

TAX CLAIMS IN CHAPTER 11 BUSINESS BANKRUPTCY CASES

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I. INTRODUCTION

There is a delightful quality about the play between bankruptcy and tax. Superficially, the two bodies of law and policy often appear in conflict. However, under the surface and after careful thought, what appeared to be a conflict between the two regimes often evaporates right before the discerning eye. Once the superficial conflict has been removed, one can craft a more elegant harmony between bankruptcy and tax.

In gaining a better appreciation of the elegant dance between bankruptcy and tax, one must begin with an understanding of just how profound the 2005 amendments to the tax provisions of the Bankruptcy Code were. On April 20, 2005, the President signed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“2005 Act” or “BAPCPA”). Although most of the controversy surrounding the 2005 Act centered on many of the consumer provisions, the 2005 Act also included substantial changes to business bankruptcies and the most substantial modifications of bankruptcy tax law since 1980. Generally, most provisions in the 2005 Act are effective for cases commenced on or after October 17, 2005, unless otherwise noted. However, there are at least a half dozen dates “otherwise noted,” including on or after the date of enactment (April 20, 2005) for cases or proceedings filed after such date. Thus, during this transition period, it is important to consult the 2005 Act to determine whether the case or proceeding of interest is governed by the 2005 Act or the prior Bankruptcy Code.

The 2005 Act contains approximately 20 tax changes that required modifications of the Bankruptcy Code. Several of the provisions were recommendations made by the National Bankruptcy Review Commission (“NBRC”) based on a report prepared by the Tax Advisory

Committee appointed by the Chairman of the NBRC. However, a few of the provisions contradict the recommendations of both the NBRC and the Tax Advisory Committee. In general most of the provisions selected from the recommendations of the report prepared by the NBRC and those added to the 2005 Act were favorable to the taxing authorities, especially to state and local taxing authorities.

Major winners in the 2005 Act happen to be the federal, state, and local taxing authorities. In fact, one bankruptcy judge is rumored to lament that the IRS was able to convince Congress to repeal virtually every tax decision in bankruptcy that had gone against the IRS over the years. The good news is that a number of cases deserved rejection, and the 2005 Act did just that. The bad news is that the 2005 Act did not stop with those cases that had little justification; it went further and proceeded to overturn the results of cases that stood on solid bankruptcy and tax policy. For example, under the 2005 Act, taxing authorities, when entitled to interest, may receive that interest at the applicable nonbankruptcy rate, a boom for state taxing authorities in some jurisdictions where the rate may exceed 20%.

Another interesting provision in the 2005 Act provides that fraudulent taxes are not dischargeable in a *corporation's* Chapter 11 case. Although not troubling on its face, recall that a corporation is not a human being; it is a fictitious entity that acts through human beings. The bad guys in many of these cases are gone; any nondischargeable debt like the tax claim in question simply remains to punish the creditors and new equity, relatively innocent folks. The real concern here is whether the camel's nose is in the tent – does this particular exception to the robust discharge under section 1141(d) serve as a harbinger of more exceptions to come in the corporate bankruptcy context.

In these materials, I have included the bankruptcy tax provisions regarding the treatment of priority and/or unsecured tax claims in a chapter 11 business bankruptcy case. I wanted to ensure my reader access to these changes in their appropriate context. One can be assured, however, that with these changes will come much dispute and a change in the environment in which we practice. More than ever, the general bankruptcy practitioner must be cognizant of the potential federal, state, and local tax consequences of a business bankruptcy filing.

II. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 11

Section 1141 defines the effect of confirmation of a chapter 11 plan, and specifically discharges certain debts that arose before confirmation. The 2005 amendment excepts tax liabilities from a Chapter 11 discharge if the debtor corporation made a fraudulent return, or willfully attempted in any manner to evade or defeat that tax or duty. The new provision also excepts from discharge any debt incurred under false pretenses or by making a false statement in writing. The potential mischief this provision may work cannot be overstated. This is the first provision that excepts from the chapter 11 discharge a corporate misconduct debt. The problematic aspect of this new concept is that a corporation is a legal fiction; a corporation may act only through its officers and directors. Often, these “bad guys” are gone by the time the issue of non-dischargeability arises. Thus, the drag on cash imposed by non-dischargeable debts is shouldered by innocents, that is, the creditors and new equity in the reorganized debtor.

A. Practice Prior to 2005 Act

A corporation was entitled to a fresh start and obtained a discharge under Code section 1141 of all debts not provided for in the plan. Priority claims including tax priority claims were required to be provided for in the plan under Code section 1129(a)(9).

B. Changes Enacted

Bankruptcy Code section 1141 defines the effect of confirmation of a chapter 11 plan and specifically discharges certain debts that arose before confirmation. The 2005 amendment excepts tax liabilities from a Chapter11 discharge if the debtor corporation filed a fraudulent return or willfully attempted in any manner to evade or defeat that tax or duty. The new provision also excepts from discharge any debt incurred under false pretenses or by making a false statement in writing. The potential mischief this provision may cause cannot be overstated. This is the first provision that excepts from the Chapter 11 discharge a corporate misconduct debt or any other debt that is generally not provided for in the plan.

C. Impact of Changes

The problematic aspect of this new concept is that a corporation is a legal fiction; a corporation may act only through its officers and directors. Often, these “bad guys” are gone by the time the issue of nondischargeability arises. Thus, the drain on cash imposed by nondischargeable debts is shouldered by relative innocents, that is, the creditors and new equity in the reorganized debtor. Bankruptcy Code section 362(b)(9) does not operate as a stay against:

...the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

Because of this provision it appears that the taxing authority will be able to obtain a lien on emergence from Chapter 11 in unsecured assets that otherwise would have been available to fund operations and provide payments to unsecured creditors.

III. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RETURNS

Under section 521, the debtor must now timely file *postpetition* tax returns or suffer conversion or dismissal of the case. The conversion or dismissal is mandatory if the debtor does not file the returns or obtain an extension within ninety days after the taxing authority files its request. This provision applies in Chapter 7, 11, 12, and 13. Although this provision is not jurisdictional – thus, it appears to be waivable in the appropriate circumstance – there is no doubt that this provision, along with others, is designed to limit the discretion of bankruptcy judges.

IV. SETOFF OF TAX REFUND

The 2005 Act excepts from the automatic stay the setoff of an *income tax refund* and an *income tax liability*, both of which have their origin in a prepetition taxable period unless the liability is disputed. If either the refund or the liability falls in the postpetition period, the setoff is stayed. If a setoff is tolled during a hearing to determine amount or legality of the tax, then the taxing authority may freeze the refund. This amendment actually restricts the procedures under local rules in existence in a large number of jurisdictions.

A. Changes Enacted

The 2005 Act excepts from the automatic stay the setoff of a refund and a liability, both of which have their origin in a prepetition taxable period unless the liability is disputed.

B. Impact of Change

This amendment reflects a procedure under local rule in existence in a large number of jurisdictions and should have minimal impact. However, it has been pointed out by some writers that the decision in *Seminole Tribe of Florida*, 116 S. Ct. 1114 (1996) may preclude the debtor from recovering tax refunds improperly setoff by a state taxing authority.

V. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS

Any governmental entity can now be allowed administrative expense treatment for taxes incurred in the conduct of business after a petition in bankruptcy is filed without being required to file an application for allowance and payment. Under prior law, filing an application for allowance and payment of an administrative expense was required before being allowed administrative tax treatment. Section 960, Title 28, makes officials, including the bankruptcy trustee, operating a business under the authority of a United States Court subject to all federal, state and local taxes applicable to such a business.

