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Cc:
Subject: Bankruptcy impacts offer-in-compromise
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Attachments: None

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LAW LETTER NO. 8 June 13 2016

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EXCERPT FROM
King's Guide to IRS
Offers in Compromise
WITH CO-AUTHORS
David Greenberg, Esq.
Neil Deininger, Esq.

OFFERS IN COMPROMISE
Release 2016 No. 1

¶ 6.14 Acceptance of offer

(f) Contractual terms

(11) If taxpayer files bankruptcy

In the event of a bankruptcy filed while the terms of the OIC are still pending, the IRS treats the accepted offer as an executory contract, which may be assumed or rejected by the debtor. A bankruptcy filing does not always nullify the terms of the OIC.

Chapter 13 case. The taxpayer has an approved offer-in-compromise, but all the terms have not been satisfied when he files a chapter 13 bankruptcy. The Service will probably file a protective claim for the full underlying tax liability to protect the Service's interests, rather than merely the compromise amount.

The Service is entitled to collect the full amount of the unpaid underlying tax liabilities if the OIC is breached (non- performance of contract).

However, the debtor can choose to assume the OIC as an executory contract in a Chapter 13 plan, and continue to pay the amount agreed on. This means the debtor agrees, as part of the Chapter 13 confirmation process, to honor the OIC and fulfill its terms during the bankruptcy case. The plan should probably provide that the OIC is assumed to preserve the benefits of the bargain.

If the debtor assumes the OIC, the offer should not be treated as breached, and the plan should provide for only the amount due under the OIC. As noted above, the

proof of claim will list the full underlying tax liabilities. Once the debtor chooses to assume an OIC, the debtor has agreed to pay in full the remaining obligation under the OIC. Accordingly, the Service must honor the OIC by accepting its payment as satisfying the obligation.

The debtor will have a choice (1) to assume the OIC in the plan or (2) pay the entire tax debt though the plan, or (3) to be liable for the underlying tax liability, whichever is in the debtor's best interest.

If the debtor assumes the OIC in the Chapter 13 plan, and the case is subsequently converted to a Chapter 7, the Service may claim the full underlying tax liability as listed on the proof of claim.

If the debtor does not assume the OIC or does not provide for payment of the unpaid underlying liability in the plan, the Service is likely to object to the plan.

The most logical way for the debtor to continue to honor the terms of the OIC is to make the agreed monthly payments as a necessary expense, outside of the plan. However, how the terms of a pending offer is to be paid in order to assume the contract, is probably a matter of local practice.

* IRS Treasury Department Memorandum No. 200015037 April 14, 20**00**

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THE LAW & CASE HOTWIRE

HELD - IRS IS NOT SUBJECT TO THE FAIR DEBT COLLECTION PRACTICES ACT

United States v. Fritz (5th Cir., 2015)

"Federal government officers and employees are explicitly exempted from the FDCPA's definition of "debt collectors."

_____

Held, in considering an offer-in-compromise IRS may include value of dissipated assets not spent on necessary living expenses.

Chandler v. Comm'r (U.S.T.C. 2015)

Before making an offer, the taxpayer withdrew $400,000 from retirement funds and "spent it on anything and everything."

"Inclusion of dissipated assets ... is no longer applicable except in situations where it

can be shown the taxpayer has sold, transferred, encumbered, or otherwise disposed of assets in an attempt to avoid the payment of the tax liability." The court said "The SO gave petitioner multiple opportunities to explain how he disposed of the funds he withdrew from his retirement accounts during 2006-2008, but he made no effort to do so.

"His testimony at trial that he "had a good time" spending the funds on "anything and everything" would not support the conclusion that the assets in question were expended for essential living expenses.

"We find that the SO did not abuse her discretion by treating petitioner's retirement account withdrawals as "dissipated assets" and rejecting his OIC for that reason."

Held, taxpayer's business recent receivables could be included in RCP, but IRS officer granted that funds in the business bank account would be excluded, because it was necessary for the survival of the business, which was taxpayer's principle source of income.

Strong v. Comm'r U.S.T.C. 2016

The SO concluded that according to petitioner's business bank account statements, Boise Gutter had funds to make monthly payments, maintain deposits, and pay business expenses. The SO determined that she would not include the funds in petitioner's business bank accounts in determining petitioner's reasonable collection potential (RCP) because petitioner needed the funds to continue to produce income and pay his business expenses.

The SO concluded that according to petitioner's business bank account statements, Boise Gutter had funds to make monthly payments, maintain deposits, and pay business expenses. The SO determined that she would not include the funds in petitioner's business bank accounts in determining petitioner's reasonable collection potential (RCP) because petitioner needed the funds to continue to produce income and pay his business expenses.

Held, IRS did not abuse discretion when it refused to release the tax lien because there was insufficient evidence to establish that removing the lien would facilitate collection of the taxes.

