

TAX ISSUES IN BANKRUPTCY – 4 QUICK HITS*

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- 1) Tax Return Filing Requirements
 - a) Bankruptcy Code Sections 521(j), 1307, 1308(a), and 1325
 - b) In re French, No. 06-20006 (Bankr. E.D. Wis. 2006) – Debtor filed Chapter 13 on Jan. 9, 2006. First meeting of creditors was scheduled for Mar. 30, 2006. The trustee informed debtor that the meeting would be rescheduled to allow the debtor to file her 2005 income tax return. Debtor argued that 2005 return was not required to be filed under “applicable nonbankruptcy law” until April 15th. Debtor moved the court for an order of confirmation. Judge Pepper held that the language in § 1308(a) which states “if the debtor was required to file a tax return under applicable nonbankruptcy law” deals with whether the debtor is required to file a return at all rather than when the return is required to be filed. Thus, the debtor was required to file her 2005 return before the first meeting of creditors.
 - c) E-Service – instant transcripts, W-2s and 1099

- 2) Nondischargeable post-petition interest on some priority tax claims in Chapter 13 and 12 cases after BAPCPA
 - a) Where an individual debtor made all the payments required under a confirmed Chapter 11 plan, and the plan provided for the payments of the Service’s unsecured claim but without interest, the court held that the Service is entitled to collect the postpetition interest that accrued on the nondischargeable tax claims. In re Gill, 343 B.R. 732 (Bankr. M.D. Fla. 2006).
 - b) This decision is consistent with case law allowing the Service to collect gap interest and other postpetition interest on nondischargeable claims. See In re Tuttle, 291 F.3d 1238 (10th Cir. 2002) (Service’s claim for gap interest survives bankruptcy and can be asserted against an individual personally, regardless of whether a provision for the interest was included in the bankruptcy plan); In re Cousins, 209 F.3d 38 (1st Cir. 2000) (Chapter 12 debtors were liable for postpetition interest on Service’s nondischargeable tax liability, where interest was not provided for in the plan); In re Artisan Woodworkers, 204 F.3d 888 (9th Cir. 2000) (Chapters 11 and 12 proceedings).
 - c) With the new exceptions to discharge in Chapter 13 cases (Bankruptcy Code Sections 1328(a), 507(a)(8)(C), 523(a)(1)(B) and (1)(C), and 523(a)(3)), issues regarding the payment of postpetition interest on

nondischargeable claims will also arise in Chapter 13 cases. New section 1322(b)(10) specifically allows the payment of postpetition interest on nondischargeable claims if the debtor has sufficient disposable income to pay the interest after making provision for full payment of all allowed claims. New section 1222(b)(11) provides the same in Chapter 12 cases.

- 3) What constitutes a return for dischargeability - Bankruptcy Code Section 523(a)(1)(B)
 - a) In re Payne, 431 F.3d 1055 (7th Cir. 2005), where assessments had already been made based upon substitutes for returns at the time Payne filed his returns, the court determined that his belated filing was not a reasonable effort to satisfy the requirements of the filing. The court stated that, “[t]he legal test is not whether the filing of a purported return has some utility for the tax authorities, but whether it is a *reasonable* endeavor to satisfy the taxpayer’s obligations....” Judge Easterbrook dissented, concluding that the documents filed by Payne was a return because it contained all of the required information and may have served the purpose of helping the Service consider Payne’s offer in compromise. See also, In re Hindenlang, 164 F.3d 1029 (6th Cir. 1999.), *cert. denied*, 528 U.S. 810, 120 S.Ct. 41, 145 L.Ed.2d 37 (1999), Moroney v. United States (In re Moroney), 352 F.3d 902 (4th Cir.2003) and In re Hatton, 220 F.3d 1057 (9th Cir. 2000).
 - b) In In re Colsen, 446 F.3d 836 (8th Cir. May 4, 2006), the Eighth Circuit held that returns filed by the debtor after the Service made assessments based upon substitutes for returns qualified as returns under Bankruptcy Code section 523(a)(1)(B)(i) because they appeared on their face to constitute endeavors to satisfy the tax laws.
 - c) The BACPCA amended section 523(a) to specifically define the term “return” for this subsection. The amendment provides that a “return” means a return that satisfies the requirements of applicable nonbankruptcy law, and includes a return prepared under I.R.C. § 6020(a) or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but not a return made pursuant to I.R.C. § 6020(b).

- 4) Collection from exempt and excluded properties by Insolvency Unit of the Service
 - a) exempt property
 - b) excluded property – pension plans
 - i) Patterson v. Shumate, 504 U.S. 753 (1992) and In re Baker, 114 F.3d 636 (7th Cir. 1997)
 - ii) It is the Service’s position that a Notice of Federal Tax Lien need not be filed prepetition for the Service to pursue the collection of discharged liabilities as long as there was an unfiled federal tax lien

that attached to the taxpayer's property pre-petition and the assets being pursued have been excluded from the bankruptcy estate under Bankruptcy Code Section 541(b) and (c).

*Note, none of the positions taken in this outline nor in my presentation should be considered as the official position of the United States of America/ Internal Revenue Service and are not binding on the United States of America/ Internal Revenue Service in any proceeding.