The amendments added two new paragraphs to section 960 to clarify a trustee's duties regarding taxes that:

- (1) require timely payment under nonbankruptcy law unless secured by a lien and abandoned within a reasonable period of time, or otherwise excused under a specific provision of Title 11;
- (2) permit deferral of payment until a final distribution if a trustee under Chapter 7 did not incur the tax or if the court makes determination of "probable insufficiency of funds to pay in full all administrative expenses having an equal priority with the tax liability.

This amendment makes two additional changes in aid of state and local taxing authorities. The first change allows any expense authorized by "state statute," under which the claim arose, to be paid when the amount realized exceeds the amount of the secured claim. For example, if the state statute allowed attorney's fees or penalties for failure to pay, the amendment would permit payment of those amounts to the extent not considered a part of the secured claim.

The second change allows the trustee to recover property taxes from the sale proceeds as a necessary part of maintaining the property.

A. Practice Prior to 2005 Act

Prior to the 2005 Act, an application for allowance and payment of an administrative expense was required to be filed before being allowed administrative tax treatment

B. Changes Enacted

Any governmental entity can now be allowed administrative expense treatment for taxes incurred in the conduct of business after a petition in bankruptcy is filed without being required to file an application for allowance and for payment. Section 960, Title 28, makes officials, including the bankruptcy trustee, operating a business under the authority of a United States Court subject to all federal, state and local taxes applicable to such a business.

C. Impact of Changes

As is true with several other tax changes included in the 2005 Act, the change will make it easier for state and local tax authorities to collect taxes. The impact on other creditors is minimized by the provision that, in a case pending under Chapter 7, payments may be deferred until final distribution is made under Code section 726 of the Code, if the tax was incurred before the trustee was appointed, or before the due date of the return for which the court determines there is a probability the debtor will not be able to pay in full the administrative expenses and other claims with the same priority as the tax claim.

VI. STANDARDS FOR TAX DISCLOSURES IN DISCLOSURE STATEMENTS

Adequate information now requires a discussion of potential material Federal tax consequences to the debtor, any successor to the debtor, and a hypothetical investor typical of the

holder of claims or interests in the case. Moreover, there may be a requirement that the Disclosure Statement include an IRS Circular 230 Disclosure.

The 2005 Act requires that the Disclosure Statement include adequate information regarding the federal tax consequences of a plan. In these circumstances, “adequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable the inclusion of a discussion of the potential Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical reasonable investor typical of the holders of claims or interests in the case, that would enable such hypothetical investor of the relevant class to make an informed judgment about the plan. However, adequate information need not include such information about any other possible or proposed plan, and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

VII. TAX INTEREST RATES

Under the 2005 Act, one of the most significant changes is the rate of interest on tax claims. New §511 states that:

(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.

(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.

This new provision is problematic. Under some state laws, this may result in the only example of a creditor (the state taxing authority) potentially receiving more than the value of its claim. For example, some state rates will exceed the market rate and may even approach or exceed 20%. For federal taxes, the applicable federal rate is usually close to market.

A. Practice Prior to 2005 Act

Bankruptcy Code section 1129(a)(9) provided that the total value of the payment over a period not to exceed six years from the assessment date was to equal the amount of the tax claim as of the effective date of the plan. There was no other provision that specified an interest rate; not only was a market rate to be used for tax purposes but also for other claims. In fact, there was no provision in the Bankruptcy Code that suggested or implied that a creditor should receive more than the value of its claim until Bankruptcy Code section 511 was added by the 2005 Act.

B. Changes Enacted

Section 704 of the 2005 Act adds new Bankruptcy Code section 511 providing that if interest is required on a tax claim, including tax claims qualifying as administrative expenses, or 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. Code section 511 provides the following:

§ 511. Rate of interest on tax claims

(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.

(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.

While Bankruptcy Code section 511 indicates that the taxing authority should receive a payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the concept of value is distorted by the requirement that the nonbankruptcy rate must be used to determine value.