Drew v. Comm'r (U.S.T.C., 2016)

Petitioners also assert that SO1 abused his discretion by refusing to withdraw the NFTL filing. The IRS' decision whether to withdraw an NFTL is discretionary: "If the IRS determines conditions for withdrawal are present, the IRS may (but is not required to) authorize the withdrawal." Sec. 301.6323(j)-1(c), Proced. & Admin. Regs.

Even where the IRS accepts a collection alternative, withdrawal of an NFTL filing is not automatic. See Blackman v. Commissioner, T.C. Memo. 2013-194, at *4. Petitioners have set forth no facts to demonstrate that the withdrawal of the NFTL would facilitate collection of their tax liabilities; speculation along these lines is insufficient to show that SO1 abused his discretion

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IN OTHER NEWS
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Consumer Bankruptcy Filings Fall to 3-Month Low

May 2016 non-commercial filings down 6% from previous month

June 2, 2016
By Mortgage Daily staff

The number of new bankruptcy filings that were made last month by consumers descended to the lowest level during the last three months.

U.S. bankruptcy courts handled 66,094 new cases during May 2016, fewer than the upwardly revised 70,472 filings during the prior month.

Commercial and non-commercial filings were also down from the same month last year, when an upwardly revised 69,338 cases were filed.

Revised Offer in Compromise Procedures

From PitBull.com

In the May 13, 2016 issue of PitBullTax e-News for Tax Professionals, the following news on the Offer in Compromise procedures has been circulated.

"Effective immediately, the IRS will return newly filed Offer in Compromise (OIC) applications in cases where the taxpayer has not filed ALL required tax returns. Any fees included with the OIC application will also be returned. This new policy does not apply to current year tax returns, if there is a valid extension on file."

Please make sure your clients have filed ALL required tax returns before attempting to submit an OIC package.

In the past, pursuant to Internal Revenue Manual 1.2.14.1.18 and Policy Statement 5-133, enforcement of delinquency procedures was applied for not more than six (6) years of unfiled returns. Enforcement beyond such period was not undertaken without

prior managerial approval. The IRM 1.2.14.1.18 is still not updated since 08/04/2006, but we expect it to be updated soon in light of today's news. Or maybe not, since the update only concerns Offer in Compromise procedures.

Posted by Irina Bobrova at 05/13/2016

CLLA and The Venue Group Publish Data on Bankruptcy Forum Shopping

Press release - CLLA

Wauconda, IL May 18, 2016 - The Commercial Law League of America, a long-time leader in the push for national bankruptcy venue reform and The Venue Group, an ad hoc group of lawyers located throughout the country, have developed and recently published a list of bankruptcy cases that were filed in Delaware or the Southern District of New York instead of their home states. The results are astonishing.

For the eleven-year period between 2004 and 2014, a total of 745 cases (630 to Delaware and 115 to the SDNY) were filed outside their home jurisdictions involving approximately $909 billion in assets, $1.88 trillion in liabilities affecting 5.3 million creditors and nearly 2 million employees.

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Bill would make some forgiven student loans tax-free

By Kay Bell · Bankrate.com
Thursday, June 2, 2016

Owing a debt you can't repay is bad. Owing federal taxes on that debt amount even after you no longer have to pay it back is even worse.

Federal tax law, however, requires in most cases that when a loan is forgiven, the amount that is written off by the lender is taxable income to the previous debtor.

Sen. Debbie Stabenow, D-Michigan, thinks that's wrong when the debt was incurred under fraudulent circumstances, specifically to pay for college. Stabenow has introduced the Student Tax Relief Act, a bill that would protect defrauded borrowers from being taxed on their forgiven student loans.

Corinthian College cause

Her bill, S. 3008, was drafted in the wake of the federal investigation into Corinthian

Colleges, Inc. and its associated schools.

The Department of Education found that the now-defunct for-profit chain run by Corinthian defrauded students at more than 100 schools in more than 20 states across the country.

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The Battle of the Student Loan Discharge

Alana Katz Bankruptcy Blog
Weil Gotshal & Manges LLP

Although our Blog focuses more on corporate restructuring issues than individual bankruptcies, the discharge of student loan debt is a topic that seems to be an exception to that rule

(see The Eternal Pursuit to Collect: Due Process Rights and Actions to Collect on a Debtor's Defaulted Student Loans, Are You Ready for Some (Fantasy) Football? Or, Why Fantasy Football May Help You to Discharge Your Student Debt, and Being In Love Means Never Being Able To Get Your Student Loans Discharged, Or Why Stedman Graham Should Have To Pay His Student Loans). (Maybe it's because so many of us contributors have massive student loan debt burdens that we dream of getting rid of...) Lately, it appears to be a popular topic among courts, as well.)

Section 523(a)(8) of the Bankruptcy Code governs a debtor's discharge of student loan obligations. Under this section, student loans are presumptively nondischargeable. However, there is a narrow exception if a debtor is able to show that repayment of the student loans will cause an "undue hardship" on the debtor.

Recently, two courts entered decisions on this issue within the same week. Using the same standard for "undue hardship," the District Court for the Middle District of Alabama and the Bankruptcy Court for the District of Idaho issued largely opposite decisions based on relatively similar facts.

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