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Cc:
Subject: U.S. Trustee's 2015 audit report
Date: 5/9/2016
Time: 07:15 AM

Attachments: None

News for Tax, Bankruptcy, and Consumer Professionals
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The King Law Letter

NEWS – EVENTS - UPDATES FOR BANKRUPTCY AND TAX PROFESSIONALS

LAW LETTER NO. 6 May 9 2016

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IMPORTANT PRODUCTS & EVENTS

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EXCERPT FROM
King's
DISCHARGING TAXES
In Consumer Bankruptcy Cases
By Morgan D. King, Esq.
Of the California Bar

BOOK: KING'S DISCHARGING TAXES IN CONSUMER BANKRUPTCY CASES

PART 3: DISCHARGING TAXES IN CHAPTER 13

¶ 3.6 Proof of Claim in Chapter 13

¶ 3.6(f) Filing claim on behalf of taxing entity

(f)4. For an unsecured tax claim

i. Unsecured dischargeable income tax

In the event the taxing entity fails to file a timely proof of claim for an unsecured fully dischargeable income tax, and the taxing entity has been properly noticed, it seems prudent *not to file a claim* on behalf of the taxing

entity. The reason is that personal income taxes, *even priority personal income taxes*, are not excepted from discharge in chapter 13 as long as they are innocent of any § 523 offense (no return filed, return filed with last 2 years, tax evasion, etc).

Accordingly, in the unlikely event of a taxing entity's failure to file a timely proof of claim, such tax, interest and penalties will be discharged upon final discharge in the chapter 13, regardless of whether the claim has been paid through the plan, or otherwise.

ii. Tax falling within § 523(a)(1)(B) or (C)

Where the claim is an unsecured income tax for a year in which the debtor failed to file his/her tax return more than 2 years before the bankruptcy filing date [§ 523(a)(1)(B)] or where the taxpayer is guilty of at attempt to defeat or evade the tax [§ 523(a)(1)(C)], the tax liability is not dischargeable in chapter 13 pursuant to Code § 1328(a)(2). In that event, the debtor should file a claim on behalf of the taxing entity. This assumes the debtor wishes to address the problem through the chapter 13 payment plan. If a priority income tax, it must be paid in full through the plan pursuant to 11 U.S.C. § 1322(a)(2).

A timely filed proof of claim assures that the tax liability will be paid off through the plan. If a proof of claim is not timely filed, it will not be paid through the plan and the debtor will be stuck still owing the tax, plus accrued postpetition interest, after discharge

iii. Trust-fund taxes

Likewise, if the claim is for a trust fund tax under 11 U.S.C. 507(a)(8)(C), it is non-dischargeable in chapter 13 and hence should be paid through the plan.

Under pre-BAPCPA law, it was usually better to refrain from filing the claim on behalf of the taxing entity, even for § 523 or § 507(a)(8)(C) category tax, because under pre-BAPCPA law no tax was excepted from discharge in chapter 13, so that at the end of the plan where a discharge was entered, the tax was entirely discharged, even though not paid. This of course could only benefit the debtor.

(f)(5). Secured or partially secured taxes

Ordinarily the debtor would want to assure that taxes, to the extent they are secured, will be satisfied through the plan, otherwise the lien will remain on the debtor's assets following final discharge. And, the Code requires that secured claims be paid through the plan, pursuant to 11 U.S.C. § 1325(a)(5)(B)(iii). Hence, where the taxing entity has failed to file a timely proof of claim, in the ordinary case the debtor should file a proof of claim for a secured tax, or the secured portion of an undersecured tax, on behalf of the taxing entity.

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THE LAW & CASE HOTWIRE

COURT DENIES STATE TAXING ENTITY'S ARGUMENT FOR HIGHER INTEREST RATE ON TAX CLAIMS PAID THROUGH CHAPTER 13 PLAN

In re Bratt (B.A.P. 6th Cir., 2016)

Metropolitan Government of Nashville & Davidson County ("Metro") objected to a chapter 13 plan which proposed to pay 12% interest on a delinquent tax debt, asserting that, pursuant to newly amended Tennessee Code Annotated ("T.C.A.") § 67-5-2010(d), the correct interest rate should be 18%.