C. Impact of Changes

As noted above, the Bankruptcy Code does not specify the interest rate to be used for tax claims entitled to interest, but it does indicate that a market rate should be used. Judicial consensus is that the Federal statutory rate is relevant in determining the appropriate market rate of interest. To avoid wasting both judicial and debtor resources by litigating the rate, the NBRC followed the recommendation of the Tax Advisory Committee that the rate be fixed at the statutory rate under IRC section 6621(a)(2), without reference to IRC section 6621(c) and that it should be the rate in effect as of the confirmation date. The rate under IRC section 6621 was included in early proposed modifications to the IRC, but was subsequently modified to include the federally applicable rate in section 1274(d). IRC section 1274 appeared to be a reasonable substitute. Subsequent drafts provided that IRC section 1274 would apply to federal taxes and other taxing units would use the rate under nonbankruptcy law. As passed, 2005 Act section 704 eliminates any reference to the Internal Revenue Code by providing that nonbankruptcy law applies to all taxes where interest is required.

While the rate for federal taxes approximates market value, the rate for state and local taxes could be in excess of 20 percent, resulting in state and local taxing authorities receiving interest in excess of market rate at the expense of other creditors. Additionally, it violates the general philosophy underlying bankruptcy law that creditors should not receive consideration in excess of the value of such claim.

VIII. PLAN TREATMENT OF TAX CLAIMS IN CHAPTER 11

A. Plan treatment of tax claims

Section 1129(a)(9)(C) has been amended to provide that Section 507(A)(8) tax claims must receive:

- *Regular installment* payments in cash (old law was *deferred* cash payments);
- Over a 5 year period measured from the order for relief (old law was 6 years from assessment);
- In a manner no less favorable than the “most favored” nonpriority unsecured claim other than the administrative convenience class; and
- Interest at a rate based on nonbankruptcy law (either state law for a state tax claim or the applicable federal rate for federal tax claims).

B. Secured Priority Claims

Under the 2005 Act, Congress rejected a line of precedent that if a claim otherwise categorized as a tax claim happened to be secured, then that claim would no longer be entitled to the special treatment under the Bankruptcy Code. Now, the Code requires all priority tax claims (secured or unsecured) to be treated in accordance with the special provisions regarding priority tax claims in a bankruptcy case.

C. Straddle-Year Tax Claims

Let us assume a corporation is a calendar year taxpayer. That is just a fancy tax way of saying that its tax year begins January 1 and ends December 31 of each calendar year. Now in the tax year in question, the corporation files a bankruptcy petition on July 1. Let us assume that all during the tax year the corporation has been conducting business, generating income and deductions. Some of those taxable events occurred prepetition and some occurred postpetition. The IRS is going to argue that the entire tax liability occurs postpetition regardless of when the taxable event occurs. In our chapter 11 case, that makes the tax for the year in which the bankruptcy case is filed a complete administrative expense entitled to be paid in full in cash as of

the effective date of the plan. But, recall that some of the income can be traced to events that occurred prepetition. How can the IRS make this argument? Under federal tax law, the tax on income is annualized and does not arise until the close of the tax year. The IRS would simply argue to the judge that under applicable nonbankruptcy law, the tax does not arise until January 1 following the end of the tax year and that a return is not required until the 15th day of the third month following the close of the tax year or the following March 15.

Simple isn't it. Not really. You see the debtor and the creditors' committee will argue that "when a claim arises under bankruptcy law" is not controlled by the Internal Revenue Code; the question is controlled by the Bankruptcy Code. See it is just the tax iteration of the classic "when does a claim arise in bankruptcy" situation. Guess what? In every circuit other than the Third, the debtor wins. The courts that have addressed the issue have generally held that you bifurcate the treatment of the tax claim so that the taxes associated with the prepetition part of the tax year are section 507(a)(8)(A) priority claims that can be paid out over 5 years from the order for relief with the appropriate interest and that the taxes associated with the postpetition part of the year are administrative expenses entitled to very, very special treatment. The Third Circuit would treat the entire amount as an administrative expense. Why? Because under the Third Circuit when a claim arises is answered by complete deference to applicable nonbankruptcy law.

