

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

In re: ANTHONY S. GOULD,  
*Debtor,*

ANTHONY S. GOULD,  
*Appellant,*

v.

UNITED STATES OF AMERICA,  
*Appellee,*

and

DEVIN DERHAM-BURK, Chapter 13;  
UNITED STATES TRUSTEE,  
*Trustees.*

No. 09-60008  
BAP No. NC-08-  
1100-JuMkD  
ORDER

Appeal from the Ninth Circuit  
Bankruptcy Appellate Panel  
Markell, Dunn, and Jury, Bankruptcy Judges, Presiding

Argued and Submitted  
February 9, 2010—San Francisco, California

Filed April 30, 2010

Before: Diarmuid F. O’Scannlain, Stephen S. Trott and  
Richard A. Paez, Circuit Judges.

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**COUNSEL**

David A. Boone and Leela V. Menon, Law Offices of David  
A. Boone, San Jose, California, for the appellant.

Randolph L. Hutter, Department of Justice, Tax Division,  
Washington D.C., for the appellee.

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**ORDER**

The published order filed April 19, 2010, is hereby WITHDRAWN.

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**ORDER**

The central issue in this case is whether or not the Bankruptcy Court erred in denying the government's motion to lift the automatic stay to allow the Internal Revenue Service "IRS" to offset the debtor's income tax overpayment against his outstanding federal income tax liabilities pursuant to 11 U.S.C. § 553 and 26 U.S.C. § 6402(a). For the reasons given by our Bankruptcy Appellate Panel in *In re Gould*, 401 B.R. 415 (B.A.P. 9th Cir. 2009), we reverse the decision of the Bankruptcy Court, *In re Gould*, 389 B.R. 105 (Bankr. N.D. Cal. 2008), and remand for further proceedings. We note that for cases filed after October 17, 2005, 11 U.S.C. § 362(b)(26) permits the IRS to setoff a pre-petition income tax overpayment against a pre-petition income tax liability without seeking relief from the automatic stay.

Accordingly, the judgment of the Bankruptcy Appellate Panel is AFFIRMED.