The bankruptcy court found that T.C.A. § 67-5-2010(d) violates the Supremacy Clause of the United States Constitution, determining that it imposes a penalty on bankruptcy debtors in violation of the mandates of the Bankruptcy Code. For the reasons stated below, the Panel finds that T.C.A. § 67-5-2010(d) is not applicable to determine the interest rate pursuant to 11 U.S.C. § 511. The bankruptcy court's decision that the appropriate interest rate is 12% is AFFIRMED on other grounds.

Section 511 explains how the interest rate for tax claims is determined under the Bankruptcy Code. It provides:

> (a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

This appeal turns on the meaning of the phrase "applicable nonbankruptcy law."

Simply stated, § 511's plain language requires bankruptcy courts to use an interest rate that is determined under nonbankruptcy law. Subsection (d) of the Tennessee statute is a bankruptcy law because it creates an interest rate that is only used in bankruptcy cases. Therefore, under § 511's plain meaning, Subsection (d) cannot be applied to determine the interest rate.

The Panel holds that T.C.A. § 67-5-2010(d), a bankruptcy-specific statute, is a bankruptcy law. Therefore, Subsection (d) may not be used to determine the applicable tax interest rate pursuant to § 511. The bankruptcy court's determination that the applicable tax rate is 12% is AFFIRMED.

CLICK FOR FULL CASE OPINION

HELD: APPROVED ATTORNEY FEES IN CHAPTER 13 CONVERTED TO CHAPTER 7 MAY BE PAID OUT OF THE FUNDS HELD BY THE TRUSTEE

Wheaton v. Fessenden (B.A.P. 1st Cir., 2016)

The U.S. Supreme Court ruling in Harris v. Viegelahn, 135 S. Ct. 1829 (2015) held that when a chapter 13 case is converted to chapter 7 post-confirmation, the post-petition wages of the debtor held by the chapter 13 trustee must be returned to the debtor and not distributed to creditors.

The dispute in this case is, to what extent does *Harris* apply where the chapter 13 is not converted, but dismissed? The court held that approved attorney's fees could be paid out of the money held by the trustee.

The court wrote:

"A debtor's postpetition wages, including undisbursed funds in the hands of a trustee, ordinarily do not become part of the Chapter 7 estate created by conversion." Because § 348(f)(1)(A) removes post-petition wages from the pool of assets that may be distributed to creditors in a case converted to chapter 7, "[a]llowing a terminated Chapter 13 trustee to disburse the very same earnings to the very same creditors is incompatible with that statutory design." The Supreme Court further held that § 348(e) terminates the services of a chapter 13 trustee, including the disbursement of payments to creditors under § 1326(c), when a case is converted from chapter 13 to chapter 7.

"A majority of courts have held that the Harris holding does not apply in a chapter 13 case that has been dismissed prior to confirmation. [citations] (stating that Harris did not apply because chapter 13 case was dismissed rather than converted, and § 1326(a)(2) dictated how funds were to be distributed in cases that are dismissed prior to plan confirmation).

"In this case, Attorney White sought approval of his fees and expenses under § 330 and the court awarded those fees. Thus, the Trustee should have paid the 2014 Fee Award to Attorney White prior to any disbursement to the Debtor."

CLICK FOR FULL TEXT OF OPINION

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IN OTHER NEWS

Bankruptcy - Taxes - Consumer Protection

Grieving family hit with unbelievable bill for 'forgiven' student loans after artist's tragic death

Lorraine Berry
02 May 2016 at 11:12 ET

Keegan Brennen was a talented artist who died of a brain aneurysm at the age of twenty-two. His $78,000 in federal student loans were forgiven upon his death. But his grieving parents were cold-cocked by the news, however, that they now owe $33,000 in taxes, according to the Portland Press Herald.

The young artist had overcome obstacles on his way to graduating cum laude from the New Hampshire Institute of Art in May, 2012. He was born with a severe immunodeficiency - the kind that, in the past would have forced him to live inside a "bubble" - which required IV treatments until he outgrew the condition in his late teens. He had learning disabilities, for which he received help, that allowed him to earn As in the classroom.

Determined to be independent, he told his mother, "Mom, the only thing I want is to be able to take care of myself when I am older," she told the Press Herald.

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FBI INVESTIGATES BANKRUPTCY FRAUD

The FBI is the primary investigative agency responsible for addressing bankruptcy fraud. And while there are other financial crimes that require larger investments of resources-like mortgage, financial institution, and health care fraud-the Bureau takes its responsibility to pursue allegations of bankruptcy fraud very seriously. The FBI focuses on cases with large dollar amounts, the possible involvement of organized crime, and suspects who file in multiple states.

