (9th Cir. BAP 1995) (tax claims were priority claims
27 within the meaning of § 507(a) (7) (A) [now 507(a) (8) (A)] and
28 therefore nondischargeable under § 523(a) (1) (A)); Raiman v. Cal.
State Bd. Of Equalization (In re Raiman), 172 B.R. 933, 941 (9th
Cir. BAP 1994) (California sales tax at issue was a tax within

1 the meaning of § 507(a)(7)(A) [now 507(a)(8)(A)] and therefore
2 nondischargeable pursuant to § 523(a)(1)(A)); George v. Cal.
3 State Bd. Of Equalization (In re George), 95 B.R. 718, 721 (9th
4 Cir. BAP 1989), aff'd, 905 F.2d 1540 (9th Cir. 1990) (debtors'
5 personal liability under California Revenue and Taxation Code
6 § 6829 was an excise tax under § 507(a)(7)(E) [now
7 § 507(a)(8)(E)] and thus nondischargeable under § 523(a)(1)(A)).

8 **CONCLUSION¹⁵**

9 For the reasons set forth above, we AFFIRM.

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¹⁵ Because we agree with the bankruptcy court's
27 determination that the UI Tax is not of the kind specified under
28 § 507(a)(8)(C) and therefore does not give rise to a
dischargeable debt within the meaning of § 523(a)(1)(A), we
decline to address any issues concerning any penalties or
interest relating thereto.