

ID: CCA_2009082810535333

Number: **200941022**

Release Date: 10/9/2009

Office:

UILC: 09.13.04-00

From:

Sent: Friday, August 28, 2009 10:53:57 AM

To:

Cc:

Subject: 1305 claims

ISSUE

In a chapter 13 bankruptcy case, whether a section 1305 claim for taxes accruing after the bankruptcy petition date should be treated as a priority tax claim.

LAW & ANALYSIS

The Bankruptcy Code allows a “creditor” to file a proof of claim in order to participate in the bankruptcy distribution. 11 U.S.C. § 501(a). A creditor is defined as an entity that holds a claim against the debtor that arose before the bankruptcy order for relief (the date the bankruptcy petition was filed in voluntary cases). 11 U.S.C. §101(10). 11 U.S.C. § 502(a) provides that a claim listed on a proof of claim is deemed allowed unless a party in interest objects. If an objection is filed, section 502(b) directs the court to determine the amount of the claim as of the petition date and allow the claim as determined unless certain exceptions apply. 11 U.S.C. § 507(a)(8) confers priority status on certain allowed tax claims. An income tax claim for a tax year ending before the bankruptcy petition was filed is entitled to priority if the return for the tax was last due within three years of the bankruptcy case. 11 U.S.C. § 507(a)(8)(A)(i). 11 U.S.C. § 1322(a)(2) provides that a chapter 13 plan must provide for the full payment of priority claims in deferred cash payments unless the holder of the claim agrees otherwise.

Claims against a chapter 13 debtor that arise after the bankruptcy petition was filed are generally not claimable in the bankruptcy case. Section 1305(a), however, allows a proof of claim to be filed for two types of postpetition debts of the debtor: (1) taxes that become payable to a governmental unit while the case is pending, and (2) consumer debts for property or services necessary for the debtor’s performance under the plan. Section 1305(b) provides:

[A] claim filed under subsection (a) of this section shall be allowed, or disallowed under section 502 of this title, but shall be determined as of the date such claim arises, and shall be allowed under section 502(a), 502(b) or 502(c) of this title, or disallowed under section 502(d) or 502(e) of this title, the same as if such claim had arisen before the date of the filing of the petition.

11 U.S.C. § 1322(b)(6) provides that a chapter 13 plan “may” provide for payment of all or any part of any claim allowed under section 1305. A chapter 13 discharge does not apply to a liability listed on a section 1305 claim unless the claim is provided for by the plan. See 11 U.S.C. § 1328(a).

Some courts have held that a section 1305 tax claim is a priority claim that must be paid in full under a chapter 13 plan pursuant to section 1322(a)(2). In *In re King*, 217 B.R. 623 (Bankr. S.D. Cal. 1998); *In re Bryant*, 1998 WL 412632 (Bankr. E.D. Va. 1998); *In re Wright*, 66 B.R. 125 (Bankr. D. Kan. 1984). These courts reasoned that under section 1305(b), a section 1305 claim should be allowed or disallowed under section 502 as if the claim arose before the date of filing of the petition and that such a claim would be a priority claim under section 507(a)(8)(A)(i). Other courts have concluded that section 1305 tax claims are not entitled to priority and that the debtor may opt not to pay the claim through the chapter 13 plan pursuant to section 1322(b)(6). *In re Jagours*, 236 B.R. 616 (Bankr. E.D. Tex. 1999); *In re Wilkoff*, 2001 WL 91624 (Bankr. E.D. Pa 2001). These courts reasoned that section 507(a)(8)(A) applies only to income taxes “for taxable years ending before the filing of the bankruptcy petition” and therefore does not apply to section 1305 tax claims, which relate to postpetition years.

CONCLUSION

Absent a local practice enforced by the trustee and the court, or a provision in the chapter 13 plan that provides for full payment of section 1305 tax claims, it is not clear whether section a 1305 tax claim will be paid in full under a chapter 13 plan. The Internal Revenue Manual cautions that even though a section 1305 tax claim is technically allowed by the court, it does not necessarily follow that the claim will be paid. IRM 5.9.10.9.2. Further, as noted in the IRM, if the Service files a section 1305 claim, some debtors may fail to modify the plan appropriately and, depending on local practice, the claim could be considered discharged under 11 U.S.C. § 1328 even if not paid in full. See IRM 5.9.10.9. The IRM states that it is generally beneficial for the Service to send a written request to the debtor (with a copy to the debtor’s attorney) to advise the debtor of the need to modify the plan so that the Service can file a section 1305 tax claim. IRM 5.9.10.9.2(11). Absent a local practice or a provision in the plan that provides for full payment of section 1305 tax claims, we recommend that this procedure be followed.