

Collection Bankruptcy Overview

**Small Business/Self-Employed Division
January 25, 2011**

**The information contained in this presentation is
current as of the date it was presented. It should not
be considered official guidance**

Types of Bankruptcy

- Chapter 7 – Liquidation of assets
- Chapter 9 – Municipalities
- Chapter 11 – Reorganization
- Chapter 12 – Family farmer or fisherman
- Chapter 13 – Repayment of debts
- Chapter 15 – International

IRS Insolvency

- Insolvency is responsible for administering the coordination of tax and bankruptcy law for collecting tax debts through the bankruptcy court
- Complying with both sets of law requires coordination

Insolvency's Two Operations

- **Centralized Insolvency Operation:**
CIO is located in Philadelphia, Pa.
- **Field Insolvency:**
Consists of nine territories throughout the United States, Puerto Rico, Guam and Northern Mariana Islands

Field Insolvency

- Prepares and files all proofs of claim
- Works all chapters of bankruptcy except for some chapter 7 no asset cases
- Attends first meeting of creditors as necessary
- Reviews plans and schedules

Field Insolvency (cont.)

- Refers cases to the U.S. attorney, Department of Justice or IRS counsel as necessary
- Works all complex issues CIO identifies
- Appears in court as expert witnesses
- Negotiates with debtors or their representatives

Notification of Bankruptcy Proceedings

- Mailing address for providing IRS notice of all bankruptcy filings
- Correspondence from debtors and trustees should be mailed to:

Internal Revenue Service

P.O. Box 7346

Philadelphia, PA 19101-7346

Centralized Insolvency Operation

- Handles incoming telephone calls via a toll-free line: **1-800-913-9358**
- Loads all cases to the Automated Insolvency System
- Receives all chapter 7 and chapter 13 payments
- Performs actions on chapter 7 no asset cases and confirmed chapter 13 cases
- Initiates closing actions on cases

Automatic Stay

- Prohibits collection activity after the bankruptcy is filed
- BAPCPA imposed stay termination after 30 days for individual serial filers
- IRS initiates corrective action within two work days after becoming aware of a violation of the stay

Proof of Claim

- Protects the government's interest in bankruptcy proceedings
- Identifies the amount of secured, priority and general tax debt to the court
- Taxes can be tolled to retain a priority status

Insolvency's Research

- Review of schedules and Statement of Financial Affairs
- Public Access to Court Electronic Records
- IRS case histories
- Property tax records
- Vehicle pricing and information websites
- Accurint[®] and other internal and external asset locator sources

Refunds and Offset

- Bankruptcy Code preserves offset rights subject to the automatic stay
- BAPCPA created exception to automatic stay for offset of pre-petition income tax refund against a pre-petition income tax liability
- If exception does not apply, IRS can file motion for relief from the stay

Tax Returns

- BAPCPA requires all tax returns to be filed
- Trustees require copies or transcripts of tax returns
- Chapter 13
 - Prior four years returns must be filed
 - Unfiled returns can prevent confirmation
 - Unfiled returns could result in dismissal or conversion to another chapter of bankruptcy

Transcripts

Debtors:

- Form 4506-T
- Automated Delivery Service

E-Services for Tax Professionals:

- Disclosure Authorization
- Transcript Delivery System

www.IRS.gov/taxpros

First Meeting of Creditors

- Every debtor is required to attend the first meeting of creditors (often called the 341 meeting)
- The meeting is conducted by a court appointed trustee
- Debtors are questioned under oath by creditors and the trustee concerning financial affairs, debts and assets

Insolvency's Role at the 341

- Question debtors as to financial affairs and any inconsistencies between schedules and research
- Obtain agreed orders for unfiled tax returns
- Object to confirmation if IRS' claim is not properly provided in the bankruptcy plan
- Question understated value of assets

Insolvency's Role at the 341 (cont.)

- Secure basic Trust Fund Recovery
Penalty information
- Question debtors about businesses to
determine if employment or highway use
tax returns should be addressed on the
claim
- Discuss self employment issues

Post 341 meeting

- Field employees ensure the confirmed plan protects the government's interest
- All chapter 9, 11 and 12 cases stay in the field to monitor for pyramiding, compliance and payments
- Field employees assign confirmed chapter 13 cases to CIO
- Field employees resolve complex issues identified by CIO as they arise over the life of a chapter 7 or chapter 13 bankruptcy

Exempt and Abandoned Property

- Discharged taxes may be collectible from exempt property or property that has been abandoned, or otherwise not administered by the trustee if a valid prepetition Notice of Federal Tax Lien is on file against an individual chapter 7 debtor per (11 USC § 522)

Notice of Federal Tax Lien

- IRS can collect from and pay non-dischargeable and dischargeable tax debts from:
 - Property exempt by either state or federal law e.g., 401(k) retirement, household goods and homesteads
 - Property abandoned or not administered by the trustee

Excluded Property

- Property not falling under the jurisdiction of the bankruptcy court:
 - Corporate assets in an individual's case
 - Employee Retirement Income Security Act qualified pension plans
- NFTLs are not necessary to collect from excluded property
- With proper approval, insolvency can issue levies on excluded property before closing the case

Exceptions to Discharge

Chapter 7

- Priority taxes
- Taxes due on returns filed late and after two years before the petition date
- Income tax assessed within 240 days before the petition date
- Trust fund taxes
- Taxes based on fraudulent returns
- Taxes due on unfiled returns

Penalties may be dischargeable while tax is non-dischargeable

Exceptions to Discharge

Chapter 13

- Taxes due on returns filed late and after two years before the petition date
- Income tax assessed within 240 days before the petition date
- Trust fund taxes
- Taxes based on fraudulent returns
- Taxes due on unfiled returns

Penalties may be dischargeable while tax is non-dischargeable

Chapter 13 “Hardship Discharge” or Chapter 11 (Individual)

Exceptions to discharge:

- Priority taxes
- Taxes due on returns filed late and after 2 years before the petition date
- Taxes based on fraudulent returns
- Taxes due on unfiled returns
- Trust fund taxes
- “Gap” taxes in Chapter 11 cases

Questions

Toll Free (888) 674-0224

or

(201) 604-0502

(Long distance charges may apply)