Bankruptcy
VALTA FALL 2003 CONFERENCE

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The Bankruptcy Code

- Title 11 of the United States Code
- www.law.cornell.edu/uscode/11/

Types of Bankruptcy

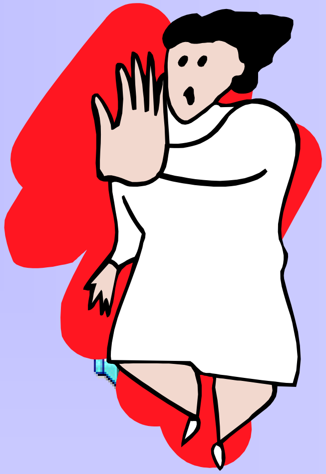
- Chapter 7: Individual, partnership, corporation; liquidation of all debtors assets.
- Chapter 11: Individual, partnership, corporation; reorganization of a business but may involve the liquidation of business.
- Chapter 13: Individuals only with regular income; unsecured debts < $250,000 and secured debts < $750,000.

Notice of Filing

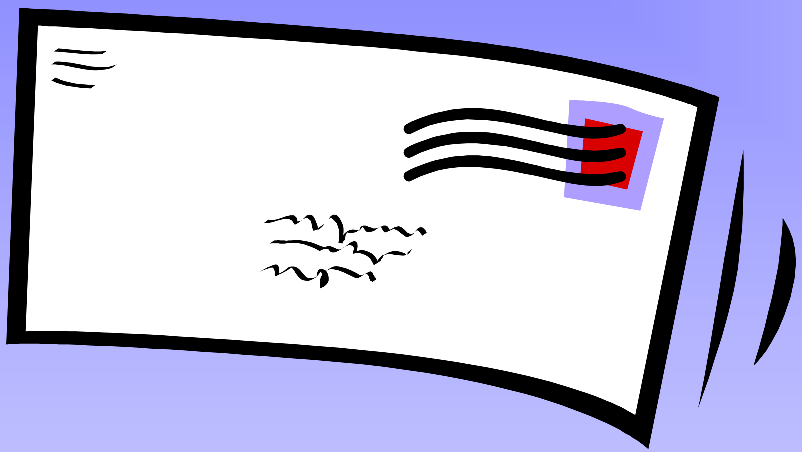
- Official Notice: Bankruptcy Court
- Actual Notice: Debtor
  - Eastern District: www.vaeb.uscourts.gov
  - Western District: access the PACER system www.vawb.uscourts.gov

Automatic Stay

- 11 USC §362
- Collection efforts must cease
- Audit, Billing and Demand for Returns may continue
- Co-debtor stay
- Violation of the Stay
- Setoff Debt Collection



Filing Claims



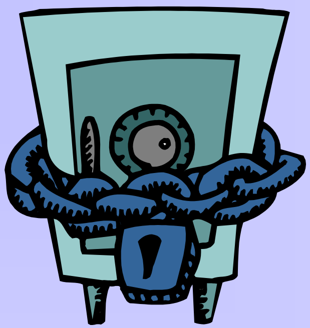
- File as soon as possible.
- Attach bills or debt information with claim.
- File within 180 days after order if Chapter 7 case or Chapter 13 case.
- File before bar date in Chapter 11 case.

Priority Claims

- Personal Property Tax: covers personal property taxes which become due and payable within one year prior to the filing.
- Business License Tax: covers gross receipts if the tax return was due within three years prior to the filing, or if the tax was assessed within 240 days of the filing date.
- Administrative Expense: covers taxes assessed for a calendar year after the year during which a petition is filed.

Secured Claims

- Real estate taxes, personal property taxes and utility charges, which are treated under Virginia law as liens against the assessed or serviced property, should be treated as secured claims if the debtor still owns the property.



Trust Fund Taxes

- Certain types of taxes, such as transient occupancy taxes, are collected and held in trust by taxpayer until remitted to the locality. Because these taxes are not the property of the taxpayer, the funds should not be a part of the bankruptcy estate.

Penalties and Interest

- Post Petition penalties are recoverable if assessed in connection with taxes which qualify for administrative expense priority.
- Safest course is to include penalties and interest as part of claim with a designation on the claim form breaking out the amount of debt attributable to levy versus penalties and interest.