Now, let's look at what new section 507(a)(8)(A) has done – that is section 705 of the Act.

- 8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for--
 - (A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition--

So under the new Act the taxes associated with the prepetition tax year are – you guessed it – general unsecured claims. Of course, the taxes associated with the postpetition part of the year are administrative expenses.

Lesson 1.1: The lesson here is file as deep in your tax year as possible if you are a corporation. Then most of your current year taxes are general unsecured claims. Then argue that such claims should be treated like the rest of the unsecured claims – not very good!

At this point, since I have your attention on section 507(a)(8)(A), look at the amendment in your materials. I just gave you the amended language – not the entire section. Check out where it ends and how it ends. The amendment ends after (a)(8)(A)(ii)(II) and ends with a period! If you have your Bankruptcy Code take a look at section 507(a)(8)(A) in its entirety. You see that that section has Roman (i), (ii), and (iii). These Roman numerals corresponded to the three rules regarding priority and nondischargeable income and gross receipt tax claims – the three year rule, the 240-day assessment rule, and the still assessable rule. Three independent rules. Meet any one of the three and the taxing authority had a priority tax claim. But look what the drafters did. They sewed in the amendment as we have read it and changed the three rules into just two rules because of the placement of the period in the amendment. Now, it appears that you must meet either Roman (i) AND (ii) or Roman (iii). This may constitute a big, big change. Did Congress intend this result – no. What does the legislative history say? – nothing because Congress blew it! Does it make technical sense? – yes. What are courts going to do with this?

Lesson 1.2: The lesson here is that any tax within three years that has not been assessed within 240 days of the bankruptcy filing plus those extensions for a pending offer in compromise is arguably an unsecured nonpriority claim. Moreover, any tax that has been

assessed within 240 days but is outside the three-year window also appears to be an unsecured nonpriority claim.

IX. PRIORITY TAX CLAIMS

A. Tolling

Section 507(a) has been amended to address several issues, some of which had already been addressed by the courts. New Section 507(a) states, in relevant part:

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for--

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition--

(i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days, plus before the date of the filing of the petition, exclusive of--

(I) any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment that tax was pending, before the date of the filing of the petition; or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days.

B. Property Tax

The 2005 Act modifies the priority treatment of property tax claims. The relevant section provides:

(B) a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition.

X. TARDILY FILED PRIORITY TAX CLAIMS

Prior to the 2005 amendment, section 726 stated that a tardily filed claim, for the purposes of distribution, had to be filed before the date on which the trustee “commenced distribution” under section 726. The 2005 amendment adds a second condition before a tax claim is deemed tardy, namely, that a tax claim filed before the date that is ten days after the mailing to creditors of the summary of the trustee’s final report. The first condition was modified by adding, “commences *final* distribution.” Without the change, “any distribution” operated as a bar date for the filing of a tardily filed claim. As amended, that bar date has been moved to the earlier of the trustee’s final report or the commencement of “final” distributions.

A. Practice Prior to 2005 Act

Prior to the 2005 amendment, Code section 726 stated that a tardily filed claim, for the purposes of distribution, had to be filed before the date on which the trustee “commenced distribution” under Code section 726.

B. Changes Enacted

The 2005 amendment adds a second part to the condition for the timely filing of a priority tax claim, namely that the taxing authority must file its claim before the *earlier of* 10 days after the mailing to creditors of the trustee’s final report, *or* (the previously existing condition) the date on which the trustee commences *final* distribution. The word *final* was also added by the amendment; without this change, “any” distribution operated as the bar date for the filing of a priority tax claim.

C. Impact of Changes

It is important that the claim be filed before the final order approving the trustee's report is entered to avoid requiring the trustee to recalculate the amount paid to creditors and equity holders, to rewrite the report, and to reschedule the hearings to approve the report. Filing a claim after the report is filed clearly affects the efficient court administration of the case. See *Pioneer Investment Servs. Co. v. New Brunswick Assocs., Ltd.*, 113 S. Ct. 1489 (1993). The provision as modified should satisfy the questions raised by trustees and provide for a more effective distribution.

XI. JURISDICTION OVER TAX MATTERS

A. Limits on Jurisdiction

The 2005 Act amended section 505(a)(2), the determination of tax liabilities. The new amendment provides:

(a)(1) Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax . . .

(2) The court may not so determine . . .

(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.

Thus, courts will no longer be able to redetermine the tax for debtors that did not object to a property tax before the time for such objection expired. The 2005 Act also amends section 505(b), the request for the determination of a tax. The 2005 Act requires that the bankruptcy court clerk to maintain address list of tax agencies. Moreover, if there is no designation by a tax authority on record, then one can file a request at the place that one would file the tax return.

B. Practice Prior to 2005 Act

Bankruptcy Code section 505(b) previously provided that a trustee may request a determination of any unpaid liability of the estate for any tax uncured during the administration of the case, by submitting a tax return for such tax and a request for a prompt determination to the governmental unit charged with collection or determination of tax liability. Unless the return was fraudulent or contains a material misrepresentation, the trustee, the debtor and any successor to the debtor are discharged from any liability for the tax reported on the return if paid and if the governmental unit did not notify the trustee, within 60 days, that such return has been selected for examination or, if selected for examination, the governmental unit does not complete the examination within 180 days or such additional time as the court permits.

C. Changes Enacted

In addition, the 2005 Act adds “the estate” to the list of entities that can apply for a prompt determination of any unpaid tax liability of the estate.

D. Impact of Changes

The addition of “the estate” to the list of entities that can apply for a prompt determination makes it clear that the estate, being the tax entity that requested the determination, is also covered by the determination. Thus an estate with funds will no longer be liable for any tax that may be subsequently assessed. In cases where there are multiple entities, this change will allow the trustee or debtor-in-possession to close or leave estates open when a letter is received indicating that the return has been accepted without concern of future action by the taxing authority.

E. Stay on Tax Court Proceedings

The 2005 Act limits the stay of a tax proceeding to prepetition taxes by amending Section 362(a)(8). That new provision provides:

a petition . . . operates as a stay, applicable to all entities, of—

8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

In *Halpren v. Comm'r*, 96 T.C. 895 (1991), the United States Tax Court refused to hear a case involving taxable years ending after the voluntary petition was filed, citing section 362(a)(8), the subparagraph of the automatic stay prohibiting the commencement or continuation of a proceeding before the Tax Court. Read literally, that part of the automatic stay did in fact prohibit the initiation or continuation of any proceeding before the Tax Court after a bankruptcy was filed.

1. *Changes Enacted*

Language was added to Bankruptcy Code section 362(a)(8) to limit the stay, as to individuals, to proceedings for taxable periods “ending” before the entry of an order for relief in bankruptcy. For corporate debtors, the stay was limited to those taxable periods that a bankruptcy court might determine.

2. *Impact of Changes*

This change is technical. The statute was “tweaked” to deal with a matter that needed to be resolved. As for corporate debtors, occasions may still arise where filing a Tax Court petition and also filing a complaint to determine a tax liability in the bankruptcy proceeding will be the more prudent course of action.

XII. CONCLUSION

The changes to tax law and tax claim treatment are significant. These changes will impact most cases under all substantive chapters for relief under the Bankruptcy Code. Practitioners must be aware of these provisions to represent their clients in a competent and effective manner. This is no less the case where a business seeks to reorganize under chapter 11 of the Bankruptcy Code.