

TAX RELATED CHANGES IN BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

- N.B.:
1. From Senate Bill 265, supposedly what the House passed 4/14/05.
 2. Confirm for yourself that the final version says the same thing.

1. §308. Small Business debtor (<\$2mm debt, no UCC) must file periodic profitability reports, projections, comparisons of past projections with reality, tax status and payment reports and reports as to how it intends to cure any defaults on payment of admin expenses.

2. §346. (a) Estate is separate entity for purposes of state/local taxation, if it would be a separate entity for IRS purposes.

(b) If there is not a separate entity for IRS purposes, there is not a separate entity for state/local purposes.

(c) LLC are recognized and dealt with

(d) State and local tax periods terminate only if IRS periods terminate

3. §362(a)(8) stay of US Tax Court proceedings expanded to clarify that it applies only to pre-petition periods for an individual.

§362(b)(2)(F) interception of tax refunds for support is not a violation of the stay

§362(b)(18) Statutory liens for unpaid ad valorem taxes can come into effect during administration of case

§362(b)(26) Set off of income tax refunds is not stayed by bankruptcy

4. §502(b)(9) In a chapter 13 case, a proof of claim for taxes is timely if filed within 60 days of the filing of the return, even if that is more than 180 days from the petition.

5. §503(b)(D) A governmental unit is not required to file a request for payment as a condition of being allowed an administrative expense.

6. §505(a)(2)(C) The court may not determine ad valorem taxes on real or personal property if the time to protest under non-bankruptcy law has expired.

7. §505(b) Taxing authority may designate and file with the clerk an address for determinations of estate taxes. If it doesn't, the normal address is sufficient.

8. §506(a)(2) In individual chapter 7 and 13 cases, the value of a claim secured by personal property is replacement value, without any deductions for costs of sale or marketing.
9. §507(a)(8) The 240 day look-back period for assessments includes an additional 30 days if there was an offer in compromise, and 90 days if there was a stay against collection in a prior case, plus 90 days.
10. §507(a)(8) Any §507 time limits are suspended for periods during which collections were prohibited under non-bankruptcy law, such as during a protest, plus 90 days, and during a prior bankruptcy, plus 90 days.
11. §511 Interest on tax claims shall be at the statutory rate applicable under non-bankruptcy law, and under plans, as of the month of confirmation.
12. §521(d)(2)(A) Debtor shall provide the trustee with most recent year's federal tax return at least 7 days before the 341 meeting. Dismissal upon failure unless due to circumstances outside of debtor's control.
13. §521(f) Court, UST or party in interest may request that an individual 7, 11 or 13 debtor, while the case is pending, file Federal tax returns with court at the same time they are filed with IRS.
14. §523(a)(14) A loan to pay nondischargeable taxes is nondischargeable.
15. §724. Before subordinating a tax lien, the chapter 7 trustees shall exhaust the unencumbered assets of the estate.
16. §1112. The court shall, absent articulated special circumstances, dismiss or convert a case for failure to pay post-petition taxes or file tax returns due at time of filing.
17. §1115 property of estate includes an individual's post-petition personal services income.
18. §1129(a)(9)(C)& (D) Priority taxes must be paid within 5 years of the date of the petition, in a manner not less favorable than the most favored non-priority unsecured claims, and ditto for secured tax claims.
19. §1307. Court shall dismiss or convert a case to chapter 7 if debtor fails to file required tax returns.
20. §1308(a). Debtor must file all tax returns for the four-years prior to the petition not later than the day before the 341 meeting.
§1308(b) trustee may hold open 341 for 120 days if returns aren't filed.

21. §1322(b)(10). Plan may provide for payment of interest on non-dischargeable unsecured claims if there is income available after payment in full of allowed claims.
22. §1325(a)(9). Debtor must file all tax returns prior to confirmation.
23. §1328(a)(2) Taxes due for which tax returns were not filed are not dischargeable in chapter 13.