Failure to file Claim or filing late

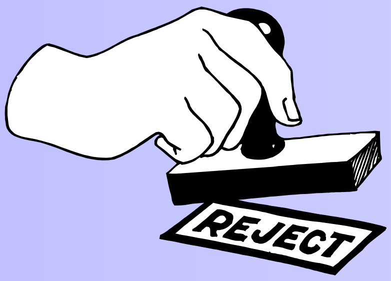
- Failure to file a claim will not result in the loss of a non-dischargeable tax except in Chapter 13 cases.
- Excusable neglect

Objections to Claims

- Claim filed is presumptively correct unless a party in interest objects in writing.
- In Virginia, tax assessments are presumed correct and may only be altered for manifest error.
- Most objections can be resolved with the Trustee.
- Omnibus Objections

Preference Actions
11 USC §547(b).

- Payments made w/in 90 days of the Petition date may be recovered by the Trustee



- Exceptions:
  - Ordinary Course Payments
  - Amount doesn’t exceed payment available in chapter 7 liquidation

Receipt of Payments

Chapter 7 No Asset Case

- No payment is received unless assets are discovered during the liquidation process.
- Upon notification of the discovery of assets, proof of claim must be filed and the case proceeds as a Chapter 7 asset case.

Receipt of Payment-Chapter 7 Assets

- Assets are distributed in order of priority after the debtors' holdings are liquidated.
- If assets are insufficient to pay all creditors holding claims of same priority, a pro rata payment will made.

Receipt of Payment-Chapter 13

- A copy of the Chapter 13 plan will be sent outlining the amount and timing of payments.
- All tax claims entitled to priority must be paid in full.
- Payment period is not to exceed three (five) years.
- Contact debtors attorney if payments are not being received.

Receipt of Payment-Chapter 11

- By claiming administrative expense priority, can receive prompt payment of taxes assessed post-petition.
- Plan of reorganization allows payment of priority taxes over a period not to exceed 6 years from the tax assessment date.
- Trustee must file all returns as required by state laws.

Dismissal of Case

- Debtor is to be treated in the same manner as if no case had been filed.

- Fast collection action is advised after receipt of the dismissal notice.

Discharge of Case

- Discharge: a written federal court order signed by a bankruptcy judge determining that a person is entitled to immunity from any actions by creditors to collect (discharged) debts existing on the filing date of the bankruptcy proceeding.
- Courts usually send a notice of the discharge order.
- Exoneration of Taxes
- Statute of Limitations

Discharge of Case

- Chapter 7: Priority tax claims are not dischargeable and remain a personal obligation of the debtor.
- Chapter 13: if claim not filed, the tax claim will be discharged once debtor makes all payments under the Chapter 13 plan.
- Chapter 13 taxes must be paid unless debtor gets a hardship discharge

Discharge of Case
Chapter 11

- Once plan of reorganization is confirmed by the Court, the debtor is discharged from all debts not provided for in the plan.
- Taxes which become due after the bankruptcy petition was filed should be paid by the debtor in the ordinary course of business as they become due.

Discharge of Taxes

Personal Property Taxes:

- Priority taxes not discharged.
- Non-priority may be nondischargeable if:
  - no return was filed; or,
  - late return was filed within 2 years prior to the petition date.

Discharge of Taxes

Real Estate Taxes

- Taxes due and payable one year prior to the filing may be collected;
- All earlier tax years assessed may be collected in an in rem action against the real estate taxed.

Judicial Liens

- Judicial liens, criminal fines and restitution will not be discharged.

Discharge of Taxes

Fraudulent Returns

- False statements in which the taxpayer under-reports taxes may be basis for claiming the taxes are nondischargeable.

Unscheduled Debts

- Debt may be collected even though discharged in bankruptcy if notice was not received and creditor was not included in the schedule of creditors.

Abandoned Property

- Trustee can abandon property which is not essential to the debtor's reorganization or has inconsequential value, or is so encumbered or burdensome to have no value to the estate.

Non-Tax Considerations

- Utility Debts: Adequate assurance and termination of service.
- Library Debts: post-petition fines.
- Letters of Credit: may pursue payment through non-bankruptcy procedures.

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For additional information, contact Ms. South at:

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