The U.S. Trustee Program, part of the Department of Justice, oversees the bankruptcy system. When it uncovers suspected fraud, it refers the information to the appropriate U.S. attorney and the FBI. Working closely with the U.S. Attorney's Office, Bureau field office investigators open a case if warranted and begin conducting interviews and reviewing financial documents. Based on the complexity of the case, the FBI also can use techniques like undercover operations and court-authorized electronic surveillance to gather additional evidence.

FBI investigations typically involve fraud committed through Chapter 7, Chapter 11, or Chapter 13 of the Federal Bankruptcy Code

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NACBA 24TH ANNUAL CONVENTION IN MAY

The National Association of Consumer Bankruptcy Attorneys (NACBA) is holding its 24th annual convention in San Francisco

May 19-22 at the Marriott Marquis

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FROM NACBA NEWS

TCPA, FDCPA AND FCRA MONTHLY CASE FILINGS INCREASE IN MARCH
ACA International Apr 18, 2016

Consumer litigation cases are on the rise overall, especially the TCPA.

Consumer litigation cases under the Telephone Consumer Protection Act, Fair Debt Collection Practices Act and Fair Credit Reporting Act all increased in March, and by significant percentages compared to February, according to WebRecon's latest Debt Collection Litigation and CFPB Complaint Statistics report.

FDCPA cases increased the most from February to March-by 23.6 percent-while FCRA cases increased 20.6 percent and TCPA filings came in at 16.4 percent more than the previous month.

The increases from January to February were much smaller with 4.2 percent for the FDCPA, .7 percent for the FCRA and 12.1 percent for the TCPA.

Year-to-date increases for the case filings are also picking up for FCRA and TCPA. The FCRA cases as of March 2016 increased 24.3 percent to 886, compared to 720 as of March 2015.

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CONSUMERS AMASSED $71B IN CREDIT CARD DEBT IN 2015

CNBC
Sarah Whitten

COULD 2016 BE THE NEXT 2008 FOR CREDIT CARD DEBT?

It's possible, according to new research by CardHub.

America's outstanding credit card debt surpassed estimates in 2015, climbing to $917.7 billion, up from a forecast of $900 billion, the credit card comparison website said on Monday.

In 2015, consumers amassed around $71 billion in credit card debt, up 24 percent from the previous year. In the fourth quarter alone, consumers racked up $52.4 billion in credit card debts, nearly the cumulative amount of debts owed to credit card companies in 2014, which reached $57.4 billion.

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CONSUMER FINANCIAL PROTECTION BUREAU ISSUES ITS 2016 REPORT

From JDSUPRA Business Advisor

In the background section of the report, the CFPB provides various statistics about the debt collection industry and consumer debt. The CFPB observes that there has been a

significant increase in consumer FDCPA litigation, with 4,316 cases in 2007 and 11,697 cases in 2015.

According to the report's section on debt collection complaints, the CFPB handled approximately 85,200 complaints in 2015, which was 3,100 fewer than in 2014. (It is unclear whether the 2015 number includes payday loan complaints which, according to recent testimony given by Director Cordray to the House Financial Services Committee, were wrongly classified as debt collection complaints.) The most common complaint was about attempts to collect a debt that the consumer claimed was not owed and the second-most-common issue was communication tactics.

The report breaks down the types of complaints that consumers made in 2015:

- Continued attempts to collect debt not owed - 40%
- Communication tactics - 18%
- Disclosure verification of debt - 15%
- Taking or threatening an illegal action - 11%
- False statements or representation - 9%
- Improper contact or sharing information - 7%

CLICK FOR FULL 2016 REPORT

U.S. TRUSTEE ISSUES 2015 REPORT ON TRUSTEE AUDITS

In Fiscal Year 2015, the USTP designated 2,897 cases for audit. Of the cases designated for audit, 53 were dismissed before the case was assigned to an audit firm and 52 audits were still in process as of January 26, 2016. Of the remaining 2,792 cases, 1,114 were random audits and 1,678 were exception audits (audits of cases with income or expenditures above a statistical norm). Reports of Audit were filed in 2,634 of the completed audits, and at least one material misstatement was reported in 23 percent of these cases. There were 158 Reports of No Audit filed. A Report of No Audit is filed when a case selected for audit is closed without completion either because the debtor failed to provide sufficient information to complete the audit or the case was dismissed while the audit was in process.

CLICK FOR TRUSTEE AUDIT REPORT

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