

Memorandum



Subject

Proposed Bankruptcy Plan Language
for the Internal Revenue Service (IRS)

Date

January 11, 2010

To

Bankruptcy Bar

From

AUSA Stephanie Bengford and
AUSA Cheryl Dupris

Below are suggestions regarding standard plan language for treatment of the IRS as to a basic IRS secured claim, priority claim, or unsecured claim. This memo is provided for you to consider issues which could arise relating to the treatment of the IRS in your bankruptcy plan. The IRS will evaluate the facts of each case when determining whether to file objections to a bankruptcy plan.

ITEMS TO CONSIDER INCLUDING:

1. General Language acknowledging the claim filed by the Internal Revenue Service

IRS filed a proof of claim showing an allowed claim in the amount of \$ [add amount], consisting of a secured claim in the amount of \$ [add amount], a priority claim in the amount of \$ [add amount], and an unsecured general claim in the amount of \$ [add amount].

2. General Language as to a Secured Claim:

Debtor(s) shall provide for payment of Internal Revenue Service's (IRS) secured claim with interest. Interest on the IRS secured claim begins to accrue as of the date that Debtor(s) are scheduled to make their first monthly payment under the Plan. The applicable interest rate is [see www.smbiz.com and go to the "reference section" and click on "IRS Interest Rates, AFRs" and select the interest rate that applies as of the date the Court orders confirmation].

See Appendix 3A to Local Rules for additional language to be included.

3. General Language as to a Priority Claim:

Payment schedule of IRS priority claim is as follows:

Amount of Payment Months Paid Total Paid

[note that priority claim must be paid in full during the term of the Plan]

4. General Language as to an Unsecured Claim:

Payment of the IRS' unsecured claim will be made pursuant to paragraph [add applicable number] of this Plan. Discharge of any portion of the IRS' unsecured claim is determined pursuant to the Bankruptcy Code. See, e.g., 11 U.S.C. § 523(a)(1).

5. Other General Issues for Consideration [by no means an exhaustive list]:

a. See Appendix 3A to Local Rules at paragraph 5 for language to include regarding timely payment and filing of post-petition taxes.

b. When the Trustee objects to a plan because tax refunds should be turned over to the trustee as disposable income, the Trustee normally includes limiting language in his/her objection implying that refunds which the Debtor is entitled to or receives should be turned over. The IRS would object to language limiting its ability to offset prior to a refund being issued. Indicating that Debtor should turn over refunds received by the Debtor to the Trustee, allows for offset prior to the issuance of the tax refund.

c. Counsel should make their clients aware that although post-petition items cannot be dealt with in a Plan of reorganization because they are unmatured, the IRS is entitled to post-petition interest and penalty accruals for non-dischargeable taxes even when the underlying tax liabilities are paid in full over the life of the Plan. Payment of the tax liabilities through the Plan simply impacts the amount of such interest and penalties that